



**House
Legislative
Analysis
Section**

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DRUG TRAFFIC NEAR SCHOOLS

House Bill 4046 as enrolled
Third Analysis (2-19-88)

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Sponsor: Rep. Michael J. Griffin
First House Committee: Public Health
Second House Committee: Judiciary
Senate 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 to protect 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. A court could depart from the minimum sentences imposed by the bill if it found that there were substantial and compelling reasons for doing so. An adult who delivered less than 50 grams of a Schedule 1 or 2 narcotic or cocaine to a minor on or within 500 feet of school property would be punished by at least two years in prison and 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 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 at least two years in prison, up to twice the prison term and up to three times the fine that would apply elsewhere, providing the person was within 500 feet of school property.

Second and subsequent convictions under the above provisions would be punished by at least five years in prison and up to double the penalties the bill would authorize for first offenses. A repeat violator would not be eligible for probation or a suspended sentence.

An adult who possessed a controlled substance on school property generally would be subject to twice the penalty that applies to possession of that controlled substance elsewhere. (This provision would not apply to possession of more than 25 grams of cocaine or narcotics, as provided by Senate Bill 598.)

Penalties that now apply to an adult selling drugs to a minor at least five years his or her junior would be extended to apply to an adult selling to a minor three or more years younger than the seller. In addition, the bill would prescribe a mandatory minimum term of imprisonment of one year; provisions allowing judges to depart from minimum terms would not apply to this minimum.

The bill would take effect June 1, 1988.

MCL 333.7410 et al.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have an indeterminate fiscal impact on the state and local government. Enforcement costs and the increased costs to the Department of Corrections would depend on the number of violations of the provisions of the bill, as well as the penalties imposed. (1-5-88)

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 strictly 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.

Response: Strictly mandatory minimum penalties would not improve the bill, but rather would interfere with judicial discretion to an unacceptable degree. 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 the distributor's junior by a given number of years. 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:

Even though a judge could depart from a specified minimum penalty by finding on the record that there were compelling reasons for doing so, the bill's presumption is for mandatory minimum penalties. The bill thus would make it difficult for judges to tailor their sentences to

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accommodate individual circumstances, and would unduly interfere with judicial discretion.

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.