



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

OUIL CAUSING SERIOUS INJURY

House Bill 4586 with committee
amendments
First Analysis (10-7-93)

Sponsor: Rep. John Llewellyn
Committee: Judiciary

THE APPARENT PROBLEM:

The Michigan Vehicle Code provides special felony penalties (up to five years in prison and/or a fine of between \$1,000 and \$5,000) for drunk driving that causes a long-term incapacitating injury to another. "Long-term incapacitating injury" is at present defined as an injury that has caused a comatose state, quadriplegic state, hemiplegic state, or paraplegic state that is likely to continue for one year or more.

The definition has been problematic for prosecutions. Obviously, there are many very serious injuries that may befall a drunk driving victim that do not fall within the relatively narrow statutory definition. Loss of a limb, loss of reproductive function, loss of eyesight, and major organ damage all are outside the definition, and thus the drunk driver must be prosecuted for a less serious offense and punished with lower penalties.

The solution, many believe, is to revise or eliminate the definition of "long-term incapacitating injury" so that a broader range of injuries may be addressed by the law.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Vehicle Code to delete the definition of long-term incapacitating injury from the provision establishing special felony penalties (up to five years in prison and/or a fine of \$1,000 to \$5,000) for drunk drivers who cause long-term incapacitating injuries to others. Certain elements of the offense would be retained, however, so that under the bill, a drunk driver would be subject to the penalties if he or she caused a "physically manifested" long-term incapacitating injury (other than death) that was "likely to continue for one year or more." (Drunk driving that causes a death is punishable under a separate provision of law that makes the offense a 15-year felony carrying a possible fine of between \$2,500 and \$10,000.)

FISCAL IMPLICATIONS:

There is no fiscal information at present. (10-5-93)

ARGUMENTS:

For:

The bill would make it possible for a drunk driver whose irresponsibility caused serious and life-altering injury to be punished with stiff felony penalties, without regard to whether the victim's injury met the current narrow definition of "long-term incapacitating injury." The meaning and refinement of that term would instead be left to juries, judges, and common sense.

Response:

Problems with the current definition may point to problems with the underlying provision, which was created as part of the drunk driving reforms of 1991. By punishing not the drunk driving, but the happenstance of whether the drunk driving caused an injury, the provision (and its companion provision that punishes causing a death) contradicts basic premises of criminal law: that one's state of mind is pertinent, and that punishment should be dependant on what one meant to do. Further, perhaps more than other criminal laws, drunk driving laws are meant to deter; their main object is to prevent people from drinking and driving. For this purpose, special felony penalties for causing an injury or death may be of little benefit; obviously, no one who is about to drink and drive does so with any belief that he or she might kill or injure another.

Against:

The bill would foster confusion over the meaning of "long-term incapacitating injury." Without definitional guidance, prosecutors may be tempted to treat relatively minor injuries as incapacitating, and defense attorneys may routinely challenge whether injuries could justifiably be called incapacitating. The confusion could lead to two things: an increase in pleas down from the offense,

as the threat of stiff penalties and lengthy court debate prompted both defense and prosecution to avoid proceeding under this provision of law; and, an increase in appeals to the court of appeals, as defense attorneys continued to challenge whether the facts of a given case met the concept of long-term incapacitating injury. If the current statutory definition of "long-term incapacitating injury" is too narrow, it should be revised, not abolished.

Response:

It would not necessarily be bad if the threat of prosecution under this provision prompted an otherwise recalcitrant offender to plead guilty to a lesser offense. It could serve the interests of justice for various penalties to be made available without the necessity for a costly and time-consuming trial. Further, whether a given injury was "incapacitating" is something that should be left to the trier of fact (that is, the jury, or the judge in a bench trial). For statute to attempt to resolve this matter would be misguided.

Against:

Many might think that the bill does not go far enough. Retaining the one-year standard for long-term incapacitating injury means another element of proof for the prosecution. The result might be to exclude some injuries and offenses that warranted prosecution under the special felony provision.

Response:

The one-year standard is needed to safeguard against the provision being applied when incapacitation was during a brief recuperative period. It helps to ensure that the special provision applies in situations where injuries were sufficiently serious to warrant the stiff felony penalties.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (10-6-93)

Mothers Against Drunk Driving supports the concept of the bill, but believes that the term "long-term incapacitating injury" could be further defined. (10-6-93)