

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 380 (as passed by the Senate)
Sponsor: Senator Bev Hammerstrom
Committee: Health Policy

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RATIONALE

Despite the long “war on drugs” that has been conducted in the United States, and its emphasis on preventing young people from obtaining drugs and beginning drug usage, use of illicit drugs by teenagers is still widespread. Of those illicit drugs used by teenagers, marijuana reportedly is the drug most often used. According to the *Monitoring of the Future Study* conducted by the University of Michigan, in 1998 22% of all eighth-graders, and 49% of all 12th-graders, said they had tried marijuana; 37.5% of the class of 1998 said they had used marijuana in the past 12 months. (The study, funded in part by the National Institute on Drug Abuse, is a 23-year study on the prevalence of drug use nationally.) While the last two years have shown a slight decrease in marijuana use by young people, it appears that the popularity of the drug remains a significant problem.

The State seeks to address the issue of illicit drug use, and marijuana in particular, on several levels. Substance abuse treatment programs are available, and the State spends a significant amount of money on a public awareness campaign to alert people to the dangers of marijuana use. Further, to punish and discourage use, the State provides criminal penalties for violations involving marijuana. Under Part 74 of the Public Health Code, a person who manufactures, delivers, creates, or possesses with intent to manufacture, deliver, or create marijuana in an amount less than five kilograms or 20 plants is guilty of a felony, punishable by imprisonment for up to four years, a fine of up to \$20,000, or both. Penalties are more severe for amounts over five kilograms. A person who knowingly or intentionally possesses marijuana is guilty of a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$2,000, or both.

It has been pointed out that a small number of cities have ordinances that provide lesser penalties for possession of marijuana. In fact, in Ann Arbor possession of marijuana is considered a civil infraction, punishable by a \$25 fine. East Lansing assesses a fine of \$25 for first-time possession while maintaining the offense as a misdemeanor. In Flint, possession is a civil infraction punishable by a \$50

fine. Some people believe that the existence of penalties less severe than those provided in State law sends a message to young people that use of marijuana is not a serious matter. It has been suggested that local units be prohibited from providing penalties for controlled substance violations that are less than those found in State law.

CONTENT

The bill would amend Part 74 of the Public Health Code, which regulates controlled substances and provides penalties for controlled substance violations, to prohibit a city, village, township, or county from enacting or enforcing an ordinance or regulation concerning conduct prohibited under Part 74, unless the ordinance or regulation prescribed criminal penalties that were not less than the penalties prescribed under Part 74.

The bill would apply to an ordinance or regulation regardless of when it was enacted. The bill specifies that it would not authorize a city, village, township, or county to enact or enforce an ordinance or regulation that had a penalty greater than the maximum penalty that the local unit was otherwise authorized by law to prescribe.

Proposed MCL 333.7417

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

While most high school students have never used marijuana, or have only tried it infrequently, its use is widespread. Furthermore, it is readily available. According to the *Monitoring of the Future Study*, over 90% of the class of 1998 reported that it is “fairly easy” or “very easy” to obtain marijuana. This is disturbing because marijuana can have varied and harmful effects on users. The National Institute on Drug Use reports that long-term studies of high school students and patterns of drug use reveal that few use other illicit drugs without first trying marijuana; and that marijuana use puts teens in contact with the users and sellers of other drugs, thus exposing the teens to greater risks. Marijuana use can affect memory, judgment, and perception, and expose more teens to smoking and its associated health risks. Great efforts have been made to discourage persons from drinking alcohol and driving, but driving after or while smoking marijuana can cause physical and mental impairments that are similar to alcohol use and thus present the same dangers for the users, and other people on the road.

To discourage and reduce the use of marijuana, the State and local units of government spend enormous resources on enforcement, substance abuse treatment programs, medical care, and public awareness campaigns. A small number of local units, however, have chosen to treat marijuana possession in a manner that belies the seriousness of the situation. While the State provides that possession of marijuana is a misdemeanor punishable by a fine of up to \$2,000 and up to a year in jail, the City of Ann Arbor by ordinance has declared possession to be a civil infraction punishable by a \$25 fine. Both East Lansing and Flint also provide minimal penalties. These fines are no more than a slap on the wrist for those who are caught, and offer little deterrence for violating the law. The greater damage, however, is done by the message sent by these insignificant penalties. The existence of lesser penalties than those determined correct by the State tells teenagers that, in some places, marijuana use is not a serious concern but is instead socially acceptable. This is the exact opposite of the message that should be sent about marijuana. By forbidding local units from establishing lesser penalties for violations of drug laws than those found in the Public Health Code, the bill would eliminate the mixed message that now exists and create consistency across the State.

Response: Simply because a marijuana possession offense takes place in Ann Arbor, or another local unit with a lesser penalty, does not

mean that the penalty under the Public Health Code is not available. If a person commits an offense that is punishable under both a local ordinance and a State statute, he or she can be charged under either law. The local ordinance does not make the State statute any less enforceable.

Opposing Argument

The bill is a misguided attempt to control the “Hash Bash”, the annual Ann Arbor event (started in 1971) that features speakers and rallies in support of marijuana use. What the bill really does is directly attack local control. By prohibiting a local ordinance that provides a lesser penalty for certain offenses than that provided in the Public Health Code, the bill would impose the State’s authority on local units. The decisions of the elected governing body of Ann Arbor, and other cities that have lesser penalties, should not be overruled just because persons from other communities may not approve of those decisions. Reportedly, Ann Arbor decided to treat marijuana violations as it does in order to relieve local law enforcement officers and the courts from having to deal with numerous possession offenses, and instead allow them to concentrate on more serious crimes. The bill would overturn the judgment of Ann Arbor officials, and any other local unit that differed with State law, now and in the future.

Response: The Hash Bash has created a haven for drug use; it attracts kids from all over the State, who come to Ann Arbor, get high, and drive home. This is clearly dangerous and anything that can be done to prevent this annual event should be attempted. The bill, though, is not about the Hash Bash; it is about the misleading message that marijuana use is acceptable. In fact, State law provides that tobacco use in any form by a minor in a public place is a misdemeanor, punishable by a \$50 fine. This means that tobacco use by a minor carries a greater penalty than marijuana possession, in certain areas of the State. The bill would provide a consistent message that marijuana possession is a criminal offense, and violators should be treated as criminals.

Opposing Argument

Part 74 of the Code provides that possession of marijuana is a misdemeanor, punishable by a *maximum* fine of \$2,000, *up to* a year in jail, or both. The penalties levied under the Ann Arbor ordinance, and in other cities, fall within these parameters, except that a few ordinances declare possession to be a civil infraction. Thus, other than requiring that an ordinance declare possession to be a misdemeanor, rather than a civil infraction, the bill would not change current penalties.

Furthermore, it would not be possible for a local unit to enact an ordinance with the same penalties as those in the Public Health Code, because local units are subject to statutory limitations on the penalties

they can impose. For example, under the Home Rule City Act, the maximum penalty a city can impose for an ordinance violation generally is limited to 90 days' imprisonment and a \$500 fine (MCL 117.4i). The bill specifically states that it would not authorize a local unit to enact an ordinance with a penalty greater than the maximum that the local unit was otherwise authorized by law to prescribe.

There also are statutory limits on the offenses that a local unit can designate as civil violations. Using the Home Rule City Act as an example again, a city ordinance may not make an act or omission a municipal civil infraction if it constitutes a crime under any State law that makes the act or omission punishable by imprisonment for more than 90 days (MCL 117.4i). Thus, Ann Arbor's and Flint's civil penalty for marijuana possession already may be subject to challenge under existing law.

Legislative Analyst: G. Towne

FISCAL IMPACT

This bill would have no fiscal impact on State government, but would affect local governments that currently assess certain criminal penalties that are less than the penalties prescribed in the State Public Health Code. The fiscal impact of this bill is probably very minimal, but it cannot be quantified because the number of local governments that would be affected by this bill is not known.

Fiscal Analyst: J. Wortley

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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.