

SUBJECT: Methamphetamine-related offenses with regard to endangering a child

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 7 ayes — Driver, Latham, Allen, Frost, Ortiz, Vo, West
0 nays

WITNESSES: For — Sheriff Tommy Bryant, Erath County Sheriff's Dept.; (*Registered, but did not testify*: Jill Johnson, Texans Care for Children)

Against — (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association)

BACKGROUND: Penal Code, sec. 22.041 defines the offense of endangering a child as intentionally, knowingly, recklessly, or with criminal negligence engaging in conduct that places a child younger than age 15 in imminent danger of death, bodily injury, or physical or mental impairment. The 79th Legislature enacted HB 164 by Berman, which amended Penal Code, sec. 22.041 to classify the manufacture of methamphetamine in the presence of a child as a form of child endangerment, punishable as a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

DIGEST: HB 946 would amend Penal Code, sec. 22.041(c-1) to classify the possession or use of methamphetamine in the presence of a child as a form of child endangerment.

In addition, if the analysis of a specimen of a child's blood, urine, or other bodily substance indicated the presence of methamphetamine, a person whose conduct resulted in that child's proximity or access to methamphetamine would be considered to have committed the offense of endangering a child.

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

SUPPORTERS SAY: HB 946 is desperately needed to address the alarming number of children exposed to methamphetamine in the home. In addition to the host of

serious problems methamphetamine causes for communities, schools, and law enforcement, the abuse of methamphetamine in the home is harmful not only to users but also to other residents, including children. When methamphetamine is smoked indoors, it seeps into the fibers of every fabric in the room. In addition, users of methamphetamine often leave packets of the drug in the home that are eaten by young children. These environmental exposures and accidental ingestions have led to positive methamphetamine test results in children, who can become unwillingly addicted.

HB 946 would make it a crime to have methamphetamine around children and to cause environmental exposure that produces positive drug test results in children. In Erath County alone there have been 40 cases where children who tested positive for meth were removed from the home, but their adult caretakers escaped punishment because there was no evidence of methamphetamine “manufacture” in the home. The bill would cause adults who exposed their children to methamphetamine to face criminal prosecution for child endangerment.

While it is ideal to keep children in the home, the deleterious effects of meth use and exposure by their caretakers warrant serious protective action. Children whose parents keep and abuse methamphetamine in the home already are subject to removal by Child Protective Services to extended family placement or foster care, whether or not their parents go to jail for drug-related crimes. A child’s physical health, developmental skills, and emotional well being can be irreparably damaged by adults who possess and use methamphetamine in their presence. As part of broader state efforts to protect children, Texas must ensure that causing exposure leading to the introduction of methamphetamine into a child’s system is punishable by law.

**OPPONENTS
SAY:**

While protecting children is a honorable goal, this bill could further strain the state’s child protective and corrections services. HB 946 likely would increase the number of kids seized and placed in foster care, as well as the number of adults imprisoned for using or possessing methamphetamine around children. According to the Legislative Budget Board’s criminal impact statement, the bill is expected to result in increased demands upon the correctional resources of the state and counties.

By removing children from dangerous situations without providing the appropriate services and funding, the bill actually might make matters

worse for these fragile children. Children with incarcerated parents are several times more likely to commit crimes than the average child. The Legislature should more carefully study the potential negative effects of sending more kids to foster care and more parents to jail before considering such a broad expansion of this offense.