



**House
Legislative
Analysis
Section**

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DRUG TRAFFIC NEAR SCHOOLS

House Bill 4046 (Substitute H-2)
First Analysis (6-2-87)

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Sponsor: Rep. Michael J. Griffin
First Committee: Public Health
Second Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

The prevalence of drugs on and near school grounds has alarmed parents, school officials, and law enforcement officers who say they need new tools to enhance efforts at protecting children from drug traffickers and punish the drug pushers who prey upon young people. To deter drug trafficking near schools, the attorney general and others have recommended increasing penalties for drug trafficking on or near school property.

THE CONTENT OF THE BILL:

The bill would amend the Controlled Substances Act within the Public Health Code to create special penalties for sale or possession of controlled substances on or near school property. An adult who delivered less than 50 grams of a Schedule 1 or 2 narcotic or cocaine to a minor on school property would be punished by up to three times the term of imprisonment or fine (or both) that applies to delivery of less than 50 grams elsewhere; those penalties are 20 years imprisonment, a fine of up to 25,000, or both.

An adult who possessed a controlled substance on school property would be subject to twice the penalty that applies to possession of certain controlled substances elsewhere. The applicable penalties would be those for possession of marijuana, hallucinogens, and controlled substances other than cocaine and Schedule 1 or 2 narcotics. Thus, possession of marijuana, hallucinogens, or Schedule 5 substances on school property would be subject to two years' imprisonment, rather than one, and a fine of up to \$2,000, rather than \$1,000. Possession of other controlled substances on school property would be subject to four years' imprisonment and a fine of up to \$4,000.

An adult who possessed less than 50 grams of cocaine or a Schedule 1 or 2 narcotic with intent to deliver to a minor who was a student at the school would be punished by a term of imprisonment or a fine or both of up to twice that which would apply elsewhere, providing the person was within 500 feet of school property.

Second and subsequent convictions under the bill would be punishable by penalties double those the bill would authorize for first offenses. A repeat violator would not be eligible for probation or a suspended sentence.

MCL 333.7410 and 333.7413

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Selling drugs to children is among the most despicable of crimes, and one that warrants strong penalties. The stiff penalties proposed by the bill would be an effective deterrent to drug dealers who might otherwise find schoolyard transactions to be all too attractive. The bill is not precedent-setting — federal law already provides for

enhanced penalties for drug trafficking on or near school property — but it would provide local law enforcement agencies with a strong "schoolhouse" law that they would have the jurisdiction to enforce. Moreover, the bill would avoid undue punishment for those who arguably are the victims of the drug dealers — the children themselves.

Against:

The bill would not do enough to curb schoolyard drug trafficking. The deterrent effect of any penalty depends largely on its certainty. Without mandatory minimum penalties, and without provisions to induce juveniles to cooperate with prosecutors, the bill seems likely to change nothing. Moreover, the bill contains some logical inconsistencies which further cloud its potential effect. For example, the maximum prison term for delivery of less than 50 grams of cocaine on school property would be sixty years, while the maximum for delivery of between 50 and 250 grams would remain what it is now: twenty years. In addition, the bill would provide that possession of any controlled substance on school property would be subject to twice the penalty that applies to possession of controlled substances other than cocaine and Schedule 1 and 2 narcotics. This would provide no deterrent with regard to the drugs that are the greatest problem: cocaine and heroin.

Response: Mandatory minimum penalties would not improve the bill. They would interfere with judicial discretion, and would not provide any deterrent effect that is not already available through the mandatory minimums that now exist for major drug offenses. It is those mandatory minimums, more than the potential maximums, that distinguish the large-quantity narcotics penalties from those established by bill. Further, the bill does not replace existing penalties for drug possession, but rather supplements them. Thus, prosecutors could continue to employ the statute that provides stiffer penalties for distributing to a minor who is at least five years the distributor's junior. Possession of large amounts of drugs could be prosecuted as possession with intent to deliver. Finally, proposals to require juveniles to cooperate with prosecutors raise issues of how the rights and safety of those juveniles and their families would be protected.

Against:

Skeptics might argue that stiffer penalties are unlikely to have any discernible effect on the drug problem. Harsh penalties apparently have done nothing to stop drug abuse, and are likely to continue to fail as long as the things that cause people to turn to drugs — whatever those things may be — continue to exist, along with attraction of easy money that drug dealing seems to offer.

POSITIONS:

The Attorney General supports the bill. (5-27-87)

The Department of State Police supports the bill. (5-27-87)

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The Michigan Judges Association has no position on the bill. (5-27-87)