

Legislative Analysis



DISCHARGING A WEAPON FROM A VEHICLE OR AT OR IN A DWELLING: INCREASE PENALTIES

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House Bill 4167 (Substitute H-1)

House Bill 4168 (Substitute H-1)

Sponsor: Rep. Brenda Clack

Committee: Judiciary

First Analysis (3-13-07)

BRIEF SUMMARY: House Bill 4167 would increase penalties for drive-by shootings, increase penalties for firing a weapon at or in a building, and create enhanced penalties for violations that cause injury to a victim. House Bill 4168 would place the maximum term of imprisonment for these crimes in the corresponding section of the sentencing guidelines.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local units of government. (See Fiscal Information below for a more detailed discussion.)

THE APPARENT PROBLEM:

Gun violence has continued to rise in the state and across the nation. Perhaps the most troubling aspect of this is the increase in deaths and injuries resulting from drive-by shootings – incidents in which an assailant fires a weapon from a moving or stationary vehicle. Because drive-by shootings generally involve the use of an automatic or semi-automatic weapon, many bullets are fired over a broad target area. As a result, a drive-by is more likely to injure or kill innocent bystanders along with, or rather than, the specific person the shooters are targeting. All too often, children at play in their yards or even sleeping in their beds are the victims.

Urban areas have been particularly beset by drive-bys. Two recent drive-by shootings in Flint have spurred some to seek an increase to the current penalties. In July of 2006, a five-year old girl who was a passenger in a car that was being test-driven by a relative was killed. Shots, reportedly meant for the car salesman, were fired on the car from a passing vehicle. Earlier this month, a one-year old boy was killed in Buena Vista Township when shots were fired from a tan Hummer H3. An adult passenger in the car was the reported target.

Some feel that the current penalty of up to four years in prison and/or a fine of not more than \$2,000 is insufficient to deter this type of violence. In addition, it is believed that a better approach should be to tie the severity of the penalty to the level of injuries incurred by the victims of such shootings.

THE CONTENT OF THE BILLS:

The bills would increase the penalties for crimes relating to discharging a firearm from a vehicle or at or in a dwelling or occupied structure. Both bills would take effect 90 days after enactment.

House Bill 4167

The bill would amend the Michigan Penal Code (MCL 750.234a and 450.234b) to do the following:

Shooting from a vehicle

Currently, it is illegal to intentionally discharge a firearm from a motor vehicle, a snowmobile, or an off-road vehicle in such a manner as to endanger the public safety. A violation is a felony punishable by imprisonment for not more than four years or a fine of not more than \$2,000, or both.

The bill would increase the penalty for a violation to imprisonment for not more than 10 years and/or a fine of not more than \$10,000.

The bill would also create enhanced felony penalties based on the level of injury suffered by a victim. Causing any physical injury of another individual would be punishable by a maximum term of imprisonment of 15 years and/or a fine of not more than \$15,000. Causing the serious impairment of a body function of another would be punishable by not more than 20 years imprisonment and/or a fine of not more than \$25,000. Causing the death of another would be punishable by imprisonment for life or any term of years.

Intentionally shooting at or in a building

It is against the law to intentionally discharge a firearm *at* a facility that the shooter knows or has reason to believe is a dwelling or an occupied structure. The bill would clarify that this provision applies whether or not the dwelling or structure was actually occupied at the time the firearm was discharged. The current penalty of a maximum term of imprisonment of four years and/or a fine of not more than \$2,000 would be increased to a maximum term of imprisonment of 10 years and/or a fine of not more than \$10,000.

It is also against the law to intentionally discharge a firearm *in* a facility that the shooter knows or has reason to believe is an occupied structure in reckless disregard for the safety of any individual. The bill would revise this provision to instead apply to a person who intentionally discharges a firearm in a facility that he or she knows or has reason to believe is a dwelling or occupied structure (the bill would delete the element of "reckless disregard" for the safety of another). The bill specifies the provision would apply whether or not the dwelling or structure was actually occupied at the time the firearm was discharged. The current penalty of a maximum term of imprisonment of four years and/or a fine of not more than \$2,000 would be increased to a maximum term of imprisonment of 15 years and/or a fine of not more than \$15,000.

Causing injury to or the death of another person would result in enhanced felony penalties. Intentionally discharging a firearm at or in a building in a manner that caused the serious impairment of a body function of another would be punishable by imprisonment for not more than 20 years and/or a fine of not more than \$25,000; causing the death of another would be punishable by imprisonment for life or any term of years.

Miscellaneous

"Serious impairment of a body function" would mean that term as defined in Section 58c of the Michigan Vehicle Code (MCL 257.58c). The definition of "occupied structure" (a facility in which one or more individuals are present) would be deleted.

The bill would also specify that Sections 234a (shooting from a vehicle) and 234b (shooting at or in a building) would not prohibit an individual from being charged with, convicted of, or punished for any other violation of law committed by that individual while violating these provisions. A court could order a term of imprisonment imposed for a violation of Section 234a or 234b to be served consecutively with any other sentence imposed for another violation arising from the same transaction. As with current law, these provisions would not apply to a peace officer in the performance of his or her duties or to an individual discharging a firearm in self-defense or the defense of another person.

House Bill 4168

The bill would amend the Code of Criminal Procedure (MCL 777.16m) to revise the sentencing guidelines. The bill would increase from 4 years to 10 the maximum term of imprisonment allowed for discharging a firearm from a vehicle or discharging a firearm at a dwelling or occupied structure and change the category of the crimes from a Class F felony to a Class D felony. The bill would also add the following sentencing guidelines:

- Discharging a firearm from a vehicle causing physical injury would be a Class C felony against a person with a maximum term of imprisonment of 15 years.
- Discharging a firearm in a dwelling or occupied structure would be a Class C felony against the public safety with a maximum term of imprisonment of 15 years.
- Discharging a firearm from a vehicle or in or at a dwelling or occupied structure causing serious impairment would be a Class B felony against a person with a maximum term of imprisonment of 20 years.
- Discharging a firearm from a vehicle or at or in a dwelling or occupied structure causing death would be a Class A felony against a person with a maximum term of imprisonment of life.

The bill is tie-barred to House Bill 4167.

FISCAL INFORMATION:

The bills' fiscal impact would depend on how they affected felony convictions and sentences. Of the 29 sentences imposed in 2005 for discharging a firearm from a vehicle (MCL 750.234a), 14 were prison sentences, 9 were probation sentences, 2 were jail sentences, and 4 were "other" (such as sentencing under the Holmes Youthful Trainee Act). Of the calendar year 2004 commitments to the Department of Corrections, there was one person whose largest minimum term was for a violation of 750.234a; the sentence was for 2.3 years.

Of the 78 sentences imposed in 2005 for discharging a firearm at an occupied structure (MCL 750.234b), 40 were prison sentences, 26 were probation sentences, 11 were jail sentences, and 1 was "other." Of the 2004 commitments to the Department of Corrections, there were five people whose largest minimum terms were for violation or attempted violation of MCL 750.234b. The average minimum term was about 1.4 years.

To the extent that the bills increased the numbers of offenders sent to prison or increased the lengths of prison sentences, the bills could increase state correctional costs, which average about \$31,000 per prisoner annually. State costs could be offset by the amount that otherwise would have been spent on probation supervision of affected offenders; costs of parole and probation supervision average about \$2,000 per offender per year. A reduction in the number of jail sentences could result in savings for affected counties; jail costs vary by county. Any increased collections of penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

ARGUMENTS:

For:

All too often, the intended victim of a drive-by shooting escapes injury while innocent bystanders are killed or injured. People are killed or injured when sitting on their porches, walking their dogs, crossing the street. Bullets have penetrated walls and windows and killed children and adults inside their homes, even while asleep. Two recent drive-by shootings in Flint ended the lives of young children who were passengers in cars occupied by an intended target.

The bills would seek to address the growing problem of drive-by shootings by increasing the amount of prison time and fines that could be imposed. House Bill 4167 would also allow a sentence for a drive-by to be served after serving a sentence for any other crimes arising from the incident. The bill also would extend the penalties for firing a weapon at or in a home or occupied structure (i.e., garage, office building) to all incidents regardless of whether the perpetrator knew anyone was present at the time. Moreover, intent to harm the victim or victims would not have to be proved; intentionally discharging a firearm from a vehicle, or in or at a dwelling or occupied structure, would be sufficient to trigger the bill's penalties. If any person (even an unintended one) suffered injuries or death, the penalties would be increased accordingly.

The bills would give prosecutors an additional tool in keeping the residents of the state safe, would be more effective in deterring drive-by shootings than the current penalties, and would keep dangerous individuals incarcerated and off the streets longer.

Against:

There has been a trend in recent years to increase the maximum terms of imprisonment for many crimes. Some feel this adds to the problem of prison overcrowding. In addition, the bills would not just apply to drive-by shootings associated with gang or drug violence. As written, House Bill 4167 could have broader applicability, for example, hunters whose bullets inadvertently went astray and towards a dwelling. Moreover, because the bill allows, but not requires, a sentence to be served consecutively to any other sentences arising from the same event, treatment of defendants could differ around the state depending on how a prosecutor charged the crime and the philosophy of the presiding judge.

Response:

House Bill 4167 could indeed apply to incidents other than drive-bys. It could apply in domestic violence cases, robberies, stalking, and in some hunting incidents if the elements fit. However, the bill would not apply to accidents. The crimes addressed by the bill already exist and there is case law shaping the parameters. The changes are to the severity of the penalties and, in regards to firing at a dwelling or occupied structure, clarifying that firing on an empty dwelling can net the same punishment as firing on one full of people. As to prison overcrowding, the solution is never to avoid locking up those who pose a danger to others. People who shoot guns from cars are dangerous. People who shoot at houses, at garages, at schools or businesses, are dangerous people. The public needs to be protected from such people.

POSITIONS:

The prosecutor of Genesee County testified in support of the bills. (3-7-07)

The Prosecuting Attorneys Association of Michigan (PAM) supports the bills. (3-13-07)

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■ 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.