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**SFA**



**BILL ANALYSIS**

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Senate Bills 319 and 320 (as introduced 2-17-99)  
Sponsor: Senator William Van Regenmorter  
Committee: Judiciary

Date Completed: 3-9-99

## CONTENT

**Senate Bill 319 would amend the Revised Judicature Act (RJA) to limit damages recoverable for injury or property damage resulting from the operation of a law enforcement vehicle; and Senate Bill 320 would create the "Law Enforcement Pursuit and Response Policy Act" to provide for the establishment of a model law enforcement vehicle pursuit and response policy.** The bills are tie-barred.

Under the bills, "law enforcement pursuit and response" would mean the operation of a law enforcement vehicle in a manner described in or authorized by Section 603 or 632 of the Michigan Vehicle Code; those sections provide that the driver of an emergency vehicle may be exempt from certain traffic regulations when responding to an emergency call or engaging in police pursuit (including adhering to speed limits and stopping at red lights or stop signs), but only while using an audible signal (such as a siren) and red or blue flashing lights, unless the nature of the mission requires travel without giving warning to suspected law violators. "Law enforcement vehicle" would mean a motor vehicle owned or operated by a law enforcement agency.

### Senate Bill 319

#### Overview

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 a law enforcement 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 during 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.

#### 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 a law enforcement 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. In awarding damages, the trier of fact (the jury or, in the absence of a jury, the judge) would have to itemize the amount of damages awarded for economic loss and the amount of damages awarded for noneconomic loss.

The bill would define "noneconomic loss" as it is in Section 1483 of the RJA, i.e., damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other 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 a law enforcement vehicle operation policy certified under the "Law Enforcement Pursuit and Response Policy Act" proposed by Senate Bill 320.
- At the time of the occurrence, the law enforcement vehicle was engaged in a law enforcement pursuit and response.
- The operator of the law enforcement vehicle was certified by the agency as meeting the minimum requirements established for law enforcement vehicle operators under the proposed policy 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 law enforcement pursuit and response 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 or the revised liability limit as adjusted by the Treasurer.

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 a law enforcement pursuit and response while he or she was violating 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 for that injury or property damage. ("Person" would include an individual, association, 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 a law enforcement pursuit and response policy certified pursuant to the proposed policy Act.
- Whether, at the time of the occurrence, the law enforcement vehicle was engaged in a law enforcement pursuit and response.
- Whether, at the time of the occurrence, the law enforcement vehicle operator was certified by the governmental agency as meeting minimum requirements established for law enforcement vehicle operators under the proposed policy Act.
- Whether, at the time of the occurrence, the law enforcement vehicle operator was in substantial compliance with the law enforcement pursuit and response 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 (the State, political subdivisions, and municipal corporations), 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.

### **Senate Bill 320**

#### Overview

The bill would create the "Law Enforcement Pursuit and Response Policy Act" to do all of the following:

- Establish a "Law Enforcement Vehicle Pursuit and Response Policy Advisory Panel" within the Commission on Law Enforcement Standards created by the Commission on Law Enforcement Standards Act.
- Require the Commission to develop, with the advice of the advisory panel, a model law enforcement vehicle pursuit and response policy to govern emergency operation of law enforcement vehicles.
- Authorize a governmental agency to adopt all or a portion of the model policy or to develop and adopt its own policy.

The bill would take effect on January 1, 2000, and would be repealed five years after its effective date.

#### Advisory Panel

The proposed advisory panel would consist of the members of the Commission on Law Enforcement Standards, and at least one member and one alternate member from each of the following groups:

- 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 on urban streets or roads.
- An organization of police officers who regularly perform law enforcement duties on suburban streets or roads.
- An organization of police officers who regularly perform law enforcement duties on rural streets or roads.
- An organization of police officers who regularly perform law enforcement duties on limited access highways.

The members and alternates would have to be selected by the Commission from a list of individuals provided by each group. Each entity that provided a list would have to state which persons were nominated as members and which were nominated as alternate members.

Members would serve two-year staggered terms, or until a successor was selected. A vacancy on the advisory panel would have to be filled in the same manner as the original selection. If a member were absent from an advisory panel meeting, the person serving as the alternate member for that person would have to act as a member at that meeting.

Members of the advisory panel would have to be selected by the Commission within 90 days after the bill's effective date and would have to hold their first meeting within 90 days after appointment.

The advisory panel would have to hold a regular annual meeting at a place and on a date fixed by the panel. Special meetings could be called by the chairperson or not less than seven advisory panel members, on at least three business days' actual notice. A majority of the advisory panel selected and serving would constitute a quorum. Final action by the advisory panel could only be by affirmative vote of a majority of members appointed and serving. A member could not vote by proxy.

Members of the advisory panel would serve without compensation. Expenses incurred in the performance of official duties would have to be reimbursed as provided by law for State employees. The advisory panel would have to assist the Commission in performing its duties. The Commission would have to provide facilities for meetings of the advisory panel and necessary office and clerical assistance.

#### Model Policy

Within one year after the advisory panel's first meeting, the Commission, with the advice of the panel, would have to develop a model law enforcement vehicle pursuit and response policy governing emergency operation of law enforcement vehicles by a governmental agency. The model policy would have to do all of the following:

- Define the model policy's coverage.
- Recognize that pursuit or response had the potential for risk or harm.
- Identify the circumstances that would warrant initiation, maintenance, or termination of pursuit or response, based on: the risks to the physical safety of employees and the public, including innocent bystanders, of initiating or maintaining pursuit or response; and for pursuits involving the chase 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 procedures for a law enforcement agency's initiation, maintenance, and termination of law enforcement pursuit and response, and include: authorization for an employee other than one actively engaged in the pursuit or response to prohibit, modify, or terminate the pursuit or response; specific rules governing law enforcement pursuits and responses that crossed jurisdictional boundaries; and specific rules governing permissible law enforcement pursuit and response methods and tactics.
- Establish guidelines requiring a law enforcement agency to monitor internally the effects of its law enforcement pursuit and response policy.
- Establish minimum requirements for law enforcement vehicle operators and provide guidelines for training employees to comply with an adopted pursuit and response policy.
- Include any other provision the advisory panel considered necessary for a model pursuit and response policy.

The Commission would have to report the model policy developed by the advisory panel to the Senate and the House of Representatives and to each law enforcement agency in Michigan.

The advisory panel would have to meet at least once annually to review the model pursuit and response policy developed under the bill.

#### Adoption of Policy

A governmental agency could adopt all or part of the model policy developed under the bill, or could develop and adopt its own law enforcement vehicle pursuit and response policy. If a governmental agency adopted the model policy, it would have to notify the Commission. If a governmental agency adopted either part of the model policy and part of its own policy or an entire policy of its own, it could send that policy to the Commission for review and comment. The Commission would have to make its review and comments in writing, including any recommendations for revision and improvement, and return those comments to the governmental agency as soon as possible.

If a governmental agency discontinued all or a portion of a pursuit and response policy adopted under the bill, the agency immediately would have to inform the Commission, in writing, of the date on which the policy was discontinued. The Commission would have to keep a record of what type of policy

each agency adopted.

MCL 600.6304 et al. (S.B. 319)

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

### **Senate Bill 319**

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 a six-year period there were 40 payouts involving pursuit cases totaling \$4.9 million in noneconomic damages due to negligent operation of a law enforcement vehicle. That liability pool includes approximately 800 members.

The Michigan Municipal Risk Management Authority reports that from July 1988 through October 1997, 22 deaths and 24 serious injuries arising from 39 police chases resulted in \$22.8 million in payments as of October 1997. The Authority includes approximately 280 members that have emergency vehicles.

These two organizations do not include the City of Detroit, Wayne County, Oakland County, or Macomb County.

### **Senate Bill 320**

The bill would have an indeterminate fiscal impact on State and local law enforcement agencies. The bill would require State reimbursement of expenses for the proposed Model Law Enforcement Vehicle Pursuit and Response Advisory Panel, an amount that most likely would not exceed \$10,000 per year. The Commission on Law Enforcement Standards would be required to assist the panel and to provide facilities for panel meetings as well as necessary office and clerical support. In assisting the panel with its mandate of establishing emergency vehicle operation policies and guidelines, the Commission would incur administrative costs which could be covered by existing Commission resources.

Local law enforcement agencies could incur additional administrative and training costs should they opt to use, in whole or in part, the policy developed by the panel or to develop their own policy.

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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.