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BILL



ANALYSIS

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Senate Bill 779 (Substitute S-3 as reported)  
Senate Bill 780 (Substitute S-2 as reported)  
Senate Bill 781 (Substitute S-3 as reported)  
Sponsor: Senator Hoon-Yung Hopgood (S.B. 779)  
          Senator Rick Jones (S.B. 780)  
          Senator Steven Bieda (S.B. 781)  
Committee: Judiciary

Date Completed: 1-12-12

### **RATIONALE**

Reportedly, there has been a rise in the popularity of imitation firearms that greatly resemble real guns. If toys and other imitation firearms do not have colored markings on the tip of the barrel, these items can be mistaken for authentic weapons. Conversely, a firearm altered with colored markings can be mistaken for a toy. There have been incidents in at least two Michigan communities in which imitation firearms were mistaken for the real thing and tragedy was narrowly averted. More recently, in Texas, a teenage boy with a pellet gun that appeared to be a real firearm was shot and killed by police when he refused orders to drop his weapon. Some people believe that, to discourage the use of altered imitation or real firearms, their use in the commission of a crime should be penalized and penalties for brandishing a firearm also should apply to brandishing an altered imitation firearm.

### **CONTENT**

**Senate Bill 779 (S-3) would amend the Michigan Penal Code to do the following:**

- **Prohibit the possession of either an imitation firearm from which required colored markings were removed, disguised, or concealed, or a firearm to which color or markings required of an imitation firearm were added.**

- **Prescribe criminal penalties for using an imitation firearm from which colored markings were removed, disguised, or concealed to commit a misdemeanor or felony.**
- **Make it a misdemeanor to possess a firearm disguised to look like an imitation firearm, and make it a felony to have such a firearm while committing a felony.**

**Senate Bill 780 (S-2) would amend the Michigan Penal Code to extend a misdemeanor penalty for brandishing a firearm to brandishing an altered imitation firearm. The bill also would increase the maximum penalty for a violation from 90 days' imprisonment to 93 days.**

**Senate Bill 781 (S-3) would amend the Code of Criminal Procedure to include the felony proposed by Senate Bill 779 (S-3) in the sentencing guidelines.**

The bills would take effect 90 days after their enactment. Senate Bills 780 (S-2) and 781 (S-3) are tie-barred to Senate Bill 779.

### **Senate Bill 779 (S-3)**

The bill would prohibit a person from possessing either of the following:

- An imitation firearm from which the colored markings required under State

or Federal law on a toy, look-alike, or imitation firearm had been removed, disguised, cloaked, covered, concealed, or masked.

- A firearm to which any color or markings required on an imitation firearm under State or Federal law had been added or installed in a way that made the firearm look like an imitation firearm.

A person who possessed an altered toy, look-alike, or imitation firearm and used it to commit a misdemeanor would be guilty of a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$100. A person who possessed such a firearm and used it to commit a felony would be guilty of a felony punishable by up to 18 months' imprisonment and/or a maximum fine of \$10,000.

A person who possessed a firearm to which any color or markings were added or installed to make it look like an imitation firearm would be guilty of a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$100. If the person possessed the firearm while committing a felony, he or she would be guilty of a violation of Section 227b of the Penal Code (carrying or possessing a firearm when committing or attempting to commit a felony). (A violation of Section 227b is a felony requiring imprisonment for two years. A second felony-firearm conviction requires five years' imprisonment and a third or subsequent conviction requires 10 years' imprisonment.)

A conviction or sentence imposed for a violation of the bill would not preclude a conviction or sentence for a violation of any other applicable law.

The bill would not apply to a manufacturer, importer, or distributor of imitation firearms or to the lawful use of an imitation firearm in a motion picture, television, stage, or other theatrical production.

The bill would define "imitation firearm" as a BB gun, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm.

"BB gun" would mean a smooth bore rifle or handgun designed and manufactured exclusively to propel BBs that do not exceed .177 caliber by a spring or by gas or air.

### **Senate Bill 780 (S-2)**

The Penal Code prohibits a person from knowingly brandishing a firearm in public. Under the bill, the prohibition would include knowingly brandishing in public an altered imitation firearm. "Altered imitation firearm" would mean a toy, look-alike, or imitation firearm that had been altered in a manner described in Senate Bill 779 (S-3).

A violation of the brandishing prohibition is a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$100. Under Senate Bill 780 (S-2), the maximum term of imprisonment would be 93 days.

(The prohibition does not apply to a peace officer lawfully performing his or her duties as a peace officer, or to a person lawfully engaged in hunting, target practice, or the sale, purchase, repair, or transfer of the firearm.)

### **Senate Bill 781 (S-3)**

Under the bill, altering an imitation firearm and using it to commit a felony would be a Class G felony against the public safety, with a statutory maximum penalty of 18 months' imprisonment.

Proposed MCL 750.225 (S.B. 779)  
MCL 750.234e (S.B. 780)  
777.16m (S.B. 781)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

According to testimony before the Senate Judiciary Committee by the Taylor chief of police, a few years ago there was an incident at a local mall in which a group of children brandished and openly wore realistic-looking toy guns. Their behavior disrupted shoppers and retailers, and the mall security office called in Taylor police. If the children had brandished the fake weapons at or in the presence of police

officers, the police might have been justified in using deadly force because the toy guns appeared to be real weapons. Although the incident ended without gunfire, it easily could have been tragic. The police chief also mentioned that some criminals paint the tips of real guns so the weapons might look like toys.

In addition, in June 2009, a Troy police officer fired a patrol rifle at a teen playing a game with what turned out to be a toy gun, according to an article in *The Oakland Press*. Apparently, a motorist saw a person point what appeared to be a shotgun at someone in the driveway of a Troy home and called 9-1-1. The officer was dispatched and spotted the person holding in a shooting position what appeared to be a short-barrel shotgun with a pistol grip. When the officer ordered the person to drop the weapon, the teen turned and pointed the weapon at the officer, who then fired his weapon. While no one was harmed, it turned out the teen was holding a toy Airsoft gun (which shoots plastic bullets), and was playing a game with a group of youths. The teen apparently did not drop the toy gun when ordered to do so, because he thought it was part of the game.

According to recent news reports, on January 4, 2012, police in Brownsville, Texas, shot and killed an 8<sup>th</sup>-grade student who displayed a firearm as classes were resuming after the holiday break. The weapon turned out to be a pellet gun (which would be considered an imitation firearm under the definitions in Senate Bill 779 (S-3)), but evidently resembled a semiautomatic handgun. Reportedly, the boy engaged officers by failing to comply with numerous commands to drop the weapon.

By prescribing misdemeanor and felony penalties, Senate Bill 779 (S-3) would help to deter the use of altered imitation firearms, and guns disguised to look like toys, in the commission of crimes. By subjecting people who brandished altered imitation firearms to the same penalty as prescribed for brandishing a real gun, Senate Bill 780 (S-2) would discourage potentially deadly pranks like the one at Southland Mall in Taylor and games like the one the Troy teens were playing out in the open. Ultimately, the bills could help to avoid situations like the one in Texas where officers, believing a weapon to be authentic,

used deadly force against someone holding or brandishing an imitation firearm.

Legislative Analyst: Patrick Affholter

### **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 felony or misdemeanors or the expanded felony or misdemeanor. An offender convicted of the Class G offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 18 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Dan O'Connor

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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.