

SUBJECT: Penalties in drug-free zones; creating weapons-free zones

COMMITTEE: Criminal Jurisprudence — favorable, with amendment

VOTE: 7 ayes — Place, Talton, Greenberg, Nixon, Pickett, Pitts, Solis

0 nays

2 absent — Farrar, Hudson

WITNESSES: None

BACKGROUND: The 73rd Legislature established state-level protective zones around schools and other areas in which the penalties for some drugs offenses are enhanced. The minimum term of confinement and the maximum fine are doubled if the offense is committed within 1,000 feet of a school, institutes of higher education, playground or within 300 feet of a youth center, public swimming pool or video arcade.

Persons convicted of drug-free zone violations are not eligible for parole until their calendar time, without consideration of good conduct time, equals five years or the maximum term to which they were sentenced, whichever is less.

DIGEST: HB 439 would change the penalties for offenses committed in drug-free zones, add violations of drug-free second offenses to the offenses that require longer sentences to be served before being eligible for parole, prohibit probation for second offenses for violations of drug-free zones and increase the penalties for weapons-related offenses committed near schools and other places.

Drug-free zones. Offenses committed on school buses would be added to the places where the enhanced penalties apply, and the zone for enhanced penalties for offenses committed near a playground would be reduced from 1,000 to 300 feet.

For current felonies, the minimum term of confinement or imprisonment would be increased by five years, instead of being doubled. Current state jail felonies would become third degree felonies. Current Class A misdemeanors would become state jail felonies. Current Class B misdemeanors would become Class A misdemeanors unless the offense occurred in a private residence with no minors present. These enhanced punishments could not run concurrently with punishments for convictions under other criminal statutes.

The enhancement for current state jail felonies, Class A misdemeanors and Class B misdemeanors would also apply to offenses taking place within 1,000 feet of a school board's property.

HB 439 would repeal the requirement that persons convicted of drug-free zone violations are eligible for parole only when their calendar time, without consideration of good conduct time, equals five years or the maximum term to which they were sentenced, whichever is less.

Second offenses of drug-free zones. HB 439 would add second offenses for violations in drug-free zones to the list of offenses in Code of Criminal Procedure art. 42.12, sec. 3(g). (Persons convicted of 3g offenses cannot receive judge-ordered probation and are ineligible for parole until their time served, without consideration of good conduct time, equals one-half of their maximum sentence or 30 years, whichever is less, and a minimum of two years.)

Juries would be prohibited from recommending community supervision and judges would be prohibited from granting deferred adjudication for second offenses for violations in drug-free zones.

Weapons-free zone. HB 439 would also enhance punishments for Penal Code weapons-related violations to the next highest penalty for offenses committed within 1,000 feet of a school or an institution of higher education, on a school bus, within 300 feet of a playground, youth center, public swimming pool or video arcade or a premises where a school-sponsored extracurricular activity in which the offender is a participant, an official school function or a university interscholastic league event are taking place. The bill would create exceptions to the enhanced penalties

for violations in places where weapons are prohibited or if the offender possessed a firearm or club on private property, for use in a school program, as a peace officer, under a contract with the school or while traveling as a members of the armed forces or the National Guard or if the firearm was unloaded and in a locked container or on a locked firearms rack in a motor vehicle.

HB 439 would allow municipal or county engineers to produce maps delineating the boundaries of weapon-free zones and require them to file the maps with the county clerk. When approved by the local government, such maps would be admissible during prosecution as prima facie evidence establishing zone limitations.

HB 439 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

HB 439 would fine-tune the drug-free zone statutes enacted in 1993, increase penalties for second offenses and increase the punishment for weapons offenses in places that children frequent.

HB 439 would put the punishments for drug-free zone violations in line with other punishments in the Penal Code and apply more appropriate punishments by increasing the term by five years for felony violations and by enhancing other penalties to the one given for the next highest offense, instead of doubling the minimum confinement terms for all violations. For example, it is ineffective to double the confinement term for state jail felonies because state jail terms are automatically probated so HB 439 would increase those offenses to third-degree felonies.

Drug dealers who prey on vulnerable children and commit drug-free zone violations should be kept off the street as long as possible. Adding second offenses for violations of drug-free zones to the list of "3g offenses that require longer sentences before being eligible for parole would ensure that repeat offenders stay in prison for at least half of their sentences for the pushing drugs around children. Prohibiting violators from receiving probation would ensure that they are not given simply a slap on the wrist and let loose on probation.

Increasing penalties for violations of weapons laws near schools and other places where children congregate would give law enforcement officers a strong tool to regain control over areas that often have trouble with both guns. It would further long-standing state policy that crime is more reprehensible when it is directed toward children and thus should be punished more severely.

It is especially important that the state create weapon-free zones since the U.S. Supreme Court has struck down a federal law that created gun-free zones near schools. Keeping schools safe is a state and local responsibility, and the Legislature should provide the tools needed to keep drugs and weapons away from schoolchildren trying to get an education.

OPPONENTS
SAY:

Lengthening the list of 3g offenses would disturb the balance of penalties created when the Penal Code was revised in 1993. The 3g designation should be reserved for the most serious and violent crimes like murder. Expanding the list would flatten the range of penalties and means that crimes that differ in seriousness are treated the same. Eliminating probation as an option for drug-free zone violations would reduce the flexibility of courts to deal with these offenders.

Increasing the punishment for state jail offenses to the third-degree felony punishment is too large of an enhancement. State jail felonies are low-level crimes that should not be punished as felonies.

The Penal Code revisions enacted in 1993 streamlined the code by doing away with piecemeal enhancements. By enhancing penalties for violations in newly-created weapon zones, this bill would unwisely set up a new level of enhancements.

The weapon-free zones set up in HB 439 would cast too wide a net; schools and playgrounds may be valid zones for enhancing penalties, but including video arcades and institutions of higher education stretches the concept of protecting children.

NOTES:

The committee amendment would add exceptions to the weapons-free zones.