



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

**DRUNK DRIVER DETENTION
CENTERS**

**House Bills 6049-6051 with committee
amendments
First Analysis (9-18-96)**

**Sponsor: Rep. Sandra Hill
Committee: Judiciary and Civil Rights**

THE APPARENT PROBLEM:

Michigan's drunk driving laws, contained in the vehicle code, have been extensively revised in 1982, 1992 and then in 1995. These revisions expanded the applications of the drunk driving laws, stiffened penalties for repeat offenders, created special penalties for having caused death or incapacitating injury, and closed certain loopholes.

While various reports suggest that the incidence of drunk driving has declined in recent years, as has the traffic death rate, the proportion of fatal accidents in which alcohol was involved has held steady. The National Highway Traffic Safety Administration has estimated that on the average a drinking driver can drive drunk about 5,000 miles before being arrested; only about one in a thousand drunk drivers get arrested. Even if arrested, a drunk driver frequently manages to obtain a restricted license allowing limited driving privileges, or to plead hardship and successfully appeal a license suspension. Common wisdom has it that to successfully deter drunk driving, there should be swift and sure sanctions. However, such sanctions were instituted in the previously mentioned amendments to the law. In spite of these changes repeat offenders continue to pose significant problems and a serious threat to the general public.

Under current law, an initial conviction for operating a motor vehicle with a blood alcohol content of 0.10 percent or greater, or while under the influence of alcohol or a controlled substance or a combination thereof (OUIL), is punished as a misdemeanor. If the individual is convicted of a third OUIL offense within ten years (OUIL III) the offense is a felony and is punishable by one to five years imprisonment, a fine of \$500 to \$5,000, or both. Even these current punishments often seem to be unsuccessful at deterring many of serious drunk driving offenses.

Unfortunately, part of the problem appears to stem from the fact that many of those who persistently drive while intoxicated suffer from substance abuse problems. As a result, efforts to stop these individuals from drinking and

driving that fail to provide adequate treatment of their substance abuse problems or fall short of imprisonment are unsuccessful in preventing them from continuing to drive while intoxicated. Legislation has been proposed to address this problem by providing an additional option of sending those convicted of OUIL III offenses to a Drunk Driver Detention Center that would emphasize treatment and discipline in a fashion patterned after boot camp programs.

THE CONTENT OF THE BILLS:

House Bills 6049, 6050, and 6051 would amend the Michigan Vehicle Code and the Code of Criminal Procedure, and create the Drunk Driver Detention Center Act, respectively. Together the bills would create rules regarding the establishment and operation of drunk driver detention centers, similar to juvenile boot camps, and create procedures for placing drunk drivers in these centers.

House Bill 6051 would create the Drunk Driver Detention Center Act, which would require the Department of Corrections (DOC) to establish and operate, or to contract with private vendors for the establishment and operation of, one or more drunk driver detention centers. Drunk driver detention centers would house and train drunk drivers who had been committed to a detention center as a condition of probation under the Code of Criminal Procedure (as amended by House Bill 6050). A convicted drunk driver for whom a court had ordered placement in a detention center would be transported directly to the detention center by the county sheriff and would not be processed through the department's prisoner reception center. During his or her placement in a detention center, a convicted drink driver could be transferred from one detention center to another at the department's or the private vendor's discretion. Placement in a drunk driver detention center would be for no less than 90 days and no more than one year.

House Bills 6049-6051 (9-18-96)

Each detention center would be required to provide both of the following: 1) a program of physically strenuous work and exercise, patterned after military basic training, along with other compatible programming as determined by DOC, and 2) treatment and rehabilitative services appropriate for convicted drunk drivers, including treatment and rehabilitative services for alcoholism.

A drunk driver who failed to perform satisfactorily at the detention center would be reported to his or her sentencing court for possible revocation of his or her probation and could be housed in a county jail while awaiting such a determination. The DOC or the private vendor would be required to provide the sentencing court with information certifying whether the drunk driver had satisfactorily completed the program, treatment, and rehabilitation services at the detention center at least five days prior to his or her expected date of release. The detention center would also be required to advise the court whether continuing education and rehabilitation services would be recommended for the individual.

House Bill 6049 would amend the Michigan Vehicle Code (MCL 257.625) to provide that an individual convicted of operating a vehicle while under the influence of intoxicating liquor or a controlled substance (OUIL) who had 2 or more prior convictions within the preceding 10 years could voluntarily agree to a term of probation and confinement in a drunk driver detention center rather than be sentenced according to the current standards. If the drunk driver chose placement in a detention center the commitment to that center could not be suspended.

House Bill 6050 would amend the Code of Criminal Procedure (MCL 771.1) to add placement in a drunk driver detention center as a sentencing option for a person convicted of a third or subsequent OUIL offense within 10 years. Specifically, the bill would allow the court, in addition to any other terms or conditions of probation, to place a convicted drunk driver in, and order him or her to satisfactorily complete a program of training in, a drunk driver detention center as established under the provisions of House Bill 6051. In order to place a drunk driver in a detention center program, the individual would have to meet the following requirements: 1) be physically able to participate in the program, and 2) not appear to have any mental handicap that would prevent his or her participation in the program. After the individual were placed in the program, the DOC or the private vendor, whichever entity was running the program, would be responsible for determining whether the individual met the physical and mental requirements stated above. If the person did not meet these requirements, the probation order would be rescinded and the drunk driver would be returned to the court for sentencing and could not be placed on probation again for that offense.

The clerk of the court that had placed the drunk driver in the detention center program would be required to mail a certified copy of the judgement of sentence and the presentence investigation report to the operator of the detention center within five business days after the individual's placement.

As stated above, the drunk driver could be placed in the detention center program for no less than 90 days and no more than one year. However, if the drunk driver missed more than 5 days of the program due to medical excuse for injury or illness which occurred after his or her entrance in the program, the drunk driver's placement in the program could be increased by the number of days he or she missed, beginning with the sixth day he or she was medically excused. The individual's detention in the program could be extended on this basis for up to 20 days. If the injury or illness prevented the individual's participation in the program for more than 25 days, he or she would be returned to the court for sentencing in accordance with the vehicle code. Verification of the medical excuse by way of a physician's statement would be required, and a copy of the excuse would have to be forwarded to the sentencing court. An individual would not be eligible for placement in a drunk driver detention center program more than once. However, an individual who had been unable to complete the program due to a medical condition could be placed in the program again after the medical condition had been corrected.

The court would be required to authorize the release of the drunk driver from the detention center program upon receipt of a report from the operator of the program indicating the individual's satisfactory performance in the program. If the court received a report that the individual performed unsatisfactorily in the program, treatment, and rehabilitation services the court would be required to hold a probation revocation hearing. If the court determined that the individual had not satisfactorily performed the center's program, the court would be required to revoke the order of probation and sentence the individual to a term of imprisonment as required for the offense of OUIL III. Additional probation would not be an option for that offense. The individual's term of confinement in the detention center program would be served in the manner outlined in House Bill 6051 (the proposed Drunk Driver Detention Center Act).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have an indeterminate effect on state and local costs. Only about 26 percent, or 497, of the 1,290 OUIL III offenders sentenced in 1995 were committed to prison. To the extent that the bills diverted offenders from local punishments, they would increase state costs. Assuming

that a drunk driving detention center would cost about what a "boot camp" does (\$74.45 per day in the current fiscal year), a 90-day term in a drunk driving detention center would cost the state about \$6,700, a six-month stay would cost about \$13,4000, and a one-year stay would cost about \$26,800. (These figures should be considered benchmarks only; it may be reasonable to assume that more intensive programming in the drunk driving detention centers could drive up per diem costs above those of boot camp. Ultimately, the per diem cost of a drunk driving detention center would depend on the costs of programming, security, and housing.)

For offenders who otherwise would have received prison sentences, state impact would depend on how the detention center sentences and costs compared with prison sentences and costs. A recent department study of parolees suggests that OUIL offenders typically spend about 6.7 months in prison and camp placement and about 10.6 months in community placement. Current fiscal year costs of minimum security (Level I) placement are about \$42.25 per day, or \$15,421 per year, putting the cost of a 6.7-month stay at about \$8,636. Based on current-year costs of corrections centers and electronic tether (\$38.63 and \$6.59 per day, respectively), 10.6 months in community placement costs from about \$2,116 to 12,408. Thus total state costs, excluding parole/probation supervision, for OUIL III offenders may be estimated to be roughly \$10,752 to \$21,044 per offender.

To the extent that the bills diverted offenders from local punishments, they would reduce local costs. Such cost savings could be offset in part by cost increases presented by the package. Under House Bill 6051, a drunk driver detention center offender would be transported directly to the center by the sheriff's department, and would not be processed through a corrections department reception center. This could present additional transport costs for sheriffs, as they now may transport offenders to one of four reception centers maintained by the Department of Corrections. In addition, through notification and record keeping duties for court clerks, House Bill 6050 could present additional costs for county clerks. (9-17-96)

ARGUMENTS:

For:

Drunk driving in Michigan imposes financial costs in the billions of dollars and human costs that are incalculable, but the real tragedy of the deaths and injuries caused by drunk drivers is that they are preventable. Unfortunately, too many drinkers are irresponsible drivers who are either willing to risk current penalties to get behind the wheel or are unable to control their drinking.

According to the National Highway Traffic Safety Administration, nearly half of all traffic-related deaths involve drunken driving. In addition, one in six people jailed for drunk driving in 1992 had served at least three prior sentences for the same thing, according to a report from the federal Justice Department. According to statistics offered by Mothers Against Drunk Driving, 17,274 people were killed in 1995 in alcohol-related crashes. Many of these crashes are caused by people who have been arrested for drunk driving offenses in the past and who continue to violate the laws against drunk driving. Repeat offenders need to be gotten off the road and need to receive proper treatment for their substance abuse problems in order to keep them from continuing to drive under the influence.

Individuals who have continued to drink and drive after having been convicted of an OUIL offense more than twice almost invariably have a substance abuse problem. In these cases the punishments currently provided by the system (driver's license suspensions and jail time) have failed to act as a deterrent against future violations and it seems clear that another means of dealing with these offenders is warranted. The provisions of the bills will allow an alternative placement for third time OUIL offenders that would emphasize treatment and rehabilitative services appropriate for persons convicted of OUIL offenses. The programs established under the bills will provide an atmosphere of discipline and education that would aim to help end the individual's substance abuse problems. The bills recognize that the answer to the drunk driving problem does not lie in harsher penalties for drinking drivers, but rather in a commitment to adequate treatment programs to which a drinking driver may be sent, and in further reducing societal acceptance of drinking and driving.

Against:

Although the idea behind the bills is a good one -- emphasizing treatment and rehabilitation of the offender as opposed to mere incarceration -- the bills may not offer the best way to go about this. The bills fail to provide adequate direction for the Department of Corrections to implement an effective program. Furthermore, there is some question as to whether the DOC would have the facilities available to run such a program.

In addition, the bills provide a less strict punishment for a third time OUIL offender; the bills would allow the offender, who under current law would face at least one year of imprisonment, to be placed in the detention center program for as little as 90 days. If one year of imprisonment is not likely to help the offender to "dry out", it seems unlikely that a mere 90 days, however rigorous the program, will have any greater effect.

Finally, it might be better to require first or second time offenders to be placed in such a program, rather than waiting until they had violated the law at least three times. A 90-day placement is more appropriate for a first- or second-time offense rather than for a third offense, which is a felony. Furthermore, the program may be more likely to have the desired effect if offenders are offered such treatment earlier.

POSITIONS:

A representative of the Department of Corrections testified in support of the bill. (9-17-96)

Mothers Against Drunk Driving (MADD)/Michigan supports the bills. (9-17-96)

The Prosecuting Attorneys Association of Michigan supports the concept of the bills. (9-17-96)

Analyst: W. Flory

■ 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.