

SFA

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

• (517) 373-5383

Senate Bill 553 (as passed by the Senate)
 Sponsor: Senator Frederick Dillingham
 Committee: Education and Mental Health

RECEIVED**OCT 08 1990**

Date Completed: 6-11-90

Mich. State Law Library

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, extending drug-free zones to nonschool property, applying the law to additional controlled substances, and removing the age requirements.

CONTENT

The bill would amend the Public Health Code to:

- Increase drug-free school zones from 500 feet to 1,000 feet of school property and create other drug-free zones around parks and recreation areas; include other controlled or counterfeit substances in the prohibition against delivering or possessing with intent to deliver certain controlled substances to a minor student in a drug-free zone; delete the age requirements; 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.
- Remove the required age differential from the provision that imposes penalties on an adult who distributes controlled substances to a minor who is at least three years younger than the distributor.
- Provide that a defendant's lack of knowledge about proximity to a drug-free zone or the age of the buyer would not be a defense.
- Permit local units of government to post drug-free zone signs.
- 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.

The bill would amend this provision by doing the following: applying it to drug-free zones that would extend 1,000 feet around school property and would include parks, recreation areas, and recreation facilities (defined below); 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:

S.B. 553 (6-11-90)

- Any other Schedule 1 or 2 controlled substance.
- A Schedule 3 or 4 controlled substance or marihuana.
- A Schedule 1, 2, 3, or 4 counterfeit substance.
- A controlled substance analogue.

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.

In addition, the Code prohibits an individual who is 18 or older from simply possessing a controlled substance on school property. The bill would prohibit possession within a drug-free zone, 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 a drug-free zone would not be a defense to a prosecution for delivering, possessing with intent to deliver, or possessing a controlled substance on or within a drug-free zone.

"Drug-free zone" would mean: 1) school property and the area extending 1,000 feet from school property; 2) a State or municipal park, a municipal recreation area, or other recreation area designated by local ordinance, and the area extending 1,000 feet from the park or recreation area; and/or 3) a recreational facility and the area extending 100 feet from a recreational facility. "Recreational facility" would mean a swimming pool used or intended to be used by the public or the pool's parking lot, a public playground, a video arcade, and/or a youth center (a facility or gymnasium that is used or intended to be used by individuals under 18 and regularly provides athletic, civic, or cultural activities, and the facility's parking lot). "School property" would include a building, playing field, or property used to impart instruction to children in grades K-12,

when provided by a public, private, denominational, or parochial school; and a college, university, or vocational school.

The Code also provides for enhanced penalties (up to twice the prison term authorized for the underlying offense) for a person aged 18 or older who delivers or distributes a controlled substance to an individual under 18 who is at least three years younger than the deliverer or distributor. The bill would delete the required three-year age differential, and provides that it would not be a defense that the deliverer or distributor did not know that the other person was under 18.

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

Finally, the bill would permit a city, township, village, county, or local or intermediate school district to place drug-free zone signs on public roads within that local unit to notify individuals of drug-free zones. A sign would have to be at least two feet wide and two feet high, be posted between five and 10 feet above the ground, and contain the phrase "drug free zone" in letters at least one inch high on a white background.

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; and the number of individuals who would be affected by the bill.

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. Expanding the zone to 1,000 feet, 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. Further, including nonschool property where students spend time also would conform to Federal law which, in addition to creating a 1,000-foot drug-free zone around schools, 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).

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.

Supporting Argument

Since the law is designed to prevent the distribution of drugs to students, rather than simply to penalize the dealers, the bill would authorize local units to post signs that alerted would-be offenders to the existence of drug-free zones, in the hope of deterring their behavior in the first place. The bill would not require the posting of signs, however, since such a requirement could create a way to avoid convictions if it became necessary to show that a sign was properly posted before a dealer could be convicted. A posting requirement also would raise questions of who was responsible for supplying and paying for the signs. Under the bill, if communities wished to publicize the law by posting signs, they could do so.

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, and the bill would strengthen this provision by removing the three-year age differential requirement.

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. Extending the enhanced penalties to minors and persons selling other illegal drugs 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.

Legislative Analyst: S. Margules

Fiscal Analyst: B. Burghardt

A8990/S553B

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.