

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA**



**BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 38 (Substitute S-2 as passed by the Senate)  
Senate Bill 150 (as passed by the Senate)  
Sponsor: Senator Walter H. North  
Committee: Judiciary

Date Completed: 2-15-01

### RATIONALE

Under the Natural Resources and Environmental Protection Act (NREPA), the maximum sentence of imprisonment for various misdemeanor drunk boating violations is 90 days. The maximum prison term for similar misdemeanors involving the operation of an off-road vehicle (ORV) or snowmobile, however, is 93 days. The significance of this distinction pertains to fingerprinting requirements and the authority to make warrantless arrests. Under the bureau of criminal identification Act, a law enforcement agency is required to fingerprint a person immediately upon his or her arrest for a felony or for a misdemeanor for which the maximum penalty exceeds 92 days' imprisonment (MCL 28.243). An arrest for drunk boating, then, does not require the taking of fingerprints. This can lead to problems with tracking a person's criminal record to determine whether the arrest is for a first or subsequent offense. In addition, the Code of Criminal Procedure, as amended by Public Act 208 of 2000, allows a peace officer to arrest a person without a warrant for a misdemeanor punishable by more than 92 days (MCL 764.15). Absent a warrant or a penalty of more than 92 days' imprisonment, a law enforcement officer may not make an arrest for a misdemeanor unless he or she actually witnesses the violation. Some people have suggested that drunk boating misdemeanors should be punishable by up to 93 rather than 90 days' imprisonment to trigger the fingerprinting requirement, give law enforcement officers greater latitude in making an arrest for those violations, and make the penalty consistent with violations involving the operation of an ORV or snowmobile.

Further, a third offense within 10 years for operating an ORV under the influence of liquor and/or a controlled substance (OUIL) is a felony with no specified penalty. (When no penalty is otherwise specified, a felony is punishable by up to four years' imprisonment and/or a maximum fine of \$2,000.) A third OUIL offense involving a snowmobile, boat, or

motor vehicle, however, is punishable by imprisonment for not less than one year or more than five years. Also, the felony for causing serious injury due to OUIL refers to causing a "long-term incapacitating injury" in the NREPA's boating and snowmobiling provisions, but refers to causing "serious impairment of a body function" in the ORV provisions. The Michigan Vehicle Code also uses the serious impairment standard for purposes of drunk driving. Some people believe that the felony penalties and injury standards should be consistent for all of those felony OUIL offenses.

### CONTENT

**Senate Bills 38 (S-2) and 150 would amend the Natural Resources and Environmental Protection Act and the Code of Criminal Procedure, respectively, to do all of the following:**

- Increase from 90 to 93 days the maximum period of imprisonment for various drunk boating misdemeanors.
- Specify a felony penalty for a third offense of operating an ORV while under the influence of liquor and/or a controlled substance, and revise the sentencing guidelines' statutory maximum sentence for that offense.
- Change the felony of causing a serious injury due to drunk operation of a boat or snowmobile, and revise the corresponding sentencing guidelines' description.

The bills would take effect on June 1, 2001. Senate Bill 150 is tie-barred to Senate Bill 38.

#### **Senate Bill 38 (S-2)**

##### Misdemeanor Drunk Boating

Under the NREPA, operating a vessel while under

the influence of liquor and/or a controlled substance or with a bodily alcohol content (BAC) of .10 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine is a misdemeanor requiring punishment by one or more of the following:

- Community service for not more than 45 days.
- Up to 90 days' imprisonment.
- A fine of not less than \$100 or more than \$500.

Operating a vessel while visibly impaired due to the consumption of alcohol and/or a controlled substance (OWI) is a misdemeanor punishable by one or more of the following:

- Community service for not more than 45 days.
- Up to 90 days' imprisonment.
- A maximum fine of \$300.

It also is a misdemeanor for the owner or person in charge or in control of a vessel to authorize or knowingly permit the vessel to be operated by a person who is under the influence of liquor and/or a controlled substance or whose BAC is .10 or more. The offense is punishable by up to 90 days' imprisonment, a maximum fine of \$100, or both.

Under the bill, the maximum term of imprisonment for a boating OUIL, OWI, or .10 BAC offense would be 93 days. The bill would retain the other penalties.

### Third ORV OUIL Offense

Under the NREPA, a third or subsequent OUIL or BAC conviction involving an ORV within 10 years is a felony with no specified penalty. The bill would require a sentence of imprisonment for not less than one year or more than five years, a fine of not less than \$500 or more than \$5,000, or both imprisonment and a fine.

### Serious Injury

It is a felony punishable by up to five years' imprisonment and/or a fine of not less than \$1,000 or more than \$5,000 to cause a "long-term incapacitating injury" to another person due to an OUIL or BAC violation involving a boat or a snowmobile. The bill would replace "long-term incapacitating injury" with "serious impairment of a body function".

As it does under the NREPA's ORV provisions and the Michigan Vehicle Code's drunk driving provisions, "serious impairment of a body function" would include one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.

- Loss of an eye or ear or use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts for more than three days.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.

### Senate Bill 150

Currently, a third offense of operating an ORV under the influence within 10 years is classified under the sentencing guidelines as a Class E felony against the public safety, with a statutory maximum sentence of four years' imprisonment. The bill would change the statutory maximum sentence to five years' imprisonment, as proposed by Senate Bill 38 (S-2).

Also, the guidelines refer to the felony offense of operating a snowmobile or a vessel under the influence causing "long-term incapacitating injury". The bill would change those descriptions to operating a snowmobile or vessel under the influence causing "serious impairment of a body function", as proposed by Senate Bill 38 (S-2).

MCL 324.80176 et al. (S.B. 38)  
777.13 (S.B. 150)

### 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

Like Michigan's drunk driving laws, the NREPA contains graduated penalties for OUIL offenses involving boats, ORVs, and snowmobiles so that more severe punishments apply when a violator has prior convictions. Imposing a maximum penalty of 93 days' imprisonment for misdemeanor OUIL and OWI, as the Michigan Vehicle Code does for drunk driving and the NREPA does for offenses involving the operation of an ORV or a snowmobile, ensures that a record of previous violations exists because arresting officers are required to take a suspect's fingerprints when the charged offense carries a maximum penalty of more than 92 days. The NREPA, however, prescribes a maximum penalty of only 90 days' imprisonment for a misdemeanor violation of drunk boating. Since fingerprinting is not required for such an arrest, it is possible that an offender may have prior drunk boating violations without a clear record of that criminal past. Consequently, it may be difficult to impose deserved enhanced penalties for repeat offenses. By

increasing the maximum penalty for drunk boating misdemeanors to 93 days' imprisonment, the bill would ensure that an offender's fingerprints were taken and recorded and that a proper record of prior violations would be maintained.

### **Supporting Argument**

Presently, there is some difficulty in prosecuting drunk boating offenders under Michigan law when a violator is apprehended and detained by the U.S. Coast Guard. The Coast Guard, in the course of its normal operations, sometimes detects boat operators suspected of drunk boating within the waters of a state. After determining that a boat operator was indeed operating the vessel while under the influence of, or impaired by, liquor and/or a controlled substance, the Coast Guard detains the intoxicated boat operator and transports him or her ashore, to be met by local law enforcement officials. The offender then is typically prosecuted under that state's laws.

Since Michigan law does not allow a law enforcement officer to make a warrantless arrest for a 90-day misdemeanor, unless he or she actually witnesses the violation, drunk boaters turned over to Michigan law enforcement agencies by the Coast Guard usually are not charged and prosecuted. Indeed, in written testimony submitted to the Senate Judiciary Committee, the Commander of the Ninth Coast Guard District related a recent case in Huron County that illustrates this problem. In June 2000, Huron County sheriff deputies asked the Coast Guard for assistance in dealing with a boater transmitting obscenities and false distress signals on a marine radio. The Coast Guard located the boater and found that he was drunk. Coast Guard personnel terminated the boat's voyage and turned the man over to Huron County officers to take custody of the suspect. Since they had not witnessed the operation of the vessel, however, the county officers could not arrest the man and they released him.

Apparently, this type of incident is not unusual. Since more than one in four boating-related deaths reportedly involves the use of alcohol, it would be beneficial if law enforcement officers could follow through on the Coast Guard's apprehension of drunk boaters. By increasing the maximum penalty for various drunk boating misdemeanors to 93 days' imprisonment, the bill would allow Michigan law enforcement officers to make an arrest without a warrant and without having witnessed the infraction. This would facilitate more effective enforcement of the State's drunk boating prohibitions and result in safer conditions for everyone who uses the Great

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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.

Lakes and Michigan's other waterways.

**Response:** Although drunk boating offenders apprehended by the Coast Guard apparently are not usually prosecuted under Federal law (unless they involve serious maritime accidents), the Coast Guard does have the option to pursue that avenue, since it operates under Federal jurisdiction. The bill could create an incentive for the Coast Guard to divert drunk boating arrestees to State or local jurisdiction, thereby adding to the workload of Michigan's law enforcement agencies and courts. In addition, the State prosecution of Coast Guard arrestees raises questions relating to jurisdictional issues and admissibility of evidence. For instance, the Coast Guard and Michigan law enforcement agencies may have different standards as to probable cause to investigate and make arrests; it is not clear whether the results of a breathalyzer test performed by Coast Guard personnel would be admissible in Michigan courts; the Coast Guard has jurisdiction in Great Lakes waters that are not part of Michigan territory and it is possible that an arrestee would be turned over to Michigan authorities when the offense occurred in another jurisdiction; and it is unclear who would be responsible for securing and holding a watercraft that was impounded because the operator was drunk. Although these concerns exist under current law, they would become prevalent under the bill.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bills would result in a potential additional cost of an indeterminate amount for the State and local units of government. There are no data available to indicate how many offenders a year are convicted of a third or subsequent OUIL offense involving an ORV. Local units of government would incur the costs of incarcerating offenders who received the mandatory minimum sentence of one year. The offense is a Class E felony with a minimum sentencing range between 0-3 months and 24-38 months. With the maximum sentence increased from four years to five years, the longest minimum sentence would increase from 36 months to 38 months, because a minimum sentence cannot exceed two-thirds of the maximum sentence. Given that the average annual cost of incarceration in a State facility is \$22,000, an additional two months of incarceration would cost \$3,700 per offender.

Fiscal Analyst: K. Firestone