

Legislative Analysis



MIP REVISIONS: MEDICAL AMNESTY

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House Bill 4393 as enrolled
Public Act 125 of 2012
Sponsor: Rep. Anthony G. Forlini
Committee: Judiciary
Second Analysis (1-23-13)

BRIEF SUMMARY: The bill exempted a minor from the criminal sanctions for underage drinking under certain conditions, including when seeking medical treatment; clarified that a discharge and dismissal of a first offense MIP would count as a prior violation when determining sanctions for subsequent offenses; and clarified that penalties for a MIP conviction would be based on prior violations of the MIP law rather than prior convictions.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local governments as discussed later in the analysis.

THE APPARENT PROBLEM:

Currently, it is a misdemeanor for a person under 21 years of age to consume, purchase, or possess alcohol (or attempt to do the same) or to have any bodily alcohol content. ("Any bodily alcohol content" is defined to mean 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath or per 67 milliliters of urine **or** any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, with the exception of alcohol consumed as part of a generally recognized religious service or ceremony.) The penalty for a conviction or juvenile adjudication can include a fine (up to \$100 for a first offense, \$200 for a second offense, and \$500 for a third or subsequent offense), community service, substance abuse prevention or treatment and rehabilitation services, and/or substance abuse screening and assessment (at the offender's own expense). Persons convicted of a repeat offense can go to jail if they violate probation conditions.

Meant to deter underage drinking, an unfortunate and unintended result of the penalties is that minors who believes they, or friends, are suffering a medical crisis due to alcohol consumption is less likely to call 9-1-1 or to go to an emergency room because of the fear of arrest and the associated penalties if convicted. Every year, teens and young adults die from alcohol poisoning—a dangerous condition that requires immediate medical attention.

One solution that has been proposed is to create medical amnesty by which a minor who sought treatment or treatment for another person who had consumed too much alcohol would be insulated from an arrest under the minor in possession (MIP) law. It is believed that codifying the amnesty provision will encourage underage drinkers to call for medical

assistance sooner when it appears excessive drinking may have put someone at risk for alcohol poisoning.

In a separate but related matter, district court judges have found some flaws in the construction of the MIP statute they feel need addressing. For instance, a court may send to jail an offender who fails to pay a court-ordered fine or who fails to complete community service or get screened or treated for substance abuse. However, this only applies to persons who have a prior conviction. Since first offenders are eligible to have their case deferred and later discharged and dismissed if they meet all probation conditions (meaning they do not have a "conviction" on their records), it may not be until a third or subsequent offense that a judge can use the threat of jail to force compliance with probation orders. By that time, a young person can have a well-established substance abuse problem. Judges have requested that the language be revised to reflect what is believed to be the true intent of the MIP law - that sanctions be based on the number of offenses committed rather than the number of convictions.

THE CONTENT OF THE BILL:

House Bill 4393, among other things, amended the Michigan Liquor Control Code to create a medical amnesty under which certain minors meeting specified criteria would be exempt from sanctions under the minor in possession (MIP) law. The bill took effect June 1, 2012.

Medical amnesty

Specifically, the following minors are not to be considered to be in violation of the MIP law:

- A minor who consumes alcohol and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation. This includes, but is not be limited to, a medical examination and treatment for any condition arising from a violation of the criminal sexual conduct statutes committed against a minor.
- A minor who accompanies a minor who has consumed alcohol and who voluntarily presents himself or herself to a health facility or agency for treatment or observation. This includes, but is not be limited to, a medical examination and treatment for any condition arising from a violation of the criminal sexual conduct statutes committed against a minor.
- A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

The Public Health Code defines "health facility or agency" to mean, among other things, an ambulance operation, medical first response service, hospital, an HMO, and a county medical care facility. "Emergency medical services personnel" means a medical first

responder, emergency medical technician (EMT), emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator.

Sanctions based on offenses

Previously, MIP sanctions were based on prior convictions. For example, a first offense for the purpose of sanction was based on the person having no prior convictions. Thus, a person who had had a prior MIP offense deferred and subsequently discharged and dismissed and who then violated the MIP law again would have been charged and sentenced (if convicted) with a first offense. If that same person violated the MIP law again (for the 3rd time), the person would have been charged with and sentenced (if convicted) with the sanctions listed for a second offense.

The bill, instead, specifies that sanctions for repeat offenses be based on whether the offense constituted a second or a third or subsequent violation.

The bill also states that a violation of subsection (1)— a first violation of the MIP law— that is successfully deferred, discharged, and dismissed is to be considered a prior violation for the purposes of determining whether the offense was a second or a third or subsequent violation.

Miscellaneous

If a minor under the age of 18 who is not emancipated voluntarily presents himself or herself for treatment at a health facility or agency as provided under the bill, the health facility or agency must notify the minor's parent or parents, guardian, or custodian as to the nature of the treatment or observation if the name or names of those adults are reasonably ascertainable to the facility.

The bill also makes numerous revisions of an editorial or technical nature.

MCL 436.1703

BACKGROUND INFORMATION:

House Bill 4393 is similar to House Bill 4876 of the 2009-2010 legislative session. That bill was passed by the House but failed to see Senate action.

Alcohol poisoning

Information on alcohol poisoning and the signs and symptoms can be found at many sites on the Internet. According to the Mayo Clinic, alcohol poisoning is the consequence of consuming large amounts of alcohol in a short period of time. The Mayo Clinic says that drinking too much too quickly can affect a person's breathing, heart rate, and gag reflex and can lead to coma and death. Binge drinking, in which a person rapidly consumes five or more drinks in a row, is the main cause of alcohol poisoning. However, ingesting products containing alcohol, such as hand sanitizer, can also lead to alcohol poisoning. Whenever a person is suspected of having alcohol poisoning, 9-1-1 should be called immediately as the person is in need of immediate medical attention. If products containing alcohol have been ingested, the local poison control center should be called.

According to the Mayo Clinic website, the following are the signs and symptoms of alcohol poisoning:

- Confusion, stupor
- Vomiting
- Seizures
- Slow breathing (less than eight breaths a minute)
- Irregular breathing
- Blue-tinged skin or pale skin
- Low body temperature (hypothermia)
- Unconsciousness ("passing out")

Not all of these symptoms need to be present for help to be required. The website points out that a person who is unconscious or can't be roused is at risk of dying. For additional information on when to see a doctor, how to reach the local poison control center (through 800-222-1222), and the strategies to use and avoid in assisting a person with alcohol poisoning, see the Mayo Clinic website at: www.mayoclinic.com

FISCAL INFORMATION:

This bill would not have a significant fiscal impact on state or local governments. Fewer minors would be prosecuted for underage alcohol use, though the exact number of cases that would qualify for this new exception is not known. Due to the reduced number of violations, collection of fine revenue and court caseloads would decrease by an indeterminate (but likely small) amount. Fine revenue that is not collected would have been distributed to public and county law libraries.

To the extent that the bill barred misdemeanor prosecutions that otherwise would have gone forward, local units of government could avoid the costs of misdemeanor sanctions, which could include misdemeanor probation supervision and local jail sentences. Any impacts are likely to be negligible.

ARGUMENTS:

For:

Binge drinking occurs when a person consumes a large amount of alcohol in a short time, typically five drinks or more in a row. It has become a popular component of social gatherings among teens and young adults. Unfortunately, because drinking more than one drink an hour overtaxes the liver and slows metabolism, a person can consume a lethal dose before passing out. Once unconscious, a person's blood alcohol level can continue to rise. Too much alcohol in the blood causes breathing to slow to a dangerous level and because it impairs the gag reflex, increases the risk of choking on vomit or other fluids. Without immediate medical attention, alcohol poisoning can cause brain damage or death.

Too often friends, associates, or roommates of an individual who has drunk too much ignore signs of alcohol poisoning and the person is left to "sleep it off." Some may be ignorant of the dangers posed by alcohol poisoning, whereas others are reticent to call for help because of the fear of prosecution for underage drinking – both for themselves and for the person who has drunk too much.

Research supports the contention that signs and symptoms of alcohol poisoning (in themselves or others) are ignored or excused away because of uncertainty as to what should be done and also due to fear of legal or academic repercussions if help is called.

The bill addresses the problem by creating medical amnesty; that is, immunity under the MIP laws for any individual who calls for help on the behalf of himself or herself or another person. Several other states (New York, Washington, Pennsylvania, New Jersey, and New Mexico) have already adopted similar legislation.

The bill does not excuse or promote underage drinking. It merely focuses on saving the lives of young people who are inexperienced with alcohol or under the influence of peer pressure. Medical amnesty means more individuals will be encouraged to call 9-1-1 when a companion passes out, rather than hoping the person will be all right in the morning, or to seek help on their own behalves. It means that more individuals will have the chance to grow up and grow smarter and more responsible about alcohol consumption.

For:

The bill does not immunize a person from all alcohol violations. For example, a minor who used a fake ID to purchase alcohol, drove drunk or impaired, or furnished alcohol to another minor could still face prosecution for those actions. However, the bill does mean that the minor, or the person on whose behalf treatment was sought, could not be prosecuted for a MIP violation arising from the event.

For:

Judges have long complained that it can be difficult to get minors to comply with court-ordered sanctions such as paying fines, completing community service, or being screened for substance abuse. The threat of jail time has proven to be an effective incentive. However, jail time can only be applied when the minor has at least one prior MIP conviction. Since many, if not most, first time offenders get that first charge dismissed, a person who gets another MIP a short time later is treated as being a first time offender and, if convicted, is not eligible for jail time. Only if the person breaks the law again (this being the third time) can a judge enforce any court-ordered substance abuse treatment or other sanctions by threatening to send (or sending) the person to jail. This means that minors showing early signs of substance abuse and/or alcohol addictions may not get timely treatment when it is most effective.

The bill addresses this issue by revising the language in the statute to refer to "violations" instead of "convictions" when determining sanctions. The change gives judges the power to enforce court-ordered penalties upon a second violation, thus "catching" those minors who previously had a MIP dismissed. The revision will also help judges mete out appropriate sentences when a minor violated the MIP law repeatedly in a short time

frame. For example, in a recent case, a young man with a serious substance abuse problem was arrested and charged with four MIP violations in a matter of months—so close together that none were fully adjudicated before he was charged with another. Thus, each one of the four violations had to be treated as a first offense. Under the bill, by comparison, the court would be able to prosecute each offense in the manner it deserved, the court would have the power to enforce any court-ordered treatment sanctions, the minor would get the help needed, and public safety would be better served.

For:

It has been the informal practice of some law enforcement agencies not to charge minors with MIP violations if an ambulance or the police were called on behalf of a person who had drunk too much alcohol, even if the minors had also been drinking. The bill codifies this informal policy and makes it uniform across the state. In short, there should be no barriers to calling for professional medical assistance. Enactment of the bill will encourage more young people to do the right thing when help is needed.

Against:

The bill is still not clear regarding the medical amnesty status of a minor who was unconscious (and therefore not able to voluntarily seek help) for whom help was summoned by another minor or adult.

Against:

Last session, some felt that the bill should have been expanded to include controlled substances. Too many young people die from drug overdoses that could be prevented if companions or witnesses did not fear personal prosecution.

Response:

Controlled substances are in a different category than alcohol. Alcohol is a legal substance for those over 21 years of age, though certain alcohol-related conduct, like driving when drunk, is prohibited. Controlled substances, on the other hand, are strictly regulated for everyone because of the high risk of abuse and impact on the individual's health and safety. Moreover, several years ago, stiff penalties were enacted for anyone giving or selling drugs to another causing that person's death. To create a medical amnesty for drug overdoses would seriously hamper law enforcement's ability to deter the illegal diversion of controlled substances.

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■ 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.