

Legislative Analysis



INCREASE PENALTIES FOR TRAFFIC VIOLATIONS IN SCHOOL BUS ZONE

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House Bill 4167 as introduced
House Bill 4168 with committee amendment
Sponsor: Rep. Tom McMillin
Committee: Judiciary

First Analysis (2-28-11)

BRIEF SUMMARY: House Bill 4168 would add moving violations that occur in a school bus zone to the list of offenses for which enhanced penalties apply, and House Bill 4167 would add the felony penalties to the sentencing guidelines.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local government as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

In 2009, two Oakland County students were struck by a vehicle and badly injured while crossing the street to board a school bus. The driver of the vehicle failed to stop even though the bus was flashing its red lights. Fortunately, both children recovered.

Passing a school bus that has stopped to load or unload children is against the law. Drivers must wait until the flashing red lights are turned off and the extended stop arm is retracted before proceeding. Under the Michigan Vehicle Code, the penalty for ignoring a stopped school bus is a civil infraction and three points on the driver's license. Depending on the local jurisdiction, the civil fine for the infraction is about \$250. The penalty is the same even if the violation results in injury or death to another.

Many drivers ignore the law and by so doing, endanger the lives and safety of children getting on or off a school bus. According to the 2009-2010 National School Bus Loading & Unloading Survey, published by the Kansas State Board of Education, at least 457 children have been killed in the last 40 years at bus stops by vehicles passing a school bus. Many more were injured.

In light of the danger to children posed by drivers ignoring the law to stop when a school bus is loading or unloading students, some believe that the penalties should be increased to mirror those for violations occurring in a road construction zone. Legislation addressing these concerns has been offered.

THE CONTENT OF THE BILLS:

The bills would provide enhanced penalties for certain traffic offenses that occurred in a school bus zone. The bills would take effect July 1, 2011.

House Bill 4168

Currently, a person responsible for a moving violation in a work zone, at an emergency scene, or in a school zone during the period beginning 30 minutes before school in the morning and through 30 minutes after school is subject to a fine that is double the fine for a similar moving violation occurring elsewhere. House Bill 4168 would amend the Michigan Vehicle Code (MCL 257.601b) to also apply the double fine to a moving violation occurring in a school bus zone. "School bus zone" would mean the area lying within 20 feet of a school bus that has stopped and is displaying two alternately flashing red lights at the same level, except as provided for in Section 682(2) which pertains to school buses stopped on a divided highway.

The code also makes it a criminal offense to commit a moving violation in a work zone for which not fewer than three points are assigned on a person's driving license if another person in the work zone is injured (misdemeanor) or killed (felony). The misdemeanor penalty is a fine of not more than \$1,000 and/or a maximum term of imprisonment of one year. The felony penalty is a fine of not more than \$7,500 and/or imprisonment for not more than 15 years. The criminal penalties do not apply if the injury or death is caused by the negligence of the injured or deceased person. The bill would apply these penalties to incidents that occurred in a work zone or a school bus zone.

[Offenses that result in three points being assigned include improper passing, driving over the lawful maximum speed in a work zone (45 miles per hour) by 10 miles per hour or less, exceeding the lawful maximum speed by more than 10 miles per hour but less than 15 miles per hour, or careless driving.]

House Bill 4167

The bill would amend the Code of Criminal Procedure (MCL 777.12e) to make complementary amendments to felony sentencing guidelines provisions. It is tie-barred to House Bill 4168. Currently, the code refers to a "moving violation causing death to another person in a work zone." The bill would make the code refer instead to a "moving violation causing death to another person in a work zone or a school bus zone." (The felony is a Class C felony against a person.)

FISCAL INFORMATION:

House Bill 4168 would have an indeterminate fiscal impact on state and local government. Any fiscal impact would be dependent upon the number of new violations under the bill as amended. First, the bill would include "school bus zone" in the list of zones where a person responsible for a moving violation is subject to a fine that is double the fine otherwise prescribed for that moving violation. Generally speaking, if the violation were written under statute, the fine would be distributed to libraries. However, if the violation were written under local ordinance, the fine would be distributed as follows (for non-commercial vehicles): (1) one-third to the political subdivision whose ordinance was violated and (2) two-thirds to the court funding unit. For commercial vehicles under local ordinance, the fine would be distributed as follows: (1) 30% to

libraries and (2) 70% to the political subdivision whose ordinance was violated. Under the bill, costs and Justice System assessments would not be doubled.

Second, the bill would include "school bus zone" in the list of zones where a person responsible for a moving violation for which not fewer than 3 points are assigned, and which causes injury to another person is guilty of a misdemeanor. Any fine levied as a result of a violation of this subsection would be dedicated to the support of libraries. Any local court costs associated with the adjudication of the case would be offset to some degree through the payment of court costs.

Lastly, the bill would include "school bus zone" in the list of zones where a person responsible for a moving violation for which not fewer than 3 points are assigned, and which causes death to another person is guilty of a felony. Any fine levied as a result of a violation of this subsection would be dedicated to the support of libraries. Any local court costs associated with the adjudication of the case would be offset to some degree through the payment of court costs.

To the extent that the bill increased the number of misdemeanor or felony convictions that resulted in incarceration or increased the minimum sentences received as a result of such violations, it could increase state or local costs related to jail or prison incarceration or probation. The average annual cost of housing a prisoner in a state prison is around \$34,000, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Local jail costs vary by jurisdiction.

ARGUMENTS:

For:

Children are often loading and unloading school buses on busy roads, in the dark, at rush hour, or in inclement weather. They may be very young, distracted, or in a hurry to catch the bus or to run home. The point is that a child is vulnerable when catching or leaving the school bus. To protect children, most states prohibit passing a stopped school bus when children are loading or unloading. Only after the flashing red lights have been turned off and the extended stop are retracted may a driver lawfully proceed past the bus. This is true whether the driver is behind the bus or approaching the bus from the opposite direction. (Only on divided highways may a driver proceed past a stopped school bus displaying its flashing lights. If a school bus is stopped at an intersection with a traffic officer or stop light, a driver may proceed past the school bus at a speed that is reasonable and proper but not greater than 10 mph.)

Yet, many drivers ignore the law and continue to pass stopped school buses while children are crossing the street to or from the bus. Reportedly, in one Michigan city that requires its school bus drivers to record in a log any drivers that violate the law, about 80 tickets were issued last year just based on the bus drivers' observations. To some, it is obvious that the current penalties for passing a stopped school bus are neither a sufficient deterrence nor a just penalty, especially if a child or another person is injured or killed.

The bills would instead treat passing a stopped school bus similarly to violations occurring in work zones on highways. Thus, a civil fine would be doubled if there were no injuries and a driver would incur a misdemeanor penalty for an injury or a felony for a death to another person. These penalties would be in addition to allowable license sanctions under the vehicle code.

Against:

The bills wouldn't take effect until July 1, well after the end of the current school year. Shouldn't the bills take immediate effect as soon as the governor signs them so that children will be better protected?

Response:

There is a reason that the bills were given a July 1, 2011, effective date. In general, when a new law creates or increases criminal penalties, a certain amount of time is needed for the guidelines used by law enforcement officers and prosecutors in charging offenses to be updated and law enforcement agencies notified of the change in law. Typically, at least 90 days from the date of enactment is needed for the process. It is therefore common to see such legislation specifying that a bill will take effect 90 days from enactment or even at a later date. In general, bills take effect Sine Die (which is 90 days from adjournment of a legislative cycle) or, should "immediate effect" be agreed on by a 2/3 vote of each chamber, as soon as the governor signs it.

In the case of the bills under consideration, if immediate effect were added, the July 1 date would allow a modest amount of time for the bills to complete the legislative process and be presented to the governor. Depending on the time needed for the bills to complete this process, the time period between when the governor signs them into law and the July 1 effective date may be shorter than usual for these types of bills.

POSITIONS:

A representative of the Oakland County Sheriff's Office testified in support of the bills.
(2-24-11)

The Michigan Department of State Police indicated a position of neutrality on the bills.
(2-24-11)

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