

SUBJECT: Enhanced penalties for manufacturing certain drugs in a child's presence

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Peña, Riddle, Escobar, Hodge, Pierson, Talton

0 nays

1 present not voting — Mallory Caraway

2 absent — Vaught, Moreno

SENATE VOTE: On final passage, April 16 — 30-0

WITNESSES: No public hearing

BACKGROUND: Health and Safety Code, ch. 481.112 provides an offense for a person who knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance in Penalty Group 1 — including, opium, cocaine, codeine, heroin, morphine, and methamphetamine.

An offense of manufacture or delivery is:

- a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the amount of the controlled substance is less than one gram by aggregate weight;
- a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the amount of the controlled substance is one gram or more but less than four grams by aggregate weight;
- a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the amount of the controlled substance is four grams or more but less than 200 grams by aggregate weight;
- punishable by imprisonment for life, or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000 if the amount of the controlled substance is 200 grams or more but less than 400 grams by aggregate weight; and

- punishable by imprisonment for life, or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000 if the amount of the controlled substance to which the offense applies is 400 grams or more by aggregate weight.

DIGEST:

SB 183 would increase the penalties for manufacturing a controlled substance in Penalty Group 1 where it was shown at trial that a child younger than age 18 was present when the offense was committed.

Punishments for these offenses would increase as follows :

- from a state-jail felony to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the amount of the controlled substance weighed less than one gram;
- from a second-degree felony to a first-degree felony if the amount of the controlled substance weighed one gram or more but less than four grams ;
- life in prison, or a term of not more than 99 years or less than 15 years (up from 10 years) and a fine not to exceed \$150,000 (up from \$100,000) if the amount of the controlled substance weighed 200 grams or more but less than 400 grams; and
- life in prison, or a term of not more than 99 years or less than 20 years (up from 15 years) and a fine not to exceed \$300,000 (up from \$250,000) if the amount of the controlled substance weighed 400 grams or more.

The bill would take effect September 1, 2007, and would apply to an offense committed on or after that date.

**SUPPORTERS
SAY:**

SB 183 is desperately needed to address the danger posed to children who live in homes where dangerous drugs, particularly methamphetamine, are manufactured. "Cooking" meth is an extremely hazardous process, which involves the use of toxic and flammable chemicals that emit harmful fumes. As such, the risk of chemical contamination is very high for people who live in facilities where methamphetamine is manufactured, particularly children who breathe toxic vapors or otherwise come into contact with these substances by touching contaminated surfaces or consuming tainted food or drink. Chronic exposure to chemicals in a meth lab can cause a host of health problems, including cancer and damage to the liver, kidneys, and immune system.

In addition, there is a great risk of fire and explosion in the methamphetamine manufacturing process. By some estimates, 15 percent of meth labs are discovered following a fire or explosion, and children can be killed or maimed as a result of these accidents. Other dangers that confront children who live in places where methamphetamine is produced include the presence of loaded weapons, booby traps, and dangerous animals that are used to protect these illegal facilities. Adults who manufacture methamphetamine create a hazardous living environment for children in countless ways, ranging from failure to provide adequate food and hygiene to deliberate physical, sexual, and emotional abuse. In short, a child's health, developmental skills, and emotional well being can be irreparably damaged by adults who manufacture methamphetamine in their presence.

The current penalty for manufacturing drugs does not account for whether a child is present. By enhancing the penalties, SB 183 would create a deterrent for the manufacture of drugs in the presence of children in an effort to reduce the harm done to children and society as a result of this practice.

**OPPONENTS
SAY:**

Enhancing penalties for people who manufacture drugs in the presence of children would increase the state prison population with limited deterrent effect. The Texas Department of Criminal Justice already is operating at full capacity, and sending non-violent criminals to prison unnecessarily exacerbates resource shortages and overcrowding. According to the Legislative Budget Board, the increased penalties likely would result in greater demands upon correctional resources of counties and the state due to longer terms of imprisonment or probation.