

DRUNK DRIVING: VEHICLE IMMOBILIZATION

House Bill 4648 (Substitute H-1) First Analysis (5-13-99)

Sponsor: Rep. Randy Richardville
**Committee: Criminal Law and
Corrections**

THE APPARENT PROBLEM:

Michigan's drunk driving laws, which are contained in the vehicle code, have been amended repeatedly in the past decade in an attempt to take drunk drivers off the roads. Extensive revisions to the law made in 1991, among other things, expanded the application of drunk driving laws, stiffened penalties for repeat offenders, created special penalties for drunk driving that caused death or serious injury, required attempted offenses to be treated as if completed, and required speedy disposition of drunk driving cases. The drunk driving laws were further amended in 1994, and yet again in 1996, to correct a number of problems that came to light after enactment of the 1991 revisions (that took effect in 1992). One of the 1994 amendments closed a loophole that people reportedly had been using in attempts to avoid the stiff repeat-offender penalties for convictions under the 1992 revisions. The latest changes to take effect were contained in Public Acts 490 and 491 of 1996, which became effective on April 1, 1997. Among other things, the 1996 laws permit a court to order that a vehicle be forfeited or returned to the lessor if the vehicle's owner or lessee is convicted of operating under the influence of alcohol and/or a controlled substance (OUIL), operating while visibly impaired by alcohol and/or a controlled substance (OWI) within seven years of one prior conviction or within 10 years of two or more prior convictions, or OUIL or OWI that caused the death or serious impairment of a body function of another person. In the 1997-98 session of the legislature further changes were enacted. These changes will take effect October 1, 1999 and will revise the criminal penalties, license sanctions, and vehicle sanctions for drunk driving offenses in a further attempt to deter repeat offenders.

Although the most recent changes have yet to take effect, habitual drunk driving apparently has remained a problem in spite of earlier laws that stiffened criminal penalties and license sanctions for drunk drivers. A particularly serious risk is posed by those

individuals who continue to drive after their license has been suspended or revoked. According to the secretary of state, a study released by the Century Council entitled, "Combating Hardcore Drunk Driving", reported the following: Drivers with bodily alcohol content over 0.15 percent comprise only 1 percent of all drivers on weekend nights, but are involved in nearly 50 percent of all fatal crashes during these periods, and other research shows that approximately 30 percent of all drinking drivers arrested for OWI have already been caught in the past by the police and sanctioned by judicial and administrative agencies. The secretary of state also has reported that a University of Michigan Transportation Research Institute study " . . . revealed that approximately 30 percent of the arrested drunk drivers were driving on a suspended or revoked license".

When the 1996 amendments were enacted, it was argued that vehicle forfeiture would help to take away the tool with which drunk drivers commit their crime, and could deter repeat offenses. Apparently, however, not many vehicles are being forfeited under the new laws. As a result, the most recent changes were enacted to subject individuals who repeatedly drive drunk or without a license a range of sanctions, including vehicle immobilization and restricted plates, leading up to mandatory forfeiture for some repeat offenders.

Despite these attempts to get dangerous drivers off the roads, stories continue to appear in newspapers of people being killed or maimed by drunk drivers or by drivers (often convicted of drunk driving) who continue to drive despite having their licenses suspended or revoked. As a result, legislation has, again, been introduced to address the problem of how to prevent drunk drivers -- and drivers with suspended or revoked licenses -- from continuing to drive and, in some cases, to kill and maim others.

THE CONTENT OF THE BILL:

The bill would amend the recently enacted provisions of the Michigan Vehicle Code regarding the immobilization of vehicles. The bill would increase the periods of immobilization for drunk driving and define prior conviction for use in determining what level of penalty should be applied. The bill would define "prior conviction", with respect to the code's vehicle immobilization provisions, as a conviction for impaired driving, driving under the influence, causing a death or serious impairment of a bodily function due to drunk driving, drinking and driving by a minor, drunk driving with a passenger under 16 present in the vehicle (child endangerment), and drunk driving of a commercial vehicle, as well as negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes. [Note: This definition would also specifically include convictions of OUIL or OWI under previous versions of law.] However, if two or more such convictions arose out of the same incident, only one could be used in determining the number of prior convictions. Furthermore, only one violation or attempted violation of the provision against drinking and driving by a minor or a similar local ordinance of law from another state could be counted as a prior conviction.

Under the bill, a court could order a vehicle to be immobilized for not more than 180 days for a first conviction of OUIL, OWI, or child endangerment or for a conviction of a local ordinance that substantially corresponded to OUIL or OWI with no "prior convictions."

For a conviction of causing a death or serious impairment of a bodily function due to drunk driving with no prior convictions, the court would be required to order a vehicle to be immobilized for not more than 180 days.

For a conviction of OUIL, OWI, OUIL or OWI causing death or serious injury, or child endangerment within seven years after a "prior conviction," the court would be required to order the vehicle immobilized for no less than 90 days and no more than 180 days.

For a conviction of OUIL, OWI, OUIL or OWI causing death or serious injury, or child endangerment within ten years after two or more "prior convictions," the court would be required to order the vehicle immobilized for no less than one year and no more than three years.

The bill also would amend the provisions that would provide for immobilization of a person's vehicle for

driving while his or her license was suspended, revoked or denied (DWLS). The bill would clarify that immobilization would be for convictions and civil infractions that occurred during the period of suspension, revocation, or denial. The bill would also specify references to the provisions regarding suspension, revocation, and denial as they are contained in Senate Bill 556. Another level of immobilization for DWLS would be added requiring a court to order immobilization of a person's vehicle for up to 180 days if a person were convicted for causing a death or serious impairment of a bodily function due to driving without a license or while a license was suspended or revoked and the driver had not more than one license suspension.

The bill would also specify that vehicle immobilization could be ordered even if the defendant were the co-owner, or co-lessee of the vehicle that was operated during an applicable violation, or if a co-owner, or a co-lessee knowingly permitted the vehicle to be operated in violation of drunk driving or license suspension provisions, regardless of whether a conviction resulted. (Currently, the code prohibits a court from ordering vehicle immobilization if the defendant is not the owner or lessee of the vehicle, unless the owner or lessee knowingly permitted the vehicle's use in violation of drunk driving or license suspension provisions.)

Finally, the bill would also remove language that granted an exception to the immobilization provisions for driving without a license for an individual who has no currently effective suspension or denial for failure to appear or to comply with a court order or has one such suspension or denial but has never violated a condition of it, and who has no other suspensions, revocations, or denials under the vehicle code.

The bill is tie-barred to Senate Bill 556, which would also amend the Michigan Vehicle Code to make revisions to drunk driving and driving without a license provisions enacted in 1998 (Public Acts 340-359 of 1998). [For more information regarding Senate Bill 556 see the Senate Fiscal Agency's Committee Summary of Senate Bills 556-560, dated 5-5-99.] The bill would take effect on October 1, 1999, the same date as Public Acts 340-359 of 1998.

MCL 257.904d

BACKGROUND INFORMATION:

Drunk driving. Alcohol-related offenses are classified in section 625 of the vehicle code as follows:

** OUIL -- operating a vehicle while under the influence of alcohol or drugs. A person may be charged with this offense if he or she either (a) is under the influence of "intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance"; or (b) has an alcohol content of at least .10 grams per 100 milliliters of blood, per 210 liters of breath, or 67 milliliters of urine [section 625(1)];

** "Knowingly" letting someone drive OUIL [625(2)];

** OWI -- operating while visibly impaired by alcohol or drugs [625(3)];

** "Under 21 BAC" -- a minor driving with any body alcohol content (specified in the code as either (a) an alcohol content of from .02 to .07 grams per 100 milliliters of blood, per 210 liters of breath, or 67 milliliters of urine, or (b) any presence of alcohol within the minor's body "resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony") [625(6)];

** "CDL-.04 BAC" -- operating a commercial vehicle with an alcohol content of .04 to .07 grams per 100 milliliters of blood, per 210 liters of breath, or 67 milliliters of urine [625m].

In addition, the vehicle code has special provisions that make it a felony to cause death or serious injury ("serious impairment of a body function") while operating under the influence (OUIL) or while visibly impaired (OWI) [Sections 625(4) and 625(5), respectively].

Section 625 of the vehicle code also specifies the crimes (and their penalties) that violations of the code's drunk driving provisions constitute. With the exception of third and subsequent OUIL violations -- and the OUIL/OWI death or injury violations -- violations of the vehicle code's alcohol-related provisions are misdemeanors, with various

combinations of possible or mandatory fines, community service, jail or prison (for third and subsequent OUIL convictions) time, and vehicle forfeiture. (In addition to any of these sanctions, section 625(11) allows the court also to order offenders to pay the costs of their prosecutions under the Code of Criminal Procedure.) A prosecuting attorney also may seek an enhanced sentence for specified violations, based on the violator's having one or more prior convictions [Section 625(14)].

The 1998 amendments to the vehicle code will add provisions regarding the immobilization of vehicles. When the law takes effect in October, a court will be able to order immobilization of a person's vehicle for up to 180 days for OUIL, OWI, OUIL/OWI causing death or serious impairment of a body function, or child endangerment (a new misdemeanor involving drunk driving while a person under the age of 16 is occupying the vehicle). For a second violation in any combination arising out of separate incidents, the court must order immobilization for at least 24 days but not more than 180 days. For a third or subsequent violation, the court must order immobilization for at least six months but not more than three years.

For a violation involving driving without a license, or permitting another person to drive without a license, the court may order immobilization for up to 180 days if the offender has one prior suspension, revocation, or denial within the past seven years. The court must order immobilization for at least 90 but not more than 180 days if the offender has any combination of three or more prior suspensions, revocations, or denials for this offense within the past seven years. For any combination of four or more prior suspensions, revocations, or denials within the past seven years, the court must order immobilization for at least one year but not more than three years.

A mandatory immobilization order may not be suspended. A court may not order immobilization if the defendant is not the owner or lessee of the vehicle operated during the violation, unless the owner or lessee knowingly permitted the vehicle to be operated by someone who was intoxicated or did not have a license, regardless of whether a conviction resulted.

The immobilization provisions will not apply to any of the following violations or a violation of a substantially corresponding local ordinance:

-- A suspension, revocation, or denial based on a violation of the Support and Parenting Time Enforcement Act.

-- For driving without a license, an individual who has no currently effective suspension or denial for failure to appear or to comply with a court order or has one such suspension or denial but has never violated a condition of it, and who has no other suspensions, revocations, or denials under the vehicle code.

-- A vehicle registered in another state or a rental vehicle.

-- A violation of Chapter II (registration and certification requirements), a violation of Chapter V (vehicle insurance requirements), a violation for failure to change address, a parking violation, a bad check violation, an equipment violation, or a pedestrian, passenger, or bicycle violation (other than certain violations of the Liquor Control Code).

A court must order a vehicle immobilized by the use of any available technology that locks the ignition, wheels, or steering of the vehicle, or otherwise prevents any person or the defendant from operating the vehicle. The court may order an immobilized vehicle stored at a location and in a manner considered appropriate by the court, and may order the convicted person to pay the cost of immobilization and storage. Any local ordinance regarding storage or removal of a vehicle that conflicts with court order of immobilization would be preempted.

The defendant must give to the court the vehicle identification number and registration plate number of the vehicle involved in the violation. A defendant who is prohibited from operating a motor vehicle by vehicle immobilization may not purchase, lease, or otherwise obtain a motor vehicle during the immobilization period.

Removing, tampering with, or bypassing, or attempting to remove, tamper with, or bypass, a device that a person knows or has reason to know has been installed on a vehicle by court order for immobilization, would be a prohibited. Also prohibited would be operating or attempting to operate a vehicle that he or she knows or has reason to know has been ordered immobilized. A person who violates

these prohibitions will be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$100.

Immobilized vehicles also can't be sold or turned over to family members without a court order. An immobilized vehicle could be sold during the period of immobilization, but not to members of the defendant's family ("to a person exempt from paying a use tax") without court approval. Similarly, the law would allow the return of a leased vehicle to a lessor, but would require a court order to transfer a vehicle subject to immobilization, or a temporary license plate, or to assign the title or an interest in such a vehicle, to a family member ("a person exempt from paying a use tax").

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The problem of chronically drunk drivers, or drivers who continue to drive even when their licenses have been suspended because of poor driving performance (often because of alcohol), continues to result in the deaths of innocent people despite repeated efforts in recent years to address this issue legislatively. It has become increasingly apparent that the only truly effective way to deal with chronically alcohol-impaired drivers or drivers who repeatedly drive drunk even if they have suspended or revoked licenses is to take them -- or their vehicles -- off the road. The practice of continually imposing criminal penalties after these people kill or maim innocent bystanders has not brought about acceptable decreases in the numbers of deaths and serious injuries attributable to these behaviors.

This bill, by enhancing the recently enacted provisions allowing and in many cases requiring immobilization (such as with a "boot" in the owner's driveway) of the vehicles of repeat offenders, will provide a very effective means of getting and keeping habitual drunk drivers off the road. The bill will strengthen provisions enacted in 1998 by expanding the amount of time that a repeat drunk driver will be forced to go without his or her car. Those who had a prior conviction within the last seven years for drunk driving offenses as defined in the bill would be unable to use their cars for at least 90 days and if they had been convicted more than twice in the last 10 years,

the car would be immobilized for at least one year. This is a mechanism that will hopefully deter the dangerous behavior of repeat drunk drivers rather than just punishing it once it has caused irreparable harm to others. However, even if the bill's provisions do not work as a deterrent, the length of the immobilization required by the bill will serve to keep these people off the road and thereby protect the majority of citizens in this state who do not drink and drive.

According to the Department of State, approximately five percent -- or 350,000 -- of Michigan's seven million drivers have their licenses suspended or revoked every year, with a reported 81,933 traffic convictions of people driving with suspended licenses. Although the majority of these suspensions and revocations are for failing to appear in court (FAC) or to pay tickets ("failure to comply with judgment," or FCJ), nevertheless an estimated 135,000 suspensions or revocations were related to traffic safety (that is, driver performance). These habitually unsafe drivers simply should not be on the roads, posing potential threats to the residents of the state. The bills would not only increase penalties for driving with a suspended license (DWLS), they also would allow or require the immobilization and forfeiture of the vehicles driven by these dangerous drivers.

Against:

The bill essentially would amend a bi-partisan, bi-cameral package of legislation enacted last session after thorough debate and a great deal of compromise. The changes made would dishonor last session's compromise agreement by changing agreed upon provisions, before those laws have even taken effect. Even though the periods of immobilization contained in the law that will take effect in October might be lower than some of the parties might have wanted originally, the periods were agreed to as part of compromise. Further, it seems a bit premature, in May of 1999, to conclude that the periods of immobilization that will take effect in October of 1999 are not sufficient to be effective.

One reason the periods of immobilization suggested in the bill were opposed last session was that they could be overly harsh in those cases where the drunk driver is co-owner or co-lessee of the family car. In such cases, as a result of one member of the family's drunk driving, the spouse and children of the family could also be prevented from using the family car for up to

three years. Given how dependent our society is upon the automobile, being prevented from using a car for even a period of days, much less weeks or months, can

being very troublesome. Simple, yet necessary, day to day activities like going to the store for groceries, going to work, or going to the doctor or hospital, become difficult. Mass transportation is not particularly convenient, and walking or riding a bicycle is not a reasonable option for many people. While there is no reason not to immobilize the car of a drunk driver when it affects only the drunk driver, it seems unfair to punish that drunk driver's family members (particularly for the lengths of time proposed in the bill) who have committed no crime by restricting their use of the family car. Punishment should fit the crime, and as of yet, it is not a crime to be related to a drunk driver.

Finally, it is, as yet, unknown whether periods of vehicle immobilization will have a significant impact in deterring repeat drunk drivers. If a drunk driver has his or her car immobilized, he or she may simply borrow a car, with or without explicit permission, or rent a car for a day rate. It should be remembered that at one point it was thought that the current license sanctions would keep drunk drivers off the road. Perhaps it would be wise to see if the shorter periods in the law that will take effect in October will have a positive impact before they are increased. This would be particularly prudent given the potential impact these immobilization could have upon the families of the drunk drivers.

Response:

Even though the families of drunk drivers might be negatively affected by this legislation (and, for that matter, by the legislation that will already take effect in October), the positive impact of potentially keeping these repeat drunk drivers off the road far outweighs the risk that it might have a negative impact on some of the families of drunk drivers. Drunk driving is a crime that threatens every person in this state who drives or otherwise uses the roads of this state (or for that matter, the sidewalks). The fewer drunk drivers there are on the road, the safer our roads will be. The cost of inconveniencing the families of some drunk drivers is not an excessive price to pay to protect lives of other citizens.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (5-12-99)

The Fraternal Order of Police supports the bill. (5-11-99)

The Department of State supports the bill. (5-11-99)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.