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BILL ANALYSIS

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House Bill 6009 (Substitute S-3 as reported by the Committee of the Whole)
Sponsor: Representative Kevin Elsenheimer
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

The bill would amend the Michigan Vehicle Code to apply enhanced penalties for a third or subsequent drunk driving offense, regardless of when the prior offenses occurred, and expand the methods by which a prior conviction may be established at sentencing.

The Vehicle Code prohibits the operation of a vehicle by a person who is under the influence of alcohol and/or a controlled substance; who has an alcohol content of .08 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine; who has in his or her body any amount of a Schedule 1 controlled substance or cocaine; or whose ability to operate the vehicle is visibly impaired due to the consumption of alcohol and/or a controlled substance. If a violation of any of those prohibitions 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 \$500 to \$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 60 to 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.

In addition, the Code prescribes penalties for a person who commits any of various drunk driving offenses while a passenger under 16 years of age is in the vehicle ("child endangerment"). If the violation occurs within seven years of a prior conviction or within 10 years of two or more prior convictions, the violation is a felony subject to the same penalties as prescribed for operating a vehicle under the influence, while impaired, or with any amount of a Schedule 1 controlled substance or cocaine. Under the bill, these penalties would apply to a violation committed within seven years of a prior conviction or after two or more prior convictions, regardless of the number of years that had elapsed since any prior conviction.

The Code also prohibits the operation a vehicle by a person who is under 21 if he or she has any bodily alcohol content (a "zero tolerance" violation). 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 within 10 years of two or more prior convictions, the person must pay a fine of \$200 to \$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. Under the bill, these penalties would apply to a violation committed within seven years of a prior conviction or 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 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; or information contained in a presentence report.

The bill would take effect on January 1, 2007, and would be known as "Heidi's law". The bill is tie-barred to Senate Bill 1241, which would require the records of certain drinking convictions to be maintained for the life of the offender.

MCL 257.625

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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 enhanced penalties. To the extent that the bill would increase penalties for felony drunk driving convictions, 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 \$31,000. 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.

Date Completed: 11-29-06

Fiscal Analyst: 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.