



**House
Legislative
Analysis
Section**

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POLICE: EXPAND JURISDICTION

**House Bill 4401 (Substitute H-1)
First Analysis (1-31-02)**

**Sponsor: Rep. Mark Schauer
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Generally, the jurisdictional authority of law enforcement personnel is limited by the geographical boundary of their employing entity. For example, state troopers have statewide jurisdiction for the enforcement of state laws, county sheriffs and their deputies operate within their county of origin, and municipal police officers have jurisdiction within their respective cities, villages, and townships. Various laws, however, extend the jurisdictional authority of police officers in certain, statutorily specified circumstances. For example, most police officers have the authority to pursue an individual that the officer has witnessed violating a law, ordinance, or civil infraction (such as traffic offenses) across geographical boundaries. Current law also authorizes a police officer to go beyond his or her geographical boundary to enforce state laws in conjunction with the state police or to assist a peace officer of another jurisdiction.

However, several cases in recent years have shown that in some respects, the current statutes are not clear. In particular, the law is unclear as to the authority of an officer to cross jurisdictional lines and arrest an individual for a crime that arose during or became apparent after a pursuit begins. A situation that illustrates the weakness of the current statute involved an officer in the City of Springfield.

Springfield is a western Michigan city that is surrounded by the larger City of Battle Creek. It is not unusual, therefore, for Springfield officers to pursue motorists across city boundaries during routine traffic stops. On one occasion several years ago, an officer observed a motorist in violation of the seat belt law. By time the motorist stopped, he had crossed into the City of Battle Creek. When the officer approached the car, it became apparent that the driver had been drinking. A breathalyzer test revealed a blood alcohol content of over 2 percent, twice the legal limit. Unbeknown to the officer at the time, the motorist had two prior drunk driving convictions. The motorist was subsequently charged with a felony OUIL for a third offense. The felony drunk driving charge was later dismissed by the

circuit court after the court suppressed the evidence of the driver's intoxication. The evidence was suppressed because the court ruled, based on a court of appeals ruling, that the officer did not have authority to arrest or ticket the driver for driving while intoxicated, but only for the seat belt infraction – because the officer only witnessed the improper use of the seat belt in his own jurisdiction. The result was that a drunk driver with two prior convictions went unpunished. Several other drunk driving cases around the state have also been thrown out under similar reasoning.

Legislation has been introduced to clarify the authority of police officers when pursuing someone across jurisdictional boundaries.

THE CONTENT OF THE BILL:

Currently, a peace officer of a county, city, village, or township can exercise authority and powers outside his or her own municipality - the same as if he or she were in his or her own municipality - when he or she is enforcing state laws, or in conjunction with a peace officer of the municipality in which he or she may be in. House Bill 4401 would amend the Code of Criminal Procedure to expand and clarify a local police officer's authority to make arrests outside of his or her jurisdiction. The bill would specify instead that a county, city, village, township, or university peace officer would be authorized to exercise authority outside the geographical boundaries of his or her municipality under any of the following circumstances:

- if the officer was enforcing state laws in conjunction with the Michigan State Police;
- if the officer was enforcing state laws in conjunction with a peace officer of any local municipality or university in which he or she may be; or,

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- if the officer witnessed the following violations within the geographical boundaries of the officer's municipality or university and immediately pursued the individual outside of that geographical boundary: a state law or administrative rule; local ordinance; or a law, rule, or ordinance that was a civil infraction, municipal civil infraction, or state civil infraction.

Under the bill, an officer pursuing an individual under the above circumstance could stop and detain the person outside the officer's municipality or university for the purpose of enforcing the law, administrative rule, or ordinance or for the purpose of enforcing any of these before, during, or immediately after the detaining of the individual. The bill would also apply to a vessel on a lake or river. The officer pursuing an individual on any waters of the state could direct the operator of the vessel to bring it to a stop or maneuver it in a manner that would allow the officer to come beside the vessel.

MCL 764.2a

BACKGROUND INFORMATION:

A very recent Michigan Supreme Court case addresses this very issue. *People v Hamilton* (Docket no. 118615, 2002) involved a case similar to the Springfield incident. In *Hamilton*, a Howell police officer pursued a vehicle that had nonfunctioning taillights. The officer also observed the car weave in the lane and touch the shoulder of the road. A sobriety test confirmed that the driver was intoxicated, and he was arrested. Later, it was found that the defendant had two prior drunk driving convictions and was driving on a suspended license; the defendant was subsequently charged with felony OUIL. The defendant moved for suppression of the evidence and dismissal on the grounds that the arrest was illegal because the officer was outside his jurisdiction. The circuit court granted the motion and quashed the evidence and dismissed the case. The prosecutor appealed, but the appellate court upheld the trial court's decision.

Apparently, there is some disagreement over an officer's authority to arrest for a felony when outside his or her jurisdiction. The penal code (MCL 764.16) allows even private citizens to make arrests for a felony that they have witnessed or have probable cause to believe has been committed. The appellate court ruled that this statute did not apply to the officer because he did not have probable cause to believe that the defendant had committed a felony (though the officer observed behavior giving probable cause for a drunk driving offense, there was

no way for the officer to know at that time that the driver had two priors, thus making this offense a felony). The court also found that the officer was in violation of the existing statutes pertaining to making arrests when crossing jurisdictional boundaries. Therefore, the appellate court ruled that the suppression of the evidence and the dismissal of the case by the trial court were appropriate.

The case was appealed to the Michigan Supreme Court for a de novo review of the statutory interpretation of MCL 764.2a (the section of law that House Bill 4401 would amend) – specifically, that if an officer violated the statute as the officer in the *Hamilton* case did, did it follow that any evidence obtained as a result of the arrest should be suppressed. In its decision, the supreme court said, “we find no indication in the language of MCL 764.2a that the Legislature intended to impose the drastic sanction of suppression of evidence when an officer acts outside the officer's jurisdiction.” The *Hamilton* court went on to write that “the statute was intended, not to create a new right of criminal defendants to exclusion of evidence, but rather to ‘protect the rights and autonomy of local governments’ in the area of law enforcement.” Therefore, the court ruled that the statute in question “does not require exclusion of evidence obtained as a result of police conduct that is not in accordance with the statute . . .” and reversed the court of appeals ruling and remanded the case to the circuit court for further proceedings.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no direct fiscal impact. (1-30-02)

ARGUMENTS:

For:

Police officers cross geographical boundaries every day to issue traffic citations, pursue a motorist fleeing or eluding arrest, or make an arrest for a crime that an officer witnessed. Though various statutes appear to give officers the authority to do so, there remains a gray area that has allowed offenders to slip through. It is not uncommon for police officers to observe a minor traffic infraction or equipment failure on a vehicle and pull the vehicle over. If, however, before the vehicle stops, it crosses into a different township, village, county, or city, some recent trial and appellate court decisions have ruled that the officer only has the authority to cite the driver for the original offense observed, and not for any crime that

becomes apparent before the driver stops the car or after the driver stops the car. For example, there appears to be disagreement over whether an officer can make an arrest if, after stopping a vehicle for a traffic offense that has crossed a geographic boundary, the officer observes a gun or drugs in plain sight in the car.

Also, in several cases in recent years, officers pulled over drivers for traffic offenses only to discover after the car stopped (in a different jurisdiction) that the driver was intoxicated. In some of these cases, the drivers had two or more prior drunk driving convictions – meaning that the driver now would be subject to a felony charge for a third offense. Unfortunately, due to the existing gray area in state law, several courts have suppressed the evidence leading to the felony drunk driving charge and dismissed the cases. The result is that several repeat drunk drivers got off unpunished and were returned to the road.

The bill would remedy this situation by clarifying the circumstances under which a peace officer would have authority to cross jurisdictional boundaries. The bill would include university peace officers (if their governing board approved), and would apply to situations in which the officer witnessed a violation of state law, administrative rule, a local ordinance, or a violation of a civil infraction, municipal civil infraction, or state civil infraction. The bill would also apply to vessels operating on the waters of the state (to enforce the prohibition on drinking while operating watercraft and other laws pertaining to watercraft). The bill would not limit any due process rights of defendants, but would merely close a loophole that some drunk drivers have used to escape prosecution.

Response:

The bill includes violations of administrative rules. Reportedly, this was included to allow conservation officers pursuing violators across geographic boundaries. However, this section of law is not defined to include conservation officers, but appears to only apply to county, city, village, township, or university peace officers.

Against:

The recent supreme court ruling in *People v Hamilton* makes the bill unnecessary.

Response:

Hamilton doesn't speak to all the situations covered by the bill; for instance, the bill resolves any question of an officer's liability, whereas the *Hamilton* ruling does not. Further, the bill includes university peace

officers. The last time that this section of law was amended, universities did not have the statutory authority to have their own police forces. Public Act 120 of 1990 allowed universities to create their own police departments independently of the local municipality. Since university peace officers must be MCOLES-trained (Michigan Commission on Law Enforcement Standards), and are authorized to enforce state law and ordinances and regulations of the university on university grounds and on adjacent public rights of way, it only makes sense to include them at this time.

POSITIONS:

Representatives from the following agencies and organizations indicated support for the bill (1-29-02):

- The Michigan Association of Chiefs of Police
- The Michigan Townships Association
- The Michigan State Troopers Association
- Mothers Against Drunk Driving (MADD)
- The Calhoun County Prosecutor's Officer
- The City of Springfield

A representative of the Department of State Police indicated that the department is neutral on the bill. (1-29-02)

Analyst: S. Stutzky

■ 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.