

Legislative Analysis



EXPAND USE OF PEPPER SPRAY OR FOAM

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House Bill 4861 as enrolled
Public Act 401 of 2006
Sponsor: Rep. Richard Ball
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (1-24-07)

BRIEF SUMMARY: The bill would revise the definition of a "self-defense spray device" to include a pepper foam device and specify exemptions from the general prohibition on the use of pepper spray and foam.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local units of government.

THE APPARENT PROBLEM:

Pepper spray is often used as a non-lethal tool for law enforcement officers, correction officers, and jail personnel when attempting to subdue a violent or uncooperative suspect or inmate. However, it is difficult to confine pepper spray only to the intended target. Pepper spray disperses over a wide area and often is spread further by wind or a jail or prison ventilation system, thus affecting many more than intended. The substance in pepper spray, oleoresin capsicum, is now manufactured in a foam product, albeit at a higher concentration than utilized in the spray form. Pepper foam has an advantage over spray in closed or crowded situations in that it can be directed just to the intended target. However, provisions in the penal code would need to be amended to allow the use of oleoresin capsicum in foam devices and to allow the higher concentration found in pepper foam devices.

THE CONTENT OF THE BILL:

The Michigan Penal Code (MCL 750.224, 750.244d, and 750.231) authorizes the use of self-defense sprays containing oleoresin capsicum (pepper spray) by law enforcement officers in the performance of their duties and by members of the public in the protection of a person or property under circumstances which would justify using physical force. House Bill 4861 would make the following revisions to these provisions:

- Extend the provisions that currently apply to the use of self-defense *spray* devices to self-defense *foam* devices.
- Revise the definition of a self-defense spray or foam device to include a device capable of releasing a solution containing not more than 10 percent, instead of 2 percent, oleoresin capsicum.

- Restrict the use of a self-defense spray or foam device by the public in protecting persons or property to devices containing not more than 2 percent oleoresin capsicum.
- Allow the reasonable use of a self-device spray or foam device containing not more than 10 percent oleoresin capsicum by a person in the employ of a county sheriff or chief of police and who had written authorization from his or her employer to carry and use, while in the performance of his or her duties, a self-defense spray or foam device if he or she had been trained in the use, effects, and risks of the device (individuals who have not received certification from the Michigan Commission on Law Enforcement Standards/MCOLES).
- Delete the current exemption for law enforcement officers while in the performance of their duties and instead exempt, with some restrictions, peace officers, certain authorized employees of the DOC, members of the military, a private vendor operating a youth correctional facility, state security officers providing security at state facilities in Lansing and at the state Secondary Complex and state police motor carriers (these individuals would be added by the bill) from the prohibitions against the use of a self-defense spray or foam device.
- Specify that the bill would be effective 90 days after enactment.

ARGUMENTS:

For:

According to law enforcement personnel, in some situations, pepper foam is superior to pepper spray when subduing a violent or uncooperative suspect or inmate. Pepper foam is easier to direct (and therefore contain the spread of) than pepper spray. Pepper spray can be dispersed by the wind or by air ventilation systems and affect unintended subjects. The bill is needed to amend the current definition of devices that disperse pepper spray to allow for the higher concentration of oleoresin capsicum (the active ingredient) used in pepper foam.

The bill would also allow non-MCOLES certified jail employees to use pepper spray or foam if they had previously received proper training and written authorization from their employer. Further, peace officers, certain employees of the Department of Corrections, and members of the military are currently exempted from the general prohibitions on possessing various types of weapons in the performance of their duties. The bill would 1) add Capitol security officers (who provide security at the state facilities in Lansing and at the state secondary complex) and state police motor carrier officers to this list, and 2) exempt all of these individuals from the general prohibition on possession and use of pepper spray and foam devices.

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