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UNDERAGE DRINKING DRIVERS

House Bill 4839 as passed by the House
Second Analysis (8-9-93)

Sponsor: Rep. Frank M. Fitzgerald
Committee: Judiciary

THE APPARENT PROBLEM:

People under age 21 are not supposed to drink alcohol in Michigan, and therefore, many reason, someone who is under age 21 and driving should have no alcohol in his or her system (or at least virtually no alcohol, as many over-the-counter remedies contain alcohol). However, the vehicle code makes no special provision for underage drinking drivers. Legislation to create a separate unlawful blood alcohol level for drivers under age 21 has been recommended by the House Republican Task Force on Drunk Driving (in its 1989 report), by the Legislative Policy Subcommittee of the Michigan Campaign for Surgeon General Koop's Drinking and Driving Recommendations (in a position paper issued in March 1990), and others.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Vehicle Code to forbid a person under age 21 from operating a motor vehicle on a highway or other place open to the general public or generally accessible to motor vehicles (including a parking area) if the person had a blood alcohol content of .02 percent. The bill would take effect April 1, 1994.

Criminal penalties. A first offense would be a misdemeanor punishable by up to 45 days of community service, a fine of up to \$250, or both. A second offense within seven years of a prior drinking and driving offense would be a misdemeanor punishable by up to 60 days of community service, a fine of up to \$500, or both. As with other drinking and driving offenses, the court could order the person to pay the costs of prosecution.

Suspensions. If the offender had no prior drinking and driving convictions within the previous seven years, he or she would have his or her license suspended for up to 90 days. The court could order a restricted license to be issued under existing provisions enabling the offender to drive to and

from work, school, treatment program, and community service. If the offender had one or more prior drinking and driving offenses within the previous seven years, his or her license would be suspended for up to one year, and the first 60 days of suspension would be a "hard" suspension during which no restricted license could be issued.

Points. A person convicted of underage drinking and driving would be assessed two points under a provision of the vehicle code that assigns two points to moving violations not otherwise listed (MCL 257.320a).

Pleas. At or after arraignment, a plea reduction to underage drinking and driving (the offense created by the bill) generally would be forbidden to someone charged with a more serious drinking and driving offense. If the charge was operating a vehicle under the influence of liquor or drugs (OUIL) or driving with a blood alcohol level of .10 percent or more (unlawful blood alcohol level or UBAL) and the charge was punishable as a first offense or second offense within seven years, or if the charge was operating a vehicle while impaired by alcohol or drugs (OWI), the prosecutor could not reduce the charge to underage drinking and driving. If the charge was OUIL or UBAL and was punishable as a third offense within ten years, the prosecutor could not reduce the charge if the person had waived the preliminary examination or if the preliminary examination had established probable cause for charging the person with first-, second-, or third-offense OUIL or UBAL or with OWI.

Lesser included offenses. A court would be forbidden from instructing a jury that underage drinking and driving was a lesser included offense of OUIL, UBAL, or OWI. Someone charged with OUIL, UBAL, or OWI could not instead be found guilty of underage drinking and driving.

Prior offenses. While the more serious offenses of OUIL, UBAL, and OWI would be considered prior offenses for someone charged with underage drinking and driving, the less serious offense of underage drinking and driving would not be considered a prior offense for someone charged with OUIL, UBAL, or OWI.

Deadlines. Since January 1, 1992, courts have had to finally adjudicate drunk driving cases within 77 days after arrest. The bill would retain this deadline, but would specify that it not apply to an OUIL or UBAL case punishable as a third offense within ten years, nor to a case where a felony charge was joined with a charge of OUIL, UBAL, OWI, or drinking and driving a commercial vehicle. An identical exception would be created to the 14-day arraignment deadline. In addition, the bill would specify that the dismissal of a case without prejudice for a violation of the 77-day deadline would not preclude issuing a new complaint and warrant charging the same violation.

Preliminary breath tests. A police officer could require a driver under age 21 to submit to a preliminary breath test (PBT) if he or she had reasonable cause to believe that the driver was operating a vehicle while the driver's blood contained any measurable amount of alcohol by weight or while the person had any detectable presence of intoxicating liquor. (This language parallels that for commercial vehicle drivers, whose threshold unlawful blood alcohol content is .04 percent.) The PBT results would be admissible in court.

Chemical testing. Existing provisions that say a driver is considered to have given consent to chemical testing would be extended to apply to drivers arrested in connection with underage drinking and driving.

MCL 257.319 et al.

FISCAL IMPLICATIONS:

The Department of State reports that data are lacking on the numbers of underage drinkers who drive with less than .07 blood alcohol level (the threshold for OWI), although efforts are being made to compile such information. However, the bill would present administrative costs to the department, the size of which would depend on the

numbers of underage drinking drivers convicted under the bill. (8-9-93)

ARGUMENTS:

For:

While Michigan law forbids people under age 21 from possessing alcohol outside of their bodies, it does not prohibit them from "possessing" it inside their bodies while driving, as long as they have not consumed enough to be considered drunk drivers. The bill would eliminate this inconsistency in the law, and in so doing, discourage teens from drinking at all before getting behind the wheel. The life-saving potential of such a measure is clear: alcohol-related crashes constitute the leading cause of death among youth of driving age. The surgeon general has reported that the leading single cause of death for Americans aged 15 to 24 is drunk driving. The National Commission on Drunk Driving has noted that a young person under the legal drinking age is nearly twice as likely to die in an alcohol-related crash as an adult over age 21. According to the Michigan State Police, 42 percent of the Michigan crashes in which teenagers were killed in 1991 involved alcohol. At least one study has found young drinkers to be disproportionately represented among driver fatalities where moderate amounts of alcohol had been consumed. Taken as a whole, the facts suggest that the combination of inexperience with driving and inexperience with drinking is a lethal one. In discouraging teens from drinking and driving, the bill would help to make highways safer and enable more teens to grow into adulthood.

For:

The bill's approach is an appropriate one. It sets a threshold blood alcohol level of .02 percent, which is high enough to eliminate those who have consumed alcohol in a dose of cough syrup, but low enough to include those who have had a drink or two. It excludes jail time for young offenders, but sets reasonably high fines and community service orders as sentencing options. It mandates license suspensions of up to 90 days (tougher for repeat offenders), but leaves room for restricted licenses that would allow young offenders to attend school, hold down a job, or complete substance abuse treatment. With license suspensions, the bill may offer a particularly effective mechanism to induce teenagers to comply with the law: a driver's license is a tremendously important thing for many teens, and the prospect of losing it should serve as an especially strong incentive not to drink and drive.

Response:

The bill does not clearly mandate a minimum period for license suspension. By requiring license suspensions of up to 90 days, it leaves room for license suspensions of one day or even less.

Against:

Some may find the bill's fines to be unreasonably high. With young people, the ability to pay may have a great deal to do with parental ability or willingness to pay, with the result that the penalty would not fall evenly on those for whom a fine was ordered. Moreover, the fines are significantly higher than those for related alcohol offenses such as those for "minor in possession" or open intoxicants in a vehicle.

Response:

The bill would set a maximum fine of \$250 for a first offense, which in itself is not excessive, and may often be warranted. Whether to impose a fine and at what level are matters best left to judicial discretion, so that individual circumstances may be accommodated. This is what the bill would do.

Against:

The bill would perpetuate inconsistencies in the law regarding underage drinking drivers. For one thing, the prohibition against an underage person possessing and transporting alcohol would remain in the liquor code, where it is a misdemeanor subject to a \$100 fine and/or 90 days in jail. No points are assessed against the driver's license, which must be done under the vehicle code. Having open intoxicants in a motor vehicle, which is prohibited by the vehicle code and applies regardless of age, would continue to be a 90-day misdemeanor punishable by a \$100 maximum fine but no license suspension. Various proposals addressing underage drinking and driving have been circulating in the legislature, and what is needed is a comprehensive and organized approach to the problem.

Against:

The bill would unfairly single out young people for criminal and license sanctions. The law sets a standard for the blood alcohol level at which one should not drive, and that standard should apply to all. The law in effect now says that someone who has had one drink, which is roughly the amount proscribed under the bill, does not present a threat to highway safety. To apply a separate standard to people under age 21 is to create license sanctions for behavior that is presumed not to affect driving ability.

Against:

The bill could alter the way police enforce the vehicle code against young people, or give tacit approval to questionable methods. Since the standard for stopping a person is reasonable suspicion that the offense in question is being committed, police would not need the same level of cause to stop a person that they would when drunk driving is suspected. A minor fluctuation in vehicle speed could be used as excuse to pull over a young driver; a violation of traffic laws or an indication of impaired driving would not be necessary. Then, under the bill's standard, a whiff of alcohol would be enough to cause provisions regarding preliminary breath tests to apply. An overzealous officer might be able to pull over a young person based on little more than an assessment of the person's age combined with dislike of his or her looks or a knowledge of his or her reputation. Kids who pulled out of a party store parking lot could get pulled over because the officer found the way they did it "suspicious."

Response:

Fundamentally, the standard for pulling a driver over will continue to be the same, namely that the officer has a reasonable suspicion that a law was being violated. In practice, the officer will observe a traffic violation, pull a young person over, and detect a whiff of alcohol before the reasonable suspicion of underage drinking and driving will arise.

For:

A major overhaul of the state's drunk driving laws took effect on January 1, 1992. Part of those reforms was the imposition of deadlines for action--from a 14-day deadline for arraignment (starting with the date of arrest) to a 77-day deadline for final adjudication. Those deadlines have proved difficult to meet at times, and reports are that some courts are dismissing cases that miss deadlines. The bill would address this problem by creating exceptions to the deadlines for the more serious and complicated cases--those involving felonies.

Response:

The deadlines were created as a means of ensuring swift and therefore effective justice, and are an element in the state's strategy to qualify for millions of dollars in federal funds. Exceptions to the deadlines were established, however, including an exception for "exceptional circumstances." Moreover, the court of appeals recently ruled in People v. Smith (issued 6-21-93) that a drunk driving case cannot be dismissed with prejudice for

missing a deadline; in other words, a missed deadline is not sufficient to excuse a defendant from prosecution. To do as the bill proposes and create additional exceptions to the deadlines would be to address a problem that may not exist at the expense of speedy disposition of cases.

POSITIONS:

The Department of State supports the bill. (8-9-93)

The Department of State Police supports the bill. (8-6-93)

The Michigan Beer and Wine Wholesalers Association supports the bill. (8-9-93)

The Michigan District Judges Association supports the bill. (8-5-93)

The Michigan Interfaith Council on Alcohol Problems (MICAP) supports the bill. (8-5-93)

Mothers Against Drunk Driving (MADD) supported the committee version of the bill (6-30-93); a position from the organization was not available on the House-passed version, which differed from the committee version in including the exception to the 14-day arraignment deadline. (8-9-93)

The Michigan Licensed Beverage Association does not oppose the bill. (8-5-93)

The Michigan Collegiate Association opposes the bill. (8-5-93)