



**House
Legislative
Analysis
Section**

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**EXPAND POSSESSION AND USE OF
EMD DEVICES**

**House Bill 6028 (Substitute H-1)
First Analysis (12-4-02)**

**Sponsor: Rep. Mickey Mortimer
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Since 1976, Michigan has banned the possession and sale of stun guns and other electrical devices or weapons that use a current, wave, or beam of electricity to disable a person. Earlier this year, Public Act 536 amended the penal laws to exempt from this ban peace officers, employees of the Department of Corrections (if the person is authorized in writing by the director to carry a concealed weapon while in the official performance of his or her duties or while going to or returning from those duties), and people employed by a private vendor that operates a youth correctional facility under provisions of the Corrections Code who meet specified criteria.

More recently, as technology has advanced, a new generation of devices known as electro-muscular disruption (EMD) devices have been developed. EMDs use a high voltage shock to immobilize an attacker by disrupting the signals of the nervous system from the brain to the muscles – as compared to a stun gun which uses pain to immobilize a person. Even a physically large attacker can be immobilized by just one to three seconds of contact. Though these devices may temporarily paralyze a person or cause a state of confusion and disorientation, reportedly, these effects do not result in lasting harm to systems of the body, such as the heart and other organs. Many in law enforcement feel, therefore, that EMDs provide a safer alternative than conventional tools available to them such as chemical sprays, physical force, batons, and firearms. Many states authorize the use of EMDS by law enforcement personnel and some studies have shown a decrease in injuries to officers as well as to the suspects they were subduing as compared to using standard techniques.

Some of these devices include a chip that records each time a device is discharged and also sprays Mylar tags when used. These Mylar tags are imprinted with information from the manufacturer and can be used to trace the device back to the manufacturer (an important tool when investigating improper or illegal use of an EMD). Though peace officers, corrections officers, and youth corrections

officers were authorized to use EMDs, stun guns, or other devices by Public Act 356, it is still against the law for manufacturers or distributors to sell or deliver such devices to residents in Michigan. Some in law enforcement believe that the law should be amended to allow for the sale and delivery to law enforcement personnel of EMDs that contain the information and tracking systems, and that the exemption for using EMDs should be expanded to include other personnel associated with keeping the peace or making arrests and for airline personnel.

THE CONTENT OF THE BILL:

Current law prohibits selling, offering for sale, or possessing a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed (e.g., stun guns or electro-muscular devices) and which is designed to incapacitate temporarily, injure, or kill. (Public Act 536 of 2002 exempted peace officers, employees of the Department of Corrections, and an employee of a private vendor operating a youth correctional facility from this ban.) However, the penal code does not prohibit delivery to or possession by the Department of State Police (DSP) or any agency or laboratory with prior written approval, and under conditions established by, the director of the department for the purpose of testing a stun gun. The bill would amend the Michigan Penal Code to eliminate this latter provision and replace it with a provision allowing the possession and use of an electro-muscular device (EMD) by certain authorized professionals and allowing the sale or delivery of an EMD to those personnel.

Under the bill, the possession and reasonable use of a device that used electro-muscular disruption technology would not be prohibited for a peace officer, corrections officer authorized in writing by the director of the DOC, probation officer, court officer, bail agent, licensed private investigator, aircraft pilot, or aircraft crew member who had been trained in the use, effects, and risks of using the device in the performance of his or her official duties.

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Possession solely for the purpose of delivering a stun gun to any governmental agency or to a laboratory for testing would also be allowed with the prior written approval of the governmental agency or law enforcement agency and under conditions that had been determined to be appropriate by that agency.

A manufacturer, authorized importer, or authorized dealer would be permitted to demonstrate, offer for sale, hold for sale, sell, give, lend, or deliver an electro-muscular disruption device to a person authorized to possess a device, and could possess such a device for any of those purposes. A violation of the bill would be a felony punishable by imprisonment for not more than four years or a fine of not more than \$2,000, or both. "A device that uses electro-muscular disruption technology" would mean a device to which all of the following apply:

- The device is capable of creating an electro-muscular disruption and is used or intended to be used as a defensive device capable of temporarily incapacitating or immobilizing a person by the direction or emission of conducted energy.
- The device contains an identification and tracking system that, when the device is initially used, dispenses coded material traceable to the purchaser through records kept by the manufacturer.
- The manufacturer of the device has a policy of providing the identification and tracking information described in the bill to a police agency upon written request by that agency.

MCL 750.224a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill likely would have a minimal fiscal impact on the state and local correctional systems. The impact would depend on how the bill affected the numbers of convictions obtained for violations of the bill's provisions. In 2000, there were 36 dispositions for violations and attempted violations of the current law against possession and sale of all prohibited devices. Though none of these were imprisoned, in 2001, two violators of the current law were imprisoned – one was sentenced to six months in prison, and the other sentenced to one year. (12-3-02)

ARGUMENTS:

For:

Electro-muscular devices (EMDs) emit a high voltage burst of electricity that temporarily

immobilizes an individual by disrupting the signals from the brain to the muscles. These devices are being used in other jurisdictions by law enforcement personnel to reduce injuries to suspects and officers that occur during arrests, when transporting prisoners, and during court appearances. According to statistics compiled by the Orange County, Florida sheriff's department, in 1,600 field uses of EMDs, there were no injuries to officers or suspects. This is in comparison to the following injuries that occurred during attempts to subdue a suspect when traditional techniques and equipment were used: in cases where a flashlight was used, 80 percent of suspects injured/16 percent of officers; batons – 78 percent of suspects injured/20 percent of officers; chemical sprays – 5 percent of suspects/29 percent of officers; a physical punch – 78 percent of suspects/20 percent of officers; and kicking – 45 percent of suspects injured/11 percent of officers.

It would appear, therefore, that EMDs are superior to traditional methods used to subdue suspects and prisoners. The effects are temporary in nature (normal functioning returns in a few seconds to about an hour) and there currently have been no deaths or serious injuries associated with the use of EMDs. Further, the bill would restrict usage to only those devices equipped with the information and tracking systems. Should a device fall into the hands of a criminal, the Mylar tags deployed by the device would become an important investigative tool. Also, if a suspect alleged that an officer zapped him or her repeatedly, the information chip inside the device would enable the record of discharges to be reviewed. If the officer improperly utilized the device, appropriate discipline could be instituted. Further, the bill requires appropriate training and restricts authorized users to those in law enforcement, those who assist in keeping the peace such as court personnel and licensed private investigators, and airline personnel who – although not in law enforcement – are entrusted with the safety of their passengers and crew. Manufacturers or dealers who violated the prohibition on unauthorized sales or personnel who used the devices for unauthorized purposes could be charged with a felony punishable by up to four year in prison, a fine of up to \$2,000, or both.

Against:

People in these professions already use pepper spray and a variety of physical restraints to subdue a dangerous or out-of-control person. Why does yet another device, especially one that sounds so dangerous, need to be allowed to be used?

Response:

EMDs are superior for several reasons. First of all, unlike pepper spray – which can disable an entire crowd – an EMD is directional and can isolate a target. Secondly, pepper spray is not always effective (e.g., in extreme cold or on people using alcohol or certain controlled substances or in an emotional rage). Pepper spray takes longer to recover from and can disable the officer or other person using it. A baton can severely injure a person if used improperly. Even when an officer is trying to use a baton responsibly, officers are trained to try to hit a portion of soft tissue on the leg where a nerve is easily disabled, thereby causing the person’s leg to buckle. However, this area is very close to the knee, and if a suspect or criminal is moving (which is generally the case), the person’s knee may be struck instead.

Against:

If licensed private investigators are included in the bill, why aren’t security guards? They often need to subdue persons suspected of shoplifting, robbery, or if there is a fight.

Response:

Licensed private security guards are regulated by the state, undergo a criminal background check, and are subjected to other stringent requirements. The term “security guard” however, is broad and encompasses licensed private security guards and licensed private security police (who usually carry weapons), as well unregulated “proprietary” security guards who are considered employees of the store or business they protect. Reportedly, four out of the five deaths at the hands of security guards recorded in the state over the past two years were associated with proprietary security guards. In many instances security guards work in conjunction with local police (such as securing a business after a break-in, apprehending a suspect, etc.), and since the events of September 11, 2002, security guards have played an important role in keeping the peace. Therefore, it could make sense to include them in this legislation; however, perhaps only the security guards who are licensed by the state, or who work for a licensed security guard business should be included.

Against:

Only a handful of states (Hawaii, Massachusetts, Michigan, New Jersey, New York, Rhode Island, and Wisconsin) and about 7 local jurisdictions still prohibit stun guns, EMDs, and other such devices. Besides being useful for law enforcement, all people should be able to use them for personal protection. The ban on these devices should be eliminated entirely.

Response:

The ban on use by the general public should be upheld. Stun guns and EMDs are not toys. Some brands deliver up to 300,000 volts and more. They are cheap and easily accessible by catalog and the Internet. (Currently, because they are illegal, all Internet sites reviewed post that they do not ship to Michigan.) They have been used by criminals in the commission of crimes. Some involved in the Jon Benet Ramsey murder investigation believe that a stun gun was used to disable the young child so that she could not cry out for help or defend herself. Moreover, people may have been led to believe the devices to be safer than they are. In the hands of properly trained law enforcement officers, they appear to be a safe and effective tool. But, just like some prescription drugs, the dangers aren’t always apparent until several million people use it.

Against:

It would seem that the electrical current used in EMDs and stun guns could interfere with pacemakers or the electrical system of the heart.

Response:

According to information supplied by a representative of the Court Officers Deputy Sheriff’s Association of Michigan, a University of Missouri study involving 400 subjects did not show evidence of interference with the normal heart rhythm. Furthermore, the study appeared to confirm that the T-waves emitted by EMDs do not disrupt the functioning of a pacemaker. However, it could be possible that a direct hit on a pacemaker could cause some functional disruption, similar to what a physical blow to the heart or a pacemaker can do.

POSITIONS:

The Court Officers Deputy Sheriff’s Association of Michigan supports the bill. (12-3-02)

The Department of State Police is neutral on the bill. (12-3-02)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.