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BILL ANALYSIS

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Senate Fiscal Agency

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House Bill 4046 (Substitute S-1 as reported)**Sponsor:** Representative Michael J. Griffin**First House Committee:** Public Health**Second House Committee:** Judiciary**Senate Committee:** Judiciary**Date Completed:** 1-5-88**RATIONALE**

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.

CONTENT

The bill would amend the Public Health Code to establish mandatory minimum prison terms for an adult who delivered or possessed with intent to deliver, controlled substances to a minor who was a student, on or within 500 feet of school property, and for an adult who was in possession of a controlled substance on school property. In addition, the bill would change a section of the Code that specifies penalties for an adult who delivers a controlled substance to a minor who is at least five years the junior of the distributor. The bill would refer instead to a minor who was at least three years younger than the distributor, and prescribe a mandatory minimum term.

"School property" would mean a building, playing field, or property used for school purposes to impart instruction to children in grades kindergarten through 12, when provided by a public, private, denominational, or parochial school, except buildings used primarily for adult education or college extension courses.

Delivery or Possession with Intent to Deliver

The bill provides that an adult who delivered less than 50 grams of a Schedule 1 or 2 narcotic or cocaine to a minor who was a student on or within 500 feet of school property would have to be punished by a term of imprisonment of not less than two years nor more than three times that which is authorized under current law (regardless of age or location). (Under current law, the offense is punishable by imprisonment of not more than 20 years.) In addition, the violator could be punished by a fine of not more than three times that which is authorized under current law for the offense. (The current fine is up to \$25,000).

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 on or within 500 feet of school property, would have to be punished by a term of imprisonment of not less than two years nor more than twice that which is authorized under current law.

A second or subsequent conviction of an offense described above would be punishable by a term of imprisonment of

not less than five years nor more than twice that authorized under current law. In addition, the violator could be punished by a fine of not more than three times that which is currently authorized. An individual sentenced for repeated offenses would not be eligible for probation or suspension of sentence during the term of imprisonment.

The court could depart from the minimum term of imprisonment authorized under the bill if the court found on the record that there were "substantial and compelling" reasons to do so.

Possession on School Grounds

The bill also provides that an adult who possessed certain controlled substances on school property could be punished by a term of imprisonment or a fine, or both, of not more than twice that which is authorized under current law for the possession of those substances. The controlled substances in question include marihuana, hallucinogens (e.g., LSD), and less than 50 grams of Schedule 1 or 2 narcotics and cocaine. The current penalty for the Schedule 1 or 2 substances is four years and \$2,000. The maximum penalty for hallucinogens and marihuana is one year and \$1,000.

Delivery off School Grounds

Currently, an adult who delivers less than 50 grams of a Schedule 1 or 2 narcotic or cocaine to a minor at least five years younger than the adult, may be sentenced to a maximum fine of \$25,000 or a maximum prison term of 40 years, or both. The bill would change the age differential to three years, and include a minimum mandatory term of one year. The three-year to five-year change also would apply to the delivery of other Schedule 1 to 5 controlled substances, which would still be subject to the \$25,000 and/or 40 years penalty.

MCL 333.7410 and 333.2413

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute to the bill that does not contain a provision in the House-passed version that would have set minimum penalties for someone aged 17 or older who recruited a person under 17 to commit a drug law violation that would be a felony if committed by an adult. Also, the Senate substitute would allow a judge to depart from the proposed minimum sentences for "substantial and compelling reasons", rather than for "just cause", as the House version specified.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on 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.

ARGUMENTS

Supporting Argument

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 school-yard transactions to be all too attractive. The bill is not precedent-setting — since 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.

Opposing Argument

The bill would not do enough to curb drug trafficking near schools, since the deterrent effect of any penalty depends largely on its certainty. Without mandatory minimum penalties from which judges could not depart, and without provisions to induce juveniles to cooperate with prosecutors, the bill could change little. Moreover, the bill would create some logical inconsistencies within the code that could further cloud the bill's potential effect. For example, the maximum prison term for delivery of less than 50 grams of cocaine on school property would be 60 years, while the maximum for delivery of between 50 and 250 grams would remain what it is now: 20 years.

Response: Strictly mandatory minimum penalties would unduly 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 proposed by the bill. Further, the bill would not replace existing penalties for drug possession, but rather would supplement 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.

Opposing Argument

Even though a judge could depart from a specified minimum penalty if there were substantial and compelling reasons to do so, the bill would make it difficult for judges to tailor their sentences to accommodate individual circumstances, and would unreasonably interfere with judicial discretion.

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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.