

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 96 (Substitute S-1 as reported)

Sponsor: Senator Rudy J. Nichols

Committee: Judiciary

Date Completed: 11-3-89

**RATIONALE**

The Michigan Penal Code provides that a person who causes the death of another by the operation of a vehicle "at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly" is guilty of a misdemeanor, punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. Although driving under the influence of, or impaired by, liquor or drugs in itself is a criminal act, this negligent homicide provision does not differentiate between sober and intoxicated drivers. While some people feel that an intoxicated driver whose negligence causes the death of another should be subject to greater punishment than a sober driver in the same situation, prosecutors reportedly have found it difficult to meet the standards for proving manslaughter rather than negligent homicide based simply on the fact that the driver was intoxicated. Prosecuting attorneys and others believe that the law should provide a harsher penalty, equal to that for manslaughter, for intoxicated drivers who commit vehicular homicide. (See BACKGROUND for a discussion of the difference between manslaughter and negligent homicide.)

**CONTENT**

The bill would amend the Michigan Penal Code to provide that a person who caused the death of another by the operation of a vehicle while under the influence of, or visibly impaired by, liquor, a controlled substance, or a

combination of the two, or while he or she had a blood alcohol content of .10% or more, would be guilty of a felony. The felony would be punishable by up to 15 years' imprisonment, a maximum fine of \$7,500, or both.

The Code's current provision for negligent homicide with a vehicle would be retained.

MCL 750.324

**FISCAL IMPACT**

The bill would have an indeterminate impact on State and local units of government. Costs to the State would depend on the following factors:

1. The number of individuals convicted under this bill.
2. The sentence imposed by the judge.
3. The effective date of the bill.

Statistics are not available on the percentage of people convicted of vehicular homicide who were under the influence.

**BACKGROUND**

The charge of manslaughter, which derives from the common law, is the unlawful killing of another without malice, and can be voluntary or involuntary. Involuntary manslaughter occurs when a death is caused by a defendant's negligence that is gross, wanton, or willful.

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Voluntary manslaughter occurs under circumstances that fall short of willful or deliberate intent to kill, such as in the heat of passion. Under Michigan law, manslaughter carries a penalty of up to 15 years' imprisonment, a maximum fine of \$7,500, or both. Negligent homicide is the charge when a driver causes a death by the negligent operation of a vehicle. According to one source, negligent homicide laws were adopted because the manslaughter charge had proved to be ineffective in repressing negligence in such instances. Negligent homicide occurs when the offender's negligence is the direct and proximate cause of another's death, but the negligence is not gross, wanton, or willful.

## **ARGUMENTS**

### **Supporting Argument**

An intoxicated person who causes the death of another through the negligent operation of a motor vehicle should be subject to a greater penalty than that imposed on a sober driver. A person who uses drugs or alcohol and then gets behind the wheel of a car puts the lives of all other people on the road in grave danger. Driving while intoxicated is a deliberate act, and if another individual is killed as a result of a drunken driver's actions, the driver should be punished as if he or she were grossly negligent. The penalties for manslaughter, up to 15 years behind bars and a maximum fine of \$7,500, should apply.

### **Opposing Argument**

The bill is unnecessary because the illegal act of driving under the influence, in and of itself, could justify bringing a manslaughter charge. According to Black's Law Dictionary, 5th edition, manslaughter is "[t]he unlawful killing of another without malice, either expressed or implied. Such may be either voluntarily...or involuntarily, but in the commission of some unlawful act." Since it is illegal to operate a motor vehicle while under the influence of, or while impaired by, liquor or a controlled substance, a death caused during the commission of such an unlawful act could constitute manslaughter.

**Response:** It has been well established in case law that the distinguishing factor between negligent homicide and manslaughter is the level of negligence involved. To prove a charge of manslaughter beyond a reasonable doubt, it

is not sufficient simply to prove that the death occurred during the commission of another crime. The Michigan Court of Appeals has held that manslaughter requires a showing of gross, wanton, or willful negligence (see People v Maghzal (1988) 170 Mich App 340; People v Thinel (1987) 164 Mich App 717; People v Rettelle (1988) 173 Mich App 196; and People v Parney (1979) 85 Mich App 618). Since the act of driving while intoxicated may not constitute gross, wanton, or willful negligence, stronger penalties for negligent homicide committed due to intoxicated driving should be permitted.

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### **A8990/S96A**

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