



**House  
Legislative  
Analysis  
Section**

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## **DESTRUCTION OF DRUG EVIDENCE**

**House Bill 4244 with committee  
amendments  
First Analysis (10-21-93)**

**Sponsor: Rep. Terry London  
Committee: Judiciary**

### ***THE APPARENT PROBLEM:***

Although the seizure of a large quantity of drugs in connection with an arrest can secure the successful prosecution of a major offender, the storage of those drugs through the conclusion of the trial can present problems for law enforcement. Sometimes the sheer bulk of the material (especially if it is marijuana) creates problems in finding storage space. Other times, the preservation of the material is a problem; not only can chemicals break down, but rising temperatures in damp decomposing marijuana reportedly can present fire hazards. And, to store large quantities of drugs is to increase security problems and risk the loss of evidence.

It apparently is not unusual for the parties in a drug case to agree to have the drugs involved destroyed, but statute lacks procedures to guide authorities in how such matters are to be handled. While some judges will order the drug evidence destroyed following testing, others apparently are reluctant to undertake such action absent specific statutory authorization. While federal drug enforcement authorities routinely destroy confiscated drugs, Michigan authorities may be reluctant to do so without some formal sanction.

Legislation has been proposed to establish procedures for judicial authority and oversight over the destruction of drug evidence.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Public Health Code to specify procedures for the destruction of drugs or counterfeit drugs used as evidence in a criminal prosecution. Prior to trial, the prosecutor could move in writing that the drugs be destroyed, and would have to give reasons supporting the destruction. A copy of the motion would go to the defense.

If the defense objected, the defendant or his or her attorney would have to file specific objections within 21 days after receiving notice of the prosecutor's motion. To miss the 21-day deadline would be to waive any objection to the destruction of the evidence. Before any hearing, the defense would have to have the opportunity to inspect and test the evidence, subject to reasonable supervision by laboratory or law enforcement personnel.

The court would have to hold a hearing, after which it could order the destruction of all or part of the drug evidence, if it determined on the record that destruction was warranted. The court order would specify the evidence to be destroyed and could include other provisions as required by the interests of justice.

The law enforcement agency with custody of the drug evidence would destroy it as ordered by the court. Before doing so, however, it would have to make an accurate photographic record of the evidence. The court could order additional records.

MCL 333.7527

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency says that the bill would have no significant fiscal implications. (10-19-93)

### ***ARGUMENTS:***

#### ***For:***

The bill would provide clear authority to destroy unneeded drug evidence with prosecutor and court approval. It would place oversight for such destruction with impartial judicial authority, and establish procedures that would assure a measure of consistency throughout the state. Law enforcement authorities would be relieved of the expenses of

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storing and guarding confiscated drugs, without endangering the prosecution's case or impairing the defendant's rights. Defense would have ample opportunity to inspect and test the confiscated material, and to argue against its destruction, if there was some reason to do so.

***Against:***

The bill could open the way for premature destruction of evidence. If the prosecution moved shortly after arrest to have the drugs destroyed, and an overtaxed court-appointed attorney failed to promptly respond to that motion, the only drug evidence when the case came to trial might be that of the prosecution's test results. Holding at least a sample of drug evidence through the conclusion of a trial should not be burdensome for law enforcement and could further the interests of justice.

***POSITIONS:***

The Department of State Police supports the bill.  
(10-19-93)

The Prosecuting Attorneys Association of Michigan supports the bill. (10-19-93)