



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5844 (as passed by the House)
House Bill 5854 (Substitute H-1 as passed by the House)
House Bill 5855 (as passed by the House)
House Bill 5856 (Substitute H-1 as passed by the House)
House Bill 5857 (as passed by the House)
Sponsor: Representative Joseph N. Bellino, Jr. (H.B. 5844)
Representative Tim Sneller (H.B. 5854)
Representative Tommy Brann (H.B. 5855)
Representative Steven Johnson (H.B. 5856)
Representative Jack O'Malley (H.B. 5857)

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

Date Completed: 10-7-20

CONTENT

House Bill 5844 would amend the Public Health Code to delete mandatory minimum sentences for certain violations of Article 15 (Occupations) of the Code.

House Bill 5854 (H-1) would amend the Michigan Vehicle Code to do the following:

- Delete mandatory minimum sentences for certain offenses related to operating a motor vehicle while impaired and for offenses related to operating a motor vehicle by an unlicensed person.
- Delete provisions requiring certain terms of imprisonment to be served consecutively.
- Allow certain terms imprisonment to be suspended if the defendant agreed to participate in a specialty court program and successfully completed the program.

The bill also would repeal Section 905 of the Code, which pertains to proof of financial responsibility and certain violations of Chapter 5 (Financial Responsibility Act) of the Code.

House Bill 5855 would amend the Revised School Code to delete mandatory minimum sentences for failing to comply with Part 24 (Compulsory School Attendance) of the Code and for certain other misdemeanors related to fraudulently using a teaching certificate or college transcripts to obtain employment.

House Bill 5856 (H-1) would amend the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Delete mandatory minimum sentences for certain offenses related to the possession or taking of game; the taking or killing of fish, game, and birds;

commercial and sport fishing; and impaired operation of a motorboat, off-road recreational vehicle (ORV), and snowmobile.

- **Delete provisions requiring certain terms of imprisonment to be served consecutively.**
- **Allow certain terms imprisonment to be suspended if the defendant agreed to participate in a specialty court program and successfully completed the program.**

House Bill 5857 would amend the Railroad Code to delete mandatory minimum sentences for certain misdemeanor offenses related to railroads and switches and devices maintained by a railroad company.

House Bill 5844

Under the Public Health Code, a person who uses a title regulated under Article 15 of the Code without a registration or under a suspended, revoked, or fraudulently obtained registration, or who uses as his or her own the registration of another person is guilty of a misdemeanor punishable as follows:

- For a first offense, by up to 90 days' imprisonment, or a fine of \$100, or both.
- For a second or subsequent offense, by imprisonment for 60 days to one year, or a fine of \$300 to \$1,000, or both.

Under the bill, a second or subsequent offense, instead, would be punishable by imprisonment for up to one year, or a fine of \$300 to \$1,000, or both.

The Code also specifies that a person who violates or aids or abets another in violating Article 15, other than those matters described in Sections 16294 and 16296 of the Code, is guilty of a misdemeanor punishable as follows:

- For a first offense, by up to 90 days' imprisonment, or a maximum fine of \$100, or both.
- For a second or subsequent offense, by imprisonment for 90 days to six months, or a fine of \$200 to \$500, or both.

(Under Section 16294, an individual who practices or holds himself or herself out as practicing a health profession regulated by Article 15 without a license or registration or under a suspended, revoked, lapsed, void, or fraudulently obtained license or registration, or uses the license or registration of another is guilty of a felony. Under Section 16296, a person who uses a title regulated by Article 15 without a registration or under a suspended, revoked, or fraudulently obtained registration, or who uses as his or her own the registration of another person is guilty of a misdemeanor.)

Under the bill, a second or subsequent offense, instead, would be punishable by imprisonment for up to six months, or a fine of \$200 to \$500, or both.

The provision prohibiting a person from violating or aiding and abetting another in violating Article 15 does not apply to a violation of Sections 17015, 17015a, 17017, 17515, or 17517 of the Code. Under the bill, this provision also would not apply to a violation of Article 15 for which another criminal penalty was specifically prescribed. (Sections 17015, 17015a, 17017, 17515, and 17517 require informed consent to perform an abortion; require screening for coercion to have an abortion; require a physician to perform a physical examination before diagnosing and prescribing a medical abortion; require a physician to comply with Sections 17015 and 17015a before performing an abortion; and require a physician to comply with Section 17017, respectively.)

House Bill 5854 (H-1)

Operating a Vehicle while Impaired

Under Section 625(7)(a) of the Michigan Vehicle Code, a person, whether licensed or not, may not operate a vehicle in violation of Section 625 (which generally prohibits operating a motor vehicle while intoxicated or visibly impaired) while another person who is less than 16 years of age is occupying the vehicle. A person who violates Section 625(7)(a) is guilty of a misdemeanor punishable by a fine of \$200 to \$1,000 and one of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year.

At least 48 hours of the imprisonment must be served consecutively. The term of imprisonment may not be suspended. Under the bill, a person who violated Section 625(7)(a), instead, would be guilty of a misdemeanor punishable by a fine of between \$200 to \$1,000 and one of the following:

- Community service for 30 to 90 days.
- Imprisonment for up to one year.

Under the Code, if a violation of Section 625(7)(a) occurs within seven years of a previous conviction or after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, a person who violates Section 625(7)(a) is guilty of a felony punishable by a fine of \$500 to \$5,000 to either of the following:

- Imprisonment under the jurisdiction of the Michigan Department of Corrections (MDOC) for one to five years.
- Probation with imprisonment in a county jail for 30 days to one years and community service for 60 to 180 days.

At least 48 hours of the probation with imprisonment in a county jail must be served consecutively.

The term of imprisonment may not be suspended. The bill would delete this provision.

Additionally, under the bill, a term of imprisonment imposed under Section 625(7)(a) could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

"Specialty court program" would mean a program under any of the following:

- A drug treatment court in which the participant is an adult.
- A DWI/sobriety court.
- A hybrid of a drug treatment court and a DWI/sobriety court.
- A mental health court.
- A veterans treatment court.

Section 625(7)(b) prohibits a person, whether licensed or not, from operating a vehicle in violation of Section 625(6) while another person who is less than 16 years of age is occupying the vehicle. A person who violates Section 625(7)(b) is guilty of a misdemeanor punishable as described below.

- Community service for up to 60 days.

- A maximum fine of \$500.
- Up to 93 days' imprisonment.

If the violation occurs within seven years of a previous conviction or after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, a person who violates Section 625(7)(b) must be sentenced to pay a fine of \$200 to \$1,000 and one of more of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year.

At least 48 hours of the imprisonment must be served consecutively. The term of imprisonment may not be suspended.

Under the bill, for a second or subsequent conviction, the person who violated Section 625(7)(b) would have to be sentenced to pay a fine of \$200 to \$1,000 and to one of more of the following:

- Community service for 30 to 90 days.
- Imprisonment for up to one year.

The term of imprisonment could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

Section 625(3) of the Code also prohibits a person, whether licensed or not, from operating a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this State when, due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance, the person's ability to operate the vehicle is visibly impaired.

If a person is convicted under Section 625(3), the person is guilty of a misdemeanor punishable by one or more of the following:

- Community service for up to 360 hours.
- Imprisonment for up to 93 days.
- A maximum fine of \$300.

If a violation occurs within seven years of one previous conviction, the person must be sentenced to pay a fine of \$200 to \$1,000, and one or more of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year.

At least 48 hours of the term of imprisonment must be served consecutively. The bill would delete this provision.

Additionally, if a violation occurs after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, the person is guilty of a felony punishable by a fine of \$500 to \$5,000 and either of the following:

- Imprisonment under the jurisdiction of the MDOC for one to five years.
- Probation with imprisonment in the county jail for 30 days to one year and community service for 60 to 180 days.

At least 48 hours of the term of imprisonment must be served consecutively.

A term of imprisonment imposed under the misdemeanor or felony offense may not be suspended. Under the bill, the term of imprisonment could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

Operation of a Motor Vehicle by Unlicensed Person

Under Section 904a of the Code, any person, not exempt from license under the Code, who operates a motor vehicle on the highways of the State and who is unable to show that he or she has been issued a license to operate a motor vehicle by any state or foreign country valid within the last three years before operating the vehicle is punishable by imprisonment for up to 90 days, or a fine of \$50 to \$100, or both. Under the bill, a person who violated Section 904a would be guilty of a misdemeanor punishable as currently prescribed.

Any person convicted of a second offense under Section 904a is punishable by imprisonment for two to 90 days, or a fine of \$100, or both. Under the bill, a person convicted of a second offense under Section 904a would be guilty of a misdemeanor punishable by imprisonment for up to 90 days, or a fine of \$100, or both.

Violation of Financial Responsibility

Under Section 905 of the Code, a person who forges or, without authority, signs any evidence of ability to respond in damages as required by the Secretary of State in the administration of Chapter 5 and any person who violates any provisions of Chapter 5 for which no penalty is otherwise provided, is guilty of a misdemeanor punishable by a fine of \$100 to \$1,000, or imprisonment for up to 90 days, or both.

Any person whose driver license or registration card or other privilege to operate a motor vehicle has been suspended or revoked and restoration or issuance of a new license or registration is contingent upon the furnishing of proof of financial responsibility and who during the suspension or revocation or in the absence of full authorization from the Secretary of State drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by the person to be operated by another person on any highway except as permitted is guilty of a misdemeanor punishable by a maximum fine of \$500 and by imprisonment for two days to one year, or both.

The bill would delete these provisions.

House Bill 5855

Under Section 1599 of the Revised School Code, a parent or other person in parental relation who fails to comply with Part 24 of the Code is guilty of a misdemeanor, punishable by a fine of \$5 to \$50, or imprisonment for two to 90 days, or both. Under the bill, the misdemeanor prescribed above, instead, would be punishable by a fine of \$5 to \$50 or imprisonment for up to 90 days, or both.

Under Section 1809 of the Code, a person who uses or attempts to use a teaching certificate that he or she knows is surrendered, suspended, revoked, nullified, fraudulently obtained, altered, or forged, or who uses or attempts to use as his or her own a valid teaching certificate that he or she knows is issued to another person, to obtain employment in a position requiring a valid teaching certificate or who remains employed in a position requiring a valid teaching

certificate knowing that he or she does not hold a valid respective certificate is guilty of a misdemeanor.

A person who uses or attempts to use a school administrator's certificate that he or she knows is surrendered, suspended, revoked, nullified, fraudulently obtained, altered, or forged, or who uses or attempts to use as his or her own a valid school administrator's certificate that he or she knows is issued to another person, to obtain employment as a school administrator or who remains employed in a position requiring a valid school administrator's certificate knowing that he or she does not hold a valid school administrator's certificate is guilty of a misdemeanor.

A person who uses or attempts to use a State Board of Education approval that he or she knows is surrendered, suspended, revoked, nullified, fraudulently obtained, altered, or forged, or who uses or attempts to use as his or her own a valid approval that he or she knows is issued to another person, to obtain employment in a position requiring a valid State Board approval or who remains employed in a position requiring a valid State Board approval knowing that he or she does not hold one is guilty of a misdemeanor,

A person who uses or attempts to use a college or university transcript or a certificate or other credential that he or she knows is fraudulently obtained, altered, or forged, or who uses or attempts to use as his or her own a college or university transcript or a certificate or other credential that he or she knows is that of another person, to obtain a teaching certificate, school administrator's certificate, or state board approval in Michigan is guilty of a misdemeanor

In addition to any other penalty provided by law, the misdemeanors described above are punishable as follows:

- For a first offense, by imprisonment for up to 93 days or a maximum fine of \$500, or both.
- For a second or subsequent offense, by imprisonment for 93 days to six months, or a fine of \$500 to \$1,000, or both.

Under the bill, each misdemeanor, instead, would be punishable as follows:

- For a first offense, by imprisonment for up to 93 days or a maximum fine of \$500, or both.
- For a second or subsequent offense, by imprisonment for up to six months, or a fine of \$500 to \$1,000, or both.

House Bill 5856 (H-1)

Possession or Taking of Game

Under Section 40118 of NREPA, except as otherwise provided, an individual who violates a provision of Part 401 (Wildlife Conservation) of the Act or an order or interim order issued under Part 401 regarding the possession or taking of deer, bear, wild turkey, or wolf is guilty of a misdemeanor punishable by imprisonment for five to 90 days, and a fine of \$200 to \$1,000, and the costs of prosecution.

An individual who violates a provision of Part 401 or an order or interim order issued under Part 401 regarding the possession or taking of elk is guilty of a misdemeanor punishable by imprisonment for 30 to 180 days, or a fine of \$500 to \$2,000, or both, and the costs of prosecution.

An individual who violates a provision of Part 401 or an order or interim order issued under Part 401 regarding the possession or taking of moose is guilty of a misdemeanor punishable by imprisonment for 90 days to one year and a fine of \$1,000 to \$5,000, and the costs of prosecution.

The bill would delete from these provisions the mandatory minimum terms of imprisonment.

Under Section 40118, an individual who violates Sections 40113(1) is guilty of a misdemeanor punishable by imprisonment for five to 90 days or a fine of \$100 to \$500, or both, and the costs of prosecution.

An individual who violates Sections 40113(3) is guilty of a misdemeanor punishable by imprisonment for five to 90 days and a fine of \$100 to \$500, or both, and the costs of prosecution.

The bill would delete from these provisions the mandatory minimum terms of imprisonment. Additionally, a violation of Section 40113(3) would be punishable by the prescribed term of imprisonment *or* the prescribed fine, or both.

Under Section 40118, if an individual were convicted of a violation of Part 401 or an order or interim order issued under Part 401 and it is alleged in the complaint and proved or admitted at trial or ascertained by the court after conviction that the individual had been previously convicted two times within the preceding five years for a violation of Part 401 or an order or interim order issued under Part 401, the individual is guilty of a misdemeanor punishable by imprisonment for 10 to 180 days, and a fine of \$500 to \$2,000, and costs of prosecution. Instead, under the bill, the individual would be guilty of a misdemeanor punishable by imprisonment for up to 180 days, and a fine of \$500 to \$2,000, and costs of prosecution.

Taking or Killing of Fish, Game, and Birds

Under Section 41105 of NREPA, a person who takes or kills any fish, game, or fur-bearing animal, or game bird, contrary to an order or rule promulgated under Part 411 (Protection and Preservation of Fish, Game, and Birds), or who violates Part 411, is guilty of a misdemeanor, punishable for a first offense by imprisonment for up to 60 days or a maximum fine of \$100.

For a second or subsequent offense, the person is guilty of a misdemeanor punishable by imprisonment for 20 to 90 days, or a fine of \$50 to \$250. Under the bill, a second or subsequent offense would be a misdemeanor punishable by imprisonment for up to 90 days, or a fine of \$50 to \$250.

Commercial Fishing

Sections 47301 through 47325 of NREPA generally regulate commercial fishing in Michigan. Under Section 47327, any person who violates Sections 47301 to 47325, for a first offense is punishable by imprisonment for up to 30 days, or a fine of \$25 to \$100 and costs of prosecution, or both. Under the bill, a first offense would be a misdemeanor punishable by imprisonment for up to 30 days or a fine of \$25 to \$100, or both, and the costs of prosecution.

For the second or a subsequent offense under Section 47327, a person is punishable by imprisonment for 30 to 90 days, or a fine of \$50 to \$100 and the costs of prosecution, or both. Instead, under the bill, a second or subsequent offense would be a misdemeanor punishable by imprisonment for up to 90 days or a fine of \$50 to \$100, or both, and the costs of prosecution.

Under Section 47327, if a fine with costs is imposed under Part 473 (Commercial Fishing), the court must sentence the offender to be confined in the county jail until the fine and costs are paid, but for a period not exceeding the maximum penalty for the offense. The bill would delete this provision.

Sport Fishing

Under Section 48738 of NREPA, a person who takes or possesses sturgeon in violation of Part 487 (Sport Fishing) or rules or orders issued to implement Part 487 is guilty of a misdemeanor punishable by imprisonment for 30 to 180 days and a fine of \$500 to \$2,000, or both, and the costs of prosecution. Instead, under the bill, this offense would be a misdemeanor punishable by imprisonment for up to 180 days *or* a fine of \$500 to \$2,000, or both, and the costs of prosecution.

Impaired Operation of a Motorboat

Section 80176(1) prohibits a person from operating a motorboat on the waters of the State if any of the following apply:

- The person is under the influence of alcoholic liquor or a controlled substance, or both.
- The person has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- The person has in his or her body any amount of a Schedule 1 controlled substance under Section 7212 of the Public Health Code or a rule promulgated under that section, or of a controlled substance described in Section 7214(a)(iv) of the Code (coca leaves and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, except that the substances do not include decocainized coca leaves or extraction of coca leaves which extractions do not contain cocaine or ecgonine, including cocaine, its salts, stereoisomers, and salts of stereoisomers when the existence of the salts, stereoisomers, and salts of stereoisomers is possible within the specific chemical designation).

Under Section 80177 of NREPA, a person who is convicted for violating Section 80176(1) is guilty of a misdemeanor punishable by one or more of the following:

- Community service for up to 45 days.
- Imprisonment for up to 93 days.
- A fine of \$100 to \$500.

If the violation occurs within seven years of a previous conviction, the person must be sentenced to a fine of \$200 to \$1,000 and to either of the following:

- Community service for 10 to 90 days, and may be imprisoned for up to one year.
- Imprisonment for 48 consecutive hours to one year, and may be sentenced to community service for up to 90 days.

A term of imprisonment for a second or subsequent violation may not be suspended. Under the bill, the term of imprisonment could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program. "Specialty court program" would mean a program under any of the following:

- A drug treatment court in which the participant is an adult.
- A DWI/sobriety court.
- A hybrid of a drug treatment court and a DWI/sobriety court.

- A mental health court.
- A veterans treatment court.

Section 80176(7)(a) prohibits a person from operating a motorboat while impaired while another person who is less than 16 years of age is occupying the motorboat. A person who violates Section 80176(7)(a) is guilty of a misdemeanor punishable by a fine of \$200 to \$1,000 and one or more of the following:

- Imprisonment for five days to one year, at least 48 hours of which must be served consecutively.
- Community service for 30 to 90 days.

If the violation occurs within seven years of a previous conviction or after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, the person is guilty of a felony punishable by a fine of \$500 to \$5,000 and either of the following:

- Imprisonment under the jurisdiction of the MDOC for one to five years.
- Probation with imprisonment in the county jail for 30 days to one year, at least 48 hours of which must be served consecutively, and community service for 60 to 180 days.

A term of imprisonment for a first or subsequent violation may not be suspended. Under the bill, a term of imprisonment for a first or subsequent violation could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

Section 80176(7)(b) prohibits a person less than 21 years of age, whether licensed or not, from operating a motorboat on the water of the State if the person has any bodily alcohol content while a person who is less than 16 years of age is occupying the motorboat. A person who violates Section 80176(7)(b) is punishable by one or more of the following:

- Community service for up to 60 days.
- A maximum fine of \$500.
- Imprisonment for up to 93 days.

If the violation occurs within seven years of a previous conviction or after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, is guilty of a misdemeanor punishable by a fine of \$200 to \$1,000 and one or more of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year, at least 48 hours of which must be served consecutively.

The term of imprisonment may not be suspended. Under the bill, the term of imprisonment could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

Impaired Operation of an ORV

Section 81134(1)(a) prohibits a person from operating an off-road recreation vehicle (ORV) if he or she is under the influence of alcoholic liquor or a controlled substance, or both. Section 81134(1)(b) prohibits a person from operating an ORV if he or she has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters

or urine. If a person is convicted of violating Sections 81134(1)(a) or (b) he or she is guilty of a misdemeanor punishable by one or more of the following:

- Community service for up to 360 hours.
- Imprisonment for up to 93 days.
- A fine of \$100 to \$500.

If a violation occurs within seven years of a previous conviction, the person must pay a fine of \$200 to \$1,000 and one or more of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year.

At least 48 hours of the imprisonment must be served consecutively. The bill would delete this provision.

If a violation of Sections 81134(1)(a) or (b) occurs after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, the person is guilty of a felony punishable by a fine of \$500 to \$5,000 and either of the following:

- Imprisonment under the jurisdiction of the MDOC for one to five years.
- Probation with imprisonment in the county jail for 30 days to one year, at least 48 hours of which must be served consecutively, and community service for 60 to 180 days.

A term of imprisonment for a second or subsequent conviction may not be suspended. Under the bill, a term of imprisonment for a second or subsequent conviction could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

Section 81134(7) prohibits a person from operating an ORV while under the influence of alcoholic liquor or a controlled substance, or both, while another person who is less than 16 years of age is occupying the ORV. A person who violates Section 81134(7) is guilty of a misdemeanor punishable by a fine of \$200 to \$1,000 and one or more of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year, at least 48 hours of which must be served consecutively.

If a violation occurred within seven years of a previous conviction or after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, the person is guilty of a felony punishable by a fine of \$500 to \$5,000 and either of the following:

- Imprisonment under the jurisdiction of the MDOC for one to five years.
- Probation with imprisonment in the county jail for 30 days to one year, at least 48 hours of which must be served consecutively, and community service for 60 to 180 days.

A term of imprisonment for a first offense and a term of imprisonment in a county jail for a second offense may not be suspended. Under the bill, the terms of imprisonment could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

Section 81134(6) prohibits a person less than 21 years of age, whether licensed or not, from operating an ORV if he or she has any bodily alcohol content. A person who operates an ORV

in violation of Section 81134(6) while another person who is less than 16 years of age is occupying the ORV is guilty of a misdemeanor punishable by one or more of the following:

- Community service for up to 60 days.
- A maximum fine of up to \$500.
- Imprisonment for up to 93 days.

If the violation occurs within seven years of a previous conviction or after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, the person is guilty of a misdemeanor punishable by a fine of \$200 to \$1,000 and one or more of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year.

At least 48 hours of the term of imprisonment must be served consecutively. The bill would delete this provision.

The term of imprisonment may not be suspended. Under the bill, the term of imprisonment could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

Impaired Operation of a Snowmobile

Section 82127(1) of NREPA prohibits a person from operating a snowmobile in the State if any of the following apply:

- The person is under the influence of alcoholic liquor or a controlled substance, or both.
- The person has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- The person has in his or her body any amount of a Schedule 1 controlled substance under Section 7212 of the Public Health Code or a rule promulgated under that section, or of a controlled substance described in Section 7214(a)(iv) of the Code.

A person who is convicted for violation Section 82127(1) is guilty of a misdemeanor punishable by one or more of the following:

- Community service for up to 45 days.
- Imprisonment for up to 93 days.
- A fine of \$100 to \$500.

If the violation occurred within seven years of a previous conviction, the person must be sentenced to pay a fine of \$200 to \$1,000 and to either of the following:

- Community service for 10 to 90 days, and may be imprisoned for up to one year.
- Imprisonment for 48 consecutive hours to one year, and may be sentenced to community service for up to 90 days.

If the violation occurs after two or more previous convictions regardless of the number of years that have elapsed since any previous conviction, the person is guilty of a felony punishable by imprisonment for one to five years or a fine of \$500 to \$5,000, or both. A term of imprisonment for a second or subsequent conviction may not be suspended. Under the bill, a term of imprisonment for a second or subsequent conviction could not be suspended unless

the defendant agreed to participate in a specialty court program and successfully completed the program.

Section 82127(7)(a) prohibits a person from operating a snowmobile while under the influence of a alcoholic liquor or a controlled substance, or both, while another person who is less than 16 years of age is occupying the snowmobile. A person who violates Section 82127(7)(a) is guilty of a misdemeanor punishable by a fine of \$200 to \$1,000 and one or more of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year, at least 48 hours of which must be served consecutively.

If a violation occurred within seven years or a previous conviction or after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, the person is guilty of a felony punishable by a fine of \$500 to \$5,000 and either of the following:

- Imprisonment under the jurisdiction of the MDOC for one to five years.
- Probation with imprisonment in the county jail for 30 days to one year, at least 48 hours of which must be served consecutively, and community service for 60 to 180 days.

A term of imprisonment for a first offense and a term of imprisonment in a county jail for a second offense may not be suspended. Under the bill, the terms of imprisonment could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

Section 82127(7)(b) prohibits a person less than 21 years of age, whether licensed or not, from operating an ORV if he or she has any bodily alcohol content while another person who is less than 16 years of age is occupying the snowmobile. A person who operates an ORV in violation of Section 82127(7)(b) is guilty of a misdemeanor punishable by one of more of the following:

- Community service for up to 60 days.
- A maximum fine of up to \$500.
- Imprisonment for up to 93 days.

If the violation occurs within seven years of a previous conviction or after two or more previous convictions, regardless of the number of years that have elapsed since any previous conviction, the person is guilty of a misdemeanor punishable by a fine of \$200 to \$1,000 and one or more of the following:

- Community service for 30 to 90 days.
- Imprisonment for five days to one year.

At least 48 hours of the term of imprisonment must be served consecutively. The bill would delete this provision.

The term of imprisonment may not be suspended. Under the bill, the term of imprisonment could not be suspended unless the defendant agreed to participate in a specialty court program and successfully completed the program.

House Bill 5857

Under Section 257 of the Railroad Code, a person who throws a stone, brick, or other missile at a train or track vehicle is guilty of a misdemeanor punishable by a fine of \$100 to \$500, or imprisonment for 10 to 90 days, or both. Under the bill, this offense, instead, would be a misdemeanor punishable by a fine of \$100 to \$500 or up to 90 days' imprisonment, or both.

Section 267 of the Code prohibits a person not authorized by a railroad company from destroying, moving, changing, extinguishing, or tampering with any light or banner attached to or connected with any switch or derauling device maintained by a railroad company. A person who violates Section 267 is guilty of a misdemeanor punishable by a fine of \$100 to \$500 or imprisonment for 10 to 60 days. Under the bill, the offense, instead, would be a misdemeanor punishable by a fine of \$100 to \$500 or up to 60 days' imprisonment.

MCL 333.16296 & 333.16299 (H.B. 5844)
257.625 et al. (H.B. 5854)
380.1599 & 380.1809 (H.B. 5855)
324.40118 et al. (H.B. 5856)
462.257 & 462.267 (H.B. 5857)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 5844

The bill would have no fiscal impact on State or local government.

House Bills 5854 (H-1)-5857

The bills would have an indeterminate fiscal impact on State and local government. The elimination of certain statutory provisions could result in reduced costs for local units of government operate county jails and probation supervision services, as judges would be given more discretion to sentence offenders to an amount of jail time that was less than the current minimum, or to no jail time at all. Additionally, if fines were imposed in addition to or instead of a jail sentence, local libraries could see an increase in penal fine revenue as these fines are distributed to local libraries. The potential savings in county jail costs as well as the potential increased fine revenue are indeterminate and would depend on the reduction in the number of arrests and convictions.

The bill also would decrease deposits into the Juror Compensation Reimbursement Fund, which receives deposits of proceeds from the collection of driver license clearance fees. The elimination of these fees would create a significant loss in revenue for the Fund, as 80% of its receipts come from driver license clearance fees.

Fiscal Analyst: Joe Carrasco

SAS\S1920\s5844sa

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.