

# Legislative Analysis

---



## INCREASE PENALTIES FOR CERTAIN DRUNK/DRUGGED DRIVING OFFENSES

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4567 as enrolled**  
**Public Act 219 of 2014**

**House Bill 4568 as enrolled**  
**Public Act 220 of 2014**

**Sponsor: Rep. Eileen Kowall**  
**House Committee: Criminal Justice**  
**Senate Committee: Judiciary**

### **Second Analysis (7-7-14)**

**BRIEF SUMMARY:** House Bill 4567 creates an enhanced penalty for a violation of the drunk/drugged driving laws that result in the death or serious impairment of a body function of another person if the driver had a prior conviction of the drunk/drugged driving laws within seven years **and** had a high BAC level (0.17 grams or more) at the time of the violation. House Bill 4568 places the maximum terms of imprisonment added by House Bill 4567 within the sentencing guidelines.

**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. Often the most serious of drunk driving accidents involve repeat offenders and/or drivers who are "superdrunk," defined under Michigan law as having a blood alcohol content of 0.17 grams or higher (over twice as high as the *per se* drunk driving BAC level of 0.08) and/or those with addictions to controlled substances. This is supported in data collected by the National Highway Traffic Safety Administration (NHTSA) that about one-quarter of all drivers arrested for drunk driving are repeat offenders and the risk of a driver who has one or more prior DWI convictions being involved in a fatal crash is almost one and one-half times that of a driver with no drunk driving convictions. In fact, most of the fatal crashes involved drivers with a blood alcohol content of 0.15 grams or more, with the greatest number of fatal accidents involving a driver with a 0.16 BAC level.

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 of the drunk/drugged driving laws. However, victims and prosecutors 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 the vehicle, often continuing to drive even though the person's driver's license has been 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. Thus, legislation to increase prison time for repeat drunk and drugged drivers who drive with a high BAC level and who seriously injure or kill another person has been offered.

***THE CONTENT OF THE BILLS:***

House Bill 4567 amends 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 felony penalties for these felony offenses are as follows:

<b>Violation</b>	<b>Current Penalty</b>	<b>NEW Penalty</b>
<b>Causing Death</b>		
Violation	15 years and/or \$2,500 minimum fine to \$10,000 maximum fine	unchanged
If victim is police officer, fire fighter, or emergency responder	20 years and/or \$2,500 minimum fine to \$10,000 maximum fine	unchanged
High BAC $\geq$ 0.17 grams AND prior conviction within 7 years	Treated same as violation above	20 years, and/or \$2,500 minimum fine to \$10,000 maximum fine
<b>Causing Serious Impairment of a Body Function</b>		
Violation	5 years and/or minimum fine of \$1,000 to \$5,000 maximum fine	unchanged
High BAC $\geq$ 0.17 grams AND prior conviction within 7 years	Treated same as above	10 years and/or \$7,500 maximum fine

The definition of "prior conviction" contained in Section 625 includes, among other things, a violation or attempted violation of the drunk/drugged driving laws and also negligent homicide, manslaughter, or murder resulting from the operation of a vehicle (or the attempt to commit any of these crimes).

A conviction of any of the new offenses 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 amends the Code of Criminal Procedure (MCL 777.12f) to specify that operating a vehicle with an alcohol content of 0.17 grams or more with a prior conviction and causing death is 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 with a prior conviction and causing serious impairment is a Class D felony against a person with a ten-year maximum term of imprisonment. The bill would also revise several sentencing guidelines provisions to apply also to operating a vehicle with the presence of a controlled substance in conformity with the underlying statutes.

***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. The problem with the current penalties for causing death or 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 coffin or wheelchair. House Bill 4567 addresses the issue by doubling the maximum amount of years a person could spend in prison and increasing any penal fine a court imposes if the driver were both a repeat offender and driving with a high BAC level (.17 grams or higher). By doing so, the bills represent the latest NHTSA data that a significant number of fatal accidents are caused by repeat drunk drivers and those with a high BAC level. 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. Proponents say that 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:***

The bills may be progress toward getting dangerous drivers off the road, but appear to miss the mark on several levels. First of all, the higher penalties only come into play with repeat offenders (limited to a seven-year look back), and then only to a driver with a BAC level of 0.17 or higher. As introduced, the bills would have increased the penalties for ALL drunk driving accidents causing death or serious injury, with the highest penalty

reserved for those driving while superdrunk. According to some data, a majority of fatal drunk driving accidents are caused by drivers with no prior convictions, and MADD makes a conservative estimate that on average, a first-time convicted drunk driver has driven drunk a minimum of 80 times before being arrested. Further, NHTSA data shows that most drunk driving fatalities are caused by drivers with a BAC level of 0.15 or more, with the most accidents caused by drivers with a BAC of 0.16 grams, lower than Michigan's superdrunk category that begins at 0.17 BAC and the threshold for the bills' higher penalties. Plus, the increased penalties do not apply to persons driving while under the influence of illegal drugs such as meth, marijuana, or cocaine, even if they have prior drugged driving convictions. Thus, many dangerous drivers will still be left on the roads as the bills' higher penalties will not apply to them.

***Response:***

The NHTSA data also suggests drunk driving recidivism rates are higher for persons sent to prison than for those who were not incarcerated. This may be due to restricted access to treatment programs by those sent to jail or prison. If an offender cannot receive timely and appropriate treatment and programming, incarceration alone appears to do little to stop drunk driving upon release.

On the other hand, 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 recent changes to Michigan's drunk and drugged driving laws, such as 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. The bills appear to take this information into consideration.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robin Risko

---

■ 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.