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CONCEALED WEAPON PACKAGE

House Bill 4531 as introduced
Sponsor: Rep. Gene DeRossett

House Bill 4540 (Substitute H-3)
Sponsor: Rep. Bruce Patterson

House Bill 4541 as introduced
Sponsor: Rep. Douglas Bovin

House Bill 4542 (Substitute H-3)
Sponsor: Rep. Larry Julian

House Bill 4544 (Substitute H-1)
Sponsor: Rep. Jim Howell

House Bill 4634 as introduced
Sponsor: Rep. Jennifer Faunce

First Analysis (5-20-99)
Committee: Constitutional Law and Ethics

THE APPARENT PROBLEM:

Much of the nation's attention in recent weeks has been focused on violence and guns -- how to prevent violence; how to control the proliferation of guns; why incidents such as the recent shooting of school children on school grounds by their Colorado high school classmates occur, and how to protect schoolchildren when they do. At the federal level, the government has been debating legislation that would require background checks of prospective buyers at gun shows. In Michigan, legislation has recently been proposed that would restrict juveniles' access to the sorts of weapons used in the high school tragedy. Other proposals would ease the restrictions on obtaining licenses to carry concealed weapons (CCW), and would establish penalties for CCW licensees who commit crimes, or who violate prohibitions against drinking while carrying a weapon. (For additional information, see HLAS analyses of House Bill 4530 et al. dated 5-18-99 and House Bill 4641 et al. dated 5-13-99). Several other bills have been introduced in connection with the concealed weapons legislation: some would increase the penalties for various crimes if guns were involved; and still others have been

introduced to clarify or amend certain provisions in the concealed weapons package of bills.

House Bills 4531, 4540, 4541, 4542, 4544 and 4634 (5-20-99)

THE CONTENT OF THE BILLS:

The bills are part of a package of legislation concerning concealed weapons, and all are tie-barred to House Bill 4530, the main bill in the package. All of the bills would take effect September 30, 1999.

House Bill 4531 would amend Public Act 170 of 1964, the governmental immunity act (MCL 691.1407a), to specify that a law enforcement agency that seized a pistol under the handgun licensure act would be civilly liable to the owner of the pistol for negligently or intentionally losing or damaging the pistol. (House Bill 4530, which would amend the handgun licensure act, provides for the seizure and forfeiture of guns under certain circumstances.)

House Bill 4540 would amend the Michigan Penal Code (750.321) to modify penalties for manslaughter. The penalty for manslaughter is currently up to 15 years imprisonment, a fine of up to \$7,500, or both. The bill would increase the maximum sentence to 25 years for a person who was licensed to carry a concealed pistol and who committed manslaughter by using a pistol. Further, the bill would set a maximum sentence of 45 years for a person who committed manslaughter by using a firearm (whether or not he or she was a concealed weapon licensee) and who had previously been convicted of manslaughter or murder in this state or elsewhere.

House Bill 4541 would amend the Code of Criminal Procedure (MCL 771.3) to allow a court to require, as a condition of probation, that a probationer not purchase or possess a firearm.

House Bill 4542 would amend the felony firearm provisions of the Michigan Penal Code (MCL 750.227b). Currently, generally, it is a separate felony to carry a firearm when committing (or attempting to commit) another felony. This firearm felony currently carries a mandatory term of imprisonment for 2 years for a first offense, 5 years for a second offense, and 10 years for a third or subsequent offense. (There are certain felonies excepted from the "felony firearm" provisions, including: selling a firearm or ammunition to someone under indictment for, or convicted of, a felony; carrying a concealed weapon without a licensee; off-duty licensees carrying loaded weapons; and removing identifying marks from firearms. The bill would add others to the list of exceptions; see below.)

Under the bill, the penalties could be enhanced where the violation involved the discharge of a firearm and if that discharge caused an injury to a person. If the violation involved the discharge of a firearm, the penalty would be set at from 2 to 4 years for a first offense, from 5 to 7 years for a second offense, and

from 10 to 12 years for a third or subsequent offense. If the violation involved the discharge of a firearm and resulted in the physical injury of a person, the penalty would be from 2 to 7 years for a first offense, from 5 to 10 years for a second offense, and from 10 to 15 years for a third or subsequent offense.

Further, for a violator holding a concealed weapon license and carrying a pistol, whether concealed or not, the penalty for a firearm felony would be set at from 2 to 4 years. If the violation involved the discharge of a firearm, the penalty would be from 2 to 5 years, and if the violation involved the discharge of a firearm and resulted in the physical injury of a person, the penalty would be from 2-8 years.

The bill would exempt from the firearm felony law the following additional felonies:

** Having unregistered or improperly registered firearms (MCL 750.230a, proposed by House Bill 4536);

** Intentionally aiming a firearm, without malice, at another person (MCL 750.233);

** Discharging a firearm intentionally aimed, without malice, at another person if the other person isn't hurt (MCL 750.234);

** Having a firearm in a depository financial institution, a church or house of religious worship, a court, a theater, a sports arena, a day care center, a hospital, or an establishment with a liquor license (MCL 750.234d);

** Injuring someone by discharging a firearm intentionally aimed, but without malice, at them (MCL 750.235);

** Having or using a firearm while drunk or under the influence of "any exhilarating or stupefying" drug (MCL 750.237);

** Stealing someone's firearm (MCL 750.357b).

The bill would add the following to the list of crimes to which the firearm felony provisions would apply:

** Assault, assault and battery, or domestic assault (MCL 750.81);

** Assault with serious injury (MCL 750.81a); and

** Stalking (MCL 750.411h).

House Bill 4544 would amend the Michigan Penal Code (MCL 750.357b) to increase the maximum penalty, from 5 years to 15 years, for the felony of larceny of a firearm. In addition, the bill would add a

new crime. Under the bill, a person who possessed a firearm, knowing or having reason to know that it was stolen, would be guilty of a felony punishable for imprisonment for up to 10 years, a fine of up to \$2,500, or both.

House Bill 4634 would amend the Michigan Penal Code (750.226). Currently, it is a felony, punishable for up to 5 years imprisonment, a fine of up to \$2,500, or both, to possess a pistol or other firearm, or another dangerous weapon, with the intent to use it unlawfully against another person. The bill would specify that a person who was licensed to carry a concealed weapon and who violated this provision while carrying a pistol would be guilty of a felony punishable for up to 10 years imprisonment, a fine of up to \$5,000, or both.

FISCAL IMPLICATIONS:

Fiscal information is unavailable. (5-18-99)

ARGUMENTS:**For:**

As part of the continuing focus on gun violence, the bills would send a message to criminals that crimes committed by those who use or carry a gun would have consequences beyond those currently imposed. For example, House Bills 4540 and 4542 would increase the penalties imposed for certain crimes in situations committed by CCW licensees if guns were involved. In addition, under House Bill 4634, the maximum penalties currently imposed on a CCW licensee for carrying a pistol with the intention of using it against another person would be doubled.

Statistics also indicate that the number of illegal weapons available on the streets is rising. (In a 1993 survey, 59 percent of grades 6 through 12 students reported that they knew where to get a gun if they needed it, and one-third of these said they could get a gun within an hour [Harris, L., "A Survey of Experiences, Perceptions, and Apprehension about Guns among Young People in America," LH Research, Inc., the Harvard School of Public Health, Cambridge MA, July, 1993]). To deter future violators, House Bill 4544 would triple the amount of prison time that could be imposed for stealing a firearm, and would make it a felony to own a firearm if one knew it was stolen.

Response:

In testimony presented to the House Constitutional Law and Ethics Committee, a member of the Michigan Coalition for Responsible Gun Owners (MCRGO) called the provisions of these bills discriminatory. According to MCRGO, CCW licensees would receive a higher punishment than common criminals for the same crime under the provisions of House Bills 4540, 4542, and 4634. The testimony also questions why peace officers aren't held to the same standards as CCW licensees under the provisions of House Bill 4542.

The package of legislation concerning concealed weapons specifies, under House Bill 4530, that the handgun of an individual who is discovered carrying a concealed weapon without a license can be seized by a peace officer and forfeited to the state. However, the owner can, in some instances, get the gun back by showing his or her license. In response to fears that valuable guns might be lost or damaged in these circumstances, House Bill 4531 would amend the act outlining governmental immunity to require that law enforcement agencies would be civilly liable to gun owners if they were negligent and this did, in fact, happen.

For:

House Bill 4541 would allow a court to prohibit a probationer from purchasing or owning a gun as a condition of probation. Currently, a court may bar a probationer from having a firearm. However, the court must show that the prohibition is necessary to protect named persons. Under the bill, judges would have more discretion in this matter.

POSITIONS:

The National Rifle Association (NRA) has no position on the bills. (5-18-99)

The Department of State Police (DSP) has no position on the bills. (5-18-99)

Analyst: R. Young

For:

■ 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.