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DRIVING NEAR EMERGENCY VEHICLES

House Bill 5549 as enrolled
Public Act 458 of 2000
Sponsor: Rep. Valde Garcia
House Committee: Transportation
**Senate Committee: Transportation and
Tourism**

House Bill 6015 as enrolled
Public Act 459 of 2000
Sponsor: Rep. Valde Garcia
**House Committee: Criminal Law and
Corrections**
Senate Committee: Judiciary

House Bill 6177 as enrolled
Public Act 460 of 2000
Sponsor: Rep. Valde Garcia
House Committee: Transportation
Senate Committee: none

Second Analysis (12-27-00)

THE APPARENT PROBLEM:

Drivers on Michigan's roadways often encounter trucks or passenger vehicles and emergency vehicles parked on the shoulder of a road while police officers, fire fighters, or other emergency personnel attend to the motorists. For example, a police officer may pull a driver off the road, park his or her patrol car behind the driver's car, leave the patrol car, and stand next to the motorist's car while issuing a ticket. Under these conditions, law enforcement and emergency personnel can be endangered as motorists drive in close proximity to the parked vehicles. For example, an accident on January 25, 2000, claimed the life of an 18-year veteran of the DeWitt Township police force who was struck by a semi-truck and killed while on a routine traffic stop along US-27 near the I-69 overpass. Apparently, the truck driver first hit the patrol car and then the officer who was standing next to the motorist's vehicle.

According to committee testimony, three additional traffic stop deaths of police officers have occurred during the past year. See *BACKGROUND INFORMATION*, below.

Preventing these kinds of tragedies begins with public education. New drivers and veteran motorists must be reminded to slow down and to move to safer lanes where traffic is not impeded by the stopped vehicles, whether those belonging to the accident victims or the vehicles at the scene to give assistance or promote safety. Some states, Ohio and Indiana among them, also have enacted legislation to penalize motorists who do not steer clear of the emergency personnel working at accident scenes, or police personnel who have stopped vehicles to issue tickets. Legislation to make the streets and highways safer for law enforcement personnel has also been proposed in Michigan.

To reduce the likelihood of tragedies, some people propose that the Michigan Vehicle Code should include provisions regulating how motorists are to proceed when driving by emergency vehicles, and then provide a range of punishments for those who disregard them. They argue that a range of penalties would enable a sentencing judge to punish a violator under different kinds of circumstances, including when the driver was

House Bills 5549, 6015 and 6177 (12-27-00)

driving drunk, and would reduce the possibility that a violator would go unpunished when he or she injured or killed an emergency assistance worker.

THE CONTENT OF THE BILLS:

House Bill 5549 would create new crimes by establishing criminal standards and penalties for drivers who drive unsafely near emergency vehicles. Further, the penalties established for the new crimes created in House Bill 5549 would be placed into the statutory sentencing guidelines under House Bill 6015. Finally, House Bill 6177 would create a range of penalties to punish a violator under different kinds of circumstances, including drunk driving. House Bills 5549 is tie-barred to House Bill 6177, and House Bill 6015 is tie-barred to House Bills 5549 and 6177, so that none of the bills could become law unless the others also were enacted.

House Bill 5549 would amend the Michigan Vehicle Code (MCL 257.653a) to establish requirements for drivers approaching and passing a stationary emergency vehicle under certain conditions; and establish a misdemeanor penalty for a violation of the bill, as well as felony penalties for violations that injured or killed a police officer, fire fighter, or other emergency personnel.

Driving Requirements. The bill provides that, upon approaching and passing a stationary authorized emergency vehicle that was giving a visual signal by means of flashing, rotating, or oscillating red, blue, or white lights as permitted under the code, the driver of an approaching vehicle would have to exhibit due care and caution, as described below.

On any public roadway with at least two adjacent lanes proceeding in the direction of the stationary authorized emergency vehicle, the driver of the approaching vehicle would have to proceed with caution and yield the right-of-way by moving into a lane at least one moving lane or two vehicle widths apart from the emergency vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or two vehicle widths apart were not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver would have to proceed as follows.

On any public roadway that did not have at least two adjacent lanes proceeding in the same direction as the stationary authorized emergency vehicle, or if the movement by the driver into an adjacent lane or two vehicle widths apart were not possible, as described

above, the approaching vehicle would have to reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a police officer.

Penalties. Except as provided below, a person who violated the bill would be guilty of a misdemeanor punishable by a fine of not more than \$500 and/or imprisonment for up to 90 days.

A person who violated the bill and caused injury to a police officer, fire fighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle would be guilty of a felony, punishable by a fine of up to \$1,000 and/or imprisonment for up to two years.

A person who violated the bill and caused the death of a police officer, fire fighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle would be guilty of a felony punishable by a maximum fine of \$7,500 and/or imprisonment for up to 15 years. If the person were under the influence of, or impaired by, intoxicating liquor or a controlled substance or a combination of the two at the time of the violation, it would be punishable by imprisonment for life or any term of years.

House Bill 6015 would amend the Code of Criminal Procedure (MCL 777.12) to add certain crimes to the statutory sentencing guidelines. The crimes added are those related to House Bills 5549 and 6177, regarding driving near emergency vehicles, and also those related to House Bill 4778, which contains amendments to the graduated driver license provisions of the Michigan Vehicle Code. House Bill 6015 would add all of the following to the sentencing guidelines:

-Operating a vehicle under the influence or while impaired causing death to emergency personnel, which would be categorized as a Class B felony against a person with a statutory maximum sentence of 13 years four months imprisonment;

-Failure to use due care and caution, causing injury to emergency personnel, which would be categorized as a Class G felony against a person with a statutory maximum sentence of two years' imprisonment;

-Failure to use due care and caution, causing death to emergency personnel, which would be categorized as a Class C felony against a person with a statutory maximum sentence of nine years and six months' imprisonment;

-Failure to use due care and caution while under the influence of or impaired by alcohol or a controlled substance, causing death to emergency personnel, which would be categorized as a Class A felony against a person with a statutory maximum sentence of life in prison;

-Corrupting an (a driver license) examining officer, which would be categorized as a Class F felony against public order with a statutory maximum sentence of two years and six months' imprisonment;

-Deviating from road test criteria, which would be categorized as a Class F felony against public order with a statutory maximum sentence of two years and six months' imprisonment;

-Forging, counterfeiting, or altering road test certification, which would be categorized as a Class F felony against public order with a statutory maximum sentence of two years and six months' imprisonment;

-Corrupting a person or agency conducting a motorcycle driving test, which would be categorized as a Class F felony against public order with a statutory maximum sentence of two years and six months' imprisonment;

-Deviating from motorcycle road test criteria, which would be categorized as a Class F felony against public order with a statutory maximum sentence of two years and six months' imprisonment; and,

-Forging, counterfeiting, or altering motorcycle road test certification, which would be categorized as a Class F felony against public order with a statutory maximum sentence of two years and six months' imprisonment.

The bill also would change the felony classification for a third or subsequent offense of operating or serving as crew of an aircraft while under the influence of alcohol or a controlled substance. Currently, that offense is a Class G felony; under the bill, it would be a class E felony. In addition, the bill would categorize as a Class E felony operating or serving as crew of an aircraft while under the influence causing serious impairment.

The bill would include in the guidelines violations of the Organic Products Act (Public Act 316 of 2000 which will take effect on October 1, 2001). A violation of that act would be categorized as a Class G felony with a statutory maximum sentence of four years' imprisonment.

Finally, the bill is tie-barred to House Bills 5549 and 6177, which would amend the Michigan Vehicle Code to establish requirements for drivers approaching and passing a stationary emergency vehicle under certain conditions, and establish a misdemeanor penalty for a violation of the bill, as well as felony penalties for violations that injured or killed a police officer, fire fighter, or other emergency personnel. (The bill also is tie-barred to House Bill 4778, the graduated driver licensing provisions.)

House Bill 6177 would amend the Michigan Vehicle Code (MCL 257.303 et al.) to apply certain of the code's penalties to people who drive too close to emergency vehicles, and in doing so, cause the injury or death of a police officer, firefighter, or any other emergency response person in the immediate area of a stationary emergency vehicle. The policy that specifies how motorists are to drive near emergency vehicles is embodied in House Bill 5549. In that bill the penalties for causing injury are noted in section 654(3), and the penalties for causing death are noted in section 653a(4). House Bill 6177 is tie-barred to House Bill 5549 so that it could not become law unless House Bill 5549 also were enacted. Throughout House Bill 6177 penalties for various violations under the vehicle code would be extended to violations of sections 653a(3) and 653a(4) as they are proposed by House Bill 5549.

For example, currently under the code, the secretary of state cannot issue a license to operate a vehicle in certain circumstances, including to habitual violators of criminal laws relating to the operation of a vehicle while impaired or under the influence of intoxicating liquor, a controlled substance, or a combination of the two. Under this section, the law specifies that two or three convictions within specified time periods of some laws (including reckless driving) stand as prima facie evidence that a person is a habitual violator. House Bill 6177 would add to these subsections a reference to include section 653a(4), the death of an emergency response person offering assistance. Further, the code prohibits issuing a license to a person who is an habitually reckless driver if there are two convictions for reckless driving within seven years. House Bill 6177 would extend that to specify conviction for reckless driving or a conviction under section 653a(3). In addition, the code specifies that an operator's or chauffeur's license should be revoked for two convictions of reckless driving within seven years. House Bill 6177 would extend that provision to specify a violation or attempted violation of section 653a(3). The code also specifies revocation of a license for a number of combined convictions. For example, revocation is required for two convictions of driving

drunk within seven years, or a combination of one conviction for driving drunk, and one conviction for any of several other offenses. House Bill 6177 would extend the provision to specify that section 653a(4) would be one of the offenses in a combined conviction.

In addition and under the code, the secretary of state is required, within 10 days after receiving conviction records from the courts, to assess points to a motorist's driving record. The number of points for each violation is specified in the statute. House Bill 6177 would require that six points be added for violation of section 653a(3), causing injury, and section 653a(4), causing death.

Under the code a person is prohibited from driving drunk. A person, whether licensed or not, who operates a motor vehicle while under the influence of liquor and causes the death of another person is guilty of a crime and the penalties are set in the code. House Bill 6177 also would specify that if, at the time of the violation, the driver was operating a motor vehicle in the manner proscribed under section 653a, and caused the death of a police officer, firefighter, or other emergency response personnel, the person would be guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not less than \$2,500, or more than \$10,000, or both. The bill specifies that this subdivision would apply regardless of whether the person was charged with the violation of section 653a (causing injury or death). Further, the judgment of sentence could impose the sanction permitted under section 625n of the code (which concerns the forfeiture or seizure of vehicles). If the vehicle was not ordered forfeited under this section, the court would be required to order the vehicle immobilized under section 904d in the judgment of sentence.

Under House Bill 6177, the clerk of the court would be required to forward an abstract of the court record to the secretary of state whenever a person's conviction involved violation of section 654a(4).

Finally, the definition of "prior conviction" found in sections 625 and 625m would be extended to include "a violation of section 653a(4)." Further, the definition of "prior conviction" found in section 904d (concerning vehicle immobilization) would be extended to include "a violation of section 653a(3)."

BACKGROUND INFORMATION:

Although statistics on all law enforcement officers who have been killed in traffic stops are not available, the Department of State Police reports that since record-

keeping began in 1921 to record the incidence of death among state troopers during routine traffic stops, eight troopers have lost their lives. Two troopers were shot and killed, and six were struck by the drivers of vehicles who did not reduce their speed and pull over to avoid the state trooper who was ticketing an errant driver.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency notes that House Bill 5549 would have an indeterminate fiscal impact on state and local government. There are no data available to indicate how many people could be convicted of not properly passing a stationary emergency vehicle. A violation would result in a misdemeanor charge for which local units of government would incur the costs of incarceration or receive the fine revenue.

However, if the offender harmed or killed emergency personnel, the offense would be a felony with increasingly longer maximum penalties. Given that there are no data to indicate the minimum penalty, if one assumed that five people a year would be convicted of each of these offenses and that they would be committed to and serve a prison term equal to two-thirds of the maximum sentence, then the cost of incarceration for the state would be \$4 million.

Additionally, if an offender killed emergency personnel while intoxicated, the maximum penalty would be life. Assuming that a life sentence is equal to 25 years of incarceration, the cost of incarceration for the state would be \$550,000 per offender convicted of this offense and sentenced to a life term. (11-13-00)

The Senate Fiscal Agency notes that House Bill 6015 would have an indeterminate fiscal impact on state and local government. For example, the agency observes that under the bill, failure to use due care when approaching and passing an emergency vehicle would be incorporated into the sentencing guidelines as a Class G felony with a sentencing guidelines minimum range between 0-3 months and 7-23 months; failure to use due care resulting in death would be a Class C felony with a sentencing guidelines minimum range between 0-11 months and 62-114 months; and failure to use due care while drunk or impaired causing death would be a Class A felony with a minimum range between 21-35 months and 270-450 months, or life. Assuming that two offenders a year would be convicted of each of the crimes and would serve sentences at the high end of the sentencing guidelines range, but not life, given that the average annual cost of incarceration is \$22,000, costs for the state could increase

\$2,153,000. Local units of government would receive the fine revenue or incur the cost of incarceration for offenders penalized with fine or periods of incarceration less than 18 months.

Further, the Senate Fiscal Agency notes that according to the 1998 Department of Corrections Annual Statistical Report, there were no offenders convicted for a third or subsequent offense of operating or serving as crew of an aircraft while under the influence, nor are there any offenders serving a prison term for which this offense is the controlling sentence. (The Department of Corrections assigns each sentence a number when an offender has multiple convictions and tracks the offender by the primary or controlling sentence.) Given that the bill would change the crime from a Class G felony with a sentencing guidelines minimum range from 0-3 months to 7-23 months, to a Class E felony with a minimum range from 0-3 months to 24-38 months, the average minimum sentence for the offense could increase, and in doing so, increase costs of incarceration for state and local government. To the extent that no offenders were convicted of this offense in 1998, the added penalties would not increase length of stay for offenders, or the costs of incarceration. (12-4-00)

The House Fiscal Agency notes that the House Bill 6177 would have an indeterminate fiscal impact on the state and local units of government, depending on how it affected administrative costs, the frequency and duration of criminal convictions and sentences, and collections of penal fine revenues. (12-6-00)

ARGUMENTS:

For:

The Michigan Vehicle Code requires a driver of a nonemergency vehicle to yield the right-of-way to an approaching emergency vehicle that has at least one red or blue light that is flashing, rotating, or oscillating and is visible under normal atmospheric conditions for at least 500 feet and when the emergency vehicle's siren, exhaust whistle, or bell is audible. In addition, the driver is required to drive to a position that is parallel to and as close as possible to the right-hand edge or curb of the road, clear of an intersection. The driver also must stop and remain in that position until the emergency vehicle has passed or until otherwise directed by a police officer. The code, however, does not provide similar regulations for motorists driving by emergency vehicles parked on the side of a road in response to an accident or for a routine traffic stop. While it is common sense for motorists to drive with caution in these situations, senseless deaths and

unnecessary injuries to emergency personnel can occur when motorists fail to avoid hazards at the side of the road. By establishing procedures for motorists to follow when driving by emergency vehicles parked beside a roadway, House Bill 5549 would help to educate motorists about potential hazards and measures they should take to avoid accidents that cause death and injury to law enforcement and emergency personnel. As a result, the bill would serve to protect the individuals who provide essential services to the public.

For:

When a driver proceeds without adequate caution and causes the death of another person, law enforcement officials can charge the driver under the Michigan Penal Code with negligent homicide, which is a misdemeanor punishable by imprisonment for up to two years and/or a maximum fine of \$2,000 (MCL 750.324), or manslaughter, which is a felony punishable by imprisonment for up to 15 years and/or a fine of \$7,500 (MCL 750.321). Some contend that the standard of proof for manslaughter is very high, and prosecutors often do not have the necessary evidence to bring a case proving the more serious crime. In the case of the DeWitt Township police officer, for example, the driver of the semi-truck evidently was charged with negligent homicide and sentenced to 90 days in jail for striking the officer. The legislation would establish appropriate penalties for drivers who cause the death of a police officer, fire fighter, or other emergency response personnel.

Response:

The bills should apply not only to police officers, fire fighters, and emergency personnel but also to other public employees who work along roadways in the state, such as employees of county road commissions.

Against:

House Bill 5549 would require drivers who approached a stationary emergency vehicle along a roadside to yield the right-of-way and move at least one lane or two vehicle widths apart from the emergency vehicle when the road had at least two adjacent lanes proceeding in the direction of the parked emergency vehicle. The bill, however, does not define "vehicle width", and the size of vehicles varies greatly. Consequently, there is concern that police officers would have too much discretion in determining whether a driver yielded the right-of-way and allowed sufficient space to avoid the emergency vehicle. Given the uncertainty about this requirement, police officers could use it to pull motorists over when a stop was unwarranted. In addition, some police officers have been trained to park

their vehicles along the right edge of the right lane, known as the “fog line”, and to position their car at an angle when stopping on the shoulder of a road. This practice can create a hazard because the patrol car is parked close to approaching traffic and police officers often step into the traffic lane when entering or exiting the patrol car. Under these circumstances, it would be difficult for motorists to comply with the bill’s right-of-way requirements.

Response:

If a road had two adjacent lanes proceeding in the same direction, the bill would require the approaching driver to move into a lane that was at least one lane apart from the emergency vehicle. Thus, a driver could move into the adjacent lane to comply with the bill. If a driver could not move into an adjacent lane or at least two vehicle widths apart, then he or she would have to reduce the vehicle’s speed and proceed with care. Motorists therefore would have other options to avoid a potentially hazardous situation.

Analyst: J. Hunault

#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.