




Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 1241 (Substitute S-1 as reported)
House Bill 6009 (Substitute S-2 as reported)
Sponsor: Senator Jason E. Allen (S.B. 1241)
Representative Kevin Elsenheimer (H.B. 6009)
Senate Committee: Judiciary
House Committee: Judiciary (H.B. 6009)

Date Completed: 10-4-06

RATIONALE

The Michigan Vehicle Code makes it a felony to commit a drunk driving offense within 10 years of two or more prior convictions. If a violation is not committed within that period of time, it is not subject to the enhanced penalties that apply to a third offense, regardless of the offender's previous drunk driving convictions. These provisions came into play in the prosecution of a man whose 2005 drunk driving violation was treated as a first offense, a misdemeanor punishable by up to 93 days' imprisonment, even though he had been convicted of manslaughter after a 1991 drunk driving episode and had a history of drunk driving offenses. To prevent repeat offenders from receiving light sentences because more than 10 years have passed since prior convictions, some people believe that a third or subsequent drunk driving violation should be a felony regardless of when the prior convictions occurred.

CONTENT

Senate Bill 1241 (S-1) and House Bill 6009 (S-2) would amend the Michigan Vehicle Code to do all of the following:

- Apply felony penalties for a third or subsequent drunk driving offense regardless of when the prior offenses occurred, rather than for a violation that occurs within 10 years of two or more prior convictions.**
- Require the Secretary of State to maintain certain drunk driving records for the life of the driver.**

-- Expand the methods by which a prior conviction may be established at sentencing.

The bills are tie-barred. Senate Bill 1241 (S-1) would take effect on October 31, 2010. House Bill 6009 (S-2) would take effect on January 1, 2007, and would be known as "Heidi's law".

Senate Bill 1241 (S-1)

Under the Vehicle Code, the Secretary of State may destroy certain records after maintaining them for a specified number of years. Records of convictions for certain violations, for which points are provided on a driver's record, may be destroyed after being maintained on file for 10 years. These include various drunk driving and other offenses.

Under the bill, if a person were convicted of violating Section 625 of the Code, the record of the conviction would have to be maintained for the life of the person. Section 625 prohibits all of the following:

- Operating while intoxicated, i.e., while under the influence of alcohol and/or a controlled substance, or with an alcohol content of .08 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine (MCL 257.625(1)).
- Authorizing or knowingly permitting a vehicle to be operated by a person who is under the influence of alcohol and/or a

controlled substance, who has an alcohol content of .08 or higher, or whose ability to operate the vehicle is visibly impaired due to the consumption of alcohol and/or a controlled substance (MCL 257.625(2)).

- Operation of a vehicle by a person whose ability to operate the vehicle is visibly impaired due to the consumption of alcohol and/or a controlled substance (MCL 257.625(3)).
- Causing the death of another person due to operating while intoxicated, visibly impaired, or with any bodily amount of a Schedule 1 controlled substance or cocaine (MCL 257.625(4)).
- Causing serious impairment of a body function of another person due to operating while intoxicated, visibly impaired, or with any bodily amount of a Schedule 1 controlled substance or cocaine (MCL 257.625(5)).
- Operation of a vehicle by a person under 21 years of age who has any bodily alcohol content (a "zero-tolerance" violation) (MCL 257.625(6)).
- A violation of Section 625(1), (3), (4), (5), or (8) while another person who is under 16 is occupying the vehicle (MCL 257.625(7)).
- Operation of a vehicle by a person who has in his or her body any amount of a Schedule 1 controlled substance or cocaine (MCL 257.625(8)).

House Bill 6009 (S-2)

Under the Code, if operating while intoxicated (under the influence or with a bodily alcohol content of .08 or more), while visibly impaired, or with any bodily amount of a Schedule 1 controlled substance or cocaine, occurs within 10 years of two or more prior convictions, the violation is a felony and the offender must be sentenced to pay a fine of not less than \$500 or more than \$5,000, and to either imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years or probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. At least 48 hours of the county jail imprisonment must be served consecutively.

Under the bill, those penalties would apply if a violation occurred after two or more prior convictions, regardless of the number of

years that had elapsed since any prior conviction.

Under the Code, a prior conviction must be established at sentencing by an abstract of conviction; a copy of the defendant's driving record; and/or an admission by the defendant. The bill also would allow a prior conviction to be established by any of the following:

- A copy of a judgment of conviction.
- A transcript of a prior trial or a plea-taking or sentencing proceeding.
- A copy of a court register of actions.
- Information contained in a presentence report.

("Prior conviction" means a conviction for any of the following, whether under a law of this State, a local ordinance substantially corresponding to a law of this State, or a substantially corresponding law of another state:

- Any violation of Section 625, except for authorizing or permitting a vehicle to be operated by a person who is under the influence of or impaired by alcohol and/or a controlled substance or who has an unlawful alcohol content (MCL 257.625, except (2)).
- Operation of a commercial vehicle by a person who has an alcohol content of .04 gram or more but less than .08 gram, per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine (MCL 257.625m).
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

Except for purposes of an enhanced sentence for a violation that occurs within seven years of one or more prior convictions, only one zero-tolerance violation may be used as a prior conviction. If two or more convictions described above are for violations arising out of the same transaction, only one conviction may be used to determine whether the person has a prior conviction.)

MCL 257.208 (S.B. 1241)
257.625 (H.B. 6009)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In 2005, Daniel Buffman was arrested in northern Michigan and charged with first-offense drunk driving, even though his record included four drunk driving convictions on eight prior arrests. Buffman's previous violations included a manslaughter conviction for causing the death of 16-year-old Heidi Steiner in June 1991, when he crossed the center line and collided with Heidi's car head-on. At that time, Buffman was sentenced to 10-15 years in prison, the maximum possible sentence for that conviction. He served seven years in prison and three on probation. Since felony penalties for repeat drunk driving convictions under the Vehicle Code apply only if the offender has had two prior convictions in the past 10 years, and all of Buffman's previous violations had occurred before his imprisonment in 1991, his 2005 conviction was for misdemeanor drunk driving and he was subject only to a 93-day misdemeanor penalty.

Drivers who have had multiple drunk driving violations should not escape harsher penalties just because a number of years have passed since their prior convictions, especially if a significant portion of that time was spent in prison for a drunk driving offense. By applying the felony penalties for a third or subsequent drunk driving violation regardless of the time frame in which prior convictions occurred, the bills would ensure that repeat offenders, such as the man in northern Michigan, were punished appropriately.

Supporting Argument

Statistics show that a large portion of drunk drivers repeat their offense. Citing data from the Insurance Information Institute, a *Traverse City Record-Eagle* editorial reported that about 50% of first-time drunk driving offenders repeat that offense and 80% of second-time offenders become multiple offenders ("Heidi's Law may provide new tool to break the cycle", 8-8-06). Given the likelihood that repeat offenders will continue to drink and drive, they should not receive a break in sentencing just because a certain number of years passed since their

prior convictions. The bills would ensure that those who were convicted of drunk driving three or more times would be treated as the most dangerous offenders and be sentenced to the harshest penalties available under the law for that violation, and that their prior convictions would not be ignored by the law, as they were in the 2005 Buffman case in northern Michigan.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 1241 (S-1)

The bill could have a minimal fiscal impact associated with any additional costs that the Secretary of State could incur from having to keep certain drunk driving records on file for the life of the driver. Currently, records may be deleted after 10 years.

The bill would have no fiscal impact on local government.

House Bill 6009 (S-2)

The bill would have an indeterminate fiscal impact on State and local government because it is unknown whether any intoxicated driving behavior modifications as a result of the bill would outweigh the creation of a larger group of offenders eligible for a felony conviction. To the extent that the bill would increase felony convictions for drunk driving, the State would incur increased costs of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. To the extent that the bill would increase sentences to jail, local governments would incur increased costs of incarceration in local facilities, which vary by county. To the extent that the bill would result in an increase in offenders eligible to use treatment options and jail diversion programs through the felony drunk driver jail reduction and community treatment program in the Office of Community Corrections (OCC), the funding provided by the OCC to the Community Corrections Advisory Boards would provide for a lower proportion of these offenders. The boards are reimbursed by the State for this program at a rate of \$43.50 per diem, with a total of \$2,097,400 appropriated for the program for fiscal year 2006-07. Additional

penal fine revenue would benefit public libraries.

There are no data to indicate how many offenders would be convicted of a third or subsequent offense of operating while under the influence (OUIL) or operating while visibly impaired (OWI) if the 10-year time period for prior convictions were removed. According to the September 2006 OCC Biannual Report, between April 2005 and March 2006, there were 2,790 offenders convicted of third-offense OUIL. Of these offenders, 721 were sentenced to prison, 286 were sentenced to jail, 1,618 were sentenced to a combination of jail and probation, 163 were sentenced to probation, and two received other types of sentences. According to the 2005 Michigan State Police Drunk Driving audit, in 2005, 143 offenders were convicted of third-offense OWI. In 2005, 49,435 offenders were convicted of misdemeanor OUIL and OWI under either State statute or local ordinance. In addition, according to the Michigan State Police Uniform Crime Report, in 2004, 48,439 individuals were arrested for driving under the influence of alcohol or narcotics in Michigan. Offenders arrested in 2004 may not necessarily have had their case heard in court during the same calendar year.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.