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SFA



BILL ANALYSIS

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Senate Bill 3 (as enrolled)
Sponsor: Senator Michael J. Bouchard
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 261 of 1998

Date Completed: 1-27-99

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. The enhanced penalties are described in **BACKGROUND**, below.

Some people believe that, to protect children from drug dealers more effectively, the Code should include similar drug-free zone provisions relative to parks.

CONTENT

The bill amended the Public Health Code to provide for enhanced penalties for certain drug violations committed in or near a public or private park. The bill took effect on October 1, 1998.

Under the bill, a person 18 years of age or older who does any of the following may be punished by up to two years' imprisonment:

- Delivers or possesses with intent to deliver to a minor who is in or within 1,000 feet of a public or private park less than 50 grams of a mixture containing a Schedule 1 or 2 controlled substance that is a narcotic or cocaine.
- Possesses less than 25 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine in a public or private park.
- Possesses a Schedule 1, 2, 3, or 4 controlled substance or a controlled substance analogue in a public or private park.
- Possesses LSD, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a

Schedule 5 controlled substance in a public or private park.

- Possesses marihuana in a public or private park.

A term of imprisonment imposed under the bill will be in addition to the term of imprisonment authorized for the underlying violation of the Public Health Code. The penalties for those underlying offenses are as follows:

- Delivery or possession with intent to deliver of less than 50 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine: not less than one year's or more than 20 years' imprisonment and an allowable fine of up to \$25,000, or probation for life.
- Possession of less than 25 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine: up to four years' imprisonment and/or a maximum fine of \$25,000.
- Possession of a Schedule 1, 2, 3, or 4 controlled substance, whose penalty is not otherwise specified in the Code, or of a controlled substance analogue: up to two years' imprisonment and/or a maximum fine of \$2,000.
- Possession of LSD, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a Schedule 5 controlled substance: up to one year's imprisonment and/or a maximum fine of \$2,000.
- Possession of marihuana: up to one year's imprisonment and/or a maximum fine of \$2,000.

The bill defines "public park" as real property owned or maintained by the State or a political subdivision of the State that is designated as a public park. "Private park" means real property owned or maintained by a private individual or entity and that is open to the general public or local residents for recreation or amusement.

BACKGROUND

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 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.

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 is consistent with Federal law and subjects 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.

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 or parks 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. 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 should be clear now that Michigan cannot build its way out of the problem by erecting more and bigger prisons. Extending enhanced penalties makes 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 law 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 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, between 1991 and 1996, there were 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: K. Firestone

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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.