



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4534 (as passed by the House)
House Bill 4535 (Substitute H-1 as passed by the House)
House Bill 4536 (Substitute H-2 as passed by the House)
Sponsor: Representative Terry London (House Bill 4534)
Representative Kirk Profit (House Bills 4535 and 4536)
House Committee: Judiciary and Civil Rights
Senate Committee: Judiciary

Date Completed: 11-26-96

CONTENT

House Bills 4534 and 4535 (H-1) would amend the Michigan Vehicle 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 include first-, second-, and third-degree fleeing and eluding in the list of offenses subject to civil forfeiture proceedings for a criminal violation. House Bill 4536 (H-2) would create the "Model Emergency Vehicle Operation Policy Act".

House Bill 4534 is tie-barred to Senate Bill 378, which would make similar fleeing and eluding amendments to the Michigan Penal Code. House Bill 4535 (H-1) is tie-barred to House Bill 4534 and Senate Bill 378. House Bills 4534 and 4535 (H-1) both include an effective date of October 1, 1996. House Bill 4536 (H-2) would be repealed five years after its effective date.

House Bill 4534

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

Currently, failing to stop at the direction of a police or conservation officer is a misdemeanor punishable by imprisonment for not less than 30 days or more than one year and a maximum fine of \$1,000 plus the costs of prosecution. A person

who commits a repeat offense within five years, or causes serious bodily injury, is guilty of a felony punishable by imprisonment for at least one year but not more than four years, a fine of up to \$10,000, and the costs of prosecution. The court may depart from the minimum prison term for either a misdemeanor or a felony if there are substantial and compelling reasons and if the court imposes community service as part of the sentence.

The bill would delete the current penalty provisions for fleeing and eluding a police or conservation officer. Except as provided below, 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 constituted permanent serious bodily disfigurement or that seriously and irreparably 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 Penal Code that is identical to the Vehicle Code's current misdemeanor and felony provisions for fleeing and eluding (MCL 750.479a, which Senate Bill 378 would amend).

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.

The bill would include first- and second-degree fleeing and eluding in the Vehicle Code's list of offenses for which the Secretary of State may not issue and must revoke a driver's license. Third- and fourth-degree fleeing and eluding would be included in the Vehicle Code's list of offenses for which the Secretary of State must suspend a person's license for not less than 90 days or more than two years.

Emergency Vehicle Operation

The Vehicle Code specifies conditions under which certain emergency vehicle drivers are afforded special privileges regarding the lawful operation of a vehicle (e.g., proceeding past a red light or stop sign). The bill specifies that the driver of an authorized emergency vehicle could exercise those privileges when pursuing or apprehending a person who had violated or was violating the law or was charged with or suspected of violating the law.

House Bill 4535 (H-1)

The RJA provides for the seizure and forfeiture of property that is the proceeds, substituted proceeds, or instrumentality of specified crimes. The bill would include first-, second-, and third-degree fleeing and eluding in the list of crimes subject to forfeiture proceedings.

House Bill 4536 (H-2)

Commission

The bill would create the "Model Emergency Vehicle Operation Policy Commission" within the

Department of Management and Budget (DMB). The Commission would consist of the Attorney General or his or her designee, the Director of the Department of State Police or the Director's designee, and one person appointed as a member and one appointed as an alternate member from each of the following groups, selected from a list of individuals provided by each group:

- The Michigan Association of Chiefs of Police.
- The Michigan Sheriffs' Association.
- The Michigan Association of Counties.
- The Prosecuting Attorneys Association of Michigan.
- The Michigan Municipal League.
- The Michigan Townships Association.
- An organization of police officers who regularly perform law enforcement duties upon urban streets or roads.
- An organization of police officers who regularly perform law enforcement duties upon suburban streets or roads.
- An organization of police officers who regularly perform law enforcement duties upon rural streets or roads.
- An organization of police officers who regularly perform law enforcement duties upon limited access roadways.

Each entity that provided a list would have to state specifically which individuals were being nominated for appointment as a member and which were nominated as an alternate. The Governor could appoint as a member only a person nominated as a member and, could appoint as an alternate only a person nominated as an alternate. If a member were absent from a Commission meeting, the individual serving as the alternate for that member would have to act as a Commission member at that meeting.

Commission members would serve two-year staggered terms, with three initial members appointed for a term of four years, three appointed for three years, and four appointed for two years. Members could serve until a successor was appointed. A vacancy would have to be filled in the same manner as the original appointment. Members would have to be appointed within 90 days after the bill's effective date.

Within 90 days after the appointment and confirmation of all members, the Commission would have to adopt bylaws for its operation. At a minimum, the bylaws would have to include voting procedures and minimum requirements for

attendance at meetings. The Commission would have to hold a regular annual meeting at a place and on a date fixed by the Commission. Special meetings could be called by the Commission's chairperson or by not less than seven members on at least three business days' actual notice.

A majority of the Commission members appointed and serving would constitute a quorum. Final action by the Commission would have to be by affirmative vote of a majority of the members appointed and serving. Members could not vote by proxy.

Commission members would serve without compensation. Members' expenses incurred in the performance of official duties would have to be reimbursed as provided by law for State employees.

The Law Enforcement Council, created by the Michigan Law Enforcement Officers Training Council Act, would have to assist the Commission in performing its duties. The DMB would have to provide facilities for Commission meetings and necessary office and clerical assistance.

The bill specifies that a writing prepared, owned, used, in the possession of, or retained by the Commission in the performance of an official function would be exempt from disclosure under the Freedom of Information Act.

Model Policy

Within one year after its first meeting, the Commission would have to develop a model emergency vehicle operation policy governing "emergency operation" of "emergency vehicles" by a governmental agency. "Emergency operation" would mean the operation of an emergency vehicle in a manner described in or authorized by the Michigan Vehicle Code's provisions concerning emergency operation of an authorized emergency vehicle. (Those provision of the Vehicle Code allow for such things as exceeding the speed limit and proceeding through a red light or stop sign.) "Emergency vehicle" would mean a motor vehicle owned or operated by a law enforcement agency, or a motor vehicle owned or operated by a volunteer employee or paid employee of a law enforcement agency, while the vehicle was being used to provide emergency services for that entity.

A model emergency vehicle operation policy developed under the bill would have to do all of the following:

- Define the model policy's coverage.
- Recognize that emergency operation may involve the use of potentially deadly force.
- Identify the circumstances warranting initiation, maintenance, or termination of an emergency operation, based on 1) the risks to the physical safety of employees and the public, including innocent bystanders, of initiating or maintaining an emergency operation, and 2) for emergency operations involving the pursuit of a person charged with or suspected of a violation of law, the danger to society of not effecting immediate apprehension, including consideration of the seriousness and immediacy of the threat posed by a pursued person and the adequacy of alternative apprehension methods.
- Identify the procedures for a governmental agency's initiation, maintenance, and termination of an emergency operation and include all of the following: 1) authorization for an employee, other than an employee actively engaged in the emergency operation to prohibit, modify, or terminate the emergency operation; 2) specific rules governing emergency operations that cross jurisdictional boundaries; and, 3) specific rules governing permissible emergency operation methods and tactics.
- Establish guidelines requiring a governmental agency to monitor internally the effects of its emergency operation policy.
- Establish minimum requirements for emergency vehicle operators to be certified by a governmental agency and provide guidelines for training employees to comply with an adopted emergency vehicle operation policy.
- Establish the criteria by which a governmental agency could certify the operator of an emergency service vehicle as meeting the minimum requirements for emergency vehicle operators.
- Establish that a governmental agency's certification of an emergency vehicle operator was effective for no more than two years.
- Include any other provision the Commission considered necessary for a model emergency vehicle operation policy.

The Commission would have to report the model policy developed under the bill to the Senate and House of Representatives and to each law enforcement agency in Michigan. The Commission would have to meet at least once

annually to review the emergency vehicle operation policy.

Policy Adoption

A governmental agency could adopt all or a portion of the model emergency vehicle operation policy developed under the bill, or could develop and adopt its own emergency vehicle operation policy and apply to the Commission for certification of that adopted policy or policy portion. Upon receiving and reviewing a certification application, the Commission would have to do all of the following:

- Certify a policy developed by the Commission under the bill that was adopted in total and met the standards established by the Commission for emergency operations.
- If the policy developed by the Commission were adopted in part, provide certification of that part only after determining both that the governmental agency did not engage in an emergency operation that exceeded the scope of the adopted part and that the adopted part met the standards established by the Commission for the type of emergency operations in which the governmental agency engaged.
- If the governmental agency developed and adopted its own emergency vehicle operation policy, provide certification of that policy only after determining that the policy complied with the bill's requirements for a model policy and met the standards established for emergency operations by the Commission.
- Deny certification of an adopted policy or policy part that did not comply with the bill's requirements for a model policy or meet the standards established for emergency operations by the Commission, and provide the applicant with written notice specifying the basis of the denial.

If the Commission did not comply with the bill's certification provisions within 180 days after receiving an application for certification, the emergency vehicle operation policy or policy portion that was the subject of the application would be presumed to be certified. The presumption could be rebutted by evidence establishing that the policy or policy portion did not comply with the bill's requirements for a model policy or meet the standards established for emergency operations by the Commission.

If a governmental agency discontinued all or a portion of an emergency vehicle operation policy certified under the bill, the agency immediately would have to inform the Commission in writing of the date on which the certified policy was discontinued.

MCL 257.303 et al. (H.B. 4534)
600.4701 (H.B. 4535)

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

There are no data presently available on the number of convictions for the current misdemeanor offense of fleeing and eluding. To the extent that the new felony provisions increased prison commitments, costs could increase, although the new felony also would allow for probation and/or jail.

According to annual commitment data collected by the DOC for the current felony provisions of fleeing and eluding under both the Vehicle Code and the Penal Code (which require either a prior conviction or serious injury), there were a total of 37 convictions in 1995, 20 (54%) receiving a prison sentence. The average minimum sentence for these convictions was 1.7 years. Given that the proposed third- and second-degree fleeing and eluding are somewhat similar to the current felony provisions, only with longer maximum sentence options, and that judges currently are not sentencing near the existing four-year maximum, it is anticipated that the new provisions would have only a minimal effect on sentence lengths, and even less on the number of increased commitments. The proposed first-degree fleeing and eluding provision, with a proposed 15-year maximum penalty for causing death while fleeing and eluding, could increase average sentence lengths for those convicted under this provision. However, it is also possible that currently, those offenders who cause a death while fleeing and eluding, are admitted to the Department under a separate statute, such as manslaughter with a motor vehicle, which also carries a maximum penalty of 15 years.

Law Enforcement: The bills would have an indeterminate fiscal impact on State and local law enforcement agencies. The bills would require State reimbursement of expenses for the proposed Model Emergency Vehicle Operation Policy Commission, an amount that most likely would not exceed \$10,000 per year. The Law Enforcement Officers Training Council would be required to assist the Commission in the performance of its duties. The Department of Management and Budget would be required to provide facilities for Commission meetings and necessary office and clerical support. In assisting the Commission with its mandate of establishing emergency vehicle operation policies, guidelines, and certification, the Council would incur administrative costs. It is not known at this time whether these costs could be covered by existing Council resources or whether an additional FTE would be required. If an FTE were determined to be necessary for the implementation of the bills' provisions, it could cost the State between \$50,000 and \$100,000, depending upon the level of expertise needed for the position.

Local law enforcement agencies could incur additional administrative and training costs should they opt to participate, in whole or in part, with the voluntary option to become certified under the proposed State Model Emergency Vehicle Operation Policy guidelines. Local law enforcement agencies could be able to obtain property from forfeiture provisions under amendments in House Bill 4535 (H-1) that would add the crimes of first-, second-, and third-degree fleeing and eluding to the list of crimes for which prosecutors may seek forfeiture of property.

Fiscal Analyst: M. Hansen
B. Baker

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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.