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ATTEMPTED DRUG OFFENSES

House Bill 4237 with committee
amendment
First Analysis (3-9-94)

Sponsor: Rep. Sal Rocca
Committee: Judiciary

THE APPARENT PROBLEM:

Recognizing the crucial role that state and local authorities play in the national effort to combat illegal drug use, the Office of National Drug Control Policy in 1990 released a white paper entitled "State Drug Control Status Report," which contained a number of suggestions for state anti-drug legislation. One suggestion was to punish attempted drug offenses as if they had been completed.

In Michigan, attempted drug offenses can be punished through one of at least two ways. Someone who attempts a violation of Michigan law can be punished under the general attempt statute contained in the Michigan Penal Code. Under that statute, the attempt of a noncapital offense punishable by imprisonment for at least five years is a felony punishable by up to five years in prison; the attempt of a lesser offense is a misdemeanor punishable by up to two years' imprisonment. For cases involving the attempted delivery of a controlled substance, however, Michigan law offers another alternative: the controlled substances portion of the Public Health Code defines "delivery" to include attempted transfers of controlled substances. Thus, the attempted delivery of a controlled substance may be prosecuted and punished as delivery. The prosecution and punishment of attempts of other drug offenses, however, must be conducted under the general attempt statute, whose punishments, many feel, are inadequate to address the seriousness of the offenses.

In a related matter, the Public Health Code criminalizes soliciting a minor to commit a drug offense, but contains no complementary criminalization of soliciting an adult. Legislation has been proposed that would punish virtually all attempted drug offenses as if they had been completed, and that would criminalize and punish

the solicitation of an adult to commit a drug offense.

THE CONTENT OF THE BILL:

The bill would amend the controlled substances law within the Public Health Code to prohibit someone from attempting to violate the part that lays out drug offenses and penalties, and to prohibit someone from soliciting or intimidating another person to violate that same part. Violation of the bill would be a crime punishable by the penalty for the crime attempted or solicited.

The bill would take effect October 1, 1994.

MCL 333.7407a

FISCAL IMPLICATIONS:

With regard to an identical Senate Bill (SB 197), the Senate Fiscal Agency said that the bill would have an indeterminate impact on state and local government. In 1991, 2,416 people were sentenced for drug law violations with an average minimum sentence of 2.5 years, and 263 people were convicted and sentenced for attempted drug law violations with an average minimum sentence of 1.4 years. Had these 263 people convicted of attempted violations received the same average sentence as those convicted of the actual violation, costs would have increased by \$2.6 million annually, assuming the same number of convictions each year. It is impossible at this time to determine how many people would be convicted of intentionally soliciting or intimidating another person to violate the applicable part of the Public Health Code. If that number were the same as those convicted for "attempting," then the state would incur new annual costs of \$12.5 million annually. (3-1-93)

ARGUMENTS:***For:***

The bill would fill the gaps in the controlled substances law regarding the prosecution and punishment of attempted drug offenses, and regarding the solicitation of others to commit drug offenses. With the stiffer sanctions would come stronger deterrent effects, discouraging potential offenders from undertaking the crimes, and longer incarceration and incapacitation of convicted criminals, thus extending protections for the public. Drug use and drug-related crime have become a scourge in our society, ruining lives and neighborhoods. Drug offenses warrant the strongest efforts of the criminal justice system.

Against:

The criminal justice system has proved to be inadequate for addressing serious problems of drugs in our society. It is clear by now that harsher punishments for drug offenses do little to curb problems with drug trafficking, but much to worsen prison overcrowding and increase the demand for correctional facilities. Ironically, the costs of prosecuting and incarcerating drug offenders drain funds away from the educational and rehabilitative programs that may be most effective in keeping people off drugs and thus drying up demand for drugs. The bill, like much other anti-drug legislation, instead takes aim at the supply side of the equation, which may be an expensive exercise in futility. As long as the demand and the profits are there, there will be supplies and suppliers. At the least, any changes in criminal drug laws should await enactment of sentencing guidelines legislation that will reserve the harshest punishments and limited prison space for the worst offenders.

Against:

The bill may be of limited benefit in drug-related prosecutions. Most drug convictions are the result of guilty pleas, but with an attempted offense to be punished as harshly as a completed offense, a defendant would have little incentive to plead guilty to an attempt under the Public Health Code. In their respective efforts to minimize punishment and maximize convictions, defendants and prosecutors might continue to use the general attempt provisions of the penal code.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (3-8-94)

The Michigan Council on Crime and Delinquency opposes the bill. (3-9-94)