

Legislative Analysis



PLACING DANGEROUS OBJECTS IN ROADWAY

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House Bill 4205 with House committee amendment

House Bill 4206 as introduced

Sponsor: Rep. Tom Pearce

Committee: Transportation

First Analysis (5-8-09)

BRIEF SUMMARY: The bills would prohibit a person from (1) intentionally placing an item in or across a roadway, if the person knows or should know that the item is likely to come into contact with a moving vehicle or another person riding in or upon a moving vehicle; and (2) intentionally placing a dangerous item in or across a roadway. Violations would be misdemeanors or felonies depending on the severity of the offense.

FISCAL IMPACT: The bills would provide for new misdemeanor and felony offenses; the fiscal impact on state and local correctional systems would depend on how they affected numbers of convictions and severity of sentences.

THE APPARENT PROBLEM:

In early July 2005, three teenage boys from Wyoming, Michigan, stretched industrial strength plastic wrap across a roadway, fastening it to two sign posts. A 48-year-old motorcyclist (now a retired police officer) hit the barrier at 1:20 am on a Saturday morning. He was thrown from his Harley Davidson cycle, suffering a fractured rib and internal bruises. He reported that the plastic wrap looked like fog.

The Kent County prosecutor searched for an appropriate crime with which to charge the perpetrators, only to conclude that none existed in the Penal Code. Consequently, the prosecutor charged the boys with assault, acknowledging that the crime could be successfully challenged since those charged would likely argue their prank was undertaken without intent to injure. (Despite these circumstances, the prosecution proceeded unchallenged by the boys' parents; the boys were found guilty, and placed on probation under Holmes Youthful Trainee status, which erases their criminal record upon the successful completion of the probationary period.)

Legislation has been introduced to prohibit the dangerous obstruction of a roadway, to make a violation of that prohibition a crime, and to set penalties and establish sentencing guidelines for the crime.

THE CONTENT OF THE BILL:

House Bill 4205 would amend the Michigan Penal Code (MCL 750.394b) to prohibit a person from (1) intentionally placing an item in or across a roadway, if the person knows or should know that the item is likely to come into contact with a moving vehicle or another person riding in or upon a moving vehicle; and (2) intentionally placing a dangerous item in or across a roadway.

A person who violated either or both of these prohibitions would be guilty of a crime as follows:

- A misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100, or both.
- If the violation causes property damage, a misdemeanor punishable by imprisonment for not more than one year or a fine of up to \$500, or both.
- If the violation causes injury to any person (other than serious impairment or death), a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$2,000.
- If the violation causes serious impairment, a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$5,000.
- If the violation causes death, a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$10,000.
- The bill specifies that a criminal penalty could be imposed in addition to any penalty for any other criminal offenses arising from the same conduct, or for any contempt of court arising from the same conduct.

The bill provides an exception for those who obstruct a roadway while engaging in law enforcement or traffic control activities

The bill defines "serious impairment" to mean serious impairment of a body function as that term is defined in Section 58c of the Michigan Vehicle Code (MCL 257.58c). [There, "serious impairment of a body function" includes, but is not limited to, one or more of the following: (a) loss of a limb or loss of use of a limb; (b) loss of a foot, hand, finger, or thumb, or loss of use of a foot, hand, finger, or thumb; (c) loss of an eye or ear, or loss of use of an eye or ear; (d) loss or substantial impairment of a bodily function; (e) serious visible disfigurement; (f) a comatose state that lasts for more than three days; (g) measurable brain or mental impairment; (h) a skull fracture or other serious bone fracture; (i) a subdural hemorrhage or subdural hematoma; and (j) loss of an organ.]

House Bill 4206 would make complementary amendments to sentencing guidelines provisions in the Code of Criminal Procedure (MCL 777.16s) to create three new felony crimes against persons as follows:

- A class F crime causing injury having a maximum punishment of four years in prison.
- A class D crime causing serious impairment having a maximum sentence of 10 years in prison.
- A class C crime causing death" having a maximum sentence of 15 years in prison.

House Bill 4206 is tie-barred to House Bill 4205, meaning that it could take effect only if House Bill 4205 also were enacted into law.

FISCAL INFORMATION:

The bills would provide for new misdemeanor and felony offenses; the fiscal impact on state and local correctional systems would depend on how they affected numbers of convictions and severity of sentences. Generally, felons are a state responsibility (except when serving a sentence in the county jail), and misdemeanants are a local responsibility. To the extent that misdemeanor convictions increased, local costs of jail incarceration or misdemeanor probation supervision, both of which vary by jurisdiction, could increase.

To the extent that more offenders were sentenced to prison or to felony probation supervision, the state could incur increased costs. The average appropriated cost of incarceration in a state prison is about \$33,000 per prisoner annually, a figure that includes allocated portions of various fixed administrative and operational costs. Costs of parole and probation supervision average about \$2,100 per supervised offender per year. To the extent that more offenders were sentenced to jail, affected counties could experience increased costs; jail costs vary by county.

To the extent that penal fine revenues increased, the bill could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

These bills establish specific criminal penalties for dangerously obstructing a roadway. Once enacted into law, they will allow prosecutors to bring charges against those who perpetrate this crime without fearing their prosecution will be challenged because the crime charged is inappropriately vague.

Response:

Some observe that this crime—charged as a felony when severe injuries are sustained—has very harsh penalties if the crime begins as a childhood prank where the offenders do not likely intend to seriously harm anyone.

Rebuttal:

The expectation is that law enforcement and prosecutors will use their discretion sensibly in applying the law.

POSITIONS:

The Kent County Prosecutor testified in support of the bills. (5-7-09)

The Michigan State Police indicated support for the bills. (5-7-09)

The Michigan Municipal League indicated support for the bills. (5-7-09)

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■ 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.