



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4167 (Substitute H-2 as passed by the House)  
House Bill 4168 (Substitute H-2 as passed by the House)  
Sponsor: Representative Brenda Clack  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 2-11-08

### **CONTENT**

**House Bills 4167 (H-2) would amend the Michigan Penal Code to do the following:**

- Increase the maximum criminal penalties for intentionally discharging a firearm from a motor vehicle, snowmobile, or off-road vehicle; at a dwelling or occupied structure; or in an occupied structure.
- Add enhanced penalties for offenses that caused physical injury, serious impairment of body function, or death.
- Refer to a "potentially occupied" structure in these provisions, and apply the penalty whether or not the dwelling or structure actually was occupied.
- Allow consecutive sentencing.

**House Bill 4168 (H-2) would amend the Code of Criminal Procedure to revise the sentencing guidelines classifications for discharging a firearm from a vehicle or at a building, and add sentencing guidelines classifications for violations that caused injury, serious impairment, or death.**

The bills would take effect 90 days after their enactment. House Bill 4168 (H-2) is tie-barred to House Bill 4167.

### **House Bill 4167 (H-2)**

Under Sections 234a and 234b of the Penal Code, it is a felony for a person intentionally to discharge a firearm under any of the following circumstances:

- From a motor vehicle, a snowmobile, or an off-road vehicle (ORV) in such a manner as to endanger the safety of another individual.
- At a facility that he or she knows or has reason to believe is a dwelling or an occupied structure.
- At a facility that he or she knows or has reason to believe is an occupied structure, in reckless disregard for the safety of any individual.

The bill would increase the penalties for those violations, as shown in Table 1.

Table 1

Violation	Current Max. Penalty		Proposed Max. Penalty	
	<u>Term</u>	<u>Fine</u>	<u>Term</u>	<u>Fine</u>
Firing from motor vehicle, snowmobile, or ORV endangering the safety of another	4 years	\$2,000	10 years	\$10,000
Firing at a dwelling or occupied structure*	4 years	\$2,000	10 years	\$10,000
Firing at a dwelling or occupied structure with reckless disregard*	4 years	\$2,000	15 years	\$15,000

\*Under the bill, the penalty would apply if the person knew or had reason to believe the facility was a dwelling or a *potentially* occupied structure, whether or not it actually was occupied at the time the firearm was discharged.

The bill also would add penalties for violations that caused physical injury, serious impairment of a body function, or death of another individual, as shown in Table 2.

Table 2

Violation	Proposed Maximum Penalty	
	<u>Term</u>	<u>Fine</u>
Firing from motor vehicle, snowmobile, or ORV causing any physical injury to another	15 years	\$15,000
Firing from motor vehicle, snowmobile, or ORV causing serious impairment of a body function	20 years	\$25,000
Firing from motor vehicle, snowmobile, or ORV causing death	Life or any term of years	
Firing at or in a dwelling or potentially occupied structure causing serious impairment of a body function	20 years	\$25,000
Firing at or in a dwelling or potentially occupied structure causing death	Life or any term of years	

The prohibition against discharging a firearm from a motor vehicle, snowmobile, or ORV does not apply to a peace officer performing his or her duties or to a person who discharges a firearm in self-defense or the defense of another individual. Under the bill, those exceptions also would apply to the proposed violations involving injury, serious impairment of a body function, or death.

The bill specifies Sections 234a and 234b would not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that was committed by that individual while violating those sections. A term of imprisonment imposed for a violation of either section could run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

The bill would define "potentially occupied structure" as a structure that a reasonable person knows or should know is likely to be occupied by one or more individuals due to its nature, function, or location.

"Serious impairment of a body function" would mean that term as defined in Section 58c of the Michigan Vehicle Code, i.e., one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- Loss of an eye or ear or use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts for more than three days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.
- Loss of an organ.

**House Bill 4168 (H-2)**

Currently, discharging a firearm from a vehicle and discharging a firearm in or at a building are Class F felonies against public safety with a statutory maximum term of four years. Under the bill, these offenses would be Class D felonies against public safety, with a statutory maximum of 10 years. The bill also would refer to discharging a firearm at a dwelling or potentially occupied structure, instead of at or in a building.

The bill would add sentencing guidelines classifications for the violations proposed by House Bill 4167 (H-2), as shown in Table 3.

Table 3

Offense	Category	Class	Stat. Max.
Discharging from vehicle causing physical injury	Person	C	15
Discharging from vehicle causing serious impairment	Person	B	20
Discharging from vehicle causing death	Person	A	life
Discharging in dwelling or potentially occupied structure	Public Safety	C	15
Discharging in or at dwelling or potentially occupied structure causing injury	Person	B	20
Discharging in or at dwelling or potentially occupied structure causing death	Person	A	Life

MCL 750.234a & 750.234b (H.B. 4167)  
777.16m (H.B. 4168)

Legislative Analyst: Patrick Affholter  
Suzanne Lowe

**FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. In 2005, 29 offenders were convicted of discharging a firearm from a vehicle and 78 offenders were convicted of discharging a firearm in or at a building. Table 4 outlines the sentences that these offenders received. Additionally, Table 5 outlines the sentencing guidelines minimum sentence ranges offenders would receive under the bills. To the extent that the bills resulted in increased incarceration time, local governments would incur

increased costs of incarceration in local facilities, which vary by county. The State would incur increased costs of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

Table 4  
2005 Dispositions

Offense	Prison	Probation	Jail	Other*	Total
Discharging a firearm from a vehicle	14	8	2	4	28
Attempting to discharge a firearm from a vehicle	0	1	0	0	1
Discharging a firearm in or at a building	40	21	8	1	70
Attempting to discharge a firearm in or at a bldg.	0	5	3	0	8
<b>Total</b>	<b>54</b>	<b>35</b>	<b>13</b>	<b>5</b>	<b>107</b>

\*Includes delayed and suspended sentences and Holmes Youthful Trainee Act probation.

Table 5

Offense	Class	Sentencing Guidelines Minimum Sentence Range
Discharging from vehicle or in or at dwelling or potentially occupied structure, causing death	A	21-35 months to 270 months-life
Discharging from vehicle causing serious impairment, or in or at dwelling or potentially occupied structure causing injury	B	0-18 months to 117-160 months
Discharging from vehicle causing physical injury, or in dwelling or potentially occupied structure	C	0-11 months to 62-114 months
Discharging from a vehicle or in or at a building	D	0-6 months to 43-76 months

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.