

Legislative Analysis



OPERATING ORV, WATERCRAFT & SNOWMOBILE: CONFORM W/ VEHICLE CODE ALCOHOL PROVISIONS

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House Bills 4072 & 4073

Sponsor: Rep. Matt Lori

House Bills 5028 & 5029

Sponsor: Rep. Andrew Kandrevas

House Bills 4794 & 4795

Sponsor: Rep. Sharon Tyler

Committee: Judiciary

Complete to 1-18-12

A SUMMARY OF HOUSE BILLS 4072 & 4073 AS INTRODUCED 1-13-11, HOUSE BILLS 4794 & 4795 AS INTRODUCED 6-21-11, AND HOUSE BILLS 5028 & 5029 AS INTRODUCED 9-28-11

House Bills 4072, 5028, and 4794 would amend various provisions of the Natural Resources and Environmental Protection Act (NREPA) pertaining to the operation of ORVs, watercraft, and snowmobiles to make them conform to the drunken driving provisions of the Michigan Vehicle Code. House Bills 4073, 5029, and 4795 would make complementary amendments to the sentencing guidelines provisions in the Code of Criminal Procedure.

Currently under NREPA, an individual is prohibited from operating an ORV, watercraft, or snowmobile while under the influence of intoxicating liquor or a controlled substance, or both.

Generally speaking, House Bills 4072, 5028, and 4794 would do the following:

- Replace references to "intoxicating liquor" with "alcoholic liquor" and define that term as it is defined in Section 1d of the Michigan Vehicle Code.
- Prohibit a person from operating an ORV, watercraft, or snowmobile with a bodily alcohol content (BAC) of 0.08 grams or higher or any bodily amount of a Schedule 1 controlled substance or cocaine.
- Change all current references to a BAC of 0.10 grams to a BAC of 0.08 grams.
- Delete language pertaining to legal presumptions. Currently, if at the time of the offense the person had a BAC of 0.07 grams or less, she or she is presumed not to be impaired. A BAC of more than 0.07 grams but less than 0.10 grams is presumed to be impaired. A BAC of 0.10 or more is presumed to be under the

influence. (Identical presumptions contained in the Michigan Vehicle Code were eliminated by 2003 PA 61.)

- Delete the definition of "serious impairment of a body function" and replace it with the definition contained in Section 58c of the Michigan Vehicle Code.
- Increase the suspension of a person's right to operate an ORV, watercraft, or snowmobile for unreasonably refusing to submit to a chemical test from six months to one year for a first refusal, and from one year to two years for a second or subsequent refusal within seven years.
- For ORV, watercraft, and snowmobile violations involving alcohol and/or controlled substances, allow enhanced penalties, suspension of the right to operate an ORV for one to two years, and permanent revocation of the right to operate a vessel or snowmobile upon a third or subsequent conviction regardless of the years elapsed since the previous convictions. Currently, these penalties are triggered when an individual had two or more convictions in the previous 10 years.
- Prohibit the owner or person in charge of a sportcraft from authorizing its use if the person operating the sportcraft is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of the two.

Additional provisions regarding ORVs

- Add a mechanism for an appeals process for a person aggrieved by a final determination by the Secretary of State for operators of ORVs that is identical to the appeals process in place for operators of snowmobiles and watercraft. House Bill 4789 would also add a provision to allow a peace officer to petition the circuit court to review the determination of a hearing officer if, after an administrative hearing, the person who refused the chemical test prevailed. This change is identical to provisions pertaining to snowmobiles and watercraft.
- Repeal Section 81135, which prohibits the operation of an ORV while visibly impaired due to the consumption of alcoholic liquor and/or a controlled substance. The prohibition would be relocated to Section 81134. A violation would be a misdemeanor punishable by up to 93 days imprisonment and/or a fine of not more than \$300. A person convicted of operating an ORV while visibly impaired would be prohibited from operating an ORV between 93 days and a year for a first offense, six to eighteen months for a second offense, and one to two years for a third and subsequent offense.
- Establish a criminal penalty for an owner or person in charge who allowed a person to operate an ORV when under the influence, has a BAC of 0.08, or is visibly impaired by drugs or alcohol. A violation would be a misdemeanor punishable by imprisonment up to 93 days or a fine between \$100 and \$500, or both. The bill would add an enhanced penalty for a violation causing death or a

serious injury. A violation causing death would be a felony with a maximum term of imprisonment of five years or a fine of not less than \$1,500 or more than \$5,000, or both. A violation causing a serious impairment of a body function would also be a felony punishable by up to five years imprisonment and/or a fine between \$1,000 and \$5,000.

Additional provision regarding snowmobiles

- An individual that refuses to submit to a preliminary chemical test upon the lawful request of a peace officer would be responsible for a state civil infraction and subject to a civil fine of not more than \$500.

Additional provision for watercraft

- Expand the definition of prior conviction to include violations of federal law substantially corresponding to violations contained in the act for anyone operating a vessel under the influence of drugs or alcohol, operating a vessel while visibly impaired, or operating under the influence and causing severe impairment or death.
- The bill establishes a new violation for a person less than 21 years of age operating a vessel with any BAC. Any BAC would be defined as an alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. It would also include any presence of alcohol within a person's body resulting from consuming alcoholic liquor, except for alcohol consumed as part of a generally recognized religious service. Individuals in violation of this provision are subject to up to 360 hours of community service and/or a fine up to \$250. For violations occurring within seven years of a prior conviction the person may be sentenced to up to 60 days of community service, a fine up to \$500, and/or up to 93 days imprisonment. Individuals cannot be paid for their community service and must reimburse the appropriate governmental unit for the cost of supervision.
- The bill establishes a new violation for anyone operating a vessel under the influence of drugs or alcohol, visibly impaired, or operating under the influence and who causes severe impairment or death with a person less than 16 years of age onboard. Violations of this provision would be subject to a fine between \$200 and \$1,000 and imprisonment between five days and one year and/or between 30 to 90 days of community service. At least 48 hours of the imprisonment must be served consecutively and the imprisonment cannot be suspended. For violations occurring within seven years of a prior conviction or after two or more prior convictions, regardless of the time elapsed since the prior conviction, a person is guilty of a felony and subject to a fine between \$500 and \$5,000, one to five years in prison, and/or probation with imprisonment in the

county jail between 60 and 180 days. At least 48 hours of the imprisonment must be served consecutively and the imprisonment cannot be suspended.

- The bill also establishes a new violation for a person less than 21 years of age operating a vessel with any BAC with someone under the age of 16 on board. Individuals violating this provision would be guilty of a misdemeanor and subject to up to 60 days of community service, a \$500 maximum fine, and/or up to 93 days imprisonment. For violations occurring within seven years of a prior conviction or after two or more prior convictions, regardless of the time elapsed since the prior conviction, a person would be subject to a fine between \$200 and \$1,000 and five days to one year imprisonment, and/or between 30 and 90 days of community service. At least 48 hours of the imprisonment must be served consecutively and the imprisonment cannot be suspended.

House Bill 4795 would amend the Code of Criminal Procedure to specify that operating a **snowmobile** with (1) presence of a controlled substance causing death would be a Class C felony with a maximum prison term of 15 years; (2) impaired or with the presence of a controlled substance causing serious impairment would be a Class E felony with a maximum prison term of five years; and (3) with the presence of a controlled substance resulting in a third or subsequent offense would be a Class E felony with a maximum prison term of five years. The bill is tie-barred to House Bill 4794.

House Bill 4073 would amend the Code of Criminal Procedure to specify that operating a **vessel** (1) while impaired or with the presence of a controlled substance causing death would be a Class C felony with a maximum prison term of 15 years; (2) while impaired or with the presence of a controlled substance causing serious impairment would be a Class E felony with a maximum prison term of five years; (3) with the presence of a controlled substance resulting in a third or subsequent offense would be a Class E felony with a maximum prison term of five years; and (4) while intoxicated or impaired with a minor onboard a Class E felony with a maximum prison term of five years. The bill is tie-barred to House Bill 4072.

House Bill 5029 would amend the Code of Criminal Procedure to specify that a person operating an **ORV** (1) while impaired or with the presence of a controlled substance, resulting in a third or subsequent offense, would be a Class E felony with a maximum prison term of five years; (2) while impaired or with the presence of a controlled substance causing death would be a Class C felony with a maximum prison term of 15 years; (3) while impaired or with the presence of a controlled substance causing serious impairment would be a Class E felony with a maximum prison term of five years. The bill is tie-barred to House Bill 5028.

FISCAL IMPACT:

House Bills 4072 and 4094 would have no significant fiscal impact on the Department of Natural Resources.

To the extent that the bills result in a greater number of felony or misdemeanor convictions, they could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these new provisions. New felony convictions could result in increased costs related to state prisons, county jails, and/or state felony probation supervision. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,200 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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■ 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.