

MINORS IN POSSESSION: REQUIRE WARRANT FOR PRELIMINARY BREATH TEST

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House Bill 4213 (reported from committee w/o amendment)
Sponsor: Rep. Peter J. Lucido
Committee: Law and Justice
Complete to 3-28-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 89 of 2017)

BRIEF SUMMARY: The bill amends the "minor in possession" (MIP) Law to clarify that a preliminary breath test (PBT) cannot be administered without the consent of the minor (under 21 years of age) or a court order, and that a peace officer may seek to obtain a court order.

FISCAL IMPACT: The bill would likely have no fiscal impact on the Department of State Police or local law enforcement agencies. The fiscal impact on the judiciary and local court funding units is indeterminate and would depend on how provisions of the bill affect court caseloads and related administrative costs.

THE APPARENT PROBLEM:

Michigan's "minor in possession" or MIP law prohibits anyone under 21 years of age from purchasing or attempting to purchase, consuming or attempting to consume, possessing or attempting to possess, alcohol or generally having any bodily alcohol content. A first offense is a civil infraction, but subsequent violations are misdemeanors with increasingly stiffer penalties that can include jail and/or fines. The law, and related penalties and sanctions, apply whether the minor is a passenger in a vehicle or in any setting (e.g., walking, at a party, or inside a dwelling).

For years it has been fairly common for law enforcement officers, especially in areas with high concentrations of young people such as college towns, to routinely ask minors to submit to preliminary breath tests (PBTs) upon reasonable cause for having any bodily alcohol content. Until recently, refusing an officer's request was a civil infraction with a civil fine of \$100 (that sanction was eliminated by Public Act 357 of 2016). However, many minors are unaware that at least two federal court cases and at least one Michigan Court of Appeals case has ruled that laws and ordinances requiring a minor to submit to a PBT are unconstitutional because a PBT is an unreasonable search of a person and therefore require the person's consent or a search warrant to be obtained.

Legislation has been offered to clarify within the MIP laws that unless a minor gives consent for a PBT, or unless a search warrant is obtained, a PBT may not be administered to a minor.

THE CONTENT OF THE BILL:

House Bill 4213 amends the minor in possession law (MIP) within the Michigan Liquor Control Code. Among other things, Public Act 357 of 2016 eliminated a provision that made it a state civil infraction for a minor to refuse to submit to a PBT. Instead, the act allowed a peace officer who had reasonable cause to believe a minor has consumed alcohol or has any bodily alcohol content to request the minor to submit to a PBT.

The bill specifies that if a minor does not consent to a PBT, the test may not be administered without a court order, but a peace officer could seek to obtain a court order.

The bill would take effect 90 days after enactment.

MCL 436.1703

ARGUMENTS:

For:

Case law is clear—a breathalyzer test is a form of bodily search. Therefore, a peace officer must obtain a person's consent or obtain a search warrant from a court before administering a preliminary breath test or PBT. The bill simply clarifies the MIP law within the Michigan Liquor Control Code to reflect state and federal case law regarding the need for consent or a warrant before a PBT may be administered. Proponents of the bill say that PBTs are notorious for being inaccurate, are not admissible in court, and point out that more accurate tests already need consent or a search warrant.

POSITIONS:

The Criminal Defense Attorneys of Michigan indicated support for the bill. (3-14-17)

The Michigan State Police indicated it has a neutral position on the bill. (3-14-17)

The Michigan Sheriffs' Association indicated opposition to the bill. (3-14-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.