

Legislative Analysis



CRIME TO RECKLESSLY OBSTRUCT ROAD; PENALTIES

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House Bill 4456 (Substitute H-2)
Sponsor: Rep. Tom Pearce

House Bill 5663 with House committee amendment
Sponsor: Rep. Marie Donigan
Committee: Transportation

First Analysis (2-25-08)

BRIEF SUMMARY: The bills would create a new crime of "reckless endangerment" that prohibits the placement of an obstruction in a roadway with intention, provide penalties for that crime depending upon the severity of injury to a victim, and establish felony sentencing guidelines for judges to follow when deciding upon punishment for the crime.

FISCAL IMPACT: The bills would provide for new misdemeanor and felony offenses; the fiscal impact on state and local correctional systems would depend on how they affected numbers of convictions and severity of sentences. (See *FISCAL INFORMATION* below.)

THE APPARENT PROBLEM:

In early July 2005, three teenage boys living in Wyoming, Michigan stretched industrial strength plastic wrap across a roadway, fastening it to two sign posts. A 48-year-old motorcyclist (now a retired police officer) hit the barrier at 1:20 am on a Saturday morning. He was thrown from his Harley Davidson cycle, suffering a fractured rib and internal bruises. He reported that the plastic wrap looked like fog.

The Kent County prosecutor searched for an appropriate crime with which to charge the perpetrators, only to conclude that none existed in the Penal Code. Consequently, the prosecutor charged the boys with assault, acknowledging that the crime could be successfully challenged since those charged would likely argue their prank was undertaken without intent to injure. (Despite these circumstances, the prosecution proceeded unchallenged by the boys' parents; the boys were found guilty, and placed on probation under Holmes Youthful Trainee status, which erases their criminal record upon the successful completion of the probationary period.)

Legislation has been introduced to prohibit the reckless and dangerous obstruction of a roadway; to make a violation of that prohibition a crime; and to set penalties and establish sentencing guidelines for the crime.

THE CONTENT OF THE BILLS:

The bills would create a new crime of "reckless endangerment" that prohibits the placement of an obstruction in a roadway, provide penalties for that crime depending

upon the severity of injury to a victim, and establish felony sentencing guidelines for judges to follow when deciding upon punishment for the crime.

House Bill 4456 (H-2) would amend the Michigan Penal Code (MCL 750.394b) to prohibit a person from intentionally placing an item in or across a roadway, if the person knows or should know that the item is likely to come into contact with a moving vehicle or another person riding in or upon a moving vehicle; and also prohibits a person from intentionally placing a *dangerous* item in or across a roadway.

A person who violated either or both of these prohibitions would be guilty of a crime as follows:

- A misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100, or both.
- If the violation causes property damage, a misdemeanor punishable by imprisonment for not more than one year or a fine of up to \$500, or both.
- If the violation causes injury to any person (other than serious impairment or death), a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$2,000.
- If the violation causes serious impairment, a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$5,000.
- If the violation causes death, a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$10,000.

The bill specifies that a criminal penalty could be imposed in addition to any penalty for any other criminal offenses arising from the same conduct, or for any contempt of court arising from the same conduct.

The bill defines "serious impairment" to mean serious impairment of a body function as that term is defined in section 58c of the Michigan Vehicle Code (MCL 257.58c). [There, "serious impairment of a body function" includes, but is not limited to, one or more of the following: a) loss of a limb or loss of use of a limb; b) loss of a foot, hand, finger, or thumb, or loss of use of a foot, hand, finger, or thumb; c) loss of an eye or ear, or loss of use of an eye or ear; d) loss or substantial impairment of a bodily function; e) serious visible disfigurement; f) a comatose state that lasts for more than three days; g) measurable brain or mental impairment; h) a skull fracture or other serious bone fracture; i) a subdural hemorrhage or subdural hematoma; and j) loss of an organ.]

House Bill 5663 (H-1) would make complementary amendments to sentencing guidelines provisions in the Code of Criminal Procedure (MCL 777.16s) to create three new felony crimes against persons as follows:

- A class F crime of "reckless endangerment causing injury" having a maximum punishment of four years in prison.

- A class D crime of "reckless endangerment causing serious impairment" having a maximum sentence of 10 years in prison.
- A class C crime of "reckless endangerment causing death" having a maximum sentence of 15 years in prison.

House Bill 5663 is tie-barred to House Bill 4456 so that it would go into effect only if House Bill 4456 also were enacted into law.

FISCAL INFORMATION:

The bills would provide for new misdemeanor and felony offenses; the fiscal impact on state and local correctional systems would depend on how they affected numbers of convictions and severity of sentences. Generally, felons are a state responsibility (except when serving a sentence in the county jail), and misdemeanants are a local responsibility. To the extent that misdemeanor convictions increased, local costs of jail incarceration or misdemeanor probation supervision, both of which vary by jurisdiction, could increase.

To the extent that more offenders were sentenced to prison or to felony probation supervision, the state could incur increased costs. The average appropriated cost of incarceration in a state prison is about \$32,000 per prisoner annually, a figure that includes allocated portions of various fixed administrative and operational costs. Costs of parole and probation supervision average about \$2,000 per supervised offender per year. To the extent that more offenders were sentenced to jail, affected counties could experience increased costs; jail costs vary by county.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

ARGUMENTS:

For:

These bills establish specific criminal penalties for recklessly or dangerously obstructing a roadway. Once enacted into law, they will allow prosecutors to bring charges against those who perpetrate this crime without fearing their prosecution will be challenged because the crime charged is inappropriately vague.

Against:

Some observe that this crime—charged as a felony when severe injuries are sustained—has excessively harsh penalties if the crime begins as a childhood prank where the offenders do not likely intend to seriously harm anyone.

Response:

The members of the Transportation Committee adopted a substitute for House Bill 4456 to prohibit a person from *intentionally* placing an item in or across a roadway, if the person knows or should know that the item is likely to come into contact with a moving

vehicle or another person riding in or upon a moving vehicle. The bill also prohibits a person from *intentionally* placing a *dangerous* item in or across a roadway.

POSITIONS:

The Kent County Prosecutor's Office supports the bills. (2-21-08)

The Prosecuting Attorneys Association of Michigan supports the bills. (2-21-08)

The Michigan State Police support House Bill 4456. (2-21-08)

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■ 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.