

Legislative Analysis



REVISE HIT AND RUN STATUTE

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House Bill 5842 (Substitute H-1)

Sponsor: Rep. John Stakoe

Committee: Criminal Justice

First Analysis (6-4-04)

BRIEF SUMMARY: The bill would amend the Michigan Vehicle Code to clarify that fleeing the scene of an accident in which a person was seriously injured or killed is a crime regardless of whether or not the driver knew someone had sustained serious injuries or death.

FISCAL IMPACT: To the extent that the bill resulted in more convictions under these provisions, the bill could increase state and local corrections costs.

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 any vehicle. A recent Michigan Court of Appeals case regarding a hit-and-run accident has illuminated a problem with the wording contained in these statutes.

In 1997, the defendant struck and killed a person who was standing on the shoulder of one of the state's freeways near a disabled vehicle. The defendant was subsequently charged with violating MCL 257.617 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 additionally that the accident had resulted in serious or aggravated injury or death to another person". See *People v Lang*, 250 Mich App 565; 649 NW2d 102 (2002). The prosecution responded that the "plain language of the statute" demonstrated only a need for proof of the defendant's knowledge of involvement in an accident. The *Lang* court, which found in favor of the defendant, wrote in the opinion 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. Instead, they believe that the punishment for fleeing the scene of an accident should be based on the injury to the other person or

person's, regardless of whether or not a driver knew or had reason to know the extent of the injuries. Therefore, at the request of the Oakland County Prosecutor's Office, legislation has been offered to clarify the provision of law pertaining to fleeing the scene of an accident in which a person sustained a serious injury or died.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Vehicle Code. Currently, a driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident that has resulted in the serious impairment of a body function or the death of a person is required to immediately stop at the scene of an accident and remain there until he or she fulfills the provisions of Section 619. A violation is a felony punishable by not more than five years imprisonment, a maximum fine of \$5,000, or both. If another person died 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.

House Bill 5842 would revise this provision to instead require a driver who knew or had reason to believe that he or she had been involved in an accident to stop his or her vehicle and comply with the provisions of Section 619. (The language about serious impairment or death would be deleted.) The bill would also clarify that the five-year felony would be for an accident that resulted in serious impairment of a body function and the 15-year felony would be for an accident in which another person died.

Section 619 of the code requires a driver who knew or who had reason to believe that he or she had been involved in an accident resulting in injury or death to a person or damage to any vehicle to give his or her name, address, and car registration number, along with showing his or her driver's license, to a police officer, the person who had been struck, or the occupants of the other vehicle. In addition, the driver is required to render reasonable assistance in securing medical aid or transportation of any injured persons.

The bill would revise Section 619 by eliminating the language about injury or death to a person and damage to a vehicle. Therefore, it would be a crime to leave the scene of an accident without fulfilling 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.

MCL 257.617 and 257.619

ARGUMENTS:

For:

Under the Michigan Vehicle Code, a driver who has been involved in an accident that seriously injures or kills another person is required to stay at the scene of the accident until he or she has given certain information to a police officer or someone else involved in the accident, and must help any injured person. To some, it is obvious that the intent

of the law was to hold the person at fault in an accident accountable and to ensure that injured persons received timely medical care.

However, according to a recent court case, a violation of this provision would only occur if the driver who fled the scene knew or had reason to know that an accident had occurred and that a person was seriously injured or killed as a result. It would be overly burdensome, if not impossible, for prosecutors to prove beyond a reasonable doubt that a driver who fled the scene actually knew the extent of injuries to a victim and chose to flee anyway. Therefore, some feel that this court interpretation will actually encourage drivers to flee so that they can avoid prosecution or felony penalties by claiming that they didn't know someone had been hurt. Since prompt medical care in the hour after an accident is so important to survival, an incentive must exist to discourage a driver from fleeing. Only by amending this provision of law can such an incentive be established.

The bill would clarify that if a driver knew or had reason to know that an accident had occurred, he or she would be prosecuted if he or she did not stop and comply with the information requirements of Section 619 regardless of whether or not he or she knew that a person had been killed or injured or the extent of any injuries. In short, the penalty for a hit and run would rest on the injuries sustained by the victim, not on what the driver who fled did or did not know about those injuries. In addition, the bill would not prevent, as a defense to prosecution, a claim that the circumstances of the accident were such that the driver did not realize an accident had occurred.

Against:

The bill is still problematic. 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 bumper tap) when there really is no need.

Against:

The bill would remove the requirement of knowledge of serious injury to the other parties or of damage to any vehicles from Sections 617 and 619; therefore, the penalties for failure to stop and failure to present the required information or render medical assistance would be triggered when a driver knew or had reason to know an accident had occurred. However, Sections 617a and 618 (which establish misdemeanor penalties for failure to stop when injury occurs and when damage to a vehicle occurs, respectively) would not be

amended even though both contain the same problematic language that the bill would remove from Sections 617 and 619. In fact, since both 617a and 618 also require compliance with Section 619, it could be even more confusing (meaning harder to prosecute) since knowledge of an injury or damage to a vehicle would be left in Sections 617a and 619 but removed from Section 619. Since the threshold event that triggers the hit and run penalties centers on what the driver knew or had reason to know, that portion of these three sections, as well as when information needs to be shared with the other party, need to be consistent.

POSITIONS:

The Oakland County Prosecutor's Office supports the bill. (6-2-04)

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