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SFA



BILL ANALYSIS

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Senate Bill 257 (as enrolled)
 Sponsor: Senator William Van Regenmorter
 Senate Committee: Judiciary
 House Committee: Criminal Justice

PUBLIC ACT 246 of 2001

Date Completed: 4-16-02

RATIONALE

Michigan law prescribes various terms of imprisonment for offenses that involve the death of a person due to the unlawful operation of a motor vehicle, vessel, aircraft, or other type of vehicle. Although any of those offenses may involve the death of more than one individual, the statutes did not specify that an additional charge could be filed for each death caused, or provide for an additional penalty if the violation resulted in multiple deaths. Some people believe that causing multiple deaths through these types of violations should be chargeable as separate crimes and that the offenders should be subject to consecutive prison sentences for each life taken.

CONTENT

The bill amended the Code of Criminal Procedure to specify that a person may be charged with and convicted of certain vehicle-related offenses for each death arising out of the same criminal transaction, and to allow the sentencing court to order the terms of imprisonment for multiple deaths in those offenses to be served consecutively. The bill took effect on March 1, 2002.

The bill applies to the following offenses:

- First-degree fleeing and eluding (a fleeing and eluding violation that results in death) (MCL 257.602a(5) or 750.479a(5)).
- Leaving the scene of an accident when the driver knows or has reason to believe that he or she has been involved in an accident resulting in serious or aggravated injury or death (MCL 257.617).
- Causing a death by operating a vehicle while under the influence of, or while

- visibly impaired due to the consumption of, liquor and/or a controlled substance (MCL 257.625(4)).
- Causing a death by operating a vehicle without a driver's license or with a suspended or revoked license (MCL 257.904(4)).
- Second-degree murder or manslaughter, if death results from the operation of a vehicle, vessel, off-road vehicle (ORV), snowmobile, aircraft, or locomotive (MCL 750.317 or 750.321).
- Causing a death by operating a boat, ORV, or snowmobile while under the influence of liquor and/or a controlled substance (MCL 324.80176(4), 324.81134(7), or 324.82127(4)).
- Causing a death by operating or acting as a crew member of an aircraft while under the influence of liquor and/or a controlled substance; with a blood alcohol content (BAC) of .02 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters or urine; or within eight hours after the consumption of an intoxicating liquor or a controlled substance or of any drug or combination of drugs that renders a person incapable of safely operating or acting as a crew member of an aircraft (MCL 259.185(4)).
- Operating a locomotive engine while under the influence of liquor and/or a controlled substance or with a BAC of .10% or more by weight of alcohol, resulting in death (MCL 462.353).

MCL 769.36

BACKGROUND

First-degree fleeing and eluding (which occurs when a flight from police results in another

person's death), causing a death by drunk operation of a vehicle, vessel, snowmobile, ORV, or aircraft, and causing a death by operating a vehicle without a driver's license or with a suspended or revoked license, all are punishable by up to 15 years' imprisonment. Leaving the scene, when a driver knows or has reason to believe that he or she has been involved in an accident resulting in serious or aggravated injury or death, carries a maximum penalty of five years' imprisonment. Second-degree murder is punishable by imprisonment for life or any term of years; the penalty for manslaughter is up to 15 years' imprisonment.

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

According to testimony presented to the Senate Judiciary Committee in May 2000, three teenaged boys on bicycles were hit and killed in November 1999, by a drunk driver who then fled the scene. The man who killed the boys reportedly was a repeat drunk driving offender. Apparently, he was charged with causing a death by drunk driving, pleaded no contest, and was sentenced to 10 to 15 years in prison. Although that penalty is the maximum sentence for the offense charged, his prison time amounts to a little more than three years' imprisonment for each life taken. This penalty is simply too lenient.

Although there apparently is no legal prohibition against charging a defendant with multiple counts of a violation for multiple deaths caused in a single incident of the vehicle-related offenses enumerated in the bill, even if multiple charges were filed an offender typically would have served his or her prison terms concurrently. In order to emphasize that each life is valuable and to deter these types of violations, the law should clearly authorize separate offenses to be charged and allow a court to order the sentences for those violations to be served consecutively.

Opposing Argument

Even without the bill's specific authorization, multiple charges may be filed when more than one life is taken in the course of the applicable crimes. As long as the violations are not for

lesser included offenses, it is not unusual for a prosecutor to charge a person with multiple violations arising out of the same criminal incident. For instance, if someone shot and killed three people, he or she could be charged with three counts of murder. Just as someone may be charged with multiple counts of murder when taking more than one life, a drunk driver may be charged with multiple counts of causing a death.

Response: A murder conviction is subject to a penalty of life in prison. Since the offenses to which the bill applies have shorter maximum sentences (with the exception of second-degree murder), the key to imposing appropriate penalties is allowing courts to apply consecutive sentences for multiple deaths caused. In addition, specifically authorizing separate charges and convictions for causing multiple deaths will avoid any ambiguity about the ability to do so.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Table 1 shows the 1999 convictions for various offenses cited in this bill. There are no data available to indicate how many deaths were involved in each conviction. Also, the data do not describe the circumstances of the crime, which would indicate whether it would be subject to the bill. For example, there is no indication of whether a second-degree murder or manslaughter conviction resulted from the use of a motor vehicle. According to the data available on convictions under the other offenses referred to in this bill, there were no convictions.

Table 1

1999 Convictions		
Offense	Convictions	Prison Sentence
First-degree fleeing and eluding	5	4
Leaving the scene of a serious accident	69	33
Driving intoxicated causing death	67	34
Second-degree murder	224	223
Manslaughter	44	37

Source: 1999 Department of Corrections
Statistical Report

Table 2 shows the average minimum sentence for each of the offenses for which there was a conviction in 1999. There are no data to indicate how many offenders per year will be convicted of an applicable offense that results in the death of more than one person and will be required to serve consecutive terms for the offenses. If one offender for each of the offenses in Table 2 is convicted for the death of two people, receives the average minimum sentences for these crimes and serves them consecutively, given that the average annual cost of incarceration is \$25,000, the total cost of incarceration for those offenders will be \$2.1 million, rather than \$1.0 million if the terms for each conviction were not consecutive.

Table 2

1999 Average Minimum Sentence	
Offense	Average Minimum Sentence (years)
First-degree fleeing and eluding	9
Leaving the scene of a serious accident	2.3
Driving intoxicated causing death	4.3
Second-degree murder	20.4
Manslaughter	5.7

Fiscal Analyst: Bethany Wicksall

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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.