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SFA



BILL ANALYSIS

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House Bill 4540 (Substitute H-3 as passed by the House)
House Bill 4542 (Substitute H-3 as passed by the House)
House Bill 4544 (Substitute H-1 as passed by the House)
House Bill 4634 (as passed by the House)
Sponsor: Representative Bruce Patterson (House Bill 4540)
Representative Larry Julian (House Bill 4542)
Representative Jim Howell (House Bill 4544)
Representative Jennifer Faunce (House Bill 4634)
House Committee: Constitutional Law and Ethics
Senate Committee: Judiciary

Date Completed: 5-26-99

CONTENT

House Bills 4540 (H-3), 4542 (H-3), 4544 (H-1), and 4634 would amend the Michigan Penal Code to increase penalties for certain offenses related to the use of a firearm, when the offender was licensed to carry a concealed pistol. House Bill 4542 (H-3) also would amend the Penal Code's "felony firearm" provision, which mandates certain minimum sentences for a person who commits a felony while in possession of a firearm, to revise the offenses subject to the provision, the penalties for a violation, and the conditions under which the penalties would apply.

Each of the bills would take effect on September 30, 1999, and is tie-barred to House Bill 4530, which would amend the handgun licensure Act to make various revisions relative to concealed weapon regulations.

House Bill 4540 (H-3)

The penalty for the felony of manslaughter is up to 15 years' imprisonment, a maximum fine of \$7,500, or both. Under the bill, if a person who was licensed to carry a concealed pistol committed manslaughter by using a pistol, the offense would be punishable by up to 25 years' imprisonment. If a person who committed manslaughter by using a firearm had previously been convicted of manslaughter or murder in Michigan or elsewhere, the offense would be punishable by up to 45 years' imprisonment.

House Bill 4542 (H-3)

Felony Firearm Provision

Under the Penal Code, it is a felony punishable by a mandatory sentence of two years' imprisonment, for a person to carry or have in his or her possession a firearm when he or she commits or attempts to commit a felony. The Code excludes from that mandatory penalty the unlawful sale of firearms and ammunition (MCL 750.223), unlawfully carrying a concealed weapon (MCL 750.227), unlawful possession of a pistol by a person licensed to possess a pistol at certain times (MCL 750.227a), or altering or removing the identifying marks of a firearm (MCL 750.230). A second conviction carries a mandatory sentence of five years' imprisonment and a third or subsequent conviction requires a sentence of 10 years' imprisonment.

Included and Excluded Offenses

The bill would add all of the following misdemeanor offenses to the mandatory penalty provision for a violation while in possession of a firearm:

- Simple assault, domestic assault, and a second offense of domestic assault (MCL 750.81 (1), (2), and (3)).
- Aggravated assault and aggravated domestic assault (MCL 750.81a (1) and (2)).

- Stalking (MCL 411h (2)).

The bill would add all of the following offenses to the *exception* from the mandatory penalty:

- Possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm knowing that it was not registered or was registered improperly due to a material false statement, as proposed by House Bill 4536 (proposed MCL 750.230a).
- Possessing a firearm on certain premises where possession is prohibited (i.e., a depository financial institution or its subsidiary or affiliate, church or other house of religious worship, court, theater, sports arena, day care center, hospital, or an establishment licensed under the Michigan Liquor Control Code) (MCL 750.234d).
- Intentionally aiming a firearm without malice (MCL 750.233).
- Discharging a firearm intentionally aimed without malice (MCL 750.234).
- Injuring another person by the discharge of a firearm intentionally aimed without malice (MCL 750.235).
- The possession or use of a firearm by a person who is under the influence of liquor or any exhilarating or stupefying drug (MCL 750.237).
- Larceny of a firearm (MCL 750.357b).

Penalties

A violation of an included offense would continue to require imprisonment for two years. If the violation involved the discharge of a firearm, however, the offense would be punishable by imprisonment for not less than two years or more than four years. If the violation involved the discharge of a firearm and the discharge resulted in physical injury to any person, the offense would be punishable by imprisonment for not less than two years or more than seven years.

If the person had one prior conviction, the violation would require imprisonment for five years. If the person had two or more prior convictions, the violation would require imprisonment for 10 years.

If the violation involved the discharge of a firearm and the person had one prior conviction involving the discharge of a firearm, however, the offense would be punishable by imprisonment for not less than five years or more than seven years. If the violation involved the discharge of a firearm and the person had two or more prior convictions involving the discharge of a firearm, the offense would be punishable by imprisonment for not less than 10 years or more than 12 years.

If the violation involved the discharge of a firearm, the discharge resulted in physical injury to any person, and the offender had one prior conviction involving the discharge of a firearm, the offense would be punishable by imprisonment for not less than five years or more than 10 years. If the violation involved the discharge of a firearm, the discharged resulted in physical injury to any person, and the offender had two or more prior convictions involving the discharge of a firearm, the offense would be punishable by imprisonment for not less than 10 years or more than 15 years.

If a violation were committed by a person who was licensed to carry a concealed pistol and who was carrying a pistol, regardless of whether it was concealed, when he or she committed or attempted a felony or misdemeanor included in the felony firearm provision, the person would have to be imprisoned for not less than two years or more than four years. If the violation involved the discharge of a firearm, however, the offense would be punishable by not less than two years or more than five years. If the violation involved the discharge of a firearm and the discharge resulted in physical injury to any person, the offense would be punishable by imprisonment for not less than two years or more than eight years.

House Bill 4544 (H-1)

Currently, larceny of a firearm is a felony punishable by up to five years' imprisonment, a maximum fine of \$2,500, or both. The bill would increase the maximum length of imprisonment for that offense to 15 years. In addition, 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 by up to 10 years' imprisonment, a maximum fine of \$2,500, or both.

House Bill 4634

Under the Penal Code, it is a felony, punishable by up to five years' imprisonment, a maximum fine of \$2,500, or both, to possess a pistol or other firearm, dagger, dirk, razor, stiletto, knife having a blade more than three inches in length, or any other dangerous or deadly weapon or instrument, with intent to use that weapon or instrument unlawfully against another person. Under the bill, if a person who was licensed to carry a concealed pistol violated this provision while carrying a pistol, regardless of whether the pistol was concealed, the offense would be punishable by up to 10 years' imprisonment, a maximum fine of \$5,000, or both.

MCL 750.321 (H.B. 4540)
 750.227b (H.B. 4542)
 750.357b (H.B. 4544)
 750.226 (H.B. 4634)

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bill 4540 (H-3)

House Bill 4540 (H-3) would have an indeterminate fiscal impact, yet would result in potentially increased costs for State government.

The bill would increase the maximum length of sentence from 15 years to 25 years for an offender who committed manslaughter with a pistol and had a license to carry a concealed pistol, and increase the maximum length of sentence from 15 years to 45 years for an offender who committed manslaughter with a firearm and had previously been convicted of manslaughter or murder. There are no data available to indicate how many people would be subject to the longer maximum sentences. However, in 1997, there were 114 people convicted of manslaughter or attempted manslaughter. Of those convictions, 98 were sentenced to prison, 15 to probation, and one was sentenced to other sanctions. According to 1997 prison commitment data, the average minimum sentence of offenders sentenced to prison is 5.9 years.

If one assumes that 10% of the offenders or 10 people a year who are sentenced to prison for manslaughter are licensed to carry a concealed pistol and would be subject to the provisions of the bill, and that offenders currently committed to prison serve the full minimum sentence and that those convicted under the bill would serve two-thirds of the maximum sentence or 16.7 years, given that the average annual cost of incarceration is \$22,000, costs for incarceration would increase from \$12,720,400 to \$15,096,400 in the long run.

House Bill 4542 (H-3)

House Bill 4542 (H-3) would have an indeterminate fiscal impact, yet would potentially increase costs for State government.

There are no data available to indicate how many offenders convicted of using a weapon in the commission of a felony would be subject to penalties based on the conditions that would be established by this bill. Table 1 shows the various conditions that would be established and the penalty for offenses committed under those conditions.

Table 1 Conditions for Mandatory Sentences		
	Mandatory sentence (In years)	Maximum sentence (In years)
<i>In the commission of a felony, the offender...</i>		
carried a firearm	2	N/A
discharged the firearm	2	4
discharged the firearm resulting in injury	2	7
had one prior conviction	5	N/A

had two or more prior convictions	10	N/A
discharged the firearm, with one prior conviction involving discharge	5	7
discharged the firearm, with two or more prior convictions involving discharge	10	12
discharged the firearm resulting in injury, with one prior conviction involving discharge	5	10
discharged the firearm resulting in injury, with two or more prior convictions involving discharge	10	15
was licensed to carry a concealed weapon and carried a firearm	2	4
was licensed to carry a concealed weapon and discharged the firearm	2	5
was licensed to carry a concealed weapon and discharged the firearm resulting in injury	2	8

In 1997, there were 46 offenders committed to prison for carrying or attempting to carry a firearm during the commission of a felony. Those prisoners were subject to the mandatory two-year prison term. Assuming that five of those offenders were instead subject to a five- year mandatory minimum sentence and that another five were subject to a 10-year minimum sentence, given that the average annual cost of incarceration is \$22,000, costs for incarcerating 46 offenders a year would increase from \$2,024,000 to \$3,234,000 in the long run.

House Bill 4544 (H-1)

House Bill 4544 (H-1) would have an indeterminate fiscal impact, yet would potentially increase costs for State government.

The bill would increase the maximum sentence from five years to 15 years for offenders who steal a firearm, and would create a crime of possessing a stolen firearm with a maximum penalty of 10 years' incarceration and/or a fine of \$2,500. There are no data available to indicate how many people would be guilty of possessing a stolen firearm. However, in 1997, two offenders were committed to prison for larceny of firearms for a minimum sentence of three years.

If the two offenders committed to prison in 1997 represent the number of offenders committed each year and if the offenders serve the full minimum sentence in a State correctional facility, assuming that the offenders instead would be subject to a 15-year maximum sentence, and would receive and serve a six-year minimum sentence in a State correctional facility, given that the annual average cost of incarceration is \$22,000, the costs of incarceration would increase from \$88,000 to \$264,000.

House Bill 4634

House Bill 4634 would have an indeterminate fiscal impact, yet potentially would increase costs for State government.

The bill would increase the maximum sentence from five years to 10 years and increase the fine from \$2,500 to \$5,000 for offenders who carried a weapon with unlawful intent and who were licensed to carry a concealed pistol. There are no available data indicating how many people who are licensed to carry a concealed pistol would be guilty of carrying a weapon with unlawful intent. However, in 1997, there were 14 offenders committed to prison for this offense or attempt of the offense. These offenders had an average minimum sentence of 3.3 years

Assuming that two offenders committed to prison in 1997 were licensed to carry a concealed weapon, that the offenders were sentenced to a 6.6-year minimum sentence instead of serving 3.3 years and that they served the full minimum sentence in a State correctional facility, given that the annual average cost of incarceration

is \$22,000, the costs of incarceration for the two offenders carrying a weapon with unlawful intent would increase from \$145,200 to \$290,400.

Fiscal Analyst: K. Firestone

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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.