

Senate Bill 637 (Substitute H-1)
Sponsor: Sen. Tom George

House Committee: Criminal Justice
Senate Committee: Judiciary
Complete to 1-19-04

**A SUMMARY OF SENATE BILL 637 AS REPORTED BY THE HOUSE COMMITTEE
ON CRIMINAL JUSTICE 12-10-03**

Senate Bill 637 would amend the Michigan Liquor Control Code to apply the same penalties for consuming, possessing, or purchasing alcohol by a person under 21 years of age to a minor who had any bodily alcohol content (BAC). The bill would also allow, in addition to current penalties, a minor convicted or adjudicated of a second or subsequent offense to be subject to limited imprisonment for probation violations. The bill would define “any bodily alcohol content” as meaning: 1) an alcohol content of 0.02 grams or more; or 2) any presence of alcohol within a person’s body resulting from the consumption of alcoholic liquor, other than that consumed as part of a generally recognized religious service or ceremony.

For a second offense, the minor could be imprisoned for not more than 30 days but only if he or she had been found by the court to have violated an order of probation, and for a third or subsequent offense, imprisonment could be ordered for up to 60 days.

However, the bill would provide for a discharge and dismissal for a first offense. When an individual who had not previously been convicted of or received a juvenile adjudication for a violation of the MIP laws, the court – without entering a judgment of guilt and with the consent of the minor – could defer further proceedings and place the individual on probation. The probation terms and conditions would include, but not be limited to, payment of the costs as provided under the Probate Code and the Code of Criminal Procedure and payment of a probation supervision fee as prescribed in the Code of Criminal Procedure.

If the individual violated a term or condition of the probation or if it were found that the individual was utilizing these provisions in another court, the court could enter an adjudication of guilt and proceed as provided by law. If the individual fulfilled the terms or conditions of probation, the court would have to discharge the individual and dismiss the proceedings. The discharge and dismissal would have to be without adjudication of guilt and would not be a conviction for purposes of determining if it were a first, second, or subsequent offense, nor would it be a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under the MIP law.

Only one discharge and dismissal would be available to a person. The court would have to maintain a nonpublic record of the matter while proceedings were deferred and the individual was on probation. The secretary of state would have to retain a nonpublic record of an arrest,

plea, and discharge or dismissal under the bill's provisions. This record could only be furnished to the following:

- To a court, prosecutor, or police agency upon request for the purpose of determining if an individual had already used the diversion provision.

- To the Department of Corrections, a prosecutor, or a law enforcement agency upon request subject to the following conditions: 1) at the time of the request, the individual was employed by one of these entities or was an applicant for employment; and 2) the record was used by the entity only to determine whether an employee had violated his or her conditions of employment or whether an applicant met criteria for employment.

The bill is tie-barred to House Bill 5120, which would make mostly technical revisions to the drunk driving provisions of the Michigan Vehicle Code. The effective date of the bill would be May 1, 2004.

MCL 436.1703

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state and a indeterminate impact on local units of government, depending on whether the offender was processed as an adult (the offense is a misdemeanor) or adjudicated as a minor (typically, youth under age 17 are adjudicated as minors), and on how the bill affected charging and sentencing practices. Incarceration and probation supervision of adults convicted of misdemeanor offenses is a local responsibility, as is detention and supervision of juveniles. Any impact on collections of fines would affect local libraries, which are the constitutionally designated recipients of penal fine revenues. (HFA analysis dated 12-15-03)

Senate Bill 637 (1-19-04)

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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.