



HOUSE BILL No. 5318

February 8, 2000, Introduced by Reps. Garcia, Birkholz, Bovin, Richner, Bob Brown, Voorhees, Mortimer, Vander Roest and Jansen and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 625 and 625m (MCL 257.625 and 257.625m), section 625 as amended by 1999 PA 73 and section 625m as amended by 1998 PA 347.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625. (1) A person, whether licensed or not, shall not
2 operate a vehicle upon a highway or other place open to the gen-
3 eral public or generally accessible to motor vehicles, including
4 an area designated for the parking of vehicles, within this state
5 if either of the following applies:

6 (a) The person is under the influence of intoxicating
7 liquor, a controlled substance, or a combination of intoxicating
8 liquor and a controlled substance.

1 (b) The person has an alcohol content of 0.10 grams or more
2 per 100 milliliters of blood, per 210 liters of breath, or per 67
3 milliliters of urine.

4 (2) The owner of a vehicle or a person in charge or in con-
5 trol of a vehicle shall not authorize or knowingly permit the
6 vehicle to be operated upon a highway or other place open to the
7 general public or generally accessible to motor vehicles, includ-
8 ing an area designated for the parking of motor vehicles, within
9 this state by a person who is under the influence of intoxicating
10 liquor, a controlled substance, or a combination of intoxicating
11 liquor and a controlled substance, who has an alcohol content of
12 0.10 grams or more per 100 milliliters of blood, per 210 liters
13 of breath, or per 67 milliliters of urine, or whose ability to
14 operate the motor vehicle is visibly impaired due to the consump-
15 tion of intoxicating liquor, a controlled substance, or a combi-
16 nation of intoxicating liquor and a controlled substance.

17 (3) A person, whether licensed or not, shall not operate a
18 vehicle upon a highway or other place open to the general public
19 or generally accessible to motor vehicles, including an area des-
20 ignated for the parking of vehicles, within this state when, due
21 to the consumption of intoxicating liquor, a controlled sub-
22 stance, or a combination of intoxicating liquor and a controlled
23 substance, the person's ability to operate the vehicle is visibly
24 impaired. If a person is charged with violating subsection (1),
25 a finding of guilty under this subsection may be rendered.

26 (4) A person, whether licensed or not, who operates a motor
27 vehicle in violation of subsection (1) or (3) and by the

1 operation of that motor vehicle causes the death of another
2 person is guilty of a felony punishable by imprisonment for not
3 more than 15 years or a fine of not less than \$2,500.00 or more
4 than \$10,000.00, or both. The judgment of sentence may impose
5 the sanction permitted under section 625n. If the vehicle is not
6 ordered forfeited under section 625n, the court shall order vehi-
7 cle immobilization under section 904d in the judgment of
8 sentence.

9 (5) A person, whether licensed or not, who operates a motor
10 vehicle in violation of subsection (1) or (3) and by the opera-
11 tion of that motor vehicle causes a serious impairment of a body
12 function of another person is guilty of a felony punishable by
13 imprisonment for not more than 5 years or a fine of not less than
14 \$1,000.00 or more than \$5,000.00, or both. The judgment of sen-
15 tence may impose the sanction permitted under section 625n. If
16 the vehicle is not ordered forfeited under section 625n, the
17 court shall order vehicle immobilization under section 904d in
18 the judgment of sentence. As used in this subsection, "serious
19 impairment of a body function" includes, but is not limited to, 1
20 or more of the following:

- 21 (a) Loss of a limb or use of a limb.
22 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
23 foot, finger, or thumb.
24 (c) Loss of an eye or ear or use of an eye or ear.
25 (d) Loss or substantial impairment of a bodily function.
26 (e) Serious visible disfigurement.

1 (f) A comatose state that lasts for more than 3 days.

2 (g) Measurable brain damage or mental impairment.

3 (h) A skull fracture or other serious bone fracture.

4 (i) Subdural hemorrhage or subdural hematoma.

5 (6) A person who is less than 21 years of age, whether
6 licensed or not, shall not operate a vehicle upon a highway or
7 other place open to the general public or generally accessible to
8 motor vehicles, including an area designated for the parking of
9 vehicles, within this state if the person has any bodily alcohol
10 content. As used in this subsection, "any bodily alcohol
11 content" means either of the following:

12 (a) An alcohol content of not less than 0.02 grams or more
13 than 0.07 grams per 100 milliliters of blood, per 210 liters of
14 breath, or per 67 milliliters of urine.

15 (b) Any presence of alcohol within a person's body resulting
16 from the consumption of intoxicating liquor, other than consump-
17 tion of intoxicating liquor as a part of a generally recognized
18 religious service or ceremony.

19 (7) A person, whether licensed or not, is subject to the
20 following requirements:

21 (a) He or she shall not operate a vehicle in violation of
22 subsection (1), (3), (4), or (5) while another person who is less
23 than 16 years of age is occupying the vehicle. A person who vio-
24 lates this subdivision is guilty of a crime punishable as
25 follows:

26 (i) Except as provided in subparagraph (ii), a person who
27 violates this subdivision is guilty of a misdemeanor and shall be

1 sentenced to pay a fine of not less than \$200.00 or more than
2 \$1,000.00 and to 1 or more of the following:

3 (A) Imprisonment for not less than 5 days or more than 1
4 year. Not less than 48 hours of this imprisonment shall be
5 served consecutively. This term of imprisonment shall not be
6 suspended.

7 (B) Community service for not less than 30 days or more than
8 90 days.

9 (ii) If the violation occurs within 7 years of a prior con-
10 viction or within 10 years of 2 or more prior convictions, a
11 person who violates this subdivision is guilty of a felony and
12 shall be sentenced to pay a fine of not less than \$500.00 or more
13 than \$5,000.00 and to either of the following:

14 (A) Imprisonment under the jurisdiction of the department of
15 corrections for not less than 1 year or more than 5 years.

16 (B) Probation with imprisonment in the county jail for not
17 less than 30 days or more than 1 year and community service for
18 not less than 60 days or more than 180 days. Not less than 48
19 hours of this imprisonment shall be served consecutively. This
20 term of imprisonment shall not be suspended.

21 (b) He or she shall not operate a vehicle in violation of
22 subsection (6) while another person who is less than 16 years of
23 age is occupying the vehicle. A person who violates this subdi-
24 vision is guilty of a misdemeanor punishable as follows:

25 (i) Except as provided in subparagraph (ii), a person who
26 violates this subdivision may be sentenced to 1 or more of the
27 following:

1 (A) Community service for not more than 60 days.

2 (B) A fine of not more than \$500.00.

3 (C) Imprisonment for not more than 93 days.

4 (ii) If the violation occurs within 7 years of a prior con-
5 viction or within 10 years of 2 or more prior convictions, a
6 person who violates this subdivision shall be sentenced to pay a
7 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or
8 more of the following:

9 (A) Imprisonment for not less than 5 days or more than 1
10 year. Not less than 48 hours of this imprisonment shall be
11 served consecutively. This term of imprisonment shall not be
12 suspended.

13 (B) Community service for not less than 30 days or more than
14 90 days.

15 (c) In ~~the~~ A judgment of sentence under subdivision (a)(i)
16 or (b)(i), the court may, unless the vehicle is ordered forfeited
17 under section 625n, order vehicle immobilization as provided in
18 section 904d. In ~~the~~ A judgment of sentence under subdivision
19 (a)(ii) or (b)(ii), the court shall, unless the vehicle is
20 ordered forfeited under section 625n, order vehicle immobiliza-
21 tion as provided in section 904d.

22 (d) This subsection does not prohibit a person from being
23 charged with, convicted of, or punished for a violation of sub-
24 section (4) or (5) that is committed by the person while violat-
25 ing this subsection. However, points shall not be assessed under
26 section 320a for both a violation of subsection (4) or (5) and a

1 violation of this subsection for conduct arising out of the same
2 transaction.

3 (8) If a person is convicted of violating subsection (1),
4 all of the following apply:

5 (a) Except as otherwise provided in subdivisions (b) and
6 (c), the person is guilty of a misdemeanor punishable by 1 or
7 more of the following:

8 (i) Community service for not more than 45 days.

9 (ii) Imprisonment for not more than 93 days.

10 (iii) A fine of not less than \$100.00 or more than \$500.00.

11 (b) If the violation occurs within 7 years of a prior con-
12 viction, the person shall be sentenced to pay a fine of not less
13 than \$200.00 or more than \$1,000.00 and 1 or more of the
14 following:

15 (i) Imprisonment for not less than 5 days or more than 1
16 year. Not less than 48 hours of the term of imprisonment imposed
17 under this subparagraph shall be served consecutively.

18 (ii) Community service for not less than 30 days or more
19 than 90 days.

20 (c) If the violation occurs within 10 years of 2 or more
21 prior convictions, the person is guilty of a felony and shall be
22 sentenced to pay a fine of not less than \$500.00 or more than
23 \$5,000.00 and to either of the following:

24 (i) Imprisonment under the jurisdiction of the department of
25 corrections for not less than 1 year or more than 5 years.

26 (ii) Probation with imprisonment in the county jail for not
27 less than 30 days or more than 1 year and community service for

1 not less than 60 days or more than 180 days. Not less than 48
2 hours of the imprisonment imposed under this subparagraph shall
3 be served consecutively.

4 (d) A term of imprisonment imposed under subdivision (b) or
5 (c) shall not be suspended.

6 (e) In ~~the~~ A judgment of sentence under subdivision (a),
7 the court may order vehicle immobilization as provided in
8 section 904d. In ~~the~~ A judgment of sentence under
9 subdivision (b) or (c), the court shall, unless the vehicle is
10 ordered forfeited under section 625n, order vehicle immobiliza-
11 tion as provided in section 904d.

12 (f) In the judgment of sentence under subdivision (b) or
13 (c), the court may impose the sanction permitted under
14 section 625n.

15 (9) A person who is convicted of violating subsection (2) is
16 guilty of a crime as follows:

17 (a) Except as provided in subdivisions (b) and (c), a misde-
18 meanor punishable by imprisonment for not more than 93 days or a
19 fine of not less than \$100.00 or more than \$500.00, or both.

20 (b) If the person operating the motor vehicle violated sub-
21 section (4), a felony punishable by imprisonment for not more
22 than 5 years or a fine of not less than \$1,500.00 or more than
23 \$10,000.00, or both.

24 (c) If the person operating the motor vehicle violated sub-
25 section (5), a felony punishable by imprisonment for not more
26 than 2 years or a fine of not less than \$1,000.00 or more than
27 \$5,000.00, or both.

1 (10) If a person is convicted of violating subsection (3),
2 all of the following apply:

3 (a) Except as otherwise provided in subdivisions (b) and
4 (c), the person is guilty of a misdemeanor punishable by 1 or
5 more of the following:

6 (i) Community service for not more than 45 days.

7 (ii) Imprisonment for not more than 93 days.

8 (iii) A fine of not more than \$300.00.

9 (b) If the violation occurs within 7 years of 1 prior con-
10 viction, the person shall be sentenced to pay a fine of not less
11 than \$200.00 or more than \$1,000.00, and 1 or more of the
12 following:

13 (i) Imprisonment for not less than 5 days or more than 1
14 year. Not less than 48 hours of the term of imprisonment imposed
15 under this subparagraph shall be served consecutively.

16 (ii) Community service for not less than 30 days or more
17 than 90 days.

18 (c) If the violation occurs within 10 years of 2 or more
19 prior convictions, the person is guilty of a felony and shall be
20 sentenced to pay a fine of not less than \$500.00 or more than
21 \$5,000.00 and either of the following:

22 (i) Imprisonment under the jurisdiction of the department of
23 corrections for not less than 1 year or more than 5 years.

24 (ii) Probation with imprisonment in the county jail for not
25 less than 30 days or more than 1 year and community service for
26 not less than 60 days or more than 180 days. Not less than 48

1 hours of the imprisonment imposed under this subparagraph shall
2 be served consecutively.

3 (d) A term of imprisonment imposed under subdivision (b) or
4 (c) shall not be suspended.

5 (e) In ~~the~~ A judgment of sentence under subdivision (a),
6 the court may order vehicle immobilization as provided in
7 section 904d. In ~~the~~ A judgment of sentence under
8 subdivision (b) or (c), the court shall, unless the vehicle is
9 ordered forfeited under section 625n, order vehicle immobiliza-
10 tion as provided in section 904d.

11 (f) In ~~the~~ A judgment of sentence under subdivision (b) or
12 (c), the court may impose the sanction permitted under
13 section 625n.

14 (11) If a person is convicted of violating subsection (6),
15 all of the following apply:

16 (a) Except as otherwise provided in subdivision (b), the
17 person is guilty of a misdemeanor punishable by 1 or both of the
18 following:

19 (i) Community service for not more than 45 days.

20 (ii) A fine of not more than \$250.00.

21 (b) If the violation occurs within 7 years of 1 or more
22 prior convictions, the person may be sentenced to 1 or more of
23 the following:

24 (i) Community service for not more than 60 days.

25 (ii) A fine of not more than \$500.00.

26 (iii) Imprisonment for not more than 93 days.

1 (12) In addition to imposing the sanctions prescribed under
2 this section, the court may order the person to pay the costs of
3 the prosecution under the code of criminal procedure, 1927
4 PA 175, MCL 760.1 to ~~776.22~~ 777.69.

5 (13) A person sentenced to perform community service under
6 this section shall not receive compensation and shall reimburse
7 the state or appropriate local unit of government for the cost of
8 supervision incurred by the state or local unit of government as
9 a result of the person's activities in that service.

10 (14) If the prosecuting attorney intends to seek an enhanced
11 sentence under this section or a sanction under section 625n or
12 904d based upon the defendant having 1 or more prior convictions,
13 the prosecuting attorney shall include on the complaint and
14 information, or an amended complaint and information, filed in
15 district court, circuit court, municipal court, or family divi-
16 sion of circuit court, a statement listing the defendant's prior
17 convictions AND LISTING ANY PERIOD THE DEFENDANT WAS INCARCERATED
18 WITHIN THE 10-YEAR PERIOD PRIOR TO THE VIOLATION.

19 (15) If a person is charged with a violation of subsection
20 (1), (3), (4), (5), or (7) or section 625m, the court shall not
21 permit the defendant to enter a plea of guilty or nolo contendere
22 to a charge of violating subsection (6) in exchange for dismissal
23 of the original charge. This subsection does not prohibit the
24 court from dismissing the charge upon the prosecuting attorney's
25 motion.

26 (16) A prior conviction shall be established at sentencing
27 by 1 or more of the following:

1 (a) An abstract of conviction.

2 (b) A copy of the defendant's driving record.

3 (c) An admission by the defendant.

4 (17) Except as otherwise provided in subsection (19), if a
5 person is charged with operating a vehicle while under the influ-
6 ence of a controlled substance or a combination of intoxicating
7 liquor and a controlled substance in violation of subsection (1)
8 or a local ordinance substantially corresponding to
9 subsection (1), the court shall require the jury to return a spe-
10 cial verdict in the form of a written finding or, if the court
11 convicts the person without a jury or accepts a plea of guilty or
12 nolo contendere, the court shall make a finding as to whether the
13 person was under the influence of a controlled substance or a
14 combination of intoxicating liquor and a controlled substance at
15 the time of the violation.

16 (18) Except as otherwise provided in subsection (19), if a
17 person is charged with operating a vehicle while his or her abil-
18 ity to operate the vehicle was visibly impaired due to his or her
19 consumption of a controlled substance or a combination of intoxi-
20 cating liquor and a controlled substance in violation of
21 subsection (3) or a local ordinance substantially corresponding
22 to subsection (3), the court shall require the jury to return a
23 special verdict in the form of a written finding or, if the court
24 convicts the person without a jury or accepts a plea of guilty or
25 nolo contendere, the court shall make a finding as to whether,
26 due to the consumption of a controlled substance or a combination
27 of intoxicating liquor and a controlled substance, the person's

1 ability to operate a motor vehicle was visibly impaired at the
2 time of the violation.

3 (19) A special verdict described in subsections (17) and
4 (18) is not required if a jury is instructed to make a finding
5 solely as to either of the following:

6 (a) Whether the defendant was under the influence of a con-
7 trolled substance or a combination of intoxicating liquor and a
8 controlled substance at the time of the violation.

9 (b) Whether the defendant was visibly impaired due to his or
10 her consumption of a controlled substance or a combination of
11 intoxicating liquor and a controlled substance at the time of the
12 violation.

13 (20) If a jury or court finds under subsection (17), (18),
14 or (19) that the defendant operated a motor vehicle under the
15 influence of or while impaired due to the consumption of a con-
16 trolled substance or a combination of a controlled substance and
17 an intoxicating liquor, the court shall do both of the
18 following:

19 (a) Report the finding to the secretary of state.

20 (b) On a form or forms prescribed by the state court admin-
21 istrator, forward to the department of state police a record that
22 specifies the penalties imposed by the court, including any term
23 of imprisonment, and any sanction imposed under section 625n or
24 904d.

25 (21) Except as otherwise provided by law, a record described
26 in subsection (20)(b) is a public record and the department of

1 state police shall retain the information contained on that
2 record for not less than 7 years.

3 (22) In a prosecution for a violation of subsection (6), the
4 defendant bears the burden of proving that the consumption of
5 intoxicating liquor was a part of a generally recognized reli-
6 gious service or ceremony by a preponderance of the evidence.

7 (23) Subject to subsection (25), as used in this section,
8 "prior conviction" means a conviction for any of the following,
9 whether under a law of this state, a local ordinance substan-
10 tially corresponding to a law of this state, or a law of another
11 state substantially corresponding to a law of this state:

12 (a) Except as provided in subsection (24), a violation or
13 attempted violation of subsection (1), (3), (4), (5), (6), or
14 (7), section 625m, former section 625(1) or (2), or former sec-
15 tion 625b.

16 (b) Negligent homicide, manslaughter, or murder resulting
17 from the operation of a vehicle or an attempt to commit any of
18 those crimes.

19 (24) Except for purposes of the enhancement described in
20 subsection (11)(b), only 1 violation or attempted violation of
21 subsection (6), a local ordinance substantially corresponding to
22 subsection (6), or a law of another state substantially corre-
23 sponding to subsection (6) may be used as a prior conviction.

24 (25) If 2 or more convictions described in subsection (23)
25 are convictions for violations arising out of the same transac-
26 tion, only 1 conviction shall be used to determine whether the
27 person has a prior conviction.

1 (26) IN DETERMINING WHETHER A VIOLATION OCCURS WITHIN 10
2 YEARS OF 2 OR MORE PRIOR CONVICTIONS FOR PURPOSES OF THIS SEC-
3 TION, THE COURT SHALL EXCLUDE ANY PERIOD OF TIME THE PERSON
4 CHARGED WITH THE VIOLATION IS INCARCERATED IN CALCULATING THE
5 10-YEAR PERIOD.

6 Sec. 625m. (1) A person, whether licensed or not, who has
7 an alcohol content of 0.04 grams or more but not more than 0.07
8 grams per 100 milliliters of blood, per 210 liters of breath, or
9 per 67 milliliters of urine shall not operate a commercial motor
10 vehicle within this state.

11 (2) A peace officer may arrest a person without a warrant
12 under either of the following circumstances:

13 (a) The peace officer has reasonable cause to believe that
14 the person was, at the time of an accident, the driver of a com-
15 mercial motor vehicle involved in the accident and was operating
16 the vehicle in violation of this section or a local ordinance
17 substantially corresponding to this section.

18 (b) The person is found in the driver's seat of a commercial
19 motor vehicle parked or stopped on a highway or street within
20 this state if any part of the vehicle intrudes into the roadway
21 and the peace officer has reasonable cause to believe the person
22 was operating the vehicle in violation of this section or a local
23 ordinance substantially corresponding to this section.

24 (3) Except as otherwise provided in subsections (4) and (5),
25 a person who is convicted of a violation of this section or a
26 local ordinance substantially corresponding to this section is
27 guilty of a misdemeanor punishable by imprisonment for not more

1 than 93 days or a fine of not more than \$300.00, or both,
2 together with costs of the prosecution.

3 (4) A person who violates this section or a local ordinance
4 substantially corresponding to this section within 7 years of 1
5 prior conviction may be sentenced to imprisonment for not more
6 than 1 year or a fine of not more than \$1,000.00, or both.

7 (5) A person who violates this section or a local ordinance
8 substantially corresponding to this section within 10 years of 2
9 or more prior convictions is guilty of a felony and shall be sen-
10 tenced to pay a fine of not less than \$500.00 or more than
11 \$5,000.00 and to either of the following:

12 (a) Imprisonment under the jurisdiction of the department of
13 corrections for not less than 1 year or more than 5 years.

14 (b) Probation with imprisonment in the county jail for not
15 less than 30 days or more than 1 year and community service for
16 not less than 60 days or more than 180 days. Not less than 48
17 hours of the imprisonment imposed under this subdivision shall be
18 served consecutively.

19 (6) IN DETERMINING WHETHER A VIOLATION OCCURS WITHIN 10
20 YEARS OF 2 OR MORE PRIOR CONVICTIONS FOR PURPOSES OF SUBSECTION
21 (5), THE COURT SHALL EXCLUDE ANY PERIOD OF TIME THE PERSON
22 CHARGED WITH THE VIOLATION IS INCARCERATED IN CALCULATING THE
23 10-YEAR PERIOD.

24 (7) ~~(6)~~ A term of imprisonment imposed under subsection
25 (4) or (5) shall not be suspended.

26 (8) ~~(7)~~ Subject to subsection ~~(9)~~ (10), as used in this
27 section, "prior conviction" means a conviction for any of the

1 following, whether under a law of this state, a local ordinance
2 substantially corresponding to a law of this state, or a law of
3 another state substantially corresponding to a law of this
4 state:

5 (a) Except as provided in subsection ~~-(8)-~~ (9), a violation
6 or attempted violation of this section, section 625(1), (3), (4),
7 (5), (6), or (7), former section 625(1) or (2), or former section
8 625b.

9 (b) Negligent homicide, manslaughter, or murder resulting
10 from the operation of a vehicle or an attempt to commit any of
11 those crimes.

12 (9) ~~-(8)-~~ Only 1 violation or attempted violation of
13 section 625(6), a local ordinance substantially corresponding to
14 section 625(6), or a law of another state substantially corre-
15 sponding to section 625(6) may be used as a prior conviction.

16 (10) ~~-(9)-~~ If 2 or more convictions described in subsection
17 ~~-(7)-~~ (8) are convictions for violations arising out of the same
18 transaction, only 1 conviction shall be used to determine whether
19 the person has a prior conviction.