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BILL ANALYSIS

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Senate Bill 1241 (as introduced 5-2-06)
House Bill 6009 (Substitute H-1 as passed by the House)
Sponsor: Senator Jason E. Allen (S.B. 1241)
Representative Kevin Elsenheimer (H.B. 6009)
Senate Committee: Judiciary
House Committee: Judiciary (H.B. 6009)

Date Completed: 9-19-06

CONTENT

Senate Bill 1241 and House Bill 6009 (H-1) would amend the Michigan Vehicle Code to do all of the following:

-- Apply felony penalties for a third drunk driving offense regardless of when the prior offenses occurred, rather than for a violation that occurs within 10 years of two or more prior convictions.
-- Require the Secretary of State to maintain certain drunk driving records for the life of the driver.
-- Expand the methods by which a prior conviction may be established at sentencing.

Senate Bill 1241 is tie-barred to House Bill 6009. House Bill 6009 (H-1) would take effect on January 1, 2007, and would be known as "Heidi's law".

Senate Bill 1241

Under the Code, the Secretary of State may destroy certain records after maintaining them for a specified number of years. Records of convictions for certain violations, for which points are provided on a driver's record, may be destroyed after being maintained on file for 10 years. These include various drunk driving and other offenses.

Under the bill, if a person were convicted of any of the following, the record of the conviction would have to be maintained for the life of the person:

-- Operation of a vehicle by a person who is under the influence of alcohol and/or a controlled substance (MCL 257.625(1)(a)).
-- Operation of a vehicle by a person who has an alcohol content of .08 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine (MCL 257.625(1)(b)).
-- Operation of a vehicle by a person who has in his or her body any amount of a Schedule 1 controlled substance or cocaine (MCL 257.625(8)).

House Bill 6009 (H-1)

The Vehicle Code prohibits all of the following:

-- Operation of a vehicle by a person who is under the influence of alcohol and/or a controlled substance.
-- Operation of a vehicle by a person who has an alcohol content of .08 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
-- Operation of a vehicle by a person who has in his or her body any amount of a Schedule 1 controlled substance or cocaine.
-- Operation of a vehicle by a person whose ability to operate the vehicle is visibly impaired due to the consumption of alcohol and/or a controlled substance.

If a violation of any of those prohibitions occurs within 10 years of two or more prior convictions, the violation is a felony and the offender must be sentenced to pay a fine of not less than $500 or more than $5,000, and to either imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years or probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. At least 48 hours of the county jail imprisonment must be served consecutively.

Under the bill, those penalties would apply to a third or subsequent violation regardless of the number of years that had elapsed since any prior conviction.

Under the Code, a prior conviction must be established at sentencing by an abstract of conviction; a copy of the defendant's driving record; and/or an admission by the defendant. The bill also would allow a prior conviction to be established by any of the following:

-- A copy of a judgment of conviction.
-- A transcript of a prior trial or a plea-taking or sentencing proceeding.
-- Information contained in a presentence report.

("Prior conviction" means a conviction for any of the following, whether under a law of this State, a local ordinance substantially corresponding to a law of this State, or a substantially corresponding law of another state:

-- Any violation of the State's general drunk driving law, except for authorizing or permitting a vehicle to be operated by a person who is under the influence of or impaired by alcohol and/or a controlled substance or who has an unlawful alcohol content (MCL 257.625, except (2)).
-- Operation of a commercial vehicle by a person who has an alcohol content of .04 gram or more but less than .08 gram, per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine (MCL 257.625m).
-- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

If two or more convictions described above are for violations arising out of the same transaction, only one conviction may be used to determine whether the person has a prior conviction.)

MCL 257.208 (S.B. 1241)
257.625 (H.B. 6009)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 1241

The bill could have a minimal fiscal impact associated with any additional costs that the Secretary of State could incur from having to keep certain drunk driving records on file for the life of the driver. Currently, records may be deleted after 10 years.

The bill would have no fiscal impact on local government.

House Bill 6009 (H-1)

The bill would have an indeterminate fiscal impact on State and local government because it is unknown whether any intoxicated driving behavior modifications as a result of the bill would outweigh the creation of a larger group of offenders eligible for a felony conviction. To the extent that the bill would increase felony convictions for drunk driving, the State would incur increased costs of felony probation at an annual average cost of $2,000, as well as the cost of incarceration in a State facility at an average annual cost of $30,000. To the extent that the bill would increase sentences to jail, local governments would incur increased costs of incarceration in local facilities, which vary by county. To the extent that the bill would result in an increase in offenders eligible to use treatment options and jail diversion programs through the felony drunk driver jail reduction and community treatment program in the Office of Community Corrections (OCC), the funding provided by the OCC to the Community Corrections Advisory Boards would provide for a lower proportion of these offenders. The boards are reimbursed by the State for this program at a rate of $43.50 per diem, with a total of $2,097,400 appropriated for the program for fiscal year 2006-07. Additional penal fine revenue would benefit public libraries.

There are no data to indicate how many offenders would be convicted of third-offense operating while intoxicated or operating while visibly impaired if the 10-year time period for prior convictions were removed. According to the September 2006 OCC Biannual Report, between April 2005 and March 2006, there were 2,790 offenders convicted of third-offense operating under the influence. Of these offenders, 721 were sentenced to prison, 286 were sentenced to jail, 1,618 were sentenced to a combination of jail and probation, 163 were sentenced to probation, and two received other types of sentences. According to the 2004 Department of Corrections Statistical Report, in 2004, 75 offenders were convicted of operating while visibly impaired; of these offenders, five went to prison, 65 received a sentence of probation, and five received a jail sentence. In 2005, 49,435 offenders were convicted of misdemeanor operating under the influence and operating while visibly impaired under either State statute or local ordinance. In addition, according to the Michigan State Police Uniform Crime Report, in 2004, 48,439 individuals were arrested for driving under the influence of alcohol or narcotics in Michigan. Offenders arrested in 2004 may not necessarily have had their case heard in court during the same calendar year.

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