

Legislative Analysis



INCREASE PENALTIES FOR CERTAIN DRUNK/DRUGGED DRIVING OFFENSES

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House Bill 4567 (reported from committee as Substitute H-1)
House Bill 4568 reported from committee without amendment
Sponsor: Rep. Eileen Kowall
Committee: Criminal Justice

First Analysis (9-24-13)

BRIEF SUMMARY: House Bill 4567 would increase the maximum term of imprisonment for a violation of the drunk/drugged driving laws that result in the death or serious impairment of a body function of another person. The bill would also create an enhanced penalty for a violation of causing serious impairment of a body function of another person if the driver had a prior conviction for the same offense and/or had a high BAC level (0.17 grams or more) at the time of the offense. House Bill 4568 would place the maximum terms of imprisonment revised or added by House Bill 4567 within the sentencing guidelines. The bill would also make an offense causing death a Class B felony, instead of a Class C as it is now.

FISCAL IMPACT: The bill would have local and state corrections fiscal implications, as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

Not all drunk or drugged driving incidents are the same. Where many result in no injuries to either the driver or to others, some result in accidents in which other individuals are killed or left with lifelong serious injuries. Currently, the Michigan Vehicle Code provides more stringent sanctions for drunk or drugged drivers who kill or seriously injure another person than the penalties available for other violations. However, victims and prosecutors alike say that all too often, such a driver gets a slap on the wrist. In short order, the person is back behind the wheel of vehicle, often continuing to drive even though his or her driver's license is suspended or revoked. Since current penalties seem to have little deterrent effect on the behavior of drivers addicted to alcohol and/or drugs, victims and prosecutors say these dangerous drivers simply need to be taken off the road – best done by putting them in prison where they cannot endanger others on the road.

Legislation has therefore been offered to increase the criminal penalties associated with drunk or drugged driving offenses causing death or serious injury to another person.

THE CONTENT OF THE BILLS:

House Bill 4567 would amend the Michigan Vehicle Code (MCL 257.625) to revise the penalties for certain violations of the drunk/drugged driving laws. Michigan law already

prohibits the operation of a motor vehicle while intoxicated, visibly impaired, or while having any bodily amount of cocaine, a Schedule 1 controlled substance (e.g., heroin, ecstasy, marijuana, or designer drugs such K-2), or other intoxicating substance. A violation that causes the death of another person or that causes a serious impairment of a body function of another person is a felony. Current and proposed penalties are as follows:

Violation	Current Penalty in Maximum Term of Imprisonment and/or fine	Proposed Penalty
Causing Death	15 years and/or \$2,500 minimum fine to \$10,000 maximum fine	20 years, same fine
Victim police officer, fire fighter, or emergency responder	20 years and/or \$2,500 minimum fine to \$10,000 maximum fine	unchanged
Causing Serious Impairment of a Body Function	5 years and/or minimum fine of \$1,000 to \$5,000 maximum fine	10 years, same fine
1 or more lifetime priors	Same as above	10 years and/or \$7,500 max fine
High BAC \geq 0.17 grams	Same as above	10 years and/or \$7,500 max fine
High BAC, 1 or more lifetime priors	Same as above	20 years and/or \$7,500 max fine

A conviction of any of the above could also result in the vehicle being subject to the code's forfeiture provisions. If the vehicle were not ordered to be forfeited, the court would have to order in the judgment of sentence the vehicle to be immobilized under Section 904d.

House Bill 4568 would amend the Code of Criminal Procedure (MCL 777.12f) to specify that operating a vehicle while intoxicated or impaired or with the presence of a controlled substance causing death would be a Class B felony (instead of Class C) against a person with a 20-year maximum term of imprisonment. Operating a vehicle while intoxicated or impaired or with a presence of a controlled substance causing death to certain persons would be a Class B felony against a person with a maximum term of imprisonment of 20 years.

Operating a vehicle with an alcohol content of 0.17 grams or more (or while intoxicated or with the presence of a controlled substance and with prior conviction) causing serious impairment would each be a Class D felony against a person with a maximum term of imprisonment of 10 years. The bill is tie-barred to House Bill 4567.

FISCAL INFORMATION:

The bills could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these provisions. New

felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year. The increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

Michigan law already makes it a felony offense when a drunk or drugged driver causes the death or serious impairment of a body function of another person. However, victims and prosecutors maintain that the criminal penalties do not go far enough. For instance, driving while drunk or drugged should result in a lengthy stay in prison if someone is killed as a result, not get someone a few months of community service. Instead, House Bill 4567 would increase the maximum term of imprisonment for causing death by five years and House Bill 4568 would raise the offense to a Class B felony. The changes mean that an offender may be sentenced to a longer minimum sentence, and depending on how a particular incident is scored, an offender who may have been eligible only for community sanctions may now be eligible to be sent to prison. Offenders who may have scored in a "straddle cell", meaning that they could be sentenced either to community sanctions or sent to prison, may now have to serve at least some time in prison.

The problem with the current penalties for causing a serious impairment of a bodily injury appears to be that they do not take into account a driver's prior record or the driver's BAC level. For instance, a driver will get the same penalty the second, or the third, or the fourth time he or she puts another person in a wheelchair. House Bill 4567 increases the maximum term of imprisonment for a first offense and enhances the prison time for a second or subsequent offense. In addition, most serious accidents are caused by a driver with a high BAC level (.17 grams or higher). The bill provides a longer maximum sentence even for a first superdrunk offense. Thus, more offenders are likely to see at least some prison time.

Though sobriety courts give judges more oversight over drunk or drugged offenders, prosecutors say that some participants are back causing accidents a short time after successfully completing the programs. Sometimes, the best way to protect the public is simply to remove the offender from the streets temporarily. The bills would do just that.

Against:

Current law creates an enhanced penalty for drunk or drugged driving that kills a police officer, fire fighter, or other emergency responder. House Bill 4567 erases that distinction, but leaves in the language specific to them. That would still imply that killing one of these public servants should result in a higher penalty. Perhaps the bill should be amended to raise the maximum term of imprisonment for killing a member of one of these professions.

Further, sobriety courts are helping many offenders finally confront the issues underlying their addictions. For those individuals, delaying needed treatment by confinement in a correctional institution may add to societal costs. Some might say that not enough time has been given to see how increased participation in sobriety courts and use of ignition interlock devices on a longer basis can turn the tide against alcohol and drug-related traffic crashes that result in death or serious impairment to others.

POSITIONS:

A representative of the Prosecuting Attorneys Association of Michigan (PAAM) and the Prosecuting Attorneys Coordinating Council (PACC) testified in support of the bills. (6-5-13)

The Office of Secretary of State indicated support for the bills. (6-5-13)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.