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SFA**BILL ANALYSIS**

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Senate Bill 287 (Substitute S-3 as reported)
Senate Bill 390 (as reported without amendment)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 3-3-99

RATIONALE

The presence of overly aggressive drivers on Michigan's highways and other roads is becoming a serious problem, as increasing numbers of people adopt dangerously offensive driving habits. In the metropolitan Detroit area, the State Police gauged aggressive driving to be such a disturbing trend that it implemented a special traffic enforcement effort out of its Metro North post in which a uniformed officer patrolled the freeway in an unmarked car observing other drivers. If the officer spotted someone driving aggressively and committing multiple traffic infractions, he or she radioed ahead to a marked police cruiser. That officer then stopped the offending driver and the officer who observed the infractions from the unmarked vehicle issued a citation or warning. This enforcement effort--dubbed "Project BAD" (for bust aggressive drivers)--began on August 12, 1998, and continued until January 15, 1999. According to the Department of State Police, in 76 patrol hours, Project BAD officers issued citations or made arrests in 155 traffic stops. Tickets issued included citations for reckless driving, careless driving, tailgating, speeding, improper lane usage, and other infractions. These violations occurred in a limited time frame on a short stretch of Michigan's freeway system. The experience of the Metro North post's officers could suggest that this aggressive driving trend is far more extensive than is indicated by these results alone. In order to crack down on this dangerous problem (sometimes called "road rage") and to encourage drivers to operate their vehicles more safely and with courtesy and civility, some people believe that criminal penalties, as well as driver's license sanctions, should be imposed on drivers who commit multiple aggressive driving violations.

CONTENT

Senate Bills 287 (S-3) and 390 would amend the Michigan Vehicle Code and the Code of Criminal Procedure, respectively, to create and provide penalties for three degrees of the offense of "criminal road endangerment" and to add first-

degree criminal road endangerment to the list of sentencing guidelines offenses. Senate Bill 390 also would add to the sentencing guidelines list several offenses enacted in 1998 after the list was originally compiled. Senate Bill 287 (S-3) would take effect 120 days after its enactment. Senate Bill 390 is tie-barred to Senate Bill 287.

Senate Bill 287 (S-3)

A person would be guilty of third-degree criminal road endangerment if, during a single continuous period of driving, he or she committed three or more of the following violations against a person operating another vehicle, a bicycle, motorcycle, or moped or against a pedestrian:

- Speeding by more than 15 miles per hour on a freeway and more than 10 miles per hour on all other roads.
- Failing to obey a traffic control device.
- Following another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and condition of the highway.
- Any improper overtaking and passing of another vehicle in violation of the Vehicle Code.
- Failing to yield the right-of-way.
- Improper lane change, in violation of the Vehicle Code, causing another vehicle to take evasive action.
- Repeated and unnecessary flashing or blinking of headlamps, causing a person to change speed or direction.
- Any other driving behavior likely to cause harm to persons or property.

The violation would be second-degree criminal road endangerment if a person committed what would be a third-degree offense and, during the same continuous period of driving, the person did any of the following:

- Operated a vehicle in a manner that caused a substantial risk of physical injury to another

person or damage to property.

- Operated a vehicle with willful or wanton disregard for the safety of persons or property.
- Openly displayed a firearm, or another person reasonably believed that the person openly displayed a firearm.

The violation would be a first-degree offense if a person committed third- or second-degree criminal road endangerment and one or both of the following applied:

- An injury or death to another person was caused as a result of the vehicle's operation.
- The person had one or more prior convictions for third- or second-degree criminal road endangerment.

Third-degree criminal road endangerment would be a misdemeanor, punishable by up to 93 days' imprisonment, a maximum fine of \$1,000, or both, and the Secretary of State would have to suspend the offender's driver's license for 30 days and enter six points on his or her driving record. Second-degree criminal road endangerment would be a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$2,000, or both, and the Secretary of State would have to suspend the offender's driver's license for 90 days and enter six points on his or her driving record. First-degree criminal road endangerment would be a felony, punishable by up to four years' imprisonment, a maximum fine of \$5,000, or both, and the Secretary of State would have to revoke the offender's driver's license and enter six points on his or her driving record.

The sentencing court could order any term of imprisonment imposed for criminal road endangerment to be served consecutively to, and immediately preceding, a term of imprisonment for a violation of any other offense arising out of the same course of conduct. Similarly, a fine under the bill could be imposed in addition to a fine imposed for a violation of any other underlying offense.

The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate the bill, including the underlying offense.

Senate Bill 390

First-degree criminal road endangerment, which is proposed by Senate Bill 287 (S-3), would be categorized as a Class F felony against public safety, with a four-year statutory maximum sentence.

The bill also would add to the sentencing guidelines list some offenses that were enacted in 1998, after the list was originally compiled. These include the felony of destruction of trees or shrubs to make a sign more visible, as enacted by Public Act 533 of 1998. This offense (which becomes effective on April 1, 1999) would be categorized as a Class H felony against property, with a two-year statutory maximum sentence.

In addition, the bill would add to the list several new felony offenses and penalties enacted in 1998 that involve drunk driving and operating a vehicle without a license.

Proposed MCL 257.626c (S.B. 287)
MCL 777.12 (S.B. 390)

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

Drivers who commit multiple traffic violations, while using hostile road tactics to intimidate other drivers, passengers, bicyclists, and pedestrians, pose a danger to all who use Michigan's roadways. They operate as if they are not subject to traffic regulations and appear to think that law-abiding drivers and other road users are no more than a nuisance to them. Speeding, tailgating, weaving in and out of traffic lanes, and using the shoulder of the road as a passing lane, these overly aggressive drivers seem to approach traffic flow as if it is their own personal roadway obstacle course. Their hostility behind the wheel also can terrorize other drivers in the form of repeated and unnecessary flashing of headlights, verbal assaults, obscene gestures, and even the threatening display of weapons.

Road rage incidents have led to tragedy on Michigan's highways. In 1998, on I-275 in Oakland County, two drivers reportedly battled for lane position at very high rates of speed. When one driver refused to allow the other to merge, the vehicles bumped and one car crossed the median and collided with oncoming traffic. The driver was killed. It is just this kind of dangerously aggressive driving behavior that the State Police's Metro North post attempted to mitigate through the Project BAD special enforcement effort. Although the troopers were successful in citing numerous drivers for multiple traffic violations, the road rage problem continues.

The Michigan Vehicle Code's current traffic regulations appear to have little effect on reducing

the incidence of road rage. With few exceptions (reckless driving and drunk driving, for instance) the Code's traffic violations are civil infractions, which can result in the imposition of fines and driver's license sanctions, but do not include criminal penalties. By combining multiple traffic civil infractions into a criminal offense, Senate Bill 287 (S-3) would give police an extra, and more powerful, tool to use in enforcing traffic laws. If an aggressive driver committed multiple infractions, as did the drivers cited in Project BAD, they would pay a heavier price under the bill. Imposing criminal penalties, in combination with driver's license sanctions, would provide a more appropriate punishment for the hostile tactics used by dangerously aggressive drivers and could prove to be a deterrent to that type of driving in the future.

Response: Although the bill includes actions against not only other drivers, but also bicyclists and pedestrians, some of the individual infractions that would be combined to constitute criminal road endangerment refer only to other vehicles. Bicyclists and pedestrians should be included in the provisions regarding following too closely and overtaking and passing, for instance. Perhaps the bill could refer to "another road user" rather than "another vehicle". In addition, there should be specific provisions for passing too closely, as automobile drivers sometimes do not give much clearance to bicyclists, and the provision pertaining to the flashing of headlights should include unnecessary and repeated honking of a horn.

Supporting Argument

Since Senate Bill 287 (S-3) proposes a new felony, that offense should be listed in the Code of Criminal Procedure's sentencing guidelines provisions, enacted last year. Senate Bill 390 would add that offense, in addition to other roadway and vehicle operation offenses enacted in 1998 after the sentencing guidelines list was compiled.

Opposing Argument

The Vehicle Code already prohibits the practices of aggressive drivers. If the current traffic laws were adequately enforced, driving habits would not have deteriorated to the point at which they are now. Enacting another law that would not be enforced would not reverse the trend of increasingly hostile driving. Only stepped-up enforcement efforts would accomplish that. In addition, educating motorists in safe and appropriate driving practices could contribute to less hazardous roadways. For example, many people seem to be unaware that they should not drive slowly in the left lane; while this behavior is not dangerous in and of itself, it can lead to traffic tie-ups, tailgating, and right-lane passing, not to mention anger and frustration in other drivers.

Opposing Argument

The bill's implementation date should be delayed

until after January 1, 2000. Computer specialists for the Secretary of State and the courts are currently preoccupied with ensuring that their systems are not affected by the so-called Y2K problem and are burdened with adding the record keeping requirements of drunk driving and driving without a license infractions added to the Vehicle Code or revised last year.

Opposing Argument

The problem is not a lack of tools in traffic enforcement, but lack of technology in regulating driving. Today's cars make it too easy to drive recklessly and require solutions other than passing more traffic laws. Technological advancement such as sensors and data recorders on cars would do more to make our roads safer. Manufacturers are developing bigger and faster cars with safety features such as airbags that make people more bold behind the wheel. They should be including features such as requiring the insertion of a driver's license to run a vehicle, which could then record driving data on the driver's record.

Response: These features are not within the scope of the Vehicle Code and would do little, if anything, to address the immediate problem of road rage.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 287 (S-3)

Senate Bill 287 (S-3) would have an indeterminate fiscal impact on State and local government.

The bill would establish misdemeanor penalties for second- and third-degree criminal road endangerment. Because the maximum penalty for these crimes would be less than one year, local governments would receive the fine revenue and/or pay the cost of incarceration. There are no data to indicate how many people could be subject to conviction under these sections, and the cost of incarceration varies from county to county.

Additionally, the bill would establish a maximum criminal penalty of four years in prison and/or a fine of \$5,000 for first-degree criminal road endangerment. The court would determine the minimum sentence, which is indicative of the cost of incarceration. The sentence for first-degree criminal road endangerment could be served consecutively to the sentence for another conviction arising out of the same incident. There are no data to indicate how many people could be subject to conviction under

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this section or how courts would impose sentences. However, if an offender were convicted of first-degree road endangerment and received a minimum sentence of 32 months, incarceration of this offender could cost the State \$58,560.

Amending the Michigan Vehicle Code to create these offenses as criminal violations also could increase administrative costs to the Department of State for enforcement of these provisions. There could be computer programming costs to add such offenses to the Code as criminal violations.

Senate Bill 390

Senate Bill 390 would have an indeterminate fiscal impact on State and local government.

To the extent that the bill would create a class for crimes enacted during the last legislative session and for crimes proposed under tie-barred legislation, minimum sentences for those crimes would be established. There are no available data that indicate the number of offenders who may be convicted of these crimes or the judicial sentencing patterns under enacted sentencing guidelines.

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