



**House
Legislative
Analysis
Section**

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**AMEND UNDERAGE DRINKING
PENALTIES**

**House Bill 5501 as passed by the House
Second Analysis (11-26-96)**

**Sponsor: Rep. Penny Crissman
Committee: Judiciary and Civil Rights**

THE APPARENT PROBLEM:

Public Act 122 of 1995, enrolled House Bill 4136, revised the penalties for possession or consumption of alcohol by persons under the age of 21. Although the act's provisions allowed judges to require second and third time offenders to participate in substance abuse prevention or substance abuse treatment and rehabilitation services, the act did not provide that first time offenders could be required to attend substance abuse courses. Although it seems reasonable to provide for second and third time offenders to be required to attend substance abuse prevention, treatment or rehabilitation services, some believe that many first time offenders could also benefit from being required to participate in such services. Legislation has been introduced to correct this apparent oversight and to provide judges with the ability to require first time offenders to participate in substance abuse services.

THE CONTENT OF THE BILL:

House Bill 5501 would amend the Michigan Liquor Control Act to add to the penalties provided in the act for first time violations of the laws prohibiting minors under the age of 21 from purchasing, consuming, possessing or attempting to purchase, consume, or possess alcoholic liquor. The offense is a misdemeanor, and first time offenders may be fined up to \$100 and may be ordered to perform community service and to undergo substance abuse screening and assessment at their own expense. The bill would provide that such offenders could also be ordered to take part in substance abuse prevention or substance abuse treatment and rehabilitation services as defined in the Public Health Code and as designated by the administrator of substance abuse services, in addition to the current penalties contained in the act.

The bill would also revise the language allowing for the circuit court to order the secretary of state to rescind a suspension or restriction of an individual's license to allow the circuit court to order the secretary of state to stay (rather than rescind) the suspension of an

individual's license pending the outcome of an appeal to the circuit court. (The new language would mirror the language of House Bill 4875 regarding appeal of a license suspension based on a conviction for open intoxicants or for a minor transporting alcohol in a vehicle. See the House Legislative Analysis Section's analysis of House Bill 4875 dated 11-19-96.) The bill would also eliminate the legal presumption that a person under the age of 21 had consumed or possessed alcohol if a preliminary chemical breath analysis or other blood alcohol test showed that the person had a blood alcohol level of .02 percent or more. (The language predates a change in the statute making the offense a misdemeanor rather than a civil infraction; such a presumption is said to be improper in a criminal proceeding.) This language would be replaced with provisions that would allow a police officer to arrest a person based, in whole or in part, upon the results of a preliminary chemical breath analysis. The bill would also allow the results of a breath analysis or other blood alcohol test to be admitted in a criminal prosecution in order to determine whether a minor had consumed or possessed alcoholic liquor.

In addition, the bill would revise the definition of probate court disposition to include dispositions by the family division of the circuit court under the juvenile code as of January 1, 1998. (This is necessitated by changes in the structure of the court system enacted this past fall.)

The bill would also correct a citation error contained in a reference to the emancipation of minors act.

The bill would take effect on April 1, 1997.

MCL 436.336

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact. (11-14-96)

House Bill 5501 (11-26-96)

ARGUMENTS:***For:***

In many cases, the first time a person is arrested and convicted of violating a law is not necessarily the first time that the person has violated that law. This is, unfortunately, often the case in alcohol offenses, particularly those involving minors. Thus, when a minor is arrested for the first time for underage drinking, he or she may already have an alcohol problem that needs treatment. It is, therefore, unreasonable to require the court to wait until the minor is convicted a second time before the court may require the minor to undergo substance abuse treatment. Furthermore, since people who begin using alcohol while they are under the age of 21 are more likely to end up abusing alcohol, it stands to reason that even first time offenders of the laws against underage drinking should face the possibility of being ordered to participate in substance abuse programs.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the concept of the bill. (11-19-96)

Mothers Against Drunk Driving (MADD) supports the bill and would also support mandatory screening and assessment. (11-18-96)

Analyst: W. Flory

■ 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.