

MIP: INCREASE PENALTIES

House Bill 4200 as passed by the House Second Analysis (8-1-01)

**Sponsor: Rep. Mike Kowall
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Under Michigan's zero tolerance laws, it is illegal for a person under 21 years of age to purchase, consume, possess (or to attempt to purchase, consume, or possess) alcoholic beverages. A violation is a misdemeanor with penalties that include automatic driver's license sanctions (for second and subsequent violations) and the possibility of a fine, community service, and substance abuse screening (at the violator's own expense) and/or substance abuse treatment. According to law enforcement personnel, however, the current penalties do not have the hoped for deterrent effect on underage alcohol consumption, as a significant number of minors are convicted of repeat violations. It is not uncommon for the same person to be convicted of a third, fourth, or even fifth violation. Even if a judge orders the minor to attend either a substance abuse prevention or treatment program, there is no additional penalty if the minor refuses to comply. Many believe that if judges had the discretion to sentence a violator to complete a substance abuse program or spend time in jail, that more violators would comply with the court-ordered substance abuse program. Legislation is therefore being offered to add the possibility of jail time to the current penalties for violations involving minors and alcohol.

THE CONTENT OF THE BILL:

The bill would amend the portion of the Liquor Control Code that prohibits the purchase, consumption, or possession of alcoholic liquor by minors to increase the penalties for violations. Under current law, a first violation is a misdemeanor, subject to a fine of no more than \$100, and the possibility of being ordered to participate in a substance abuse prevention or treatment program, perform community service, and/or undergo substance abuse screening and assessment. Upon a second violation, the penalty is increased to a fine of not more than \$200, along with the other possible penalties. Upon a third or subsequent violation, the fine is increased to no more than \$500, along with the other possible penalties. Further, under provisions of

the Michigan Vehicle Code [MCL 257.319(7)], the secretary of state is required to suspend a violator's driver's license for two or more violations. For a second offense, a person's driver's license is suspended for 90 days, and a restricted license may be issued after 30 days. For a third or subsequent violation, a driver's license is suspended for one year, and a restricted license may be issued after 60 days. The bill would specify that, in addition, each violation would be subject to imprisonment for not more than 90 days. However, a court could not impose a term of imprisonment for a first offense unless it determined on the record that the minor failed to successfully complete any treatment, screening, or community service that had been ordered by the court or the minor failed to pay any court-ordered fine. The bill would take effect January 1, 2002.

MCL 436.1703

BACKGROUND INFORMATION:

Liquor code prohibitions on minors and alcohol:
Prior to 1978, a minor who purchased alcohol was guilty of a misdemeanor punishable by up to 90 days in jail and a fine of up to \$100. The misdemeanor sanction was eliminated when an amendment to the state constitution raised the drinking age to 21. Instead, a violator was subject to a fine of \$25 for a first violation, \$50 for a second violation, and \$100 for subsequent violations. In 1995, the fines were increased to \$100, \$200, and \$500, respectively; an offense was made a misdemeanor; and license sanctions could be levied by the secretary of state. Public Act 492 of 1996 gave courts the authority to order community service, substance abuse screening and assessment, and participation in substance abuse prevention or treatment programs. The Liquor Control Code was recodified in 1998. Legislative action later in 1998 gave the secretary of state the authority to suspend licenses based upon prior convictions.

Drinking and driving: Under the Michigan Vehicle Code, a minor who is found to be driving with a blood alcohol count (BAC) of .02-.07 may, for a first offense, face a fine of up to \$250 and/or be required to perform community service for up to 45 days, and could be ordered to pay the costs of prosecution. In addition, the minor's driver's license is suspended for 30 days (but a restricted license may be issued) and the person receives four points on his or her driving record. According to the Department of State, if a minor fails to complete the community service or to pay the fine, he or she would be subject to "failure to comply with judgment" provisions of the law and could face license suspension until such time as the minor were cleared by the court. For a second or subsequent offense, a minor could be fined up to \$500, perform community service for up to 60 days, and/or be sentenced to not more than 93 days in jail, as well as face mandatory driver's license sanctions.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that, to the extent that the bill increased the use of incarceration for "minor-in-possession" misdemeanor offenders, it could increase local correctional costs. (8-1-01)

ARGUMENTS:

For:

Michigan legislators, law enforcement personnel, and citizens alike have taken a strong stance against the problem of underage drinking. Current law prohibits a person who is under 21 from purchasing, possessing, or consuming alcohol. Yet, the minor in possession (MIP) provisions of the Liquor Control Code lack the "teeth" necessary for enforcement of sanctions. Other than mandatory driver's license suspensions by the secretary of state for repeat violations, a judge can only order community service, levy a fine, or order participation in a substance abuse prevention or treatment program. According to one district judge, if a minor refuses to comply with a court order, there is little a judge can do to force compliance. The fact that many minors are being cited with repeat violations of the MIP laws is evidence that current sanctions do little to deter underage alcohol usage. Many believe that adding the possibility of time in jail would decrease the number of repeat offenses and increase the rates of attending and completing substance abuse programs.

Under the bill, a judge would have the discretion to order a minor to spend up to 90 days in jail, or in the case of juveniles, place the individual in a juvenile

facility. In the case of first-time offenders, a minor could only be ordered to serve time if he or she failed to complete any court-ordered substance abuse program, substance abuse screening, or community service or did not pay a court-ordered fine. Reportedly, even forced participation in substance abuse programs has a positive effect on reducing alcohol abuse by minors. It is hoped, therefore, that this possibility of time in jail will act as an effective encouragement to comply with participation in a substance abuse prevention or treatment program. If jail time were increased for subsequent violations, the number of minors continuing to engage in underage drinking should decrease. In light of the serious nature of alcohol addictions and the negative effects of alcohol on individuals as well as society, it is important to give judges the tools necessary to discourage alcohol abuse on the part of minors.

For:

Recent studies have revealed many damaging effects of alcohol on the developing brain. Alcohol use by young people can result in more than lifetime alcohol addictions; it can impair cognitive functioning and memory; it is associated with depression; and individuals under the influence of alcohol commit many crimes, especially assaultive crimes. Teenagers already are responsible for the majority of car accidents, and most of those accidents are alcohol related. Therefore, it is time to move past the mentality that drinking is a right of passage, and to get serious about discouraging inappropriate alcohol use by minors. The current laws are a good start, but in light of the sheer number of citations issued by law enforcement agencies for violations and the number of repeat offenders, the laws need to be strengthened.

Against:

Only persons 17 and older would be affected by the bill, as juveniles, unless tried and sentenced as adults, cannot be placed in adult jails and prisons. Since jails are already overcrowded and this could further strain local budgets for incarceration costs, the bill should not be supported unless additional funding is made available to offset local costs associated with the bill.

Response:

The current law applies to juveniles as well as to those 17 and older. Instead of sending a juvenile to a county jail, a judge could order placement in a juvenile facility. This would provide the younger offenders with a similar incentive to comply with whatever conditions or orders that a judge issued. It must be remembered that the intent of the legislation isn't to be overly punitive, but to enable the

enforcement of current laws and to encourage compliance with the state's zero tolerance laws.

The Department of State Police supports the bill. (6-29-01)

With regard to the cost associated with the bill and further overcrowding of jails, it is unlikely that most minors would serve time in jail. Just the possibility of jail time should be an effective encouragement to comply with any court orders for community service and substance abuse treatment programs. If jail time must be served, it would be likely that the time ordered would be minimal. In addition, local costs to house offenders are mitigated by a provision of the Prisoner Reimbursement to the County Act (Public Act 118 of 1984), which allows a county to charge a prisoner up to \$60 per day for the entire period of time he or she is confined in the county jail. Again, in light of the seriousness of underage drinking and the negative personal and societal impacts of alcohol abuse, the bill should be supported. Besides, the bill may have an indirect decrease in local costs if increased participation in treatment programs leads to fewer crimes being committed under the influence, less alcohol-related accidents and injuries, and less alcoholism in general.

Against:

Instead of allowing violators to be sentenced to up to 90 days in jail, the bill should be changed to allow a sentence of up to 93 days in jail. If so, a violator would be fingerprinted and the violation would have to be reported to the secretary of state and the Department of State Police for inclusion in the state criminal history records, and be reported to the Federal Bureau of Investigation for inclusion in the National Fingerprint Database.

Response:

Yes, increasing the jail time to 93 days would trigger the requirement for fingerprinting and reporting to the state police and the FBI, but to do so would result in increased costs. Further, this is not necessary, as current laws that require underage drinking convictions to be reported to the secretary of state create a sufficient record to track repeat offenders.

POSITIONS:

The Michigan Interfaith Council on Alcohol Problems (MICAP) supports the bill. (6-18-01)

The Michigan Grocers Association supports the bill. (7-24-01)

The Michigan District Judges Association supports the bill. (7-15-01)

Analyst: S. Stutzky

■ 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.