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SFA



BILL ANALYSIS

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Senate Bill 3 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Michael J. Bouchard
Committee: Judiciary

Date Completed: 2-24-97

RATIONALE

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 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. Under the 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 marijuana 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 marijuana) 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.

Some people believe that, to protect children from drug dealers more effectively, the Code's drug-free school zone provisions should not be limited to delivery to students and should be extended to parks, and that enhanced penalties for the drug-free zone provisions and for delivery to a minor should apply when the offender is at least 17 years of age.

CONTENT

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 school zones. The bill also would delete a requirement that, for drug-free school 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.

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.

“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

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Drug traffickers who prey upon children deserve severe punishment. Michigan law recognizes this by imposing enhanced penalties for selling or possessing drugs within 1,000 feet of school property. The answer to the drug problem may have to come from the next generation: today’s children. The State should do everything it can to provide them with a drug-free atmosphere in and around areas they frequent. 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 the infestation brought on by drug dealing.

Response: Extending drug-free zones to more areas could actually weaken the concept, and raises the question of whether the enhanced penalties simply ought to apply uniformly, regardless of location. Indeed, some smaller communities may not even have a spot more than 1,000 feet from a park, thereby rendering the entire community a drug-free park zone.

Supporting Argument

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.

Supporting Argument

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. By deleting the requirement that the delivery be to a student, the bill would preclude this evasion of the enhanced penalties.

Opposing Argument

The bill does not go far enough. Senate Bill 332 of 1993-94, which passed the Senate, would have removed the age requirements for both sellers and buyers and included additional drugs under the drug-free school zone law. Further, including more nonschool property where students spend time, as Senate Bill 332 would have done, also would conform to Federal law which, in addition to creating a 1,000-foot drug-free zone around schools, colleges, and playgrounds, prohibits the distribution, possession with intent to distribute, or manufacture of drugs within 100 feet of a youth center, public swimming pool, or video arcade (21 USC 860).

Opposing Argument

While no one could reasonably argue that drugs belong near schools and parks, addressing the problem in terms of geography is inappropriate. The 1,000-foot zone is over three football fields in length and, in an urban area with tall buildings, it is not always easy to tell where schools are. A person providing drugs to acquaintances and living one-fifth of a mile from school or park grounds may not be engaging in the sort of activity that warrants the enhanced penalties mandated by the law. Further, it would be simple for an undercover officer just to cross a street to make a transaction, in order to trigger the enhanced penalties.

Opposing Argument

The criminal justice system is not the appropriate or best venue in which to address society’s serious drug problem, and it is clear now that Michigan cannot build its way out of the problem by erecting more and bigger prisons. 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, the State needs to wipe out the demand for drugs, and the criminal justice system simply is not suited to doing that.

Opposing Argument

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.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill could increase costs for the Department of Corrections as a result of the enhanced sanctions and lower age limit for violators of the bill's provisions. There are no data currently available on the potential number of enhanced sentences that could result from the commission of a drug crime at or near a public park. As a comparison, for the identical enhancement provision for the commission of a drug crime at or near a school, since 1991, there have been 31 convictions in circuit court, five receiving a prison sentence, the others probation or jail. The cost of this bill would be the cost of the additional sentence lengths that could be imposed as a result of the public park enhancement provision.

Fiscal Analyst: M. Hansen

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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.