

Legislative Analysis



VULNERABLE ROADWAY USER

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

House Bill 4792 (Substitute H-1)
Sponsor: Rep. David Nathan

House Bill 5080 with committee amendment
Sponsor: Rep. Edward McBroom

Committee: Criminal Justice
First Analysis (10-29-13)

BRIEF SUMMARY: Together, the bills would expand the statutory provision that provides enhanced penalties for a moving violation that causes injury to a person operating farm equipment on a highway in order to include an injury to a "vulnerable roadway user."

A "vulnerable roadway user" refers to a pedestrian, a wheelchair user, or a person operating such devices as bicycles, electric bicycles and electric wheelchairs. The bills would take effect 90 days after enactment.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local governments. To the extent that the bills result in a greater number of convictions, they 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. Felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. Misdemeanor convictions could increase costs related to county jails and/or local misdemeanor 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 misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

With some exceptions, Michigan law provides each person riding a bicycle or electric personal assistive mobility device all of the rights, and subjects them to all of the duties, applicable to a driver of a vehicle. Indeed, Michigan leads the nation in trail ways and in local *Complete Streets* ordinances and resolutions that encourage the design and operation of roadways to accommodate all users. Yet many cyclists have horror stories of near collisions, and actual collisions, with drivers unwilling to share the road.

Reportedly, though bicycle crashes account for just 1.5 percent of all Michigan traffic crashes, they account for 17 percent of all crash fatalities. And it isn't just bicycles.

Pedestrians of all ages and abilities are injured and killed when crossing the street or when sharing the roadways. For every pedestrian killed (133 in 2012), 15 more are injured. According to the Washtenaw Bicycling and Walking Coalition, 3,022 residents were killed by a motor vehicle while out for a walk or a bike ride during the past 16 years (1996-2012). They compare this to the 2,654 Michigan residents who were killed fighting in the Vietnam War over a 16-year period.

For example, in 2007, a Michigan man in a wheelchair was struck by a semitrailer when crossing the road, which then pushed him nearly four miles after the wheelchair became stuck in the truck's grille. In mid-July of this year, a toddler in a stroller was dragged after a van backed into him and his mother. In both of these stories, the victims escaped without injuries. But just a few weeks after the stroller incident, two well-known homeless men in Detroit were killed by a hit-and-run driver when one was pushing the other in a wheelchair down a street.

Whether for health, environmental concerns, or because it may be a person's only mode of transportation, more and more people are bicycling, walking, skateboarding, or using non-motorized or motorized devices such as wheelchairs, electric-assisted bicycles, and Amigos to get to their destinations. Yet, despite increased educational campaigns and infrastructure improvements to increase safety and raise awareness among both vehicle drivers and cyclists and pedestrians, the number of accidents that continue to occur lead many to believe that there needs to be greater legal protections for non-vehicle users. It has been suggested that a driver who injures or kills a vulnerable roadway user, such as a cyclist or pedestrian, be subject to enhanced criminal penalties similar to those provided for injuring or killing operators of slow moving farm equipment, road construction workers, and children in designated school zones.

THE CONTENT OF THE BILLS:

House Bill 5080 would amend the Michigan Vehicle Code (MCL 257.601c). Currently, a person who commits a moving violation that has criminal penalties and as a result causes injury to a person operating an implement of husbandry (i.e., a tractor) on a highway in compliance with the act is guilty of a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$1,000. Causing the person's death is a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$7,500.

The bill would apply these penalties also to a moving violation having criminal penalties that injured or killed a vulnerable roadway user on a highway who was in compliance with the Vehicle Code. (The code prescribes lawful and unlawful conduct by pedestrians, wheelchair users, and cyclists; for example, cyclists riding in the roadway are required to follow the same laws as motorists.)

"Vulnerable roadway user" would mean a pedestrian, a wheelchair user, or a person operating a transportation device in compliance with the Michigan Vehicle Code.

"Transportation device" would be a device in, upon, or by which any person and/or property is or may be transported or drawn upon a highway by human power, or an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 20 miles per hour, and that is regulated under the Vehicle Code. It includes, but is not limited to, a cycle with one or more wheels, such as a bicycle or electric bicycle, and an electric wheelchair.

A "moving violation" is currently defined as an act or omission prohibited under the Vehicle Code or a substantially similar local ordinance that occurs while a person is operating a motor vehicle, and for which the person is subject to a fine.

House Bill 4792 would amend the Code of Criminal Procedure (MCL 777.12e) to add a moving violation causing death to a vulnerable roadway user to the sentencing guidelines currently in place for a moving violation causing death to an operator of an implement of husbandry. The crime is a Class C felony against a person with a 15-year maximum sentence of imprisonment. The bill is tie-barred to House Bill 5080, meaning that it cannot become law unless House Bill 5080 is also enacted.

BACKGROUND INFORMATION:

The bill package is a reintroduction of legislation considered in the 2009-2010 Legislative Session (House Bills 4958-4859). Those bills were passed by the House but failed to see Senate action.

ARGUMENTS:

For:

A body, whether on foot, in a wheelchair, or on a bicycle is no match for a one- or two-ton vehicle. Thus, the bill package seeks to improve safety for pedestrians, cyclists, and those using other transportation devices by raising the standard of care for drivers. Currently, the law provides enhanced penalties for drivers who injure or kill other vulnerable populations such as construction workers in construction zones, children in designated school zones, and people operating or riding on tractors and other farm equipment. Applying enhanced penalties for injuries or deaths to vulnerable roadway users will raise awareness among drivers to drive more carefully and to observe all laws pertaining to sharing the roadways.

The legislation is particularly timely as towns and cities work to make their communities more livable with trails and sidewalks. Many more people are riding their bikes to work or for recreation or walking rather than driving to reduce pollution or increase fitness. For others, like some who testified before the committee, walking, cycling, or using wheelchairs and other mobility devices are their only way to get to school, jobs, or out and about. Being able to use these modes of transportation enables them to live independently and be active members of their communities. Increasing the penalties for such careless driving will go far in increasing public safety by sending a clear message that drivers must share the road and drive responsibly or face the consequences.

Against:

The Vehicle Code already makes it a criminal offense to commit a moving violation that causes the death of another person or a serious impairment and is therefore not needed.

Response:

The current provision referenced above results in a misdemeanor offense punishable by one year or 93 days maximum imprisonment, respectively, with or without a fine. Plus, only injuries that rise to the level of serious impairment of a body function would trigger the penalty. Many serious injuries to person and property result when a heavy vehicle strikes a person that does not rise to that level. Some have reported problems as a result trying to get insurance companies to replace their damaged property (such as a crushed bicycle) because the responding police officer did not write a ticket or did not cite them under the referenced statute because their injuries did not appear to a serious impairment.

Thus, the legislation will end confusion for law enforcement as to how to apply Vehicle Code provisions to a vehicle/pedestrian/cyclist collision, and will give prosecutors the ability to appropriately charge careless drivers. In addition, the bills will not apply to every vehicle crash involving a vulnerable roadway user. To trigger the enhanced penalties, the driver (1) must have committed a moving violation (2) that subjects the driver to criminal penalties; and (3) the vulnerable roadway user must be in compliance with applicable Vehicle Code provisions (e.g., not crossing the street on a green light).

POSITIONS:

Representatives from the following organizations and associations testified in support of, or indicated support for, vulnerable roadway user legislation on September 11, 2013 and/or October 16, 2013:

The League of Michigan Bicyclists
Programs to Educate All Cyclists (PEAC)
Healthy Kids, Health Michigan Coalition
Michigan Municipal League
National Multiple Sclerosis Society
Michigan Environmental Council
Michigan Land Use Institute
Ann Arbor Center *for* Independent Living
Michigan Fitness Foundation
Michigan Trails and Greenways Alliance
Michigan Association of Planning
The Crim Fitness Foundation
Washtenaw Bicycling and Walking Coalition
CycleSafe, Inc.
Macatawa Cycling Club of Holland, MI
Greater Grand Rapids Bicycle Coalition
Tri-County Bicycling Association
Disability Advocates of Kent County
Michigan Biking Association

Community Economic Development Association of Michigan
Sierra Club Michigan Chapter
AARP of Michigan
Sixty-eight Michigan bicycle shop owners
Michigan League of Conservative Voters

Department of State Police indicated a neutral position on the bills. (9-11-13)

County Road Association of Michigan indicated a neutral position on the bills. (9-11-13)

The Criminal Defense Attorneys of Michigan indicated opposition to the bills. (9-11-13)

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.