

- SUBJECT:** Enhancing punishment for use of a child in a drug offense
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Hinojosa, Dunnam, Talton, Garcia, Kitchen, Martinez Fischer
0 nays
3 absent — Keel, Green, Shields
- WITNESSES:** For — Bill Harris, Texas District and County Attorneys Association
Against — Rick D. Day
- BACKGROUND:** Code of Criminal Procedure (CCP), art. 42.08 defines when cumulative or concurrent sentences can be given. Art. 42.12, sec. 3g(a) prohibits a sentence of community supervision for offenders convicted of certain violent crimes or, in some cases, of possession or delivery of illegal drugs in a drug-free zone.
- Government Code, sec. 508.149(a) prohibits mandatory supervision for inmates convicted of certain felony offenses. Mandatory supervision is the release of an inmate when the inmate's calendar time served plus good time earned equals the term of the sentence. Inmates convicted of an offense under CCP, art. 42.12, sec. 3g cannot be released from prison until they have served at least half of their sentence or 30 calendar years, whichever is less. In cases where offenders are sentenced to four years or fewer in prison, they cannot serve fewer than two years.
- DIGEST:** HB 156 would require enhancement of punishment for using or attempting to use a child younger than 18 to commit or help commit manufacture or delivery of an illegal drug, delivery of marihuana, or delivery of a controlled substance or marihuana to a minor, if this were shown at the punishment phase of the trial. An offense otherwise punishable as a state jail felony, third-degree felony, or second-degree felony would be increased by one degree, unless the defendant used or threatened to use force against the child or another to gain the child's assistance, in which case the offense would be a first-degree felony.

If the punishment for a defendant were enhanced in this manner, the court could not order the sentence to run concurrently with any other sentences the court imposed on the defendant.

HB 156 would prohibit community supervision for a person convicted under this provision and would prohibit mandatory supervision for any inmate serving a sentence for conviction of an offense under this provision.

This bill would take effect September 1, 2001, and would apply only to a person convicted of an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 156 would create an appropriate punishment for people who use children to commit drug crimes. When an adult coerces a minor into manufacturing or delivering drugs, that adult deserves to have an enhanced punishment. HB 156 would keep these offenders off the streets longer by disallowing probation for the crime, requiring that they serve at least half of their sentences before being released from prison, and requiring that multiple sentences be stacked rather than served concurrently. Also, if the adult used force to make the child participate in the illegal activity, that adult would be charged with a first-degree felony, which is punishable by life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000.

HB 156 would send a message to adults who sell drugs that Texas will not tolerate their using children to perform their dirty work. Children often commit drug offenses because their parents or other relatives forced them into it. In one Texas case, a man used his eight-year-old nephew to deliver crack cocaine to buyers. When the man was arrested, he said he had decided to use the boy because he thought he could avoid detection by law enforcement and that the boy was less likely to be shot while delivering drugs than the man himself would have been. In another case, a mother used her children to buy the precursor chemicals for manufacturing methamphetamine. In both cases, the juries were unhappy that they could not give harsher sentences for using the children to manufacture and deliver illegal drugs.

The bill could reduce the flow of illegal drugs into schools. Often, adults recruit minors to sell drugs to school-age children. If these adults were punished for longer periods or were deterred from committing these crimes by the threat of harsher sentences, fewer children would be harmed by illegal

drugs.

HB 156 would not enhance punishment for parents who gave their children a controlled substance to combat an illness. The enhancement would apply only to those who used a child to help manufacture or deliver an illegal drug.

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, aggravated sexual assault, and aggravated kidnaping. Expanding the list would flatten the range of penalties and mean that crimes differing in seriousness would be treated the same. Harsh penalties already are available for people who use children to commit drug crimes.

HB 156 could allow unfairly harsh sentences in some cases. For example, a mother who gave her minor child medical marijuana to ease the child’s suffering from cancer or a controlled substance to deaden the child’s pain could be prosecuted under this bill and sentenced to prison.

NOTES:

A similar bill in the 76th Legislature, HB 3166 by Keel, died in the House Criminal Jurisprudence Committee. HB 3166 would have amended Penal Code, sec. 15.031, criminal solicitation of a minor, to create an offense for soliciting a minor’s participation in the manufacture or delivery of an opiate or opiate derivative. The offense would have been punishable by a sentence of 25 years to life and a fine not to exceed \$100,000. On conviction of a second offense, the punishment would have been life imprisonment and a fine not to exceed \$250,000.