



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1241 (as enrolled)
House Bill 6009 (as enrolled)
Sponsor: Senator Jason E. Allen (S.B. 1241)
Representative Kevin Elsenheimer (H.B. 6009)
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 565 of 2006
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Date Completed: 1-9-07

RATIONALE

Under the Michigan Vehicle Code, it has been a felony to commit a drunk driving offense within 10 years of two or more prior convictions. In addition, committing various drunk driving offenses with a passenger under 16 years of age (a "child endangerment violation") has been a felony if the violation occurred within seven years of a prior conviction or within 10 years of two or more prior convictions. Also, operation of a vehicle by a person under 21 while the driver had any bodily alcohol content (a "zero-tolerance violation") and with a passenger under 16 is a misdemeanor that has been subject to enhanced penalties if the violation occurred within seven years of a prior conviction or within 10 years of two or more prior convictions. Prior convictions that occurred earlier than those periods did not trigger the Vehicle Code's enhanced penalties.

Those 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 had passed since prior convictions, it was suggested that a third or subsequent drunk driving violation should be a felony regardless of when the prior convictions occurred.

CONTENT

Senate Bill 1241 and House Bill 6009 amended 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 occurred within 10 years of two or more prior convictions.**
- **Apply felony penalties for a child endangerment violation after two or more prior convictions regardless of when they occurred, rather than for a violation that occurred within 10 years of two or more prior convictions.**
- **Apply enhanced misdemeanor penalties for a zero-tolerance violation with a passenger under 16 after two or more prior convictions regardless of when they occurred, rather than for a violation that occurred 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 were tie-barred. Senate Bill 1241 will take effect on October 31, 2010. House Bill 6009 took effect on January 3, 2007, and is to be known as "Heidi's law".

Senate Bill 1241

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 had included various drunk driving and other offenses.

Under the bill, if a person is convicted of violating Section 625 of the Code, the record of the conviction must 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 or 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 or 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 (zero-tolerance) (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 (child endangerment) (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

Under the bill, 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 after two or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, 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 (DOC) 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. Previously, those penalties applied if a violation occurred within 10 years of two or more prior convictions.

Under the bill, if a child endangerment violation occurs within seven years of a prior conviction or after two or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the violation is a felony and the person must be fined not less than \$500 or more than \$5,000. The violator also is subject to imprisonment under the DOC's jurisdiction 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 time must be served consecutively. Previously, those penalties applied to a violation committed within seven years of a prior conviction or within 10 years of two or more prior convictions.

Under the bill, if a zero tolerance violation is committed while another person under 16 is in the vehicle, and the violation occurs within seven years of a prior conviction or after two or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person must pay a fine of at least \$200 but not more than \$1,000. The violator also is

subject to imprisonment for not less than five days or more than one year, with at least 48 hours to be served consecutively, and community service for 30 to 90 days. The court also must order vehicle immobilization unless the vehicle is ordered forfeited. Previously, those penalties applied to a violation committed within seven years of a prior conviction or within 10 years of two or more prior convictions.

Under the Code, a prior conviction previously had to 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 allows 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 applied only if the offender had two prior convictions in the past 10 years, and all of Buffman's previous violations 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 will ensure that repeat offenders, such as the man in northern Michigan, are 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 will ensure that those who are convicted of drunk driving three or more times are treated as the most dangerous offenders and sentenced to the harshest penalties available under the law for that violation, and that their prior convictions are not ignored by the law, as they were in the 2005 Buffman case in northern Michigan.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 1241

The bill may have a minimal fiscal impact associated with any additional costs that the Secretary of State might 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 will have no fiscal impact on local government.

House Bill 6009

The bill will 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 will outweigh the creation of a larger group of offenders eligible for enhanced penalties. To the extent that the bill increases sentences for felony drunk driving convictions, the State will 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 \$31,000. To the extent that the bill increases sentences to jail, local governments will incur increased costs of incarceration in local facilities, which vary by county. To the extent that the bill results 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 will 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 will benefit public libraries.

There are no data to indicate how many offenders will be convicted of a third or subsequent offense of operating while under the influence (OUIL) or operating while visibly impaired (OWI) due to the removal of the 10-year time period for prior convictions. 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.

Fiscal Analyst: Joe Carrasco
Lindsay Hollander

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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.