

## **LOCAL CORRECTIONS OFFICERS: ALLOW USE OF EMD DEVICES**

**House Bill 5074 as introduced  
First Analysis (11-4-03)**

**Sponsor: Rep. Doug Spade  
Committee: Criminal Justice**

### ***THE APPARENT PROBLEM:***

Recently, a new generation of devices known as electro-muscular disruption (EMD) devices have been developed. EMD devices 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.

Public Act 709 of 2002 amended the state penal laws to allow the possession and reasonable use of an EMD device by a peace officer, employee of the Department of Corrections authorized in writing by the director of the DOC, probation officer, court officer, bail agent authorized under Section 167b, 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. However, the legislation did not specifically include local corrections officers in the list of people authorized to possess and use EMD devices.

The attorney general reviewed the recent changes to the penal code and issued an opinion as to whether the exemption on use and possession of stun guns and other similar devices, including EMD devices, applied to local correctional officers. Attorney General Opinion 7135, dated July 16, 2003, explored whether or not the term “peace officer” encompassed local corrections officers. The attorney general wrote that a person “is within the recognized and accepted usage of the term ‘peace officer’ if the individual has general responsibility for the enforcement of the law and preservation of the public peace.” Apparently, the duties of local corrections officers differ from county to county; in some counties, peace officers also serve as corrections officers. In other counties, a

local corrections officer may be assigned exclusively to the county jail. Thus, depending on the duties of a local corrections officer, some may fall within the definition of “peace officer” and be exempt from the ban and others will not. Indeed, the attorney general concluded that “those county corrections officers who are also ‘peace officers’ have been exempted from the ban on possession of stun guns and similar devices in sections 224a and 231 of the Michigan Penal Code, MCL 750.224a and MCL 750.231, but those county corrections officers who are not ‘peace officers’ have not been so exempted.”

Since EMD devices provide a safer alternative than conventional tools available to law enforcement personnel such as chemical sprays, physical force, batons, and firearms, many believe that local corrections officers should be allowed to use such devices. Supporters point to studies that have shown that EMD devices decrease injuries to officers, as well as to suspects they were subduing, as compared to using standard techniques. In testimony before the House Committee on Criminal Justice, local corrections officers testified that cell extractions – when a prisoner must be removed from his or her cell – can be particularly dangerous if the prisoner is uncooperative or becomes combative. The Oakland County undersheriff testified that approximately 30 deputies a year are assaulted in their county jail. In one incident, a murder suspect who was out of his cell for phone time assaulted and injured two deputies; one of them was off work for a year. It is believed that use of EMD devices during cell extractions or to subdue unruly inmates would provide greater safety and protection to both officers and inmates. Legislation has therefore been offered to add local corrections to the list of individuals authorized to possess and use EMD devices.

### ***THE CONTENT OF THE BILL:***

The Michigan Penal Code allows for the possession and reasonable use of an electro-muscular device by

peace officers, authorized employees of the Department of Corrections, probation officers, court officers, authorized bail agents, licensed private investigators, and aircraft pilots and crew members, if such persons are properly trained and performing their professional duties.

The bill would add local corrections officers to the list of authorized individuals, provided that they are authorized in writing by the county sheriff. "Local corrections officer" would be defined to mean any person employed by a county sheriff in a local correctional facility as a corrections officer or that person's supervisor or administrator.

MCL 750.224a

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, The bill would have no direct fiscal implications for the state or local units of government. (10-28-03)

### ***ARGUMENTS:***

#### ***For:***

Nationwide, the use of electro-muscular disruption devices such as Tazers have resulted in an 80 percent reduction in injuries to officers and a study of Tazer use in Phoenix, Arizona, showed a 67 percent decrease in injuries to suspects. Based on committee testimony, use of Tazers by county jail personnel could significantly increase safety to both officers and inmates. The bill would merely correct what appears to be an oversight by specifically including local corrections officers who have written authorization by their county sheriff to possess and use EMD devices such as Tazers.

#### ***Response:***

The bill would only add local corrections officers to the list of individuals authorized to use and possess EMD devices, but would not add them to the list of individuals exempted from the ban on possessing or using a portable device or weapon described in Section 224a (1) from which an electrical current, impulse, wave, or beam may be directed; for example, a stun gun. Therefore, according to the attorney general opinion, local corrections officers who, based on their specific duties, are not also peace officers would still be prohibited from possessing or using devices other than EMD devices that fall within Section 224a (1). Section 231 of the penal code only exempts the following individuals from the ban contained in 224a (1):

- A peace officer of an authorized police agency of the United States, this state, or a political subdivision

of this state who is regularly employed and paid by one of those governmental entities.

- A person regularly employed by the Department of Corrections (DOC) who is authorized in writing by the DOC 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.
- An employee of a private vendor operating a youth correctional facility who meets the same criteria established by the DOC director for DOC employees and who 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.
- A member of the U.S. Army, Air Force, Navy, or Marine Corps, while carrying weapons in the line of or incidental to duty.
- An organization authorized by law to purchase or receive weapons from the U.S. or from the state.
- A member of the National Guard, armed forces reserve, or any other authorized military organization, while on duty or drill, or in going to or returning from a place of assembly or practice, while carrying weapons used for a purpose of the National Guard, armed forces reserve, or other duly authorized military organization.

If the intent of the legislation is to treat local corrections officers identically to corrections officers employed by the Department of Corrections, then local corrections officers should also be added to the list of individuals contained in Section 231.

### ***POSITIONS:***

A representative of the Court Officers – Deputy Sheriffs Associations testified in support of the bill. (10-22-03)

The Undersheriff of the Oakland County Sheriffs Department testified in support of the bill. (10-22-03)

A representative of A.D.A. Security/MCSA testified in support of the bill. (10-22-03)

A representative of the Michigan Sheriffs Association indicated support for the bill. (10-22-03)

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.