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DRUNK DRIVER - REPEAT OFFENDER CLEAN-UP

**Senate Bill 556 with House committee
amendment**

Sponsor: Sen. William Van Regenmorter

Senate Bill 557 as passed by the Senate

Sponsor: Sen. Mike Rogers

Senate Bill 558 as passed by the Senate

Sponsor: Sen. Bev Hammerstrom

Senate Bill 559 as passed by the Senate

Sponsor: Sen. Walter H. North

Senate Bill 560 as passed by the Senate

Sponsor: Sen. Art Miller, Jr.

First Analysis (5-25-99)

**House Committee: Criminal Law and
Corrections**

Senate Committee: Judiciary

Senate Bills 556-560 (5-25-99)

THE APPARENT PROBLEM:

Michigan's drunk driving laws, which are contained in the Michigan Vehicle Code, have been amended repeatedly in the past decade in an attempt to take drunk drivers off the roads. Extensive revisions to the law made in 1991, among other things, 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 1991 revisions (that took effect in 1992). One of the 1994 amendments closed a loophole that people reportedly had been using in attempts to avoid the stiff repeat-offender penalties for convictions under the 1992 revisions. More recent changes were contained in Public Acts 490 and 491 of 1996, which became effective on April 1, 1997. Among other things, the 1996 laws permit a court to order that a vehicle be forfeited or returned to the lessor if the vehicle's owner or lessee is convicted of operating under the influence of alcohol and/or a controlled substance (OUIL),

operating while visibly impaired by alcohol and/or a controlled substance (OWI) within seven years of one prior conviction or within 10 years of two or more prior convictions, or OUIL or OWI that caused the death or serious impairment of a body function of another person. In the 1997-98 session of the legislature further changes were enacted. These changes will take effect October 1, 1999 and will revise the criminal penalties, license sanctions, and vehicle sanctions for drunk driving offenses in a further attempt to deter repeat offenders. Because the bills that created these most recent changes to the drunk driving laws were dealt with hastily near the end of the 1997-98 session of the legislature, a number of errors and potential problems exist in the laws as enacted. Legislation has been introduced to make correct the errors and to preemptively deal with some of the problems that might occur by trying to enforce the laws as they are currently written.

THE CONTENT OF THE BILLS:

Senate Bills 556 through 560 would amend various acts to make revisions to drunk driving and driving

without a license provisions enacted in 1998 (Public Acts 340-359 of 1998). Senate Bill 556 would amend the Michigan Vehicle Code (MCL 257.204a et al.), Senate Bill 557 would amend the Public Health Code(333.7408a), Senate Bill 558 would amend the Revised Judicature Act (600.8511), Senate Bill 559 would amend the Code of Criminal Procedure (764.9f), and Senate Bill 560 would amend the bureau of criminal identification act (28.243).

The bills would take effect on October 1, 1999, and are tie-barred to each other, and to House Bills 4580 through 4585.

Senate Bill 556. Among other revisions, the bill would do all of the following:

- Delete "a temporary registration plate, vehicle immobilization, or vehicle forfeiture" from the list of information the secretary of state is required to maintain in its computerized central file of individual, historical driving records.
- Include a vehicle's co-owner or co-lessee in a provision requiring that the secretary of state refuse issuance or transfer of registration or title, if the owner's or lessee's driver's license is suspended, revoked, or denied or the operator has never been licensed in Michigan, for a third or subsequent drunk driving violation or a fourth or subsequent suspension or revocation for driving without a license or while a license was suspended or revoked.
- Provide that the secretary of state could not issue a registration for a vehicle for which a temporary registration plate was issued under the 1998 legislation until the violation resulting in the issuance of the temporary plate was adjudicated or the vehicle was transferred to a person who was subject to a use tax under the Use Tax Act (MCL 205.93).
- Prohibit the transfer or assignment of title or an interest in a vehicle to a person who is not subject to payment of a use tax during the time the vehicle is subject to registration denial or the period from adjudication to immobilization or forfeiture. (The vehicle code already applies this prohibition to the time a vehicle is subject to a temporary registration plate, vehicle forfeiture, or immobilization.)
- Remove from the list of persons to whom the secretary of state may not issue a driver's license a person who has been convicted of or received a juvenile disposition for drunk driving with a passenger and add to that list a person who caused a death or serious impairment of a bodily function due to driving without a license or while his or her license was suspended or revoked. The bill also would add those offenses to the list of prior convictions that preclude the issuance of a driver's license, and that require revocation of a license.
- Add drunk driving of a commercial vehicle (257.625m) to the conditions that allow the secretary of state to require a licensee to be reexamined within 24 months after his or her probationary period, if the driver accumulated nine or more points within a two-year period.
- Increase the secretary of state's share, from \$6 to 60 percent, of each \$25 clearance fee for: failure to answer a citation or pay a fine or cost, failure to answer multiple parking violations, and state civil infractions. (The secretary of state would receive \$15 of each fee under the bill.)
- Remove the facts and circumstances relating to a license, designation, or indorsement revocation from the issues about which a court may take testimony and examine facts and circumstances in a grievance against the secretary of state.
- Provide that Chapter VIII of the vehicle code, regarding penalties, would have to apply uniformly throughout the state and in all political subdivisions and municipalities. A local authority could not adopt, enact, or enforce a local law, charter provision, ordinance, rule, or regulation that was in conflict with Chapter VIII. (The vehicle code already requires uniform application of Chapter VI, regarding obedience to and effect of traffic laws.)
- Prohibit a person from authorizing or knowingly permitting a vehicle to be operated by someone whose ability to operate the vehicle was visibly impaired due to the consumption of liquor and/or a controlled substance.
- Provide that a temporary license or permit issued to a person who refused a chemical test or submitted to a test that revealed an unlawful alcohol content would be valid, if the case were prosecuted, until the criminal charges were dismissed, the person was acquitted, or the person's license or permit was suspended, restricted, or revoked. (Currently, the temporary license or permit is valid until the criminal charges are dismissed; the person pleads guilty or nolo contendere, is found guilty, or is acquitted; or the

person's license is suspended, whichever occurs earlier.)

-- Specify that the purpose of the Drunk Driving Caseflow Assistance Fund would be to promote the timely disposition of cases involving all drunk driving offenses of the vehicle code as well as drunk boating, and drunk operation of an ORV, and all drunk snowmobiling offenses under the Natural Resources and Environmental Protection Act. (Currently, the purpose of the fund is to promote the timely disposition of certain drunk driving and drunk snowmobiling cases.)

-- Specify that, if a prosecuting attorney intended to seek enhanced penalties for driving without a license or while a license was suspended or revoked based on the defendant's having prior convictions, the prosecutor would have to include on the complaint and information a statement listing the prior convictions. Prior convictions could be established by an abstract of conviction, a copy of the defendant's driving record, or an admission by the defendant.

-- Provide that a temporary registration plate issued when a peace officer detained a driver for a violation for which vehicle immobilization was required would be valid until the charges were dismissed or the person pleaded guilty or nolo contendere, was found guilty, or was acquitted. The bill would delete a provision that the temporary plate is valid for 100 days unless extended by the court.

-- Increase the penalties for drunk driving while another person who is less than age 16 is occupying the vehicle (child endangerment). The increased penalties would allow the crime to be enhanced in the same fashion as other crimes that were part of last session's drunk driving package. For a first offense, the penalties would be the same as OUIL first offense. For a second offense, the penalties would be similar to OUIL third offense (felony). In addition, operating a vehicle with any bodily alcohol content by someone under the age of 21 with a minor under age 16 in the vehicle would have a separate penalty sequence: for first offense, like zero tolerance second offense; for second or subsequent offenses, like OUIL second offense. Unless forfeiture was ordered, immobilization could be ordered for a first offense and would have to be ordered if the driver had a prior OUIL conviction.

-- Provide that vehicle immobilization would apply for 90 days, rather than 24 days, for a drunk driving conviction within seven years after a prior conviction, and for one year, rather than six months, for a drunk driving conviction within 10 years of two or more prior convictions.

-- Require vehicle immobilization for up to 180 days if a person were convicted for causing a death or serious impairment of a bodily function due to driving without a license or while a license was suspended or revoked and the driver had not more than one license suspension.

-- Specify that a court could order vehicle immobilization if the defendant were the owner, co-owner, lessee, or co-lessee of the vehicle operated during an applicable violation, or if the owner, co-owner, lessee, or co-lessee knowingly permitted the vehicle to be operated in violation of drunk driving or license suspension provisions, regardless of whether a conviction resulted. (Currently, the code prohibits a court from ordering vehicle immobilization if the defendant is not the owner or lessee of the vehicle, unless the owner or lessee knowingly permitted the vehicle's use in violation of drunk driving or license suspension provisions.)

-- Define "prior conviction" with respect to the code's vehicle immobilization provisions, as a conviction for impaired driving, driving under the influence, causing a death or serious impairment of a bodily function due to drunk driving, drinking and driving by a minor, drunk driving with a passenger under 16 present in the vehicle, and drunk driving of a commercial vehicle, as well as negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

-- If a peace officer stopped a vehicle that was being operated in violation of an immobilization order, require that the vehicle be impounded pending a court order.

-- Require a court to order a person who immobilizes vehicles under court order to certify that the immobilizations are carried out in accordance with the requirements of the act.

Senate Bill 557. The Public Health Code provides for driver's license sanctions and the issuance of a restricted license for violations of the code's controlled substance and androgenic anabolic steroid provisions. Senate Bill 557 would specify that, regardless of a court order issued under the code's license sanction provision, the secretary of state could not issue a

restricted license to a person whose license was suspended for a controlled substance or steroid violation unless a restricted license was authorized under that provision and the person was otherwise eligible for a license.

The bill would also provide that, while driving, a person who had a restricted license under the code would have to carry proof of his or her destination and the hours of any employment, class, or other reason for traveling and would have to display that proof upon a peace officer's request.

Currently, the code allows, on a restricted license, travel between a person's home and work location, a court-ordered alcohol or drug education or treatment program, the court probation department, a court-ordered community service program, or an educational institution at which the person is enrolled as a student. The bill would also allow travel between a person's home and a place of regularly occurring medical treatment for a serious condition for the person or a member of his or her household or immediate family.

Senate Bill 558. The Revised Judicature Act provides that a district court magistrate has jurisdiction to arraign and sentence, upon a plea of guilty or nolo contendere, for violations of certain acts or parts of acts or a corresponding local ordinance, when authorized to do so by the chief judge of the district court and if the maximum permissible punishment does not exceed 90 days in jail and/or a fine.

Currently, a magistrate may arraign and sentence on violations of the Michigan Vehicle Code, except for the code's drunk driving provisions, although a magistrate may arraign defendants and set bond with regard to drunk driving violations. The bill would delete and reenact that provision, except that a magistrate would have the authority to arraign and sentence if the maximum permissible punishment did not exceed 93 days in jail and/or a fine. The bill would also treat operating a snowmobile or off-road vehicle while impaired by, or under the influence of, alcohol or a controlled substance in the same manner as drunk driving cases.

Senate Bill 559. The Code of Criminal Procedure allows the issuance of an "appearance ticket" for a certain misdemeanor violations. "Appearance ticket" means a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or ordinance to issue it, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated

violation of a state law or local ordinance for which, except as otherwise provided in the code, the maximum permissible penalty does not exceed 90 days in jail and a fine of \$500. The bill would allow the use of appearance tickets for most misdemeanors punishable by not more than 93 days and/or a fine of any amount. However, the bill would prohibit the issuance of an appearance ticket for the following:

- An arrest for domestic assault.
- A person who was subject to a detention for a violation of a personal protection order.
- A person who was subject to a mandatory period of confinement, condition of bond, or other condition of release until that person has served the period of confinement or met the requirement of bond or other condition of release.

In addition, the bill would remove language that created an exception to the prior 90 limitation for certain misdemeanors punishable by no more than 92 days in jail.

Senate Bill 560. The bureau of criminal identification act provides that, immediately upon a person's arrest for a felony or a misdemeanor for which the maximum possible penalty exceeds 92 days' imprisonment and/or a maximum fine of \$1,000, or for a juvenile offense, the arresting law enforcement agency must take the person's fingerprints in duplicate and forward the fingerprints to the Department of State Police within 72 hours after the arrest. One set of fingerprints must be sent the central records division of the department and one set must be furnished to the director of the Federal Bureau of Investigation. The bill would create an exception to these requirements, as described below.

The act authorizes, but does not require, an arresting law enforcement agency to take one set of fingerprints of a person who is arrested for a misdemeanor punishable by up to 92 days' imprisonment and/or a maximum fine of \$1,000 and who fails to produce satisfactory evidence of identification. The fingerprints must be forwarded immediately to the Department of State Police.

Upon completion of the identification process, the department must return the fingerprints to the arresting

law enforcement agency. The act also authorizes an arresting law enforcement agency to take the fingerprints of a person arrested for any other misdemeanor, but prohibits the forwarding of those fingerprints to the Department of State Police unless the person is convicted.

The bill would permit an arresting law enforcement agency to take the fingerprints of a person arrested for a misdemeanor that was a violation of a local ordinance for which the maximum penalty exceeded 92 days' imprisonment and that substantially corresponded to a violation of state law that was a misdemeanor whose maximum term of imprisonment exceeded 92 days. The fingerprints could not be forwarded to the Department of State Police before conviction. If the person were convicted of such a misdemeanor, the law enforcement agency would have to take the person's fingerprints, if not previously taken, and forward them within 72 hours after the conviction in the same manner as provided for the fingerprints of a person arrested for a felony or a misdemeanor for which the maximum penalty exceeded 92 days' imprisonment. The law enforcement agency would have to indicate the statutory citation for the state law to which the local ordinance substantially corresponded.

HOUSE COMMITTEE ACTION:

The House Committee on Criminal Law and Corrections amended Senate Bill 556 to delete the portions of the bill relating to the immobilization of vehicles (section 904d) and to tie-bar the bill to House Bill 4648 which contains those same provisions.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, Senate Bill 556 would have an indeterminate fiscal impact. However, the Department of State has requested \$1,748,600 in a fiscal year 1998-99 supplemental appropriation and \$2,479,000 in the fiscal year 1999-2000 general government appropriation bill to implement and maintain all facets of the repeat offender legislation. In addition, the changes to the child endangerment provisions could lead to potential increased costs for incarceration of offenders who violated the child endangerment provisions. Further, the SFA reports that Senate Bill 557 would have an indeterminate fiscal impact; that Senate Bill 558 would allow magistrates to continue to arraign and sentence

certain cases, thereby resulting in administrative savings to local courts; that Senate Bill 559 would have

a minimal fiscal impact on state and local law enforcement agencies; and that Senate Bill 560 would have a minimal fiscal impact on state and local law enforcement agencies. (5-5-99)

ARGUMENTS:

For:

According to the Department of State, the changes in the bills are essentially technical in nature and intended to correct errors and inconsistencies contained in the laws as enacted last session.

POSITIONS:

The Department of State supports the bills. (5-20-99)

The Prosecuting Attorneys Association of Michigan supports the bills. (5-20-99)

Analyst: W. Flory

■ 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.