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Senate Bill 705 (as introduced 1-8-20)
Senate Bill 811 (as introduced 3-3-20)
Sponsor: Senator Peter J. Lucido
Committee: Judiciary and Public Safety

Date Completed: 3-4-20

CONTENT

Senate Bill 705 would amend the Michigan Vehicle Code to require that a person who was arrested for certain crimes pertaining to the operation of a vehicle while under the influence of a controlled substance or intoxicating substance and who was subjected to analysis performed by a certified drug recognition expert be advised of certain information, including that he or she had the right to demand that a certified drug recognition expert of his or her choosing administer the same kind of analysis.

Senate Bill 811 would amend Public Act 188 of 1941, which created the Michigan State Safety Commission,¹ to require the Commission, in collaboration with certain other State entities, to offer a drug recognition expert program, and require an individual who successfully completed the program and satisfied certain certification requirements to be certified as a drug recognition expert.

Senate Bill 705

Section 625c of the Michigan Vehicle Code specifies that a person who operates a vehicle on a public 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 the State is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or other intoxicating substance, or both, in his or her blood or urine or the amount of alcohol in his or her breath if the person is arrested for various drunk driving violations or certain other traffic violations.

Under the bill, if at the time a person was arrested for a crime described in Section 652c he or she was subjected to analysis performed by a certified drug recognition expert, the person would have to be advised of the following:

- That he or she would have the right to demand that a certified drug recognition expert of his or her own choosing administer the same kind of analysis.
- The results of the analysis would be admissible in a judicial proceeding as provided under the Code and would be considered with other admissible evidence in determining the defendant's innocence or guilt.

¹ Executive Order 2002-5 abolished the Michigan State Safety Commission and incorporated its main function in the Traffic Safety Advisory Commission.

- He or she would be responsible for obtaining an analysis by a certified drug recognition expert at his or her own expense.

"Certified drug recognition expert" would mean that term as defined in Section 625t. That section defines the term as a law enforcement officer trained to recognize impairment in a driver under the influence of a controlled substance rather than, or in addition to, alcohol. Under the bill, the term would mean a law enforcement officer *or other individual* trained to recognize impairment in a driver under the influence of a controlled substance rather than, or in addition to, alcohol

Senate Bill 811

The bill would amend Public Act 188 of 1941 to require the Commission, in collaboration with the Michigan State Police, the Michigan Office of Highway Safety Planning, the Department of Transportation, and the Drug Evaluation and Classification Program coordinator, beginning on the bill's effective date, to offer a drug recognition expert program to an individual who was not a law enforcement officer. "Law enforcement officer" would mean that term as defined in the Michigan Commission on Law Enforcement Standards Act.

The program would have to include all of the following:

- A prerequisite or preenrollment requirement for qualification into the program, which would not include the preenrollment requirements, courses of study, attendance requirements, and instructional hours required for the training and licensing of a law enforcement officer.
- Education materials and programming required for a successful completion of the program.
- Relevant classroom lectures and hands-on instruction.
- Field training.

An individual who successfully completed the program and satisfied the certification requirement would have to be certified as a drug recognition expert. "Certified drug recognition expert" would mean an individual who is trained to recognize impairment in a driver under the influence of a controlled substance rather than, or in addition to, alcohol. "Controlled substance" would mean a drug, substance, or immediate precursor included in Schedules 1 to 5 of Part 72 (Standards and Schedules) of the Public Health Code.

An individual who enrolled in the program would have to bear the costs of attending the program and receiving certification as a drug recognition expert.

An individual who was certified as a drug recognition expert would have to perform the same duties and functions of a law enforcement officer who was certified as a drug recognition expert; however, the duties and functions would not include any of the following:

- The stop, search, or arrest of a driver of a motor vehicle suspected of operating the motor vehicle while under the influence of a controlled substance.
- The impound of the motor vehicle of a driver who violated a provision of the Michigan Vehicle Code with respect to operating a motor vehicle while under the influence of a controlled substance.
- Obtaining a search warrant, an arrest warrant, or any other criminal process that was necessary to institute a criminal proceeding in relation to the case.
- The powers of a conservator of the peace.

FISCAL IMPACT

Senate Bill 705

The bill could have a minor negative impact on local court systems and county jails. Any negative impact would be related to hearing delays that could result from the new defendants' rights the bill would create; specifically, the right to an independent analysis from a drug recognition expert. These requests likely would delay criminal adjudication, particularly at the district court level, while defendants asserted the right to the independent analysis and, subsequently, arranged to acquire the analysis. These costs would be absorbed by local courts and local jails. No fiscal impact to the State is anticipated in this regard.

The bill would have no fiscal impact on State or local law enforcement agencies.

Senate Bill 811

The bill would require the Michigan State Police's Office of Highway Safety Planning (OHSP), the entity that currently is the facilitator for training law enforcement personnel to become certified drug recognition experts (DREs), to offer a similar training program for individuals who are not law enforcement officers. The individual seeking the certification would bear the cost.

Currently, there are 157 active DREs within law enforcement agencies in Michigan, primarily among State Police (37), Sheriff (36), and local (78) agencies. The OHSP operates its training program with Federal funds from the National Highway Traffic Safety Administration. In most years, the OHSP conducts one DRE school a year, but for fiscal year 2019-20, it has budgeted \$378,000 to conduct two, three-week schools for 20 officers each. There is currently no cost to officers to attend the DRE school. Training is not provided for non-law enforcement personnel, and DRE credentials, issued by the International Association of Chiefs of Police, can be granted only to law enforcement personnel or authorized DRE instructors.

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