House
Legislative
Analysis
Section

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

# ESTABLISH DEGREES OF FLEEING AND ELUDING

**House Bill 4534 as passed by the House**
**Sponsor: Rep. Terry London**

**House Bills 4535 and 4536 as passed by the House**
**Sponsor: Rep. Kirk Profit**

**Committee: Judiciary and Civil Rights**

**Senate Bill 378 as passed by the House**
**Sponsor: Sen. William Van Regenmorter**

**Senate Committee: Judiciary**
**House Committee: Judiciary and Civil Rights**

**Second Analysis (6-25-96)**



## *THE APPARENT PROBLEM:*

Under the Michigan Penal Code and the Michigan Vehicle Code, it is a misdemeanor for the driver of a motor vehicle willfully to fail to obey a police or conservation officer who, acting in the lawful performance of his or her duty, signals visually or audibly by hand, voice, emergency light, or siren directing the driver to stop the vehicle. The misdemeanor is punishable by imprisonment for not less than 30 days or more than one year, a maximum fine of $1,000, and the costs of prosecution. The court may depart from the minimum sentence, if it finds substantial and compelling reasons and imposes a community service requirement. The offense is a felony if the driver has a prior conviction of fleeing and eluding within the previous five years or if the driver, while attempting to flee or elude, causes serious bodily injury to a person. The felony is punishable by imprisonment for not less than one year or more than four years, a maximum fine of $10,000, and the costs of prosecution. The court may depart from the minimum sentence for causing bodily injury, but not for a previous offense, if it finds substantial and compelling reasons and imposes a community service requirement. Some people believe that, since fleeing and eluding is an inherently dangerous crime both to the public and to police officers, the penalties for that offense, particularly for the misdemeanor violation, are too lenient.

In addition, although law enforcement officers are sworn to pursue and apprehend those who break the law, some law enforcement agencies reportedly are adopting so-called "no-pursuit" policies in response to large liability awards resulting from claims by persons injured as a result of the actions of those who flee from police. It is widely believed in the law enforcement community that, while action needs to be taken to avoid injury to innocent parties, no-pursuit policies simply are unacceptable.

A police officer who undertakes a pursuit is engaging in conduct with potentially deadly consequences; police pursuits are reported to have caused 10 deaths in the Detroit area in 1989, with an additional 20 injuries. Data from other states suggest that the injured person is most often the offender or the police officer; however, when an innocent bystander is hurt or killed, the consequences of the pursuit are all the more tragic. According to press reports, approximately 29 innocent bystanders were killed in police chases in the Detroit area between 1982 and 1990.

Clearly, the need to apprehend criminals must be balanced against the potential hazards of police pursuits. Some people believe that a model policy should be developed for police to follow.

## *THE CONTENT OF THE BILLS:*

Together, the bills would establish degrees of fleeing and eluding; provide penalties for violations; more severe sanctions; allow for forfeiture of the driver's vehicle for certain violations; and establish an Emergency Vehicle Operation Commission. All of the bills would have effective dates of October 1, 1996.

Fleeing and eluding. House Bill 4534 would amend the Michigan Vehicle Code (MCL 257.303 et al.) and Senate Bill 378 would amend the Michigan Penal Code (MCL 750.479a) to establish differing degrees of fleeing and eluding. The bills are tie-barred together and would repeal the portions of the current law providing penalties for fleeing and eluding convictions, and create a new system of punishments for varying degrees of the offense (also newly defined in the bills). Both bills specify the circumstances that would constitute each degree of fleeing and eluding, and the criminal penalties and license sanctions that would apply to each offense.

Violations and criminal penalties. The degrees of the offense of fleeing and eluding would stem from the current description of the crime with consideration given to the circumstances surrounding each case. Currently, the operator of a motor vehicle has committed the crime of fleeing and eluding when he or she ignores the lawful attempt of a police or conservation officer to halt his or her vehicle and instead increases the speed of the vehicle, extinguishes the lights, or otherwise attempts to avoid or escape the officer. It is not a violation to refuse to stop for an officer who is not in uniform or where the vehicle driven by the officer is not identifiable as an official police or Department of Natural Resources vehicle.

The bills would establish four degrees of fleeing and eluding. Fourth-degree fleeing and eluding would consist simply of having attempted to evade an officer as described above and would be a felony punishable by imprisonment for up to two years, a fine of up to $500, or both.

Third degree fleeing and eluding would include the elements needed to establish the crime of fourth-degree fleeing and eluding compounded by one or more of the following: 1) the operator's flight resulted in a collision or accident; 2) part of the violation occurred in a 35 mile per hour or less speed zone; or 3) the operator had a previous conviction for fourth-degree fleeing and eluding, attempted fourth-degree fleeing or eluding, or another current or former law of this state which prohibited substantially similar behavior. Third-degree fleeing and eluding would be a felony punishable by up to five years imprisonment, a fine of up to $1,000, or both.

The crime of second-degree fleeing and eluding would be established under the following circumstances: The operator of the motor vehicle had one or more prior convictions for actual or attempted first-, second-, or third-degree fleeing and eluding, or for violations of a state law which prohibited substantially similar behavior; or the operator had any combination of two or more prior convictions for fourth-degree or attempted fourth-degree fleeing and eluding, or for any violation of a current or former law of this state prohibiting substantially similar conduct; or the individual's fleeing and eluding violation resulted in serious injury. The bill would define a serious injury as one which caused permanent serious bodily disfigurement or seriously and irreparably impaired the functioning of a body organ or limb. This would include, but not be limited to: the loss of or loss of use of a limb, hand, foot, finger, thumb, eye, or ear; the loss of or substantial impairment of a bodily function; serious visible disfigurement; being comatose for more than three days; measurable brain impairment; a skull or other serious bone fracture; or a subdural hemorrhage or hematoma. Second-degree fleeing and eluding would be a felony punishable by up to 10 years imprisonment, a fine of up to $5,000, or both.

A fleeing and eluding violation that caused the death of another individual would constitute first-degree fleeing and eluding. First-degree fleeing and eluding would be a felony punishable by up to 15 years imprisonment, a fine of $10,000, or both.

A conviction for any degree of fleeing and eluding would not bar any other convictions or sentences for any other applicable crime arising out of the same incident, except that the individual could not be convicted and sentenced for a violation of the provisions of both the penal code and the vehicle code regarding the crime of fleeing and eluding for conduct arising out of the same transaction.

License Sanctions. As part of sentencing an individual for third- or fourth-degree fleeing and eluding, the bill would require the court to order the secretary of state to suspend the violator's license for a period of one year. He or she would not be allowed to receive a restricted license during the first six months of that suspension and if the individual was imprisoned as part his or her sentence, the period of the suspension would not begin to run until after the term of imprisonment had been completed. Where an individual was convicted of second- or first-degree fleeing and eluding, the bills would require the court to order the secretary of state to revoke to violator's license as part of the sentencing.

Other provisions. House Bill 4534 would also specifically provide that authorized emergency vehicles in legal pursuit of another vehicle would be exempted from traffic laws.

Forfeiture. House Bill 4535 would amend the forfeiture provisions of the Revised Judicature Act (MCL 600.4701) to include in the list of crimes for which prosecutors may seek forfeiture of property the offenses that would be created under Senate Bill 378 and House Bill 4534 (first, second, and third degree fleeing and eluding). The bill is tie-barred to House Bill 4534 and Senate Bill 378.

Model emergency vehicle operations policy act. House Bill 4536 would create a new act providing for a commission to develop a model policy for the operation of emergency vehicles, defined as law enforcement vehicles and vehicles owned or operated by volunteer or paid law enforcement employees while in use to provide emergency law enforcement services. The bill also would allow a local governmental unit to adopt all or part of the model policy to be developed by the commission, or to develop and adopt its own policy and apply to the commission for certification that the policy met the standards of the model policy.

Model emergency vehicle policy commission. The commission would be created in the Department of Management and Budget and would consist of 13 members, including:

-- the attorney general (or his or her designee);

-- the director of the Department of State Police (or a designee);

-- the following members appointed by the governor:

* one member (and an alternate) appointed from a list submitted by each of the following: the Michigan Association of Chiefs of Police, the Michigan Sheriffs' Association, the Michigan Association of Counties, the Prosecuting Attorneys Association of Michigan, the Michigan Municipal League, the Michigan Townships Association,

* one member (and an alternate) appointed from lists submitted by four organizations representing police officers who regularly perform law enforcement duties upon urban streets or roads; those who regularly work on suburban streets or roads; those who regularly work on rural streets or roads; and those who regularly work on limited access roadways.

The lists of individuals supplied to the governor would have to designate those nominated to be members and those designated to be alternates, and the governor would be bound by those designations. The initial appointees from these groups would serve staggered terms; three would serve four-year terms, three would be appointed for three-year terms, and four would be appointed to two-year terms. After the initial appointments, appointees would serve two years or until a successor was appointed.

Members would have to be appointed within 90 of the bill's effective date, and within 90 days after the appointment and confirmation of its members, the commission would have to adopt bylaws that at a minimum included voting procedures and requirements for attendance at meetings. The commission would have to meet annually, and at special meetings called by the chairperson or at least seven members.

The commission would have to meet at least annually to review the model policy. Administrative support for the commission would be provided by the Law Enforcement Officers Training Council. Commission members would serve without compensation. In addition, the bill would provide for commission documents to be exempt from the Freedom of Information Act, and for the statutory authority for the commission to expire after 5 years.

Model policy. Within one year of its first meeting the commission would develop a model emergency vehicle operation policy. The policy would have to define the policy's coverage; recognize that emergency vehicle operation may involve the use of potentially deadly force; identify the circumstances warranting starting, continuing, and stopping an emergency operation, based on risks to employees and the public, as well as, in the case of an emergency operation involving the pursuit of a crime suspect, the danger to society of not immediately apprehending an offender (the seriousness and immediacy of the threat posed by the pursued person and the adequacy of other ways to apprehend him or her would have to be considered). The policy would have to identify the procedures for starting, continuing, and terminating an emergency operation, including authorization for an employee not actively involved in the operation to prohibit, modify, or terminate the operation, specific rules governing operations that cross jurisdictional boundaries, and specific rules governing permissible emergency operation methods. The model policy also would have to establish guidelines requiring a governmental agency to monitor the effects of its emergency operation policy, and minimum requirements for training and certifying emergency vehicle operators to comply with a model policy.

The commission would report on the model policy or policies to each house of the legislature and each law enforcement agency in the state.

Local governments; certification of policies. The bill would specify that a local government could adopt all or a portion of the model policy developed by the commission, or could develop and adopt its own policy and apply to the commission for certification of the policy.

The commission would certify whether a local government's emergency vehicle operation policy met the standards established in the model policy. If a governmental unit adopted part of the model policy, the commission could certify it only if determined that the unit did not engage in emergency operations exceeding the scope of the policy. The commission could deny

certification if it determined that a local unit's policy did not meet the standards.

The commission would have to act to certify or deny certification of a policy within 180 days after it was submitted, or the policy would be presumed to be certified. This presumption could be rebutted by evidence establishing that the policy did not meet the standards. If a local unit discontinued its emergency vehicle operation policy, it would have to notify the commission.

## *FISCAL IMPLICATIONS:*

According to the House Fiscal Agency, House Bills 4534 and 4535 and Senate Bill 378 would have no fiscal impact. House Bill 4536 would result in costs for the reimbursement of expenses of about $5,000 for the first year, and about $1,000 per year subsequently. Further, if local governments elected to adopt an emergency vehicle policy, they could incur costs for training and certification. (5-13-96)

## *ARGUMENTS:*

### *For:*

House Bills 4534, 4535, and Senate Bill 378 are necessary to ensure effective and efficient enforcement of Michigan's fleeing and eluding laws. Too many drivers attempt to flee when signaled by police officers to stop their vehicle. Many of these drivers already are driving dangerously when signaled to pull over, and most drive even more dangerously in their attempts to evade law enforcement officers. There is a great need to change the attitude that it is okay to attempt to flee from the police. The current penalties for this offense are too weak and it should be stressed, through stricter penalties, that running from a law enforcement officer who signals a driver to stop is dangerous and a serious violation of the law that will be punished accordingly.

An individual who attempts to evade the law enforcement officers risks not only death and/or serious injury for himself or herself but for the police and innocent bystanders as well. In most cases people who flee police attempts to pull them over perform a simple calculation in their minds: whether the result of not pulling over is significantly worse than the result of pulling over. Often the fleeing driver is not even attempting to avoid prosecution for a serious felony, but rather is attempting to avoid a ticket or some other penalty. Unfortunately under the current law, unsuccessfully attempting to flee does not carry a strict enough penalty to bring the potential consequence of that action into the person's thought process. The increased penalties provided in the bills will help to deter people from attempting to flee rather than pulling over when law enforcement officials attempt to stop them.

### *Against:*

There is reason to be skeptical of the usefulness of increasing penalties for the driver in order to deter fleeing and eluding offenses. Drivers must realize that some penalty already exists for attempting to evade a police officer, but for one reason or another they still attempt to flee rather than pull over; it seems unlikely that the existence and severity of a criminal penalty is something that the driver considers. The prospect of punishment for fleeing does not appear to be a sufficient deterrent and increasing the penalty would probably not significantly decrease the number of people who attempt to flee from the police.

### *Against:*

House Bill 4534 and Senate Bill 378's definition of serious injury includes a comatose state lasting longer than 3 days. This seems an unduly long time for one to have to be comatose before the injury is considered to be "serious". Further, in the definition of the crime of second degree fleeing and eluding, it is not clear whether the serious injury would have to be to another person, or whether the serious injury of the offending driver himself or herself would support such a charge.

### *For:*

House Bill 4536 would create a qualified commission, representing many points of view and areas of expertise, that would develop a model policy on the use of high speed pursuit by police. A police officer who undertakes a high speed pursuit is employing potentially deadly force; a clearly understood policy on pursuit is as important as one on the use of a gun. As with the use of a gun, the need to apprehend a potentially dangerous criminal must be balanced against the hazards presented to innocent bystanders. Considering that most of the drivers who attempt to flee are not dangerous felons, but instead minor offenders (and often juveniles), it is especially important to ensure that police officers follow clearly articulated procedures that take all factors into account and specify when to start and when to stop a pursuit. By creating a commission to develop a model police pursuit policy, the bill would improve law enforcement techniques and assure adequate regard for safety.

### *Against:*

House Bill 4536 would create additional bureaucracy to do something that is already being done; many, if not most, police agencies, including the state police, already have policies on pursuit. It seems unnecessary to create a commission to develop a model policy given that the bill will not contain sanctions for failure to adopt or

follow the model policy or a commission-approved variation of it. If there is a need for state guidance to ensure that local policies are sufficient, then the bill should grant authority to oversee and evaluate local policies and, if necessary, impose sanctions.

### *Response:*

Conditions vary from locality to locality, and local agencies are in the best position to determine what is appropriate for them. While the state may legitimately require that law enforcement agencies have pursuit policies that address certain matters (such as procedures for initiating, maintaining, and terminating pursuits), the details of those procedures are best left to local decisionmakers.

### *Against:*

Any approach to pursuit policies is inadequate without also addressing the issues of governmental liability. Among the many liability issues raised by this package are whether a municipality would or should be liable when an individual officer fails to adhere to a proper policy, whether adoption of and adherence to an approved policy would or should protect a municipality from liability, and whether a municipality would or should be liable when a police officer followed an approved policy and broke off a chase of a driver who, for example, was drunk and drove on to cause a fatal accident. Furthermore, issues regarding the degree of liability that should attach to law enforcement officers also are raised. Senate Bill 379, which would address these issues, should also be considered with this package.

## *POSITIONS:*

The Deputy Sheriff's Association supports the bills. (5-8-96)

The Michigan Fraternal Order of Police supports the bills. (5-9-96)

The Michigan Association of Chiefs of Police supports the bills. (5-8-96)

The Michigan Trial Lawyers Association supports House Bill 4536. (5-9-96)

The Michigan Municipal League cannot support the package without the inclusion of Senate Bill 379. (5-9-96)

Analyst: W. Flory

■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.