



**House
Legislative
Analysis
Section**

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USE OF MINOR IN DRUG OFFENSE

House Bill 4457 as introduced
First Analysis (3-30-95)

Sponsor: Rep. Sue Rocca
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Because juveniles are not criminally prosecuted as adults, they often are used by adult offenders to commit acts that are criminal in nature. This appears to be particularly true in the case of illegal drug suppliers, who frequently seek to insulate themselves from detection and prosecution by using youngsters as runners, as lookouts, and to steer buyers to dealers. In an effort to thwart such tactics, the legislature enacted Public Act 17 of 1988, which amended the Public Health Code to make it a felony for someone age 17 or older to solicit or coerce someone under 17 years of age to commit or attempt any act that would constitute a felony violation of controlled substances laws. The solicitation offense generally carries a minimum penalty of one-half the maximum term of imprisonment authorized for the offense solicited; the maximum term for the solicitation is the maximum authorized for the solicited offense. However, if the solicitation is for manufacture or distribution of 650 grams or more of narcotics or cocaine, the penalty for the solicitation is life in prison without parole, which is the penalty for the solicited offense. In any event, the court may depart from the sentence otherwise mandated for the solicitation if it finds substantial and compelling reasons for doing so. The solicitation law does not apply to marihuana offenses.

Despite hopes for creating an effective tool for use against those who use juveniles as drug runners, prosecutors say that the solicitation law is little used because of the necessity of proving that the offender knew that the person being solicited was a juvenile. In addition, many have pointed out, marihuana trafficking is a serious problem in this state, and one that many believe Michigan law in general does not deal with severely enough; thus, the solicitation law has also been criticized for exempting marihuana offenses. Legislation to address these problems has been proposed.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code (Public Act 368 of 1978) to specify that the law sanctioning solicitation of a juvenile to commit a controlled substance offense would apply whether or not the older person knew the person being solicited was a juvenile. The bill also would extend the law to solicitation of juveniles to commit marihuana distribution offenses.

MCL 333.7416

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the degree that the bill prompted an increase in arrests and prosecutions, it could lead to minimal increased costs for county jails. (The HFA analysis points out that, according to the Department of Corrections, as of March 17, 1995, it had no prisoners who had been sentenced for soliciting a minor to commit a controlled substance offense as his or her "controlling" sentence. That is, any prisoner who might have been convicted for such a violation also was convicted of another offense for which a longer minimum sentence was imposed.). According to the agency, it also is not possible at this time to determine the effect the bill might have on state and local correctional resources. (3-28-95)

ARGUMENTS:

For:

Many of the juveniles involved in the drug trade are acting on behalf of adults seeking to insulate themselves from criminal prosecution. This exploitation of children is a particularly reprehensible aspect of drug trafficking, and one that many hoped would be checked by the enactment of special felony penalties for using juveniles to commit drug offenses. However,

House Bill 4457 (3-30-95)

prosecutors report that the law is not being utilized as much as it might be, due to the difficulty of proving that the offender knew that the juvenile was a juvenile. Moreover, as the governor pointed out in his anti-crime message of April 1992, marihuana is the number one illicit drug problem in Michigan; however, the solicitation law does not apply to marihuana offenses. The bill would address both of these criticisms: it would close the loophole in the solicitation law that allows criminals to escape prosecution by claiming ignorance of a child's age, and it would delete the exemption for marihuana offenses, thus extending the law's protections to children who might be targeted for involvement in the marihuana trade. By strengthening the existing solicitation law, the bill takes aim at a particularly despicable tactic employed by some drug dealers: the use of children in the drug trade. The bill is more than an anti-drug bill; it is also a child protection bill.

Against:

Skepticism is growing regarding the ability of the criminal justice system to adequately address serious problems of drugs in our society. It appears that harsher punishments may 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 suppliers willing to take the risks. At the least, any change 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 would open the door to prosecution and severe punishment of people who did not know that their associates were juveniles. Many may find that it goes against fundamental principles of fairness to exact such harsh penalties for crimes people were unaware they were committing.

Response:

Several Michigan statutes, including criminal sexual conduct statutes and child pornography laws, make

ignorance of a child's age no excuse. The importance of protecting children, coupled with the importance of protecting neighborhoods and society from the drug trade, warrant closing the loophole that allows predatory criminals to avoid prosecution by claiming ignorance of a child's age.

POSITIONS:

The Department of State Police supports the bill. (3-29-95)

The Prosecuting Attorneys Association of Michigan supports the bill. (3-29-95)