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NONMOTOR CIVIL INFRACTIONS

House Bills 4068 and 4069
Sponsor: Rep. Michael E. Nye
Committee: Judiciary

Complete to 2-8-93

A SUMMARY OF HOUSE BILLS 4068 AND 4069 AS INTRODUCED 2-2-93

The bills would specify procedures for issuing and processing nonmotor civil infractions (that is, noncriminal violations of state law that are not traffic or parking violations). House Bill 4068 would amend the Revised Judicature Act (MCL 600.8313 et al.) to establish procedures paralleling those for vehicular civil infractions. House Bill 4069 would amend the Michigan Vehicle Code (MCL 257.321a and 257.904) to provide for suspension of a driver's license as a sanction in a nonmotor civil infraction case. Both bills would take effect January 1, 1994, providing both were enacted. A more detailed explanation of the bills follows.

Civil infraction bureau. With the approval of the local funding unit, the district court could establish a civil infraction bureau using court personnel to accept admissions of civil infractions and to collect civil fines and costs. A civil infraction bureau could be combined with a traffic bureau. A person would have the right to appeal from the civil infraction bureau to the district court.

Civil infraction actions. A civil infraction action would be commenced upon issuance of a citation. The plaintiff in a civil infraction action would be the state. The district court and any municipal court would have jurisdiction over civil infraction actions. A civil infraction could not be a lesser included offense of a criminal offense.

Minors. A minor would be permitted to appear in court or to admit responsibility for a civil infraction without the necessity for appointment of a guardian or next friend. The court could proceed in all respects as if the minor were an adult.

Citations--issuance. A law enforcement officer who witnessed a person committing a civil infraction could stop the person, detain the person temporarily for the purpose of issuing a citation, and complete an original and three copies of a citation. The bill states that an officer could issue a citation if personal investigation gave the officer reasonable cause to believe that the person was responsible for a civil infraction in connection with an accident. If the prosecuting attorney gave written approval, an officer could issue a citation to a person for reasonable cause based on personal investigation by the officer of a complaint by someone who witnessed the person committing a civil infraction. A complaint for a civil infraction signed by a law enforcement officer would be treated as made under oath if the violation occurred in the signing officer's presence, and the officer signed an affirmation in the complaint.

House Bills 4068 and 4069 (2-8-93)

A law enforcement officer who accepted a fee for issuing a citation would be guilty of misconduct in office and would be subject to removal from office.

Citations--form. Each citation would be in a form approved by the state court administrator, numbered consecutively, and generally consist of an original and three copies. The original would be filed with the court, the first copy would be retained by the law enforcement agency, the second copy would be issued to the alleged violator if the violation was a misdemeanor, and the third copy would be issued to the alleged violator if the violation was a civil infraction.

The citation would contain, among other things, the telephone number of the court, the time at or by which the person would have to appear, and an explanation that the defendant could do one of the following at or by the time specified for appearance: admit responsibility for the civil infraction in person, by representation, or by mail; admit responsibility "with explanation" in person, by representation, or by mail; or, deny responsibility by appearing in court for an informal or formal hearing. The citation would note that to admit responsibility "with explanation" in person or to have an informal or formal hearing, the defendant would have to apply to the court for a hearing date; a hearing date could be specified on the citation.

The citation would contain a notice in boldfaced type that failure to appear as required would lead to a default judgment against the defendant and the immediate suspension of the defendant's operator's or chauffeur's license. The requirement for timely appearance would be met by timely application for a hearing, return of the citation with an admission of responsibility with explanation, or return with an admission of responsibility and full payment of applicable fines and costs.

Uncontested citations. A defendant could admit responsibility in person, by representation, or by mail, and the court could order the defendant to pay applicable fines and costs. If a defendant admitted responsibility "with explanation", whether by mail or in person, the court would accept the admission and could impose lower fines and costs in consideration of the defendant's explanation. If an explanation was offered by representation or by mail, the court could require the defendant to provide further explanation or appear in court.

Contested citations. If a defendant wished to deny responsibility for a civil infraction, he or she could do so by appearing for a formal or informal hearing. If the hearing date was not specified on the citation, the defendant would have to contact the court to obtain a hearing date. Unless the defendant expressly requested a formal hearing, the hearing would be informal.

Informal hearings. An informal hearing could be conducted by a municipal court or district court judge or by a magistrate authorized by the judge or judges of the district; a magistrate could administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing. An informal hearing would be conducted so as to do substantial justice according to the rules of substantive law, but would not necessarily be conducted according to statutory provisions or rules of practice, procedure, pleading, or

evidence, except provisions relating to privileged communications. There would be no jury, and no verbatim record would be required. The defendant could not be represented by an attorney, and the plaintiff could not be represented by the prosecuting attorney. The defendant and plaintiff could subpoena witnesses. If the judge or magistrate determined by a preponderance of the evidence that the defendant was responsible for a civil infraction, he or she would order the defendant to pay a fine and costs. Otherwise, a judgment would be entered for the defendant, but the defendant would not be entitled to costs of the action.

The plaintiff or defendant could appeal an adverse judgment. An appeal from a municipal judge would be a trial in the circuit court. An appeal from a decision of a district judge would be a formal hearing by different judge of the district. An appeal from a district court magistrate would be a formal hearing by a judge of the district.

Formal hearings. A formal hearing would be conducted only by a municipal court or district court judge. The defendant could be represented by an attorney, but would not be entitled to counsel appointed at public expense. The prosecutor would appear in court, and would be responsible for subpoenaing each witness for the plaintiff. The defendant also could subpoena witnesses. As with informal hearings, there would be no jury trial. If the judge determined by a preponderance of the evidence that the defendant was responsible for a civil infraction, he or she could order the defendant to pay a fine and costs. Otherwise, a judgment would be entered for the defendant, but the defendant would not be entitled to costs of the action.

Failure to appear. If the defendant failed to appear as directed by the citation or at a scheduled appearance or hearing, the court would enter a default judgment against the defendant. If the citing officer failed to appear at a scheduled informal hearing, or if the prosecutor failed to appear at a scheduled formal hearing, the court would enter a judgment for the defendant, but the defendant would not be entitled to costs.

Fines and costs. Each district of the district court and each municipal court would establish a schedule of fines and costs to be imposed for civil infractions that occur within the district or city. Any such schedule would be prominently posted and readily available for public inspection. A schedule would not have to include all violations that are designated by law as civil infractions. Costs ordered by a court could include all expenses, direct and indirect, to which the defendant had been put in connection with the civil infraction; however, any costs ordered would have to be between \$5 and \$100. Generally, any fine or costs would be payable immediately upon entry of a judgment; however, a judge or magistrate could extend the payment period or authorize installment payments. A magistrate could order fines and costs only to the extent expressly authorized by the chief or only judge of the district. Costs in an action in district court would be distributed as otherwise provided by the Revised Judicature Act. Costs in an action in a municipal court would be paid to the county.

Civil contempt. If a defendant defaulted on payment, the court could require the defendant to show cause why the default should not be treated as civil contempt; the court could issue a summons, an order to show cause, or a bench warrant of arrest for the defendant's appearance. In the case of a corporation or association, individuals authorized

to make the disbursement would be subject to civil contempt for failure to pay the fine or costs. Unless the defendant was able to show that the default was not attributable to an intentional refusal to obey the court or to a failure to make a good faith effort to obtain the funds required for payment, the court would find that the default constituted civil contempt. Upon finding civil contempt, the court could order the defendant committed until all or a specified part of the civil fine, costs, or both was paid; however, the period of incarceration could not exceed one day for each \$10 of fine and costs.

License suspension. If a defendant failed to answer a citation or notice to appear in court, or failed to comply with an order or judgment of the court issued under the bill, the defendant's operator's or chauffeur's license would be suspended as provided by House Bill 4069. Under House Bill 4069, suspension would occur only after the court had notified the person by mail of the need to either appear in court within seven days or comply with the court order within 14 days; if the person failed to meet the applicable deadline, the court would order the secretary of state to suspend the license and the secretary of state would immediately do so and notify the person by first-class mail.

Libraries. Civil fines would be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for criminal fines imposed for violation of a penal law. This provision would be expressly intended to maintain a source of revenue for public libraries that previously received fines for misdemeanors that are now designated as civil infractions.

Criminal penalties. A law enforcement officer who knowingly made a materially false statement in a citation would be guilty of perjury, punishable by imprisonment for up to 15 years; he or she would in addition be in contempt of court. A defendant who failed to comply with an order or judgment issued under the bill would be guilty of a misdemeanor.