

HOUSE BILL NO. 4309

February 23, 2021, Introduced by Reps. Filler, Hammoud and Bellino and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 33 and 48 of chapter XVII (MCL 777.33 and
777.48), as amended by 2017 PA 152.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER XVII

2

Sec. 33. (1) Offense variable 3 is physical injury to a
victim. Score offense variable 3 by determining which of the
following apply and by assigning the number of points attributable

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to the one that has the highest number of points:

(a) A victim was killed..... 100 points

(b) A victim was killed..... 50 points

(c) Life threatening or permanent
incapacitating injury occurred to a
victim..... 25 points

(d) Bodily injury requiring medical
treatment occurred to a victim..... 10 points

(e) Bodily injury not requiring
medical treatment occurred to a
victim..... 5 points

(f) No physical injury occurred to
a victim..... 0 points

(2) All of the following apply to scoring offense variable 3:

(a) In multiple offender cases, if 1 offender is assessed
points for death or physical injury, all offenders must be assessed
the same number of points.

(b) Score 100 points if death results from the commission of a
crime and homicide is not the sentencing offense.

(c) Score 50 points if death results from the commission of a
crime and the offense or attempted offense involves the operation
of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive and
any of the following apply:

(i) The offender was under the influence of or visibly impaired
by the use of alcoholic liquor, a controlled substance, or a
combination of alcoholic liquor and a controlled substance.

(ii) The offender had an alcohol content of 0.08 grams or more
per 100 milliliters of blood, per 210 liters of breath, or per 67
milliliters of urine **or, beginning October 1, 2021, 5 years after**

1 the state treasurer publishes a certification under section 625(28)
 2 of the Michigan vehicle code, 1949 PA 300, MCL 257.625, the
 3 offender had an alcohol content of 0.10 grams or more per 100
 4 milliliters of blood, per 210 liters of breath, or per 67
 5 milliliters of urine.

6 (iii) The offender's body contained any amount of a controlled
 7 substance listed in schedule 1 under section 7212 of the public
 8 health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under
 9 that section, or a controlled substance described in section
 10 7214(a) (iv) of the public health code, 1978 PA 368, MCL 333.7214.

11 (d) Do not score 5 points if bodily injury is an element of
 12 the sentencing offense.

13 (3) As used in this section, "requiring medical treatment"
 14 refers to the necessity for treatment and not the victim's success
 15 in obtaining treatment.

16 Sec. 48. (1) Offense variable 18 is operator ability affected
 17 by alcohol or drugs. Score offense variable 18 by determining which
 18 of the following apply and by assigning the number of points
 19 attributable to the one that has the highest number of points:

20 (a) The offender operated a vehicle, vessel,
 21 ORV, snowmobile, aircraft, or locomotive when his
 22 or her bodily alcohol content was 0.20 grams or
 23 more per 100 milliliters of blood, per 210 liters
 24 of breath, or per 67 milliliters of urine..... 20 points

1 (b) The offender operated a vehicle, vessel,
 2 ORV, snowmobile, aircraft, or locomotive when his
 3 or her bodily alcohol content was 0.15 grams or
 4 more but less than 0.20 grams per 100 milliliters
 5 of blood, per 210 liters of breath, or per 67
 6 milliliters of urine..... 15 points

7 (c) The offender operated a vehicle, vessel,
 8 ORV, snowmobile, aircraft, or locomotive while the
 9 offender was under the influence of alcoholic or
 10 intoxicating liquor, a controlled substance, or a
 11 combination of alcoholic or intoxicating liquor and
 12 a controlled substance; or while the offender's
 13 body contained any amount of a controlled substance
 14 listed in schedule 1 under section 7212 of the
 15 public health code, 1978 PA 368, MCL 333.7212, or a
 16 rule promulgated under that section, or a
 17 controlled substance described in section
 18 7214(a) (iv) of the public health code, 1978 PA 368,
 19 MCL 333.7214; or while the offender had an alcohol
 20 content of 0.08 grams or more but less than 0.15
 21 grams per 100 milliliters of blood, per 210 liters
 22 of breath, or per 67 milliliters of urine **or,**
 23 **beginning October 1, 2021, 5 years after the state**
 24 **treasurer publishes a certification under section**
 25 **625(28) of the Michigan vehicle code, 1949 PA 300,**
 26 **MCL 257.625,** the offender had an alcohol content of
 27 0.10 grams or more but less than 0.15 grams per 100
 28 milliliters of blood, per 210 liters of breath, or
 29 per 67 milliliters of urine..... 10 points

(d) The offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while he or she was visibly impaired by the use of alcoholic or intoxicating liquor or a controlled substance or a combination of alcoholic or intoxicating liquor and a controlled substance, or was less than 21 years of age and had any bodily alcohol content..... 5 points

(e) The offender's ability to operate a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive was not affected by an alcoholic or intoxicating liquor or a controlled substance or a combination of alcoholic or intoxicating liquor and a controlled substance..... 0 points

(2) As used in this section, "any bodily alcohol content" means either of the following:

(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning ~~October 1, 2021,~~ **5 years after the state treasurer publishes a certification under section 625(28) of the Michigan vehicle code, 1949 PA 300, MCL 257.625,** 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within an individual's body resulting from the consumption of alcoholic or intoxicating liquor other than the consumption of alcoholic or intoxicating liquor as part of a generally recognized religious service or ceremony.

Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect
3 unless Senate Bill No. _____ or House Bill No. 4308 (request no.
4 01914'21) of the 101st Legislature is enacted into law.