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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 553 (as reported with amendment)
Sponsor: Senator Frederick Dillingham
Committee: Education and Mental Health

Date Completed: 5-2-90

RATIONALE

In order to combat the prevalence of drugs on and near school grounds, the Legislature enacted Public Act 12 of 1988, which enhanced penalties for an adult who delivers certain controlled substances to a minor student on or within 500 feet of school property. Under the Act, an offender must be imprisoned for at least two years but not more than three times the term authorized for the primary offense, and may be fined up to three times the amount authorized. Proponents of drug-free school zones now believe that the law could be strengthened by increasing the 500-foot distance to 1,000 feet as provided in Federal law, increasing the mandatory minimum prison term, applying the law to additional controlled substances, and removing the age requirements.

CONTENT

The bill would amend the Public Health Code to:

- Increase the mandatory minimum prison term for delivering or possessing with intent to deliver certain controlled substances on or within 500 feet of school property; increase that distance to 1,000 feet; delete the age requirements; include other controlled or counterfeit substances in this prohibition; and prescribe a separate penalty for a violation involving under 25 grams of marihuana.
- Provide that a person subject to a minimum term would not be eligible for probation or parole.

- Revise the provision that prohibits possession of controlled substances on school property.
- Provide that a defendant's lack of knowledge about proximity to a school would not be a defense.
- Amend the definition of "school property" to delete the exception for buildings used primarily for adult education or college extension courses.

Under the Code, a person aged 18 or older who delivers, or possesses with intent to deliver, less than 50 grams of a Schedule 1 or 2 narcotic or cocaine to a minor who is a student, on or within 500 feet of school property, must be imprisoned for at least two years but not more than three times the term authorized in the Code for the possession or delivery offense, and may be fined up to three times the amount authorized. (Delivering, or possessing with intent to deliver, less than 50 grams of a Schedule 1 or 2 narcotic or cocaine is punishable by imprisonment for at least one but not more than 20 years, a maximum fine of \$25,000, or probation for life.)

The bill would amend this provision by doing the following: increasing the school zone to 1,000 feet; increasing the mandatory minimum prison term to three years; deleting the requirements that delivery be to a minor student and that the violator be at least 18; and applying the provision to the following controlled substances:

- Any other Schedule 1, 2, or 3 controlled substance, except marihuana (which

carries a penalty of up to seven years' imprisonment and/or a maximum fine of \$5,000 for delivery or possession with intent to deliver).

- A Schedule 4 controlled substance or marihuana (punishable by up to four years' imprisonment and/or \$2,000).
- A Schedule 1 or 2 counterfeit substance that is a narcotic or cocaine (up to 10 years' imprisonment and/or \$10,000).
- Any other Schedule 1, 2, or 3 counterfeit substance (up to five years and/or \$5,000).
- A Schedule 4 counterfeit substance (up to four years and/or \$2,000).
- A controlled substance analogue (up to 15 years and/or \$250,000).

The bill also provides that if the only controlled substance involved in the violation were less than 25 grams of marihuana, the minimum term of imprisonment would be one year.

A person subject to a mandatory minimum term of imprisonment would not be eligible for probation, suspension of the sentence, or parole during the mandatory minimum term, and could not receive a reduction in the mandatory term by disciplinary credits or any other type of sentence credit reduction.

The Code also prohibits an individual who is 18 or older from simply possessing a controlled substance on school property. The bill would add "or within 1,000 feet" of school property, and would delete reference to the individual's age.

The bill specifies that a defendant's lack of knowledge that the prohibited conduct took place on or within 1,000 feet of school property would not be a defense to a prosecution for delivering, possessing with intent to deliver, or possessing a controlled substance on or within 1,000 feet of school property.

In addition, the bill would delete a provision that makes it a misdemeanor to distribute marihuana without remuneration and not to further commercial distribution.

MCL 333.7410 and 333.7413

FISCAL IMPACT

The bill would result in an indeterminate expenditure increase for the State in FY 1989-90. The indeterminate increase would be the result of the following primary factors:

- The date the bill would take effect during FY 1989-90.
- The number of individuals who would be affected by the bill.
- How sentencing judges would utilize the revised sentencing guidelines.

Finally, with regard to cost analysis, individuals sentenced to prison under the mandatory minimum provisions would cost the State substantially more per offender than individuals placed on probation. The average cost per incarcerated prisoner in FY 1989-90 is approximately \$24,000 compared to approximately \$3,000 to \$7,000 per offender for the various forms of probation.

ARGUMENTS

Supporting Argument

Drug traffickers who prey upon children are among the most despicable of offenders and deserve severe penalties. Michigan law recognizes this by imposing enhanced penalties for selling or possessing drugs within 500 feet of school property. The stiffer penalties proposed by the bill, however, would be a more effective deterrent to drug dealers who might otherwise find school-yard transactions all too attractive. Creating a 1,000-foot drug-free zone, removing the age requirements for both sellers and buyers, and including additional drugs under the law, would be consistent with Federal law and would subject more offenders to the enhanced penalties.

Supporting Argument

The answer to the drug problem may have to come from the next generation: today's schoolchildren. The State requires these children to go to school and should do everything it can to provide them with a drug-free atmosphere in and around school.

Response: Since this law aims to keep drugs away from children, it could be strengthened even further. In addition to creating a 1,000-foot drug-free zone around schools, the Federal law prohibits the

distribution, possession with intent to distribute, or manufacture of drugs within 100 feet of a playground, youth center, public swimming pool, or video arcade (21 USC 845a). Michigan law should incorporate this provision.

Opposing Argument

Removing the requirements that an offender be at least 18 years old, and that delivery be to a minor, would overlook the original design in the law to penalize more severely adults who prey upon children. As proponents of Public Act 12 pointed out in 1988, the law avoids undue punishment of those who are the victims of drug pushers--the children themselves. The bill, however, by removing the age requirement, would enable 15-year-olds to be prosecuted under this law as adults--and subjected to mandatory imprisonment--if the juvenile court waived jurisdiction over them.

Opposing Argument

While no one could reasonably argue that drugs belong near schools, addressing the problem in terms of geography is inappropriate. The proposed 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 grounds may not be engaging in the sort of activity that warrants the 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. The questions of geography and intent recently were addressed by the United States District Court for the Southern District of New York in a case involving a woman who was waiting at a bus terminal within 1,000 feet of a school with cocaine that she was taking to deliver in another state. In its February 1990 opinion, the Court held that the woman could not be convicted of possession with intent to distribute within 1,000 feet of a school (U.S. v Liranzo, 729 F.Supp. 1012). It is not enough simply to be in the zone; the offender also must intend to deliver drugs there. Finally, enhanced penalties already are available under Michigan law for delivery to a minor anywhere, if the offender is an adult at least three years older than the minor.

Opposing Argument

The criminal justice system is not the appropriate or best venue in which to address this society's serious drug problem, and it should be clear by now that Michigan cannot build its way out of the problem by erecting more and bigger prisons. The State budget should not continue to be put through contortions to accommodate correctional needs, and judges should be given more--not less--sentencing discretion. Increasing the mandatory minimum term and extending the enhanced penalties to minors 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 isn't suited to doing that.

Response: In regard to the mandatory minimum terms, the law allows a court to depart from them if it finds substantial and compelling reasons to do so.

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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.