Talking Points on Michigan's New Minor In Possession Law

On April 12, 2004, Governor Jennifer Granholm signed into law Public Act No. 63, giving Michigan one of the strongest minor in possession (MIP) laws in the country. This is the first major revision of Michigan's MIP law since 1998. The changes in the law will go into effect September 1, 2004.

Important changes in the law include the following:

1. **The definition of being "in possession of alcohol" now explicitly includes blood alcohol content (BAC).**
   The Michigan Court of Appeals [People v Rutledge, 250 Mich App 1, 645 NWrd 333 (2002)] interpreted the current law's language of "consume" and "possess" to mean "acts taking place in the present." Hence, a person could not be prosecuted for still having in his or her body something that was consumed in the past or that a person no longer had control over, e.g., during digestion. This new law now prohibits "any bodily alcohol content." It is the same language that is used in the zero tolerance law for a minor driving a car. In addition, the statute states that if a minor drank the alcohol legally either in Canada or Wisconsin, it is an affirmative defense during a trial. It is not an issue on citing a minor with MIP. NOTE: The affirmative defense does not affect the zero tolerance section for the OWI law. It is still illegal for a minor to drive with a BAC of .02 or more. The exceptions that have existed to this prohibition continue. They include when a minor is (1) enrolled in a course offered by an accredited post-secondary educational institution in an academic building of the institution under the supervision of a faculty member solely for educational purposes and a requirement of the course. (2) consuming sacramental wine in connection with religious services at a church, synagogue, or temple.

2. **The new law gives judges discretion to use jail time when a youth has a prior MIP conviction AND fails to complete any treatment, screening, or community service activities ordered by the court or fails to pay any fine.**
   The absence of a provision for jail time has been a problem since the original MIP law was passed in 1998. Some judges have been unwilling to require education, treatment, or community service because they have no method of enforcing these requirements. If the education and community service activities are effectively structured they may actually have more impact on first time violators than the fine. This is because the parents often pay the fine, but the youth is required to spend the time fulfilling the probationary activities.

3. **The new law gives a first-time offender the break of not having a misdemeanor record if he/she completes probation requirements.**
   This law provides for a discharge and dismissal for a first offense. When an individual who has 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. The court will maintain a nonpublic record of the arrest, admission, and education/treatment/community service requirements while proceedings are deferred and the individual is on probation.

4. **The new law sets up a system with the Secretary of State for tracking first time offenders of the Michigan MIP law and comparable local ordinances.**
   Beginning September 1, 2004, the clerk of the court shall also forward an abstract of the court record to the secretary of state if a person has pled guilty to, or offered a plea of admission in, a juvenile proceeding for a violation of the new law or a local ordinance substantially corresponding to section 703 of Michigan's MIP law. The secretary of state will retain a nonpublic record of an arrest, plea, and discharge or dismissal. This record can only be furnished to the following: A. to a court, prosecutor, or police agency upon request for the purpose of determining if an individual had already used the diversion provision. B. 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.

5. **The new law permits 19 and 20 year olds who consumed alcohol legally the option to use this as an affirmative defense.**
   The law now includes a provision for minors who legally consume alcohol in Canada or Wisconsin to offer this as "an affirmative defense" in a criminal prosecution. This means that the police may arrest any youth with a BAC of .02 or above. If the youth can prove in a court of law that he/she consumed the alcohol in a venue or location where that consumption is legal, the charge will be dismissed. It is not an issue on citing a minor with MIP. NOTE: The affirmative defense does not affect the zero tolerance section for the OWI law. It is still illegal for a minor to drive with a BAC of .02 or more.