



**House
Legislative
Analysis
Section**

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USE OF MINOR IN DRUG OFFENSE

**House Bill 4457 as enrolled
Public Act 95 of 1995
Second Analysis (7-26-95)**

**Sponsor: Rep. Sue Rocca
House Committee: Judiciary and
Civil Rights
Senate Committee: Judiciary**

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.

Currently the health code imposes mandatory imprisonment (without parole) on adults who recruit, induce, solicit, or coerce minors to commit controlled substance offenses (that is, to manufacture, create, deliver or possess with the intent to manufacture, create or deliver a controlled substance). If the amount of the controlled substance is 650 grams or more, the punishment is life imprisonment; otherwise, the punishment is imprisonment for at least half of the maximum term of an adult convicted for the same felony (and not more than the maximum term). The act, however, specifically exempts from the non-life imprisonment provisions violations which involve schedule 4 drugs "and which involve . . . the manufacture, delivery, or possession with intent to deliver of marihuana." The bill would exempt from the health code's non-life imprisonment solicitation penalties any controlled substance violation which involved the manufacture, creation, delivery, or possession with the intent to manufacture, create, or deliver marihuana (or a mixture containing marihuana) "and that involve[d] the manufacture, delivery, or possession with intent to deliver marihuana."

The bill would take effect on August 1, 1995.

MCL 333.7416

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the degree that the bill prompted an increase in arrests

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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. (7-26-95)

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, 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. The bill would close the loophole in the solicitation law that allows criminals to escape prosecution by claiming ignorance of a child's age. 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.

For:

The bill would make a needed technical amendment to the health code which would allow the continued exemption of marihuana offenses from the solicitation law's non-life imprisonment penalties that had inadvertently been changed by a 1994 amendment to the controlled substances provisions of the health code.

Public Act 17 of 1988 (enrolled House Bill 5196) amended the Public Health code to make it a felony to recruit, induce, solicit, or coerce someone 17 years old or younger to commit or attempt any violation of a controlled substances law that would be a felony if committed by an adult. However, the act exempted acts that were violations of section 7401(2)(c) of the health code and that involved the

manufacture, delivery, or possession with intent to deliver of marihuana. Prior to its amendment by Public Act 221 of 1994 (enrolled Senate Bill 234), this section of the health code made it a felony (punishable by imprisonment for not more than four years, or a fine of \$2,000, or both) to manufacture, deliver, or possess with intent to manufacture or deliver "a substance classified in schedule 4 or marihuana." So the exemption in the solicitation law effectively exempted marihuana violations, but not Schedule 4 drug violations.

However, Public Act 221 deleted the reference to marihuana from 7401(2)(c), and instead added a new subsection, 7401(2)(d), dealing only with marihuana ("or a mixture containing marihuana"). Since the exemption in the solicitation law refers to 7401(2)(c), and since this under the 1994 amendment 7401 (2)(c) now refers only to Schedule 4 drugs (rather than to Schedule 4 drugs or marihuana), technically the exemption in the solicitation law was changed so as to exempt only violations involving both Schedule 4 drugs and "the manufacture, delivery, or possession with intent to deliver of marihuana," rather than just marihuana violations. The bill would correct this technical problem.

Against:

As the governor pointed out in his anti-crime message of April 1992, marihuana is the number one illicit drug problem in Michigan. And yet the bill would retain -- and, technically, reduplicate -- the marihuana loophole as it existed prior to Public Act 221 of 1994. (The bill would do this by saying that the non-life imprisonment penalties wouldn't apply to the provisions of the health code that apply to marihuana, 7401(2)(d), "and that involve[d] the manufacture, delivery, or possession with intent to deliver of marihuana.") This loophole should be closed, thus extending the law's protections to children who might be targeted for involvement in the marihuana trade.

Response:

Eliminating the marihuana loophole would add new mandatory minimum prison sentences at a time when prison overcrowding is a serious concern. What is more, there is a growing skepticism generally regarding the ability of mandatory minimum sentences to adequately address serious problems of drugs in our society. It appears that harsher sentences may do little to curb problems with drug trafficking, but much to worsen prison overcrowding and to 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.

Reply:

According to the House Fiscal Agency analysis, as of March 17, 1995, the Department of Corrections had no prisoners whose "controlling sentence" was for soliciting a minor to commit a controlled substance abuse offense. Unless there were a sudden change in this situation, eliminating this marihuana "loophole" should have little, if any, effect on the problems of prison overcrowding.

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 this 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.