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INCREASE PENALTIES FOR DRIVING DRUNK, NO LICENSE

House Bill 4576 (Substitute H-2)
Sponsor: Rep. Michael Hanley

House Bill 5122 (Substitute H-2)
Sponsor: Rep. John Freeman

House Bill 5123 (Substitute H-2)
Sponsor: Rep. Penny Crissman

First Analysis (3-10-98)
Committee: Judiciary

THE APPARENT PROBLEM:

Michigan's drunk driving laws, which are contained in the vehicle code, underwent extensive revision in 1991. Among other things, the 1991 changes (which took effect in 1992) expanded the application of drunk driving laws, stiffened penalties for repeat offenders, created special penalties for drunk driving that caused death or serious injury, required attempted offenses to be treated as if completed, and required speedy disposition of drunk driving cases. The drunk driving laws were further amended in 1994 -- and yet again in 1996 -- to correct a number of problems that came to light after enactment of the 1992 revisions. One of the 1994 amendments closed a loophole that people reportedly had been using in attempts to avoid the stiff repeat-offender penalties under the 1992 convictions. One of the 1996 amendments allowed courts to confiscate vehicles for certain drunk driving convictions and required imprisonment for OUIL (operating under the influence) violations within ten years of two or more prior convictions.

Despite these attempts to get dangerous drivers off the roads, stories continue to appear in newspapers of people being killed or maimed by drunk drivers or by drivers (often convicted of drunk driving) who continue to drive despite having their licenses suspended or revoked. One very well-publicized incident occurred last June in Oakland County, when two Detroit Red Wing hockey players and one of their trainers were seriously injured in a one-car crash caused when the driver of their limousine -- who was driving with a suspended license (DWS) -- apparently blacked out and crashed the car.

Once again, legislation has been introduced to address the problem of how to prevent drunk drivers -- and drivers with suspended or revoked licenses -- from continuing to drive and, in some cases, to kill and maim others.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Vehicle Code's provisions regarding repeat alcohol-impaired drivers or unlicensed drivers. House Bill 4576 (MCL 257.8a et al.) generally would allow any conviction for any drunk driving offense or conviction for unlicensed driving to count towards increased license sanctions and penalties, would mandate a felony sentence for anyone convicted of operating under the influence of alcohol or a controlled substance (OUIL) after two previous alcohol-related driving convictions, and would require substance abuse treatment for habitual drunk driving offenders. House Bills 5122 and 5123 (MCL 257.625n and 257.904) would make it a felony to kill or seriously injure someone while driving without a license if the unlicensed driver were more than 50 percent at fault in the accident. Both bills also would make it a felony to let an unlicensed driver drive one's car, if the unlicensed driver killed or seriously injured someone while driving the car. Finally, both bills would subject the car used in these felonies to forfeiture.

House Bill 4576. Currently, the Michigan Vehicle Code prohibits and criminalizes (generally as misdemeanors) a number of so-called drunk driving

House Bills 4576, 5122 and 5123 (3-10-98)

offenses (see BACKGROUND INFORMATION), penalizing violations with a variety of licensing sanctions (license denial, suspension, or revocation), fines, community service, imprisonment, forfeiture of the vehicle in question, and, in the case of commercial vehicles, suspension of a vehicle group designation. There currently are three drunk driving felonies: for causing death while under the influence of (OUIL), or while visibly impaired by (OWI), alcohol or drugs; for causing serious injury while under the influence of, or while visibly impaired by alcohol; and for operating under the influence within 10 years of 2 or more prior convictions for OUIL or causing death or serious injury while OUIL or OWI.

Under the bill, anyone operating a vehicle while under the influence (OUIL) who had been convicted of any two previous drunk driving offenses (see "prior conviction" below) would be guilty of a felony punishable by a mandatory fine of at least \$500 (and up to \$5,000) plus either (a) imprisonment under the jurisdiction of the Department of Corrections for at least one year and up to five years, or (b) probation with imprisonment in the county jail for at least 30 days (48 hours of which would be nonsuspendable and which would have to be served consecutively) and up to one year.

The bill would amend the vehicle code to consolidate and expand the definition of "prior conviction" so that a single definition existed for all sentencing and license sanctions (whether by the secretary of state under section 319 or ordered by the court under section 625b) and so that any conviction for one of the offenses listed in the definition would count toward being charged and sentenced as a repeat offender. More specifically, the bill would add commercial drunk driving ("CDL-.04 BAC"), minors drinking and driving, and negligent homicide, manslaughter, and murder resulting from the operation of a vehicle to the list of convictions which would count toward license sanctions and enhanced sentences for multiple offenses. Thus, the bill would define "prior conviction" (in sections 319 and, 625, and 625b) to mean a conviction for any of the following (whether under a Michigan law or under a local ordinance or another state law substantially corresponding to Michigan law):

** a violation or attempted violation of OUIL, OWI, causing death or serious injury while OUIL or OWI, commercial drunk driving;

** negligent homicide, manslaughter, or murder resulting from the operation of a vehicle (or an attempt to commit one of these crimes); and,

** for license sanctions (sections 319 and 625b) or sentence enhancements (section 625) of minors for driving with any body alcohol content, the "under 21 BAC" violation.

Note: In section 625m, which deals with driving commercial vehicles, "prior conviction" would mean a prior conviction for any of the drunk driving violations (OUIL, OWI, causing death or serious injury while OUIL or OWI, and commercial drunk driving) or the negligent homicide, manslaughter, or murder from driving violations while operating a commercial motor vehicle. "Under 21 BAC" violations would not be included in this definition. [Proposed subsection 625m(5)]

In addition, in section 303, which does not have a definition of "prior conviction," the bill would add commercial drunk driving and negligent homicide, manslaughter, or murder resulting from the operation of a vehicle to the list of convictions in the description of "habitual violator" (of the criminal laws relating to operating a vehicle while impaired by or under the influence of alcohol or drugs), under which the secretary of state is prohibited from issuing licenses. [Section 303(1)(f)] The bill also would change one of the combination of convictions for which the secretary of state must revoke someone's license. Currently, the secretary of state must revoke the license of someone with any combination of 2 convictions within 7 years for OUIL, causing death or serious injury while OUIL or OWI, or negligent homicide, manslaughter, or murder resulting from the operation of a vehicle. The bill would change this to an OUIL conviction within 7 years after a conviction for OUIL, OWI, causing death or serious injury while OUIL or OWI, commercial drunk driving, and negligent homicide, manslaughter, or murder resulting from the operation of a vehicle. [Section 303(2)(c)]

The bill also would mandate participation in, and successful completion of, one or more ("appropriate") rehabilitative programs if a driver convicted for OUIL, OWI, causing death or serious injury while OUIL or OWI, or "under 21 BAC" had one or more prior convictions. (Currently, the court may order such participation as part of the sentence for OUIL, OWI, causing death or serious injury while OUIL or OWI, or "under 21 BAC," but does not have to do so.) [Section 625b(5)]

Finally, the bill would increase from 90 days to 93 days the maximum amount of time someone convicted of a misdemeanor violation of the drunk driving laws could be imprisoned. (A 93-day misdemeanor requires fingerprinting, while a 90-day misdemeanor make fingerprinting permissible.)

House Bills 5122 and 5123. Currently, under the vehicle code, it is a misdemeanor to drive without a license (whether the license was revoked or suspended, denied, or never obtained in the first place). A first offense is punishable by imprisonment for up to 90 days or a fine of up to \$500, or both. A second offense is punishable by imprisonment for up to one year or a fine of up to \$1,000, or both. The bill would make it a felony to kill or injure someone while driving without a license or to let someone drive without a license when the driver subsequently killed or injured someone while driving the vehicle. In addition, the bills would subject the vehicles used by unlicensed drivers who killed or injured someone to the vehicle code's forfeiture provisions.

House Bill 5122 (MCL 257.625n and 257.904) would make it a felony, punishable by imprisonment for up to five years and a fine of at least \$1,000, or both, for a driver driving without a license who was more than 50 percent at fault to cause serious injury ("the serious impairment of a body function"). The bill also would prohibit a person from knowingly allowing someone without a license to drive the person's motor vehicle.

House Bill 5123 (MCL 257.625n and 257.904) would make it a felony, punishable by imprisonment for up to 15 years and a fine of up to \$5,000, or both, for a driver driving without a license who was more than 50 percent at fault to kill someone.

Under both bills, if someone knowingly let an unlicensed driver, who subsequently killed or seriously injured someone while driving without a license, drive their car, the person lending the car to the unlicensed driver would be guilty of a felony, punishable by imprisonment for up to two years and a fine of up to \$1,000, or both, and the car would be subject to forfeiture (or return to the lessor, if the car were leased).

Both bills also would subject the vehicle used in the accident causing death or serious injury to the vehicle code's forfeiture provisions, and would exempt from their provisions drivers who had their licenses suspended because they had failed to answer a citation

or failed to comply with a court order or judgment. Both bills would take effect on September 1, 1998.

BACKGROUND INFORMATION:

Drunk driving. Alcohol-related offenses are classified in section 625 of the vehicle code as follows:

** OUIL -- operating a vehicle while under the influence of alcohol or drugs. A person may be charged with this offense if he or she either (a) is under the influence of "intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance"; or (b) has an alcohol content of at least .10 grams per 100 milliliters of blood, per 210 liters of breath, or 67 milliliters of urine [section 625(1)];

** "Knowingly" letting someone drive OUIL [625(2)];

** OWI -- operating while visibly impaired by alcohol or drugs [625(3)];

** "Under 21 BAC" -- a minor driving with any body alcohol content (specified in the code as either (a) an alcohol content of from .02 to .07 grams per 100 milliliters of blood, per 210 liters of breath, or 67 milliliters of urine, or (b) any presence of alcohol within the minor's body "resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony") [625(6)];

** "CDL-.04 BAC" -- operating a commercial vehicle with an alcohol content of .04 to .07 grams per 100 milliliters of blood, per 210 liters of breath, or 67 milliliters of urine [625m].

In addition, the vehicle code has special provisions that make it a felony to cause death or serious injury ("serious impairment of a body function") while operating under the influence (OUIL) or while visibly impaired (OWI) [Sections 625(4) and 625(5), respectively].

Section 625 of the vehicle code also specifies the crimes (and their penalties) that violations of the code's drunk driving provisions constitute. With the exception of third and subsequent OUIL violations -- and the OUIL/OWI death or injury violations -- violations of the vehicle code's alcohol-related provisions are misdemeanors, with various combinations of possible or mandatory fines,

community service, jail or prison (for third and subsequent OUIL convictions) time, and vehicle forfeiture. (In addition to any of these sanctions, section 625(11) allows the court also to order offenders to pay the costs of their prosecutions under the Code of Criminal Procedure.) A prosecuting attorney also may seek an enhanced sentence for specified violations, based on the violator's having one or more prior convictions [Section 625(14)].

Licensing sanctions. Somewhat confusingly, the vehicle code requires the secretary of state (in sections 303 and 319), and requires the court to order the secretary of state (in section 625b), to impose licensing sanctions -- denial, suspension, or revocation (including revocation of a driver's vehicle group designation in the case of commercial vehicles) -- for violations of the code's drunk driving provisions.

1. The secretary of state is prohibited from issuing a license, among other circumstances, to "habitual violators" of the code's OUIL or OWI provisions [section 303(1)(f)]; and is required

(a) to revoke a license, among other circumstances, for any combination of two convictions within 7 years for any of the following:

** OUIL;

** causing death or serious injury while OUIL or OWI; or

** negligent homicide, manslaughter, or murder resulting from driving [section 303(2)(c)]; and

(b) to suspend (for various specified periods of time) a license (if the court hasn't already done so) as follows:

** for OWI, if the driver has no prior convictions within 7 years for OUIL, OWI, or causing death or serious injury while OUIL or OWI [Section 319(4)(a)];

** for the following convictions:

(i) one OUIL conviction;

(ii) any two OWI convictions within 7 years;

(iii) one OUIL conviction and one OWI conviction within 7 years; or

(iv) one conviction for causing death or serious injury while OUIL or OWI followed by one OWI conviction within 7 years [Section 319(4)(b)];

** for minors who drive with any alcohol content (with the length of the suspension depending on whether or not the minor driver had any prior convictions within 7 years for OUIL, OWI, causing death or serious injury while OUIL or OWI, or another "under 21 BAC") [Section 319(4)(c) and (d)].

2. The court also is required to order the secretary of state to impose certain licensing sanctions (after considering "all prior convictions currently entered upon the person's Michigan driving record"), as follows:

** revocation (with no option for a restricted license) for causing death or serious injury from OUIL or OWI [section 625(6)(a)] or for one or more prior convictions within 7 years for OUIL or causing death or serious injury from OUIL or OWI or for two or more prior convictions within 10 years for OUIL, OWI, or causing death or serious injury from OUIL or OWI [section 625b(6)(b)(iii)];

** suspension (with a possible restricted license) for OWI (with or without a prior conviction within 7 years of OUIL, OWI, or causing death or serious injury while OUIL or OWI) [section 625b(6)(c)(i) and (ii)] or for under 21 BAC (with or without a prior conviction within 7 years for OUIL, OWI, causing death or injury while OUIL or OWI, or another "under 21 BAC") [section 625b(6)(d)].

When someone has his or her license suspended or revoked for OUIL, OWI, or causing death or serious injury while OUIL or OWI while operating a commercial motor vehicle within 10 years of a prior conviction for OUIL, OWI, causing death or serious injury while OUIL or OWI, or "CDL-.04 BAC", the court also must order the secretary of state to revoke the vehicle group designations on the offender's license [section 625b(14)].

Rehabilitation programs. As part of the sentence imposed for a drunk driving conviction, the court also may order an offender to participate in, and successfully complete, one or more "appropriate rehabilitative programs" [section 625b(5)].

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:**For:**

As testimony before the House Judiciary Committee amply illustrated, the problem of chronically drunk drivers, or drivers who continue to drive even when their licenses have been suspended because of poor driving performance, continues to result in the deaths of innocent people despite repeated efforts in recent years to address this issue legislatively. The bills would once again attempt to tackle this problem by reducing the possibility that prior drunk driving offenses would be excluded from enhancing the sentences of repeat offenders (House Bill 4576) and by creating enhanced criminal penalties for drivers who caused injury or death while driving with suspended or revoked licenses (House Bills 5122 and 5123). As the case involving the injury to the Red Wing hockey players and their trainer illustrates, currently, there is no effective legal way to get at drivers with suspended licenses who cause serious injury or death when there is no way to prove intent. House Bills 5122 and 5123 would close a legal loophole by, in effect, establishing strict liability crimes in such cases, where no intent need be shown. The bills would be similar to existing laws imposing special criminal penalties for drunk drivers who cause injury or death, and would parallel other strict liability crimes, such as certain environmental crimes, nuisance crimes, and crimes involving blood alcohol levels. At the same time, the bills would exclude from the new penalties people whose licenses were suspended or revoked for non-moving violations, thereby limiting the penalties to the truly "bad actors," those whose irresponsible actions result in death and injury to others.

According to the Department of State, approximately five percent -- or 350,000 -- of Michigan's seven million drivers have their licenses suspended or revoked every year, with a reported 81,933 traffic convictions of people driving with suspended licenses. Although the majority of these suspensions and revocations are for failing to appear in court (FAC) or to pay tickets ("failure to comply with judgment," or FCJ), nevertheless an estimated 135,000 suspensions or revocations were traffic-safety (that is, driver performance) related. These habitually unsafe drivers simply should not be on the roads, posing potential threats to the residents of the state. The bills would not

only increase penalties for suspended drivers who cause death or injury and target repeat alcohol-impaired drivers, they also would permit confiscation of the vehicles of these drivers who kill and injure, establish criminal penalties for those who lend such drivers their cars, and require substance abuse counseling for repeat drunk drivers.

The bills constitute a sensible combination of providing tougher penalties for habitually dangerous drivers with mandatory treatment for such drivers, plus ways of confiscating or immobilizing their vehicles through sophisticated interlock devices. They would protect innocent lives while punishing the guilty and rehabilitating impaired drivers.

Against:

While the idea behind House Bills 5122 and 5123 is laudable, in their present form the bills have some technical problems. As introduced, the bills would have added new, and different, sections, to the vehicle code. However, the bill substitutes as reported from committee both would add the same subsection -- 904(4) -- though this proposed new section has different provisions in each bill. In House Bill 5122, the proposed subsection 904(4) would create a five-year felony for seriously injuring someone while driving without a license, while the same subsection in House Bill 5123 would create a 15-year felony for killing someone under the same circumstances. If both bills were enacted in their current form, whichever were enacted last would cancel out the provision in the other bill.

In addition, both bills propose a subsection 904(6), which in House Bill 5122 would establish forfeiture provisions and in House Bill 5123 would make it a felony to knowingly let an unlicensed driver drive one's car if the unlicensed driver subsequently killed someone while driving the car. Proposed subsection 904(5) in House Bill 5123, however, is identical to proposed section 904(6) in House Bill 5122, with both establishing forfeiture provisions. Both bills also amend the vehicle forfeiture section of the vehicle code (625n) to refer to violations of new sections proposed in each bill. However, while one proposed new section in House Bill 5122 would prohibit an action (knowingly permitting a motor vehicle to be operated by someone without a license), the other new references to violations that would be added to the vehicle code's forfeiture provisions refer to proposed new penalties for violations and not prohibited actions themselves. Since, in addition, both bills have provisions that would subject persons convicted under

the proposed new penalty provisions to, in addition, the forfeiture provisions of section 625n, it is unclear whether or not the bills need to include amendments to these forfeiture provisions themselves in order to accomplish their goals.

Against:

As with the earlier drunk driving reforms of 1991, by punishing not the driving without a license (DWS) but the happenstance of whether the driving caused an injury or death, House Bills 5122 and 5123 contradict the basic premise of criminal law that one's state of mind is pertinent, and that punishment should be dependent on what one meant to do. Further, perhaps more than other criminal laws, both drunk driving and driving-without-a-license laws are meant to deter: their main object should be to prevent people from drinking and driving or from driving without a license. For this purpose, special felony penalties for causing injury or death may not be very effective, since someone who is about to drink and drive or drive without a license is unlikely to do so with any belief that he or she might kill or injure another. Thus, some people argue that a more effective approach to discouraging people from drinking and driving or driving without a license would be to either immobilize or confiscate the vehicles of repeat offenders or to issue special license plates that at least would immediately identify the vehicles as belonging to these potentially dangerous drivers, thereby allowing the police to more closely monitor the use of such vehicles. This is the kind of approach that is being advocated by some legislators and by the secretary of state, who propose to allow the courts to order the vehicles of people who had been stopped while driving with a suspended or revoked license or with a prior record of alcohol-related driving offenses to be immobilized (for example, with a "boot" in their driveway) or given specially colored or marked license plates that would allow family members to drive the vehicle but not the suspended or chronically drunk driver do so. The only truly effective way to deal with chronically alcohol-impaired drivers or drivers who continue to drive with suspended or revoked licenses is to take them -- or their vehicles -- off the road, rather than simply imposing criminal penalties after they kill or maim innocent bystanders.

Response:

Putting a figurative "scarlet letter" on the vehicles of repeat drunk drivers or drivers who continue to drive when their licenses have been suspended or revoked would violate a fundamental tenet of law by indiscriminately punishing innocent family members along with guilty offenders. Anyone driving a car with

specially colored or marked license plates would, in effect, be involuntarily advertising that they lived with or were related to a drunk driver or a scofflaw. Why should the relatives of such drivers be subjected to potential public ridicule and possible police harassment for merely driving the vehicle of such drivers? As those in the minority community will attest, being a member of a minority group itself can be enough "reason" for some in the law enforcement community to stop and harass them while driving. Special license plates would simply serve to increase the likelihood of such harassment for innocent people. In addition, it should be noted that earlier this session the House approved legislation (House Bill 4210) that would, in fact, immobilize the vehicles of identified alcohol-impaired drivers if they tried to drive while drinking. The bill would require an ignition interlocking device, which renders a vehicle inoperable if it detects a blood alcohol content of .04 percent or more (and activates a warning signal at .02 percent), to be installed in the vehicles of convicted drunk drivers.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports House Bills 5122 and 5123, but has not yet taken a position on House Bill 4576. (3-4-98)

The Department of State Police supports the concept of House Bill 4576, and has no position on House Bills 5122 and 5123. (3-10-98)

The Calhoun County Chapter of Mothers Against Drunk Driving supports the concept of the bills. (3-10-98)

The Substance Abuse Council of Battle Creek supports the concept of the bills. (3-10-98)

The Michigan Licensed Beverage Association supports the bills. (3-10-98)

Analyst: S. Ekstrom

■ 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.