

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0729/P1dn
PJH:kjf:rs

December 19, 2012

Representative Ott,

Please review this draft to ensure that it is consistent with your intent. Please look carefully at the mandatory minimum sentences for causing bodily harm or substantial bodily harm, the enhanced sentences for repeaters, and the doubling of those sentences if a child under the age of 16 was a passenger in the car at the time of the violation.

Current law doubles the applicable minimum and maximum fines and minimum and maximum terms of imprisonment for a first offender who causes injury, and doubles the applicable maximum fine and term of imprisonment for a repeat offender. Current law also makes it a Class H felony, with no minimum period of confinement (but a maximum fine of \$10,000, maximum imprisonment of six years, or both), to cause injury if the offender has a prior OWI violation.

I tried to keep the gist of these provisions intact, but this has the effect of creating theoretically inconsistent sentencing. The bill imposes the following mandatory minimums:

Bodily harm, no priors: minimum six months in jail. If a minor passenger, minimum one year in prison and the violation is an unclassified felony.

Bodily harm, one or more priors: minimum one year confinement in prison, guilty of a Class H felony. If a minor passenger, minimum two years in prison.

Substantial bodily harm, no priors: minimum two years in prison, and guilty of a Class H felony. If a minor passenger, minimum four years in prison.

Substantial bodily harm, one or more priors: minimum three years in prison, guilty of a Class H felony. If a minor passenger, minimum six years in prison.

Current law does not employ the same doubling for causing great bodily harm with a minor passenger in the vehicle, nor does it increase the sentence for a repeat offender (unless the person committed a felony within five years prior to the offense or committed three misdemeanors within five years prior to the current offense; if this is the case, the maximum period of imprisonment can be increased by two to six years). Under the bill, a person who causes great bodily harm is guilty of a Class F felony (as under current law) and must spend a mandatory minimum of three years in prison.

Thus, under the bill, a person who commits substantial bodily harm but either has a prior OWI violation or has a minor passenger at the time of the violation will be serving a longer mandatory minimum term of confinement in prison than a person who causes great bodily harm, even if the person who causes great bodily harm has a prior OWI violation or has a minor passenger at the time of the violation. In practice, given that the person who causes great bodily harm is guilty of a higher class felony and subject to a much greater maximum term of imprisonment, it may well be that a sentencing court would ensure that the person who causes great bodily harm serves a longer stint in prison, but I still wanted to call the matter to your attention.

Finally, when the mandatory minimums imposed under this bill for causing substantial bodily harm are doubled, the mandatory minimums exceed the maximum terms of confinement allowed under s. 973.01 (2) (b) 8. I think this is okay under s. 973.01 (2) (c), which allows for longer periods of incarceration under “any applicable penalty enhancement statute.” However, you might want to have someone at the Department of Corrections and/or at the director of state courts’ office take a look at it to be sure that the doubling provisions are considered “penalty enhancement statutes” for purposes of extending the maximum term of confinement in prison.

Please let me know if you would like any changes to this draft or if you have any questions. When the draft meets your approval, I can convert it to introducible form.

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