

HOUSE BILL No. 4131

January 29, 2013, Introduced by Reps. Kesto and LaFontaine and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 33 and 48 of chapter XVII (MCL 777.33 and 777.48), as amended by 2003 PA 134.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XVII

Sec. 33. (1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) A victim was killed..... 100 points
- (b) A victim was killed..... 50 points
- (c) Life threatening or permanent incapacitating

- 1 injury occurred to a victim..... 25 points
- 2 (d) Bodily injury requiring medical treatment
- 3 occurred to a victim..... 10 points
- 4 (e) Bodily injury not requiring medical treatment
- 5 occurred to a victim..... 5 points
- 6 (f) No physical injury occurred to a victim..... 0 points

7 (2) All of the following apply to scoring offense variable
8 3:

9 (a) In multiple offender cases, if 1 offender is assessed
10 points for death or physical injury, all offenders shall be
11 assessed the same number of points.

12 (b) Score 100 points if death results from the commission of
13 a crime and homicide is not the sentencing offense.

14 (c) Score 50 points if death results from the commission of
15 a crime and the offense or attempted offense involves the
16 operation of a vehicle, vessel, ORV, snowmobile, aircraft, or
17 locomotive and any of the following apply:

18 (i) The offender was under the influence of or visibly
19 impaired by the use of alcoholic liquor, a controlled substance,
20 or a combination of alcoholic liquor and a controlled substance.

21 (ii) The offender had an alcohol content of 0.08 grams or
22 more per 100 milliliters of blood, per 210 liters of breath, or
23 per 67 milliliters of urine. ~~or, beginning October 1, 2013, the~~
24 ~~offender had an alcohol content of 0.10 grams or more per 100~~
25 ~~milliliters of blood, per 210 liters of breath, or per 67~~
26 ~~milliliters of urine.~~

27 (iii) The offender's body contained any amount of a controlled

1 substance listed in schedule 1 under section 7212 of the public
2 health code, 1978 PA 368, MCL 333.7212, or a rule promulgated
3 under that section, or a controlled substance described in
4 section 7214(a) (iv) of the public health code, 1978 PA 368, MCL
5 333.7214.

6 (d) Do not score 5 points if bodily injury is an element of
7 the sentencing offense.

8 (3) As used in this section, "requiring medical treatment"
9 refers to the necessity for treatment and not the victim's
10 success in obtaining treatment.

11 Sec. 48. (1) Offense variable 18 is operator ability
12 affected by alcohol or drugs. Score offense variable 18 by
13 determining which of the following apply and by assigning the
14 number of points attributable to the one that has the highest
15 number of points:

16 (a) The offender operated a vehicle, vessel, ORV,
17 snowmobile, aircraft, or locomotive when his or her
18 bodily alcohol content was 0.20 grams or more per 100
19 milliliters of blood, per 210 liters of breath, or per
20 67 milliliters of urine..... 20 points

21 (b) The offender operated a vehicle, vessel, ORV,
22 snowmobile, aircraft, or locomotive when his or her
23 bodily alcohol content was 0.15 grams or more but less
24 than 0.20 grams per 100 milliliters of blood, per 210
25 liters of breath, or per 67 milliliters of urine..... 15 points

26 (c) The offender operated a vehicle, vessel, ORV,
27 snowmobile, aircraft, or locomotive while the offender

1 was under the influence of alcoholic or intoxicating
 2 liquor, a controlled substance, or a combination of
 3 alcoholic or intoxicating liquor and a controlled
 4 substance; or while the offender's body contained any
 5 amount of a controlled substance listed in schedule 1
 6 under section 7212 of the public health code, 1978 PA
 7 368, MCL 333.7212, or a rule promulgated under that
 8 section, or a controlled substance described in section
 9 7214(a)(iv) of the public health code, 1978 PA 368, MCL
 10 333.7214; or while the offender had an alcohol content
 11 of 0.08 grams or more but less than 0.15 grams per 100
 12 milliliters of blood, per 210 liters of breath, or per
 13 67 milliliters of urine ~~or, beginning October 1, 2013,~~
 14 ~~the offender had an alcohol content of 0.10 grams or~~
 15 ~~more but less than 0.15 grams per 100 milliliters of~~
 16 ~~blood, per 210 liters of breath, or per 67 milliliters~~
 17 ~~of urine.....~~ 10 points

18 (d) The offender operated a vehicle, vessel, ORV,
 19 snowmobile, aircraft, or locomotive while he or she was
 20 visibly impaired by the use of alcoholic or intoxicating
 21 liquor or a controlled substance or a combination of
 22 alcoholic or intoxicating liquor and a controlled
 23 substance, or was less than 21 years of age and had any
 24 bodily alcohol content..... 5 points

25 (e) The offender's ability to operate a vehicle,
 26 vessel, ORV, snowmobile, aircraft, or locomotive was not
 27 affected by an alcoholic or intoxicating liquor or a
 28 controlled substance or a combination of alcoholic or
 29 intoxicating liquor and a controlled substance..... 0 points

30 (2) As used in this section, "any bodily alcohol content"

1 means either of the following:

2 (a) An alcohol content of 0.02 grams or more but less than
3 0.08 grams per 100 milliliters of blood, per 210 liters of
4 breath, or per 67 milliliters of urine or, beginning October 1,
5 2013, 0.02 grams or more but less than 0.10 grams per 100
6 milliliters of blood, per 210 liters of breath, or per 67
7 milliliters of urine.

8 (b) Any presence of alcohol within an individual's body
9 resulting from the consumption of alcoholic or intoxicating
10 liquor other than the consumption of alcoholic or intoxicating
11 liquor as part of a generally recognized religious service or
12 ceremony.

13 Enacting section 1. This amendatory act does not take effect
14 unless Senate Bill No. ____ or House Bill No. 4093 (request no.
15 00014'13) of the 97th Legislature is enacted into law.