

**Senate Bill 3 with House committee
amendments
First Analysis (10-28-97)**

Sponsor: Sen. Michael J. Bouchard
House Committee: Judiciary
Senate Committee: Judiciary

THE APPARENT PROBLEM:

In order to combat the prevalence of drugs on and near school grounds, the legislature enacted Public Act 12 of 1988, which amended the Public Health Code to provide enhanced penalties (see **BACKGROUND INFORMATION** for further description of these penalties) for an adult who delivers certain controlled substances to a minor student on or within 500 feet of school property. Public Act 174 of 1994 amended the code to extend drug-free school zones to 1,000 feet.

It has been argued that these enhanced penalties have had the effect of deterring those who might attempt to take sell drugs to children. In order to protect children from drug dealers more effectively, it has been suggested that the code's drug-free school zone provisions should be expanded to deal with more offenders and to include parks.

In addition, it has been argued that mandatory minimum sentences deprive the judiciary of the discretion needed to make appropriate sentences when dealing with convicted criminals and create a need for more and more prison space. It is suggested that any elimination of these mandatory minimums will help the judiciary to better deal with offenders and help to reduce prison overcrowding.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to include public and private parks within the code's drug-free school zone enhanced penalty provisions, and reduce from 18 to 17 the age of an offender subject to enhanced penalties for delivering certain controlled substances to a minor and for delivery or possession of certain drugs in or near these drug-free schools or public/private parks. The bill also would delete a requirement that, for drug-free school or park zone enhanced penalties to apply, the delivery be to a minor who is a student. Under the bill,

the enhanced penalties would apply if the delivery were to a minor regardless of whether he or she was a student.

In addition, the bill would remove both the mandatory minimum sentence requirements for drug-free zone violations and the provision allowing a judge to depart from these required minimum terms of imprisonment if he or she finds substantial and compelling reasons to do so. The mandatory minimum sentences are those that require a judge to impose a minimum prison term for a conviction of certain criminal activity. The result would be that a judge would not be required to impose a minimum prison sentence for drug-free zone violations involving possession with intent to deliver or delivery. However, the maximum penalties provided in the code would remain in effect; thus the judge could still impose, depending upon the offense, two or three times the prison term authorized for the underlying offense.

Regarding the enhanced penalties that apply regardless of where a violation occurs, the bill would reduce from 18 to 17 the minimum age of an offender subject to the penalties, and make them applicable to delivery to a person under 18 who was at least two (rather than three) years younger than the offender. In addition, the mandatory minimum penalty requiring no less than two years imprisonment for intent to deliver would be eliminated. However, if a term of imprisonment were assigned, the maximum term of twice the term authorized for the underlying offense would remain in place.

"Public park" would mean real property owned or maintained by the state or a political subdivision of the state that was designated as a public park. "Private park" would mean real property owned or maintained by a private individual or entity and that was open to the general public or local residents for the purposes of recreation or amusement.

MCL 333.7410

BACKGROUND INFORMATION:

Under the drug-free school zones provisions of the Public Health Code, delivery of less than 50 grams of a mixture containing cocaine or a Schedule 1 or 2 narcotic by a person 18 years of age or older to a minor who is a student in a drug-free school zone requires imprisonment for at least two years but not more than three times the term authorized for the primary offense. An offender also may be fined up to three times the amount otherwise authorized. Enhanced penalties also apply to possession with intent to deliver, but the maximum term is twice, rather than three times, the term authorized for the underlying offense. The penalties ordinarily applicable for delivery or possession with intent to deliver that amount of those drugs are imprisonment for a minimum of one year and up to 20 years, and/or a maximum fine of \$25,000, or lifetime probation. (A court can impose a term less than the specified minimum, under either the regular or enhanced penalty provisions, if it finds substantial and compelling reasons to do so.) Also, possession by a person at least 18 years of age of less than 25 grams of a mixture containing cocaine or a Schedule 1 or 2 narcotic or of certain hallucinogens (e.g., LSD) or marihuana on school property requires punishment by a term of imprisonment, a fine, or both, of up to twice that otherwise authorized for the offense.

In addition, regardless of where a violation occurs, enhanced penalties apply if a person at least 18 delivers or distributes less than 50 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine to a person under 18 who is at least three years younger than the offender; or if a person at least 18 delivers or distributes any other controlled substance (e.g., hallucinogens or marihuana) to someone under 18 who is at least three years his or her junior. For delivering or distributing less than 50 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine, a violator may be punished by the otherwise-authorized fine or by a term of imprisonment of not less than one year or more than twice that otherwise authorized for the violation. For the other controlled substance violations, a violator may be punished by the otherwise-authorized fine or by a term of imprisonment of up to twice that otherwise authorized for the violation.

FISCAL IMPLICATIONS:

By expanding the "drug-free school zone" law to apply to parks and by lowering the age difference requisite for the offense of distributing drugs to a minor, the bill would have indeterminate state and local costs (for

incarceration/jail resulting from additional convictions that might be obtained). To the extent that the bill led to any increase in the payment of criminal fines, it could increase funding for local libraries. Further, by eliminating the presumptive minimum terms of imprisonment for delivering drugs to a minor and for violations of the drug-free school (and park) zone provisions, the bill could reduce state costs of incarceration. (10-27-97)

ARGUMENTS:

For:

Selling drugs to children is among the most despicable of crimes, and one that deserves severe punishment. Michigan law recognizes this by imposing enhanced penalties for selling or possessing drugs within 1,000 feet of school property. The drug-free school zone helps to provide children with a drug-free atmosphere in and around one of the areas where they spend much of their time. However, schools are not the only places commonly frequented by children where they might be vulnerable to drug dealers. Extending the drug-free school zone concept to parks would be consistent with federal law and would subject more offenders to the enhanced penalties, while protecting children from drug dealing.

In addition, reducing the offender age for enhanced penalties for delivery to minors and for possession on school grounds would be consistent with the state's age jurisdictions. Under Michigan's criminal justice system, a 17-year-old is considered to be an adult and falls within the jurisdiction of the state's criminal, rather than juvenile, courts. Furthermore, by deleting the requirement that the delivery be to a student, the bill would remove a reported problem with the code's provisions. Some perpetrators reportedly have escaped the code's drug-free school zone enhanced penalties because the minor to whom they delivered drugs either was not a student or was not a student at the school in whose zone the offense occurred. This circumvents the purpose of the drug-free school zone penalties and by removing that restriction, the bill makes the law more effective.

Response:

Since the deterrent effect of a prison sentence depends largely upon its certainty, the effectiveness of the drug-free zones is largely dependent upon the inclusion of mandatory minimum sentences in the penalties for violations. By removing the mandatory minimum sentences, the bill will now do more harm than good

and would in essence allow drug dealers free reign to accost children and sell drugs in and around schools without fear of a certain prison term. The expansion of its provisions to parks now becomes a hollow addition, in that the

effectiveness of the drug-free zones would be essentially nullified.

Against:

It has become clear that the criminal justice system is not the appropriate or best venue in which to address society's serious drug problem. Extending enhanced penalties would make sense only if incarcerating more people for longer periods of time would make a serious dent in the drug problem, which is not a realistic conclusion. A better, more long-term approach would be to address the problem through the medical community, through treatment, and through economic incentives to avoid the type of conduct inspired by drugs. Since supplies and suppliers will always abound where demand exists, the state needs to wipe out the demand for drugs, and the criminal justice system simply is not suited to doing that.

For:

Despite a huge prison expansion program over the past decade, prisons still are overcrowded. Mandatory life sentences for certain drug convictions -- as well as other mandatory, if lesser, sentences for drug-related crimes -- threaten the state's limited prison capacity and already overburdened taxpayers. Some people believe that the whole concept of so-called mandatory minimums is questionable, and that judicial sentencing discretion properly rests with the judiciary, not the legislature, and should be changed accordingly. The removal of the mandatory minimum sentences from the drug-free zone penalties is therefore a step in the right direction. Giving back judicial discretion in these instances will allow judges to fashion penalties to fit the individual. The law will still allow for the full enhanced penalty to be levied where the judge determines that it is needed, but will also allow the judge to grant a lesser penalty where he or she deems it appropriate without having to defend his or her decision by listing substantial and compelling reasons on the record for the decision.

Against:

The suggestion that these mandatory minimums interfere with judicial discretion or require the judge to impose a sentence that is inappropriate under the facts of the case is unreasonable. If a judge feels that a sentence below the requirement is warranted, he or she may impose the lesser sentence and simply state on the record the reasons for imposing that sentence instead of the required minimum. One would hope that this is hardly so arduous as to deter a judge from applying a sentence that he or she deems appropriate under the circumstances.

Response:

The requirement that there be substantial and compelling reasons for a judge to deviate from the mandatory minimum is a very difficult standard to meet. This bill

would free a judge from having to try to figure out whether or not his or her reasons for imposing a lower sentence would be upheld on appeal and would allow a trial judge, who has seen the defendant and heard all of the facts of the case, far greater latitude in determining the appropriate sentence for that particular defendant.

Against:

Although the code's drug-free school zone provisions have been law since 1988, drug dealing in and near schools apparently continues to be a significant problem. The object of the law is not just to punish drug dealers, but also to get drug dealing away from schools and, under the bill, parks. If the drug-free zone concept is to succeed in that goal, dealers must be aware of the existence of the zone and the applicable enhanced penalties. The bill should require, or at least encourage, the posting of signs notifying the public of a drug-free school or park zone and that special penalties apply to drug dealing in the area.

Response:

A sign-posting requirement raises questions regarding who would be responsible for paying for and supplying the signs. Even though the code does not address the issue of signs, communities that wish to publicize the law by posting signs are free to do so. A statutory requirement, however, could create a way to circumvent enhanced penalties if signs were not posted or were not adequately visible. It could conceivably become necessary to show that an area was properly identified as a drug-free zone before a convicted dealer could be subjected to the enhanced penalties.

POSITIONS:

The Michigan Council on Crime and Delinquency supports the bill. (10-22-97)

The Michigan Appellate Assigned Counsel supports the return of sentencing discretion to the judiciary. (10-22-97)

The Michigan Judges Association supports allowing trial court judges broad discretion in sentencing. (10-22-97)

Attorneys Against Excessive Mandatory Minimums supports the removal of mandatory minimum sentences. (10-23-97)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.