

Legislative Analysis



REVISE HIT AND RUN STATUTE

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House Bill 4210 as enrolled
Public Act 3 of 2005
Sponsor: Rep. John Stakoe
House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (8-12-05)

BRIEF SUMMARY: The bill would amend the Michigan Vehicle code to clarify that fleeing the scene of an accident resulting in injury or death to a person or damage to property is a crime irrespective of whether the driver knew of the injury, death, or property damage.

FISCAL IMPACT: To the extent that the bill resulted in more convictions under these provisions, the bill could increase state and local corrections costs and increase the amount of penal fine revenue going to local libraries.

THE APPARENT PROBLEM:

The Michigan Vehicle Code makes it a crime to leave the scene of an accident and establishes penalties depending on the level of injury sustained by a party to the accident or property damage to a vehicle. The Michigan Court of Appeals' decision in *People v. Lang*, 250 Mich App 565 (2002), regarding a hit-and-run case, has highlighted a problem with the wording of these statutes.

In 1997, the defendant in that case struck and killed a person who was standing on the shoulder of Interstate 696 near a disabled vehicle. The defendant was subsequently charged with violating Section 617 of the Vehicle Code, the section that applies to hit-and-run accidents involving serious injury or death. During the course of the prosecution, the interpretation of Section 617 came into question. The defense claimed the statutory language required the prosecutor to prove beyond a reasonable doubt that the defendant knew or should have known not only of his involvement in a motor vehicle accident, but also that the accident had resulted in serious or aggravated injury or death to another person. The prosecution contended that the plain language of the statute demonstrated only a need for proof of the defendant's knowledge of involvement in an accident.

In ruling in favor of the defendant, the court of appeals held that a conviction of violating Section 617 "requires a showing that the individual knew or had reason to believe that the accident in which he was involved resulted in serious injury to or the death of another person." The court further noted that "the Legislature plainly premised a driver's culpability on his actions *after* the occurrence of an accident. Consequently, the severity of the accident becomes relevant to the extent that the driver knew of or had reason to believe in the nature of the injury occasioned by the accident."

Prosecutors now worry that in light of the *Lang* decision, hit-and-run drivers could be encouraged to flee an accident scene so as to avoid acquiring knowledge of a person's injuries and thus avoid a felony conviction. Moreover, requiring proof of knowledge of the exact nature of the injury or damage imposes a burden that is unreasonably difficult to sustain. Instead, they believe that the punishment for fleeing the scene of an accident should be based on the injury to the other person or persons, regardless of whether a driver knew or had reason to know the extent of the injuries. At the request of the Oakland County Prosecutor's Office, legislation has been offered to clarify the law pertaining to fleeing the scene of an accident.

THE CONTENT OF THE BILL:

The bill would amend provisions in the Michigan Vehicle Code dealing with leaving the scene of an accident.

The code requires a driver who knows or who has reason to believe that he or she has been involved in an accident resulting in injury or death to a person or damage to a vehicle to stop and remain at the scene until he or she has given his or her name and address, the car registration number, and the name and address of the vehicle owner, along with showing his or her driver's license, to a police officer, the person struck, or the driver or occupants of any vehicle collided with. In addition, the driver is required to render reasonable assistance in securing medical aid or transportation for any injured person. This applies to accidents on public or private property open to travel by the public.

Under House Bill 4210, a driver of a vehicle would have to fulfill the requirements described above if the driver knew or had reason to believe that he or she had been involved in an accident regardless of whether the driver knew or had reason to believe that a person had been killed or injured or another vehicle had been damaged. In lieu of remaining at the scene to fulfill the requirements described above, a driver could immediately report the accident to the nearest or most convenient police agency or officer if there is a reasonable and honest belief that remaining at the scene would result in further harm.

A violation where an accident results in serious impairment of a body function or death is a felony punishable by not more than five years imprisonment, a maximum fine of \$5,000, or both. In the case where an individual commits a violation following an accident he or she has caused when another person dies as a result of the accident, the punishment is a maximum term of imprisonment of 15 years, a fine of not more than \$10,000, or both.

Failure to stop and comply with the code's requirements when involved in an accident resulting in an injury to a person is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$1,000, or both. Failure to stop when only property damage is involved is a misdemeanor. House Bill 4210 would specify that the

penalty for the property damage misdemeanor is imprisonment for not more than 90 days or a fine of not more than \$100, or both. (No penalty is currently specified.)

MCL 257.617 et al.

ARGUMENTS:

For:

In the light of the *Lang* decision, prosecutors contend that a violation for leaving the scene of an accident can only occur if the driver who fled the scene knew or had reason to know that an accident occurred and also knew that a person was injured or killed or property was damaged as a result of that accident. This, they contend, makes prosecuting leaving the scene very difficult, if not impossible, because they must prove beyond a reasonable doubt that a driver who fled the scene actually knew the extent of the injuries to a victim and chose to flee the scene anyway. The result of the *Lang* decision, they further believe, may actually encourage drivers to flee the scene so as to avoid prosecution or felony penalties by claiming they did not know someone had been injured or killed.

The bill is intended to clarify that if a driver knew or had a reason to know that an accident had occurred, he or she would be prosecuted if he or she did not comply with the information requirements in Section 619 of the Code, irrespective of whether he or she knew that a person had been injured or killed or that property was damaged. That is to say, the penalty for a hit-and-run would be predicated on the injuries sustained by the victim, not on what the driver who fled knew or did not know about those injuries. This, many prosecutors contend, was the original intent of the law.

Response:

The principal arguments advanced in favor of the bill are precisely those that were presented by the state in *People v. Lang*. In response to the contention that its decision might encourage people to flee the scene of an accident, the Michigan Court of Appeals noted that "Section 617 plainly contemplates finding a driver liable not only on the basis of his actual knowledge of the nature of an accident, but also on the basis of the driver's constructive knowledge — what the driver reasonably should have known given the circumstances surrounding the accident. Accordingly, no driver could escape liability merely by attempting to remain willfully ignorant of the nature of the consequences of an accident."

Further, in response to the contention that its decision will place an unreasonable burden on prosecutors, the court of appeals stated, "[t]he prosecutor need not necessarily demonstrate a driver's actual knowledge of the exact nature of an injury occasioned by an accident. As with other criminal intent or knowledge requirements, the prosecution may sustain the state's burden of proof by introducing evidence of the circumstances surrounding a particular accident to demonstrate that a driver had reason to believe that the accident in which he was involved resulted in a specific injury." In this regard, the bill seems to be unnecessary.

Response:

The bill assists prosecutors by taking a person's knowledge of injuries resulting from an accident out of consideration in determining the penalties for a hit-and-run accident.

Against:

The bill is problematic for other reasons. For instance, it has long been accepted that, according to Section 619 of the Michigan Vehicle Code, names, addresses, and registration (and typically insurance information) were exchanged by parties to an accident and 9-1-1 called only if damage to one or both of the cars was visible or one of the parties was injured. When both parties agreed that the car that did not cause the accident sustained no damage and that no one had been hurt, the parties usually left without exchanging the information or calling the police.

However, a plain reading of the proposed language for Section 619 would suggest that the information must be exchanged and the police called as long as a driver knew or had reason to believe that an accident had occurred. This could unnecessarily strain already understaffed police and sheriff's departments and require the sharing of sensitive information (i.e., increase the risk of identify theft for a minor fender bender) when there really is no need.

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