



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 378 (as reported with amendments)
 Senate Bill 379 (Substitute S-2 as reported)
 Sponsor: Senator William Van Regenmorter
 Committee: Judiciary

Date Completed: 10-30-95

RATIONALE

Under the Michigan Penal Code and the Michigan Vehicle Code, it is a misdemeanor for the driver of a motor vehicle willfully to fail to obey a police or conservation officer who, acting in the lawful performance of his or her duty, signals visually or audibly by hand, voice, emergency light, or siren directing the driver to stop the vehicle. The misdemeanor is punishable by imprisonment for not less than 30 days or more than one year, a maximum fine of \$1,000, and the costs of prosecution. The court may depart from the minimum sentence, if it finds substantial and compelling reasons and imposes a community service requirement. The offense is a felony if the driver has a prior conviction of fleeing and eluding within the previous five years or if the driver, while attempting to flee or elude, causes serious bodily injury to a person. The felony is punishable by imprisonment for not less than one year or more than four years, a maximum fine of \$10,000, and the costs of prosecution. The court may depart from the minimum sentence for causing bodily injury, but not for a previous offense, if it finds substantial and compelling reasons and imposes a community service requirement. Some people believe that, since fleeing and eluding is an inherently dangerous crime both to the public and to police officers, the penalties for that offense, particularly for the misdemeanor violation, are too lenient.

In addition, although law enforcement officers are sworn to pursue and apprehend those who break the law, some law enforcement agencies reportedly are adopting so-called "no-pursuit" policies in response to large liability awards resulting from claims by persons injured as a result of the actions of those who flee from police. It is widely believed in the law enforcement community

that, while action needs to be taken to avoid injury to innocent parties, no-pursuit policies simply are unacceptable. Some people believe that a model policy should be developed to regulate emergency vehicle operations, including police chases, and that government agencies that adopt such a policy should be shielded from excessive liability awards when personal injury or property damage results from the negligent operation of an emergency vehicle by a person certified under the model policy.

CONTENT

Senate Bills 378 and 379 (S-2) would amend the Michigan Penal Code and the Revised Judicature Act (RJA), respectively, to replace the current misdemeanor and felony penalties for fleeing and eluding a police or conservation officer with four degrees of the offense, each of which would be a felony, and to limit the noneconomic damages recoverable against a governmental agency for bodily injury or property damage that resulted from the negligent operation of an emergency vehicle, unless the injury or damage resulted from the agency's gross negligence.

Senate Bill 378 is tie-barred to House Bill 4534, which would make similar fleeing and eluding amendments to the Michigan Vehicle Code. Senate Bill 379 (S-2) is tie-barred to Senate Bill 378 and House Bill 4534; House Bill 4535, which would add fleeing and eluding to the list of crimes subject to forfeiture proceedings under the RJA; and House Bill 4536, which would create the "Model Emergency Vehicle Operation Policy Act". The bills would take effect on June 1, 1996.

Senate Bill 378

The bill specifies the circumstances that would constitute each degree of fleeing and eluding, and the criminal penalties and license sanctions that would apply to each offense.

Violations and Criminal Penalties

The bill would delete the current penalty provisions for fleeing and eluding a police or conservation officer and, instead, specifies that the offense would be fourth-degree fleeing and eluding, punishable by up to two years' imprisonment, a maximum fine of \$500, or both. A violation would be third-degree fleeing and eluding, punishable by up to five years' imprisonment, a maximum fine of \$1,000, or both, if one or more of the following circumstances applied:

- The violation resulted in a collision or accident.
- A portion of the violation occurred in an area in which the speed limit was 35 miles an hour or less, whether that limit was posted or imposed as a matter of law.
- The driver had a prior conviction for a violation or attempted violation of fourth-degree fleeing and eluding or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct.

A violation would be second-degree fleeing and eluding, punishable by up to 10 years' imprisonment, a maximum fine of \$5,000, or both, if one or more of the following circumstances applied:

- The violation resulted in "serious injury" to a person.
- The driver had one or more prior convictions for a violation or attempted violation of first-, second-, or third-degree fleeing and eluding or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct.
- The driver had any combination of two or more prior convictions for a violation or attempted violation of fourth-degree fleeing and eluding or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct.

A violation would be first-degree fleeing and eluding, punishable by up to 15 years' imprisonment, a maximum fine of \$10,000, or both, if it resulted in the death of another individual.

"Serious injury" would mean a physical injury that was not necessarily permanent, but that constituted serious bodily disfigurement or that seriously impaired the functioning of a body organ or limb. Serious injury would include, but would not be limited to, one or more of the following:

- Loss of a limb or of use of a limb.
- Loss of a hand, foot, finger, or thumb or of its use.
- Loss of an eye or ear or of its use.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasted longer than three days.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or hematoma.

The bill specifies that a conviction of first-, second-, third-, or fourth-degree fleeing and eluding would not prohibit a conviction and sentence under any other applicable law for conduct arising out of the same incident, except under a section of the Michigan Vehicle Code that is identical to the Penal Code's current misdemeanor and felony provisions for fleeing and eluding (MCL 257.602a).

License Sanctions

Currently, as part of the sentence for a misdemeanor or felony conviction of fleeing and eluding, the court must order the Secretary of State to suspend the defendant's driver's license for one year. The person is not eligible to receive a restricted license during the first six months of that suspension and, if a term of imprisonment is imposed, the suspension must begin after completion of the term of imprisonment. Under the bill, these suspension provisions would apply to a person convicted of third- or fourth-degree fleeing and eluding. As part of a sentence imposed for first- or second-degree fleeing and eluding, the bill would require the court to order the Secretary of State to revoke the defendant's driver's license.

Senate Bill 379 (S-2)

The bill would do all of the following:

- Limit the noneconomic damages recoverable against a governmental agency for bodily injury or property damage that resulted from the negligent operation of an

“emergency vehicle”, unless the injury or damage resulted from the agency's gross negligence.

- Provide that a person who sustained bodily injury or property damage arising from his or her violation of fleeing and eluding laws could not recover damages for the injury or property damage.
- List issues that would be questions of law that could be decided upon by the court.

“Emergency vehicle” would mean a motor vehicle owned or operated by a law enforcement agency while the vehicle was being used to provide emergency services for the law enforcement agency.

Liability Limitation

The total amount of damages for noneconomic loss recoverable by each plaintiff against a governmental agency for bodily injury or property damage resulting from the negligent operation of an emergency vehicle could not exceed \$1 million. The State Treasurer would have to adjust the limitation at the end of each calendar year to reflect the cumulative change in the consumer price index (CPI). In awarding damages, the trier of fact would have to itemize the amount of damages awarded for economic loss and the amount of damages awarded for noneconomic loss. The bill specifies that noneconomic loss would not include the value of homemaking services or the care of dependent family members.

The limit on noneconomic damages would apply if each of the following conditions were met:

- At the time of the occurrence that resulted in the injury or damage, the agency had in effect an emergency vehicle operation policy pursuant to the proposed "Model Emergency Vehicle Operation Policy Act".
- At the time of the occurrence, the emergency vehicle was engaged in an emergency operation.
- The operator of the emergency vehicle was certified by the agency as meeting the minimum requirements established for emergency vehicle operators under the proposed model Act, and that certification was in effect at the time of the occurrence that resulted in the bodily injury or property damage.
- During the occurrence, the operator was in substantial compliance with the emergency vehicle operation policy adopted by the governmental agency.

A jury could not be advised by the court or by counsel of the limitation on noneconomic damages, and the court would have to reduce an award of damages in excess of \$1 million.

The limitation on noneconomic damages would not apply if the trier of fact determined that the bodily injury or property damage resulted from a governmental agency's gross negligence. "Gross negligence" would be defined as it is in the governmental immunity Act, i.e., "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results".

Fleeing and Eluding

An individual who sustained bodily injury or property damage arising from an emergency operation as a result of his or her violation of either the Michigan Penal Code's or Michigan Vehicle Code's prohibition against fleeing and eluding a police or conservation officer could not recover monetary damages from any person. ("Person" would include an individual, association, firm, partnership, corporation, unit of government, governmental agency, or any other legal entity.)

Questions of Law

The bill specifies that all of the following issues would be questions of law and could be decided by the court upon the motion of a party at any time before entry of judgment:

- Whether, at the time of the occurrence that resulted in the bodily injury or property damage, the agency had in effect an emergency vehicle operation policy certified pursuant to the proposed model Act.
- Whether, at the time of the occurrence, the emergency vehicle was engaged in emergency operation.
- Whether, at the time of the occurrence, the emergency vehicle operator was certified by the governmental agency as meeting minimum requirements established for emergency vehicle operators under the proposed model Act.
- Whether, at the time of the occurrence, the emergency vehicle operator was in substantial compliance with the emergency vehicle operation policy adopted by the governmental agency.
- Whether the bodily injury or property damage resulted from a governmental agency's gross negligence.
- Whether the bodily injury or property damage sustained by a person who violated

fleeing and eluding laws arose from his or her violation.

Governmental Agency

For purposes of the bill, "governmental agency" would be defined as it is in the governmental immunity Act, and would include an employee or agent of a governmental agency, acting within the scope of his or her employment or agency.

In an action against two or more governmental agencies, the total amount of damages for noneconomic loss recoverable by each plaintiff against all of the agencies could not exceed the total amount permitted under the bill.

MCL 750.479a (S.B. 378)
600.6304 et al. (S.B. 379)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Senate Bill 378, along with House Bill 4534, is necessary to ensure effective and efficient enforcement of Michigan's fleeing and eluding laws. Too many drivers attempt to flee when signaled by police officers to stop their vehicle. Many of these drivers already are driving dangerously when signaled to pull over, and most drive dangerously in their attempt to evade officers of the law. There is a great need to change the attitude that it is okay to flee from the police. The current penalties for this offense are too weak and it should be stressed, through stricter penalties, that running from a law enforcement officer who signals a driver to stop is dangerous and a serious violation of the law.

Supporting Argument

Senate Bill 379 (S-2), together with House Bill 4536, which proposes the Model Emergency Vehicle Operation Policy Act, would ensure that police officers could perform their duties in an effective, efficient, and safe manner without being urged to forego the pursuit of criminals because of the threat of exposure to liability. By limiting the damages that could be awarded for injuries resulting from an emergency vehicle operator's negligence when the employing governmental agency had a certified emergency vehicle operation policy, the operator was certified under the proposed model Act, and the operator was in substantial compliance with the agency's adopted

policy, Senate Bill 379 (S-2) would protect agencies from excessive damages arising out of police officers' simply performing their duties. In addition, by prohibiting an individual from recovering monetary damages from any person for injuries or property damage suffered by that individual if he or she were in violation of fleeing and eluding laws, the bill would ensure that a fleeing driver could not hold a governmental agency or its insurer financially responsible for his or her own criminal behavior.

Response: Senate Bill 379 (S-2) would shield from full responsibility and accountability, those who were negligently involved in a police chase. It would protect perpetrators of wrongful--though not criminal--acts. The possibility of high damages as a result of a person's negligent actions serves as a deterrent to those actions. The bill would reduce that deterrent effect.

Opposing Argument

While Senate Bill 379 (S-2) could be beneficial to a few municipalities by excusing them from responsibility for sizable monetary awards when their law enforcement employees acted negligently, those who suffered as a result of that negligence would be further victimized because of the limit on the damages that could be collected. Caps on noneconomic damages arbitrarily and unfairly punish those victims who are most severely afflicted by the wrongs done to them. For example, limiting the size of these awards is harmful to many women and children who are victims of negligence because their losses cannot be easily valued by their economic worth. A woman who is not employed outside the home will suffer little wage loss, but her noneconomic injuries can be particularly devastating to herself and her family. Caps with no exceptions also are inequitable with respect to the age of the victim. A seriously injured child with an otherwise normal life expectancy might never have a chance at an ordinary adult life. To cap that child's noneconomic damages at the same level as someone who was 80 years old simply would be unjust. Further, placing a limit on the damages that could be collected in a wrongful death case would merely send a signal that the victim's life had little worth to his or her family or to society.

Response: The bills would not affect the size of quantifiable damages. These economic damages could be assessed at whatever worth was determined in the particular case. The costs of homemaking and child care, in the case of an unemployed parent, could be included, and the bill specifies that those would not be noneconomic losses. The otherwise expected lifetime wages of an injured child or deceased victim also could be

tabulated and included in the economic damages awarded. In addition, insurers have claimed that they need a defined cap to make an accurate assessment of their risks.

Opposing Argument

By setting a standard of negligence for awards and allowing large awards only when there was gross negligence on the part of a certified emergency vehicle operator, Senate Bill 379 (S-2) in effect would undermine the purpose of having a policy for emergency vehicle operations. If the driver of an emergency vehicle violated the policy and that violation resulted in injury or property damage, the victim still would have to prove that the driver was grossly negligent and not merely in violation of his or her employer's policy. If a model policy were to be adopted, the standard for a governmental agency's liability for damages should be whether the emergency vehicle operator complied with that policy. There is no question that a model policy and better training for emergency vehicle operators are needed, but a police officer in pursuit of a suspect, for instance, should always have reservations. This, in effect, acts as a check against the officer's irresponsibility. Shielding that officer's employer from liability for damages caused by him or her would remove that check. Further, setting a standard of gross negligence for an award to exceed the cap on noneconomic damages would be basically meaningless because that standard is almost impossible to meet. According to some, to prove gross negligence, a victim essentially would have to show that an emergency vehicle operator acted with intent to injure.

Response: The bill's cap on damages for noneconomic loss would apply only if specific conditions were met. Those conditions include the emergency vehicle operator's substantial compliance with the emergency vehicle operation policy adopted by the employing governmental agency.

Opposing Argument

Before setting any cap on noneconomic damages based on a governmental agency's adoption of a model policy and a driver's certification under that policy, the policy itself should be developed. Compliance with standards should not be encouraged when those standards have yet to be developed. The State should know, not guess, what the standards of conduct will entail before adopting incentives to use them.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 378

The bill would have an indeterminate, yet likely minimal, fiscal impact on the Department of Corrections (DOC). Potential cost increases in the bill would be the result of the increased penalties associated with fourth-, third-, second-, and first-degree fleeing and eluding.

According to data provided by the DOC, in 1992 and 1993 there were a total of 44 convictions for violations of the existing fleeing and eluding statute, 20 receiving a prison sentence. Only five of the 20 prison commitments, however, were admitted to the DOC under the fleeing and eluding statute, possibly indicating that convictions involving other (likely more serious) violations may have been admitted to the Department under the more severe statute. (In practice, individuals are admitted under only one statute, even if they are convicted of multiple offenses.) For example, a violation for fleeing and eluding involving injury or death may have been counted as a commitment under negligent homicide, rather than fleeing and eluding. The increased costs of this bill, then, would result from the increased lengths of sentences imposed over current practices. Given the relatively few annual convictions, even if sentences were increased, on average by three years, total costs would increase at most by approximately \$225,000.

Senate Bill 379 (S-2)

The bill would result in indeterminate savings to governmental agencies to the extent that future damages exceeded limits contained in the bill.

The Michigan Municipal League Liability Pool reports that over the past six years there were 11 payouts involving pursuit cases totaling \$4,004,000.

The Michigan Municipal Risk Management Authority reports that from July 1988 through June 1993, 17 deaths and nine serious injuries arising from 22 police chases resulted in \$17.8 million in payments to date. These two organizations do not include the City of Detroit, Wayne County, Oakland County, or Macomb County.

Fiscal Analyst: M. Hansen (S.B. 378)
B. Bowerman (S.B. 379)

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.