



**House
Legislative
Analysis
Section**

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DRIVERS ELUDING POLICE

Senate Bill 542 (Substitute H-3)
Senate Bill 543 (Substitute H-3)
First Analysis (11-10-88)

RECEIVED

JAN 18 1989

Sponsor: Senator Rudy J. Nichols
Senate Committee: Judiciary
House Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

Too frequently, a driver disobeys a police officer's order to stop and instead drives off, prompting the officer to give chase, sometimes at high speeds. The potential for harm to officer, driver, bystanders, and property is obvious. The issue has received considerable attention in recent years as accidents stemming from high speed chases in Michigan have killed or injured innocent bystanders. Many believe that stiffer penalties for fleeing and eluding a police officer would tend to deter this irresponsible and dangerous behavior.

THE CONTENT OF THE BILL:

Senate Bills 542 and 543 would amend the Michigan Vehicle Code and the Michigan Penal Code, respectively, to strengthen penalties for willfully failing to stop a vehicle at the direction of a police officer. The bills would in addition extend penalties to apply to those who flee a conservation officer. Senate Bill 542 could not take effect unless Senate Bill 543 were enacted. A more detailed description of the bills follows.

Under Senate Bill 542, the first time a driver was convicted of fleeing and eluding within a five year period, the court generally would have to impose a minimum jail term of 30 days. The court could depart from the minimum term if it found substantial and compelling reasons to do so, and if it also imposed community service as a part of the sentence. The offense would remain a misdemeanor, punishable by a maximum jail term of one year and a maximum fine of \$1,000. However, the court also could order the driver to pay the costs of prosecution.

A repeat violation within five years after a prior conviction would be a felony punishable by imprisonment for at least one year and up to four years, and by a fine of up to \$10,000, together with the costs of prosecution. The bill would make no provision for departure from the mandatory minimum term of imprisonment.

If, in attempting to flee or elude a police or conservation officer, a driver caused serious bodily injury to a person, he or she would be guilty of a felony punishable by one to four years in prison and a fine of up to \$10,000, together with the costs of prosecution. The court could depart from the minimum term of imprisonment for substantial and compelling reasons, providing it imposed community service as a part of the sentence.

As a part of the sentence for any of the violations under the bill, the court would have to order the secretary of state to suspend the driver's license for one year. The person would not be eligible to receive a restricted license during the first six months of the period of suspension.

If a term of imprisonment was served, the suspension would commence after the term was completed.

MCL 257.319 and 257.602a

Senate Bill 543 would make virtually identical amendments to complementary provisions in the penal code.

MCL 750.479a

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill could increase local revenues through the imposition of fines. (11-3-88)

ARGUMENTS:

For:

The bills would establish more meaningful penalties for drivers who disobey an officer's direction to stop, especially for those drivers who would repeat that violation. Stiff penalties for those with previous convictions for fleeing and eluding would be an especially effective deterrent, as would be the bill's presumption for a 30-day minimum jail term for first offenders.

Response: The potential deterrent value of increased penalties is questionable. After all, many people who flee presumably do so because they do not want to be caught for another offense. Someone who has robbed a bank, for instance, is not likely to stop because of the penalty for fleeing. Further, it can be argued that the certainty of punishment is a greater deterrent than its severity and, as a result, simply increasing penalties would make little difference.

Against:

The bills should prohibit law enforcement agencies from requiring officers to pursue individuals for minor offenses such as civil infractions. That way, the potential danger of a high speed chase would be balanced against the severity of the offense for which a driver is being pursued. It simply is not worth endangering lives and safety in order to stop a driver for making an illegal turn, for example. In addition, such a provision would ensure that officers were not required to satisfy ticket quotas, which some say are imposed by local law enforcement agencies and which divert the attention of officers from more serious criminal activity. Ticket quotas may also force officers to single out one individual for speeding, even in cases when all of the other drivers are going the same speed and the safest thing to do is keep up with the traffic.

Against:

The problem of injury and death resulting from high speed chases would not be addressed by merely making the act of fleeing a police officer a more severe offense. The duty of care that is expected of a police officer also may need to be examined. For instance, the caution that must be

OVER

S.B. 542 & 543 (11-10-88)

exercised by an officer engaged in a high speed chase should not be less than that exercised by an officer in firing his or her weapon. While most officers would not dream of shooting into a crowd while running after a suspected burglar, many nevertheless are willing to drive an equally dangerous vehicle through crowded streets when chasing a person who made an illegal turn or ran a stop sign.

Against:

To be effective, the bills should establish stiffer penalties for first offenders. There is a tendency among scofflaws to disregard, or at least be willing to risk, misdemeanor penalties. The problem is serious enough to ensure that others take the law seriously: a first offense should be a felony.

Against:

Typically, someone convicted under the fleeing and eluding law has his or her license suspended for one year, which is what the bills would require. However, the bills also would state that the person would not be eligible to receive a restricted license (commonly issued so that a person may drive to and from work) during the first six months of the suspension. To ensure that a court cannot issue a restricted license during the first six months, the bills should refer to the sections of law under which the court has authority to issue restricted licenses.

Against:

It would be overly harsh to require a convicted defendant to bear the costs of prosecution, and thus be penalized for exercising the right to maintain one's innocence. Penalties for a crime should be limited to things such as imprisonment, fines, and restitution. The law should not punish a person for defending him- or herself against criminal charges.

SUGGESTED AMENDMENTS:

The Department of State has suggested an amendment to Senate Bill 542 that would, in the provision prohibiting the issuance of a restricted license during the first six months of suspension, refer to the sections of the vehicle code that give the circuit court authority to modify or set aside suspensions.

POSITIONS:

The Department of State Police supports the bills. (9-27-88)

The Michigan Association of Chiefs of Police supports the bills. (10-7-88)

The Department of State would support the bills if its suggested amendment to Senate Bill 542 is adopted. (10-6-88)