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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Senate Bill 291 (as reported without amendment)

Sponsor: Senator Frederick Dillingham

Committee: Judiciary

Date Completed: 5-26-87

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RATIONALE

The prevalence of illegal drugs on and near school grounds has alarmed parents, school officials, and law enforcement officers who say that they need new tools to enhance efforts at protecting children from drug trafficking and to help apprehend and punish the drug pushers who use and prey upon young people. Attempts to get at drug suppliers, however, are often frustrated by their use of youngsters as distributors or runners, in the belief that juveniles are not treated harshly by the juvenile justice system and in order to insulate the dealers from prosecution. It has been suggested that one way to address this problem is to forego prosecuting juveniles and, instead, grant them immunity and require their cooperation in drug investigations. Law enforcement officials also recommend that minimum penalties be established for adults who engage in drug transactions with juveniles, and that more severe penalties be prescribed for drug possession on or near school property.

CONTENT

The bill would amend the Public Health Code to do the following:

- Mandate minimum terms of imprisonment for distributing a controlled substance to a minor.
- Authorize the Attorney General and prosecutors to direct a juvenile to provide information pertaining to the investigation of a violation, and require immunity to be granted to a juvenile who complied.
- Prescribe penalties, including mandatory imprisonment, for the possession by an adult of controlled substances on school property.

Under the current Code, when an individual aged 18 or older distributes certain controlled substances to a person under the age of 18 who is at least five years younger than the distributor, the distributor may be punished by a maximum fine of \$25,000 or a term of imprisonment of up to 40 years, or both. (The controlled substances in question include a Schedule 1 or 2 controlled substance that is either a narcotic drug (e.g., morphine, codeine, or opium) or cocaine.) If other controlled substances are delivered, the maximum penalty is \$5,000 and/or 14 years for any other Schedule 1, 2, or 3 controlled substance; \$2,000 and/or eight years for a Schedule 4 controlled substance or marijuana; or \$2,000 and/or four years for a Schedule 5 controlled substance. (The terms of imprisonment indicated are twice the length prescribed for distribution to an adult.)

The bill would revise these provisions to establish the penalties for distribution or delivery of controlled substances to any juvenile. For a Schedule 1 or 2 controlled substance that is a narcotic drug or cocaine, the bill would set a minimum mandatory term of imprisonment of at least two years. The delivery or distribution of other controlled

substances would result in a minimum mandatory term of six months. The bill would delete the fines and retain existing maximum terms.

In connection with an investigation conducted under the provisions described above, the Attorney General or a prosecuting attorney could direct that a juvenile found to be in possession of a controlled substance obtained from an adult appear before the Attorney General or prosecutor to provide information pertaining to the investigation. A juvenile who appeared and provided information that led to the issuance of a warrant or indictment could not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning information disclosed by the juvenile. If a juvenile refused to provide information, the probate court, upon application of the Attorney General or prosecutor, could issue an order compelling the juvenile to comply. Failure to obey the order could be punished by the probate court as contempt.

An individual 18 years or age or older who possessed a Schedule 1 or 2 controlled substance that was a narcotic drug or cocaine on school property would have to be punished by a term of imprisonment of at least one year but not more than eight years. Possession of any other controlled substance on school property would have to be punished by a term of imprisonment of at least three months, subject to a maximum of four years for a Schedule 1, 2, 3, or 4 controlled substance, two years for a Schedule 5 controlled substance or certain other substances (e.g., LSD, peyote, or mescaline), or two years for marijuana.

"School property" would mean a building, playing field, or property within 1,000 feet of a building or playing field used for school purposes to impart instruction to children in grades K through 12, if provided by a public, private, denominational, or parochial school. School property would not include buildings used primarily for adult education or college extension courses.

MCL 333.7410

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. Enforcement costs and the increased costs to the Department of Corrections are not determinable.

ARGUMENTS**Supporting Argument**

By increasing the penalties for distributing drugs to a minor, and by establishing new mandatory penalties for possession of drugs on school property, the bill would create a strong disincentive to peddle drugs to children

S.B. 291 (5-26-87)

and youths, and would counteract the influx of drugs in our schools. Further, by authorizing prosecutors to order juveniles to provide information about such sales, and establishing immunity for juveniles who complied, the bill would facilitate the investigation and prosecution of those who violate the law, as well as send a message to juveniles that illegal drug use is not condoned. At the same time, the bill would protect children from drug trafficking, particularly on and near school grounds, and deter drug pushers from using children to distribute their wares.

Opposing Argument

Predicating immunity from prosecution for juveniles upon the disclosure of information that "leads to the issuance of a warrant or an indictment" could actually be counterproductive. Without this language, the juvenile would be assured of immunity for cooperating; with it, the immunity would depend upon the use made of any information by others, which would reduce the incentive to cooperate.

Response: Without the qualifying language, juveniles involved in the drug trade could not be prosecuted as long as they provided information "pertaining to an investigation", which would not ensure that the information was particularly helpful.

Opposing Argument

Some have raised the issue of whether the rights and safety of juveniles and their families would be sufficiently safeguarded if the law required juveniles' cooperation in drug investigations.

Response: If a juvenile refused to cooperate in an investigation under the bill, it would be up to the probate court to decide how or whether to punish the juvenile.

Legislative Analyst: S. Margules

Fiscal Analyst: B. Bowerman

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.