

House Bill 4289 (Substitute H-5)
First Analysis (5-28-97)

Sponsor: Rep. Mark Schauer
Committee: Judiciary

THE APPARENT PROBLEM:

Chapter 33 of the Michigan Penal Code deals with explosives and bombs. Provisions in this chapter govern the transportation of explosives on "common carriers" for passengers, sending or placing explosives (or fake devices made to look like explosives) with the intention of causing property damage or hurting or scaring someone (whether or not anyone is actually hurt or anything is actually damaged), and making or having explosives with the intent to use them unlawfully. Generally, violations of these provisions are felonies, with punishments ranging from imprisonment for from five years to life without parole (some felonies do not have specified punishments).

Two years ago, members of an extended family from Battle Creek were stopped by the state police in Lansing on a traffic violation and were subsequently arrested when the police discovered weapons and a bomb that the family members reportedly intended to use to kill someone in Lansing. The police arrested the family members after finding the weapons and bomb, but because the occupants of the van were stopped before they had succeeded in actually placing the bomb, the maximum sentence for transporting the bomb was only five years. Had the family members actually exploded the bomb, on the other hand, the sentence could have been up to life in prison. In light of this incident, legislation has been introduced to update and increase the penalties for bomb (and other) explosives crimes.

THE CONTENT OF THE BILL:

The bill would repeal certain sections of the "explosives" chapter of the Michigan Penal Code (MCL 750.200 et al.), rewrite certain others, generally increase the penalties for explosives felonies, and implement a five-tiered set of escalating penalties for certain explosives penalties depending on whether or not -- and how much -- damage was inflicted as a result of the violation.

Transportation of explosives in passenger vehicles. The bill would rewrite sections 200 and 201 of the penal code that currently make it a felony (with unspecified

penalties) to transport ("transport, carry, or convey") explosives on common carriers or on (land or water) vehicles carrying passengers to, instead, prohibit persons from doing this. A violation would be a felony punishable by imprisonment for up to five years, a fine of up to \$3,000, or both.

Fake bombs. Currently, under section 204a of the penal code, a person who -- "with the intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy any other person" -- sends or transports a device made to look like "an explosive, incendiary device, or bomb" is guilty of a felony with unspecified penalties. An offense is committed under this section of the code if the device is sent from or received in this state, and may be prosecuted in the jurisdiction where it was sent or received. The bill would rewrite this section to say that a person who -- "with the intent to terrorize, frighten, intimidate, threaten, harass, or annoy any person" (i.e. would eliminate "molest") -- not only sends or transports but also delivers or sends fake explosives, incendiary devices, or bombs would be guilty of a felony punishable by imprisonment for up to five years, a fine of up to \$3,000, or both. Offenses would be chargeable under this section not only if a device was sent from or received in the state, but also if one were delivered in or transported or placed in the state. Such offenses could be prosecuted not only in the jurisdiction from which the device was sent or received, but also in the jurisdiction from which it was delivered or in which it was transported or placed.

Section 204: Delivery with intent to physically injure. Currently, it is a felony (punishable by up to five years' imprisonment) to send or deliver ("or cause to be taken or received by" or to "aid in the commission of such offense") "any kind of explosive substance or any other noxious or dangerous thing" with the intent "to burn, maim, disfigure or disable . . . , or do bodily harm" to anyone when no deaths result. The bill would rewrite this section to prohibit a person from sending or delivering (or causing anyone to take or receive) "any kind of explosive substance or any other dangerous thing" with the intent "to physically injure another individual." A violation of this prohibition would be a

felony, with a five-tiered set of penalties, depending on the level of resulting property damage or physical injury. If there were no damage to property or injury to an individual, the felony would be punishable by up to 15 years' imprisonment and/or a fine of up to \$10,000; damage to property would be punishable by imprisonment for up to 20 years and/or a fine of up to \$15,000; physical injury to an individual, other than serious impairment of a bodily function, would be punishable by imprisonment for up to 25 years and/or a fine of up to \$20,000; serious impairment of a body function would be punishable by up to life imprisonment with the possibility of parole and/or a fine of up to \$25,000; any resulting death would be punishable by life imprisonment without parole and/or a fine of up to \$30,000. The bill would define "serious impairment of a body function" as including, but not limited to, one or more of the following: loss of a limb, hand, foot, finger, thumb, eye, or ear (or the use of any of these), loss or "substantial impairment" of a bodily function, or serious visible disfigurement.

Section 207: Placement with intent to unlawfully damage/destroy property. Currently, anyone who places "in, upon, under, against or near to any building, car, vessel or structure" gunpowder or any other explosive, with the intent "to destroy, throw down, or injure the whole or any part thereof," and which, when it explodes, injures someone, is guilty of a felony punishable by imprisonment ("in the state prison") for life without parole. The bill would rewrite this section to prohibit a person from placing "an explosive substance in or near any real or personal property" with the intent to "unlawfully damage or destroy any real or personal property." Violations would be felonies, with the same five-tiered structure as for delivery of explosives with the intent to physically injure someone (above).

Section 209: Placement with intent to wrongfully injure a person or property, or to alarm. Currently, anyone who places ("in, upon, under, against or near to any building, underground utility facilities, car, motor vehicle, vessel or structure") "any foul, offensive, or injurious substance or compound" ("including those sulphur compounds or other substance commonly added to natural gas for the purpose of creating a distinctive odor associated with gas") with the intent "to wrongfully injure, molest or coerce another, or to injure the property or business of another, or to molest another in the use, management, conduct, or control of his business or property" is guilty of a felony punishable by imprisonment for up to 15 years. If the placement of the substance is with the intent to alarm "any person or persons," the violator is guilty of a felony with unspecified penalties. The bill would rewrite this section to make it a felony to place "an offensive or injurious substance or compound in or near

to any real or personal property." If the intent were to alarm, the felony would be punishable by imprisonment for up to five years and/or a fine of up to \$3,000. If the intent were "to wrongfully injure or coerce another person" (or to injure his or her property or business, or to interfere with his or her use, management, conduct, or control of his or her business or property), the felony would be punishable by the same five-tier penalty system as described above.

Section 211a: Manufacture or possession of "Molotov cocktails." Currently, any person who makes, constructs, or has in his possession "any device which is designed to explode or which will explode upon impact or with the application of heat or a flame, or which device is highly incendiary" -- with the intent to use the device unlawfully against another person or his or her property -- is guilty of a felony. In addition, possession of such a device is prima facie evidence of the possessor's intent to use the device unlawfully against another person or his or her property. The bill would rewrite this section of the code to prohibit a person from manufacturing, buying, selling, furnishing, or having in his or her possession such devices with the intent to unlawfully use it against another person or his or her property. The bill also would delete the current provision specifying that possession of such devices is prima facie evidence of the intent to use them unlawfully. Violations would be felonies, with the same five-tier penalties described above.

Possession in public places. The bill would add a new section to the penal code that would make it a felony, punishable by imprisonment for up to ten years and/or a fine of up to \$10,000, to possess an explosive substance or device in a public place with the intent "to terrorize, frighten, intimidate, threaten, harass, or annoy any other person."

Repealer. The bill would repeal sections of the penal code regarding (a) the placement of explosives with the intent to destroy, but without resulting damage (section 205), (b) intimidation or harassment with fake bombs (section 205a), (c) the placement of explosives with the intent to destroy that results in property damage (section 206), (d) aiding or abetting in placing explosives with the intent to destroy property or injure business (section 208), (e) the possession of bombs with the intent to use them unlawfully (section 210), and (f) the manufacture of explosives with the intent to use them unlawfully (section 211).

The following table summarizes the current provisions and proposed changes:

Current felony	Current penalty	Proposed felony	Proposed penalty
Transportation of explosives on common carriers carrying passengers (Section 200)	None specified	(Language update)	Up to 5 years' imprisonment and/or up to \$3,000 fine
Transportation of concealed explosives (that explode by concussion or friction) on (land or water) vehicles used for carrying passengers or articles of commerce (Section 201)	None specified	(Language update)	Up to 5 years' imprisonment and/or up to \$3,000 fine
Sending explosives with the intent to injure persons but no deaths result (Section 204)	Up to 5 years' imprisonment	Prohibition against sending explosives with the intent to physically injure	5-tier penalties (see above)
Sending a device made to look like an explosive with the intent to frighten someone (Section 204a)	None specified	(Language update)	Up to 5 years' imprisonment and/or up to \$3,000 fine
Repeal section 205	Up to 15 years		
Repeal section 205a	Not specified		
Repeal section 206	Up to 25 years		
Placing explosives with intent to destroy and injuring someone (Section 207)	Life imprisonment without parole	Placing explosives near ("real or personal" property with intent to damage it	5-tier penalties (see above)
Repeal section 208	Up to 15 years		
Placing a foul or injurious substance in a building, etc. to (a) injure a person or the property; (b) alarm someone (Section 209)	(a) Imprisonment for up to 15 years (b) Not specified		(a) 5-tier penalties (b) Up to 5 years imprisonment and/or up to \$3,000 fine
Add section 209a		Possession of explosives in a public place with the intent to terrorize, etc.	Up to 10 years' imprisonment and/or a fine up to \$10,000
Repeal section 210	2 to 5 years		
Repeal section 211	Not specified		

<p>"Molotov cocktails" (Construction or possession of highly incendiary devices, or those that explode on impact or with heat, with intent to use unlawfully) (Section 211a)</p>	<p>Not specified</p>	<p>Prohibit the manufacture, buying, selling, possession of certain incendiary or explosive devices with the intent to unlawfully use against a person or property</p>	<p>5-tier penalties (see above)</p>
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BACKGROUND INFORMATION:

Currently, Chapter 33 of the Michigan Penal Code makes it a felony to do certain specified things with explosive devices. With the exception of the transportation of explosives, the provisions include the requirement that the action (generally, either the sending, placing, or possessing of explosives) be done with the intent to ("wrongfully") injure (do bodily harm to) or scare someone, or to cause property damage, or to use the explosives unlawfully. In addition, in section 204, the action must be done "unlawfully and maliciously"; in section 205a, the action, in addition to being intended, also must be done "knowingly"; in section 209, the action must be intended to "wrongfully" injure, molest, or coerce another; while in sections 210, 211, and 211a, the explosive must be intended to be used "unlawfully" against other persons or their property. Finally, the various sections of this chapter of the penal code also refer to a variety of substances -- explosives and noxious or dangerous things -- in a number of different combinations: "dynamite, gunpowder or other explosive" (Section 200), "dynamite, nitro-glycerine, fulminate in bulk in dry condition or any other explosive which explodes by concussion or friction" (Section 201), "any kind of explosive or any other noxious or dangerous thing" (Section 204), "explosive, incendiary device, or bomb" (Sections 204a, 205a), "gunpowder or any other explosive substance" (Sections 205, 206, 207), "any explosive, foul, offensive or injurious substance or compound" (Section 208), "any foul, offensive, or injurious substance or compound, including those sulphur compounds or other substance commonly added to natural gas for the purpose of creating a distinctive odor associated with gas" (Section 209), "a bomb or bombshell or any article containing an explosive or combustible substance or foul, offensive or injurious substance or compound" (Section 210), "any nitro-glycerine, dynamite, giant powder or any other dangerous explosive material" (Section 211), and -- in a section reportedly meant to refer to "Molotov cocktails" -- "any device which is designed to explode or which will explode upon impact or with the application of heat or a flame, or which device is highly incendiary" (Section 211a).

More specifically, the following actions all are designated as felonies under the penal code:

** transporting explosives on common carriers carrying passengers, or transporting concealed explosives (that explode by concussion or friction) in passenger vehicles or boats that carry passengers or "articles of commerce";

** sending/delivering (or aiding in doing so) explosives with the intent to injure someone, though no deaths result;

** sending/transporting fake devices with the intent to scare/harass someone, or ("knowingly") delivering/placing fake devices with the intent to scare/harass someone;

** placing -- or aiding/abetting in placing (or conspiring to do so) -- explosives with the intent to destroy, (a) though no damage results, (b) with resulting property damage, (c) with resulting injury, or placing explosives with the intent to ("wrongfully") injure/molest/coerce someone, to damage someone's property or business, or molest someone in the use/management/conduct/control of his or her property or business; and

** carrying/possessing bombs, or manufacturing/buying/selling/furnishing/causing to be furnished/possessing dangerous explosive materials, or making/constructing/possessing devices reportedly meant to refer to "Molotov cocktails", with the intent to use unlawfully against someone or their property. (For the purpose of prosecution under this last provision, possession of such devices is prima facie evidence of the possessor's intent to use the device unlawfully against someone or their property.)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the extent that the bill changed decision making with regard to prosecution or sentencing, it would have an indeterminate, though minimal, fiscal impact on the state and local units of government. (4-28-97)

ARGUMENTS:

For:

As the incident with the bomb-carrying family from Battle Creek a couple of years ago graphically illustrated, Michigan's current criminal bomb provisions and penalties are both vague and outdated. The bill would provide much-needed updating both of the language and penalties, so that future such incidents, should they occur, could be effectively prosecuted and the violators be appropriately penalized. This would increase the public safety at a time when domestic terrorism, as the tragic Oklahoma City bombing unfortunately points out, is on the rise. In particular, by adding a new provision that deals specifically with the possession of explosives in public places, the bill would address this vital issue. In addition, the proposed five-tier penalty structure would provide appropriate -- and escalating -- penalties for offenses, depending on whether or not property damage occurred or physical injury -- and, if so, how severe -- resulted from the offense, with the most severe penalties being reserved for death or serious bodily injury.

Against:

Some people suggest that, while the bill does improve upon current provisions in the law concerning the unlawful use of explosives and of bombs, questions still can be raised. For example, is the intent language broad enough to cover all unlawful intents? The language in section 207 covers the placement of "explosive" substances with the intent to unlawfully damage or destroy any real or personal property, while that in section 209 covers the placement of "offensive or injurious" substances with the intent to injure a person's property or business, and that in the new section 209a covers the possession in a public place of "an explosive substance or device" with the intent to "terrorize, frighten, intimidate, threaten, harass, or annoy any other person." But it is not clear that the proposed language in section 207 would cover the placement of explosive substances with the intent to frighten, injure, or even kill someone, or even to cause the evacuation of a building; while the language in section 209 refers to "offensive or injurious" substances or compounds (but not specifically explosive substances), and that in 209a, while referring to explosive substances or devices, restricts their placement to possession by someone in a "public place." Additionally, while the new language regarding the placement of explosive substances (section 207) or "offensive or injurious" substances or compounds (section 209) refers to placing them "in or near to any real or personal property," current language refers to the placement "in, upon, under, against or near" to any building, car, motor vehicle, vessel, structure, underground utility facilities, or structure.

Does the simplified, proposed language cover the same situations as the current language?

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the concept of the bill but has not yet taken a position on Substitute H-5. (5-20-97)

Analyst: S. Ekstrom

■ 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.