House
Legislative
Analysis
Section

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DESIGNATE GHB AS A CONTROLLED SUBSTANCE

Senate Bill 726 as passed by the Senate
Sponsor: Sen. John J. H. Schwarz, M.D.

Senate Committee: Health Policy and Senior Citizens
House Committee: Health Policy

First Analysis (6-2-98)

THE APPARENT PROBLEM:

Gamma-hydroxybutyrate (GHB) is a substance that causes a wide-range of manifestations that range from nausea, drowsiness, and a sensitivity to touch to more serious reactions that include amnesia, heart irregularities, low blood pressure, irregular and slow breathing (which reportedly can induce a coma), tremors, seizure-like activity, respiratory arrest, and death. GHB was first marketed by health food stores in the early 1990s as a replacement for L-tryptophan, a food supplement that was taken off the market in 1989 after tainted ingredients caused an epidemic of a debilitating illness. It also became popular among bodybuilders as an alternative to steroids and was believed to build muscle mass and reduce fat. Others sought out the substance as a legal alternative to the federally outlawed drug Ecstasy which was known for its euphoric effects. However, after a series of serious reactions and deaths from GHB, the Federal Drug Administration (FDA) banned the production and sale of gamma-hydroxybutyrate in the U.S.

Reportedly, GHB produces a sense of euphoria and is relatively cheap (about $5 a dose), and so has grown in notoriety as a recreational drug, especially in nightclubs. Because GHB can induce a sleep-like state and amnesia, it is also being increasingly implicated in rape cases, sexual assaults, and other crimes. Tasteless and odorless, it primarily comes in liquid form, and so can easily be slipped undetected into another person's drink. GHB is not manufactured by a pharmaceutical company, nor has it ever been approved for sale as a medicinal product in the U.S. Instead, GHB is made in homes and clandestine laboratories with recipes available on the Internet and other sources, and can be mail-ordered from Mexico. The drug is considered to be very dangerous because a person could be easily victimized while under its effects (which can last 2 to 96 hours), and because even under controlled conditions, identical dosages have resulted in different responses in different persons or even in the same person at different times. So, a dose that merely makes one person dizzy or drowsy can kill another, or what seems relatively safe today for someone could seriously harm him or her tomorrow. In addition, the effects of GHB are known to be intensified if used in conjunction with alcohol and other depressants.

According to a representative of the Michigan State Police, use of GHB has been increasing in the state, and has been implicated in several sexual assault cases and other crimes. Where at least one of the crimes involved the dosing of a young girl so that the assailant could victimize her, in other cases the perpetrator has dosed not just the female, but also her date. In light of the danger associated with GHB, and since there is no accepted medical use, legislation has been proposed to add the drug to the substances listed as Schedule I substances in the Public Health Code. In so doing, manufacturing, selling, or possessing the drug would result in a felony punishable by not more than seven years imprisonment or a fine of up to $10,000, or both.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to add a drug called gamma-hydroxybutyrate (GHB) and any isomer, salt, or salt of isomer of the substance to the list of Schedule I controlled substances. The bill would include sodium oxybate and 4-hydroxybutanoic acid monosodium salt as trade or other names of the substance.

To be classified as a Schedule I substance under the Public Health Code, a substance must have a high potential for abuse and no accepted medical use as a treatment in the United States, or must lack accepted safety for use in treatment under medical supervision. Schedule I substances include opiates, opium

derivatives, listed hallucinogenic substances, and marijuana used for nontherapeutic purposes.

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FISCAL IMPLICATIONS:

According to a Senate Fiscal Agency note dated 5-7-98, the bill would have an indeterminate impact on state and local resources. The note reports that depending on the level of enforcement, the bill could result in additional state and local costs associated with incarceration, and/or an increase in revenues from fines that would benefit libraries.

BACKGROUND INFORMATION:

In the 1995-1996 legislation session, House Bill 6067 was introduced to add flunitrazepam, produced under the trade name Rohypnol and known as the "date-rape" drug, to the list of Schedule 1 substances in the Public Health Code. The bill was passed by the House, but died in the Senate. House Bill 4065 of the current session would add both flunitrazepam and gamma-hydroxybutyrate to the list of Schedule 4 controlled substances, make drug-aided criminal sexual conduct and the attempt thereof a felony, and repeal the section of the health code mandating life imprisonment for Schedule 1 narcotics or cocaine (a Schedule 2 drug) offenses involving at least 650 grams (known as the "650-drug lifer" law) and instead require imprisonment "for life or any term of years." A Schedule 4 drug must have a low potential for abuse relative to those in Schedule 3, have a currently accepted medical use in the United States, and its abuse must have the potential to lead only to limited physical or psychological dependence relative to Schedule 3 drugs. Schedule 4 includes such drugs as phenobarbital, lorazepam, and diazepam (brand name Valium). Manufacturing, delivering, or possessing a Schedule 4 drug is a felony punishable by not more than four years imprisonment or a fine up to $2,000, or both. The bill was passed by the House and is awaiting Senate committee action. (For more information, see the House Legislative Analysis Section's analyses of House Bill 6067 dated 10-21-96 and House Bill 4065 dated 10-14-97).

ARGUMENTS:

For:

Hundreds of people have ended up in emergency rooms around the country from life-threatening responses to ingesting gamma-hydroxybutyrate (GHB), and several have died. This threat to the public induced the Federal Drug Administration (FDA) to ban the production, delivery, and possession of GHB in the U.S. In Michigan, GHB use is increasing around the state, and has been implicated in crimes committed against persons under the influence of GHB.

What makes GHB particularly dangerous is that it induces a sleep-like state, and that identical dosages can cause different reactions in different people or even in the same person at a different time. Though recreational users claim that the drug intensifies the sensation of touch, emergency room reports document that people under the influence of GHB are unresponsive to pain -- much like the being under the effect of anesthesia used during operations. This makes people defenseless and particularly vulnerable to serious injury from attackers. However, GHB is dangerous even to recreational users due to its severe effects on the central nervous system. GHB can depress the respiratory system to the point of respiratory arrest. Heart rhythms are disturbed, blood pressure can drop to dangerous levels, and the drug often causes tremors and seizure-like movements. Many people who have ingested GHB have required resuscitation and hospitalization in intensive care units, or been placed on ventilators. GHB also affects memory, which makes it difficult for victims to supply information to law enforcement officers after being raped, robbed, or assaulted.

By instituting a state ban on GHB, Michigan would join several other states which have adopted state regulations prohibiting the drug. Also, the bill would provide penalties that could be used as a deterrent to stem the use of the drug. In short, without the bill, law enforcement officers can do little to those who are endangering the lives of others by manufacturing and selling GHB.

For:

GHB can be metabolized by the body in as short as two hours, which makes detection difficult if it is not being specifically searched for. Since GHB is a relatively new drug, and one that is made clandestinely, many physicians and emergency room workers are unfamiliar with it or the symptoms of toxicity that it causes. So, where some emergency room personnel are reporting GHB use, others are reporting symptoms consistent with GHB but may not know how to test for it. GHB may not show up in toxicology screens of the blood or urine because it is not included in routine drug screening unless there is a specific order to do so, and also because it may not

show up in blood or urine by the time a person is brought to the hospital. Designating GHB as a Schedule 1 drug would raise physicians' awareness of the substance and its effects on the body, and so would aid in quicker and more appropriate medical interventions. Also, since GHB would be an illegal drug, a more accurate test could be devised to confirm its presence.

Against:

The bill is not needed. Since GHB has been banned by the FDA, it is already illegal and federal penalties already exist. Also, another House bill pending before the Senate would already criminalize the use and manufacture of GHB.

Response:

Reportedly, violation of the federal ban on GHB results in a misdemeanor charge, and federal prosecutors tend to use their scarce resources for more serious charges. The federal ban does aid as far as interstate trafficking in the drug goes, but a state prohibition would go a long way to curb the use of the drug within the state. If manufacturing and possession with the intent to deliver were made a felony offense, the state could send a serious message that this drug poses a health threat and will not be tolerated, either as a tool to victimize others, or as a recreational drug.

As to the provisions in House Bill 4065 that would designate GHB a Schedule 4 drug, GHB fits the criteria of a Schedule 1 drug, not Schedule 4. For example, Schedule 4 drugs must have a low potential for abuse and have a currently accepted medical use in the U.S. According to a fact sheet on GHB posted on the Internet by the FDA dated 2-18-97, "GHB continues to be an unapproved and potentially dangerous drug and cannot be legally marketed in the U.S." and the drug "has never been approved for sale as a medical product in this country." GHB more than meets the criteria for designation as a Schedule 1 drug.

The FDA fact sheet goes on to report that though the FDA and the Department of Justice by the end of 1991 had taken enforcement action against several firms and individuals involved in the manufacturing and distribution of GHB, and had instituted embargoes on importation and launched educational campaigns, these measures only temporarily diminished the distribution and abuse of GHB. There is a resurgence in the abuse of GHB, and though the FDA and other federal agencies are attempting to enforce the ban by arresting, indicting, and convicting individuals responsible for illegal operations, the state must also enact strict laws to curb usage of the drug.

POSITIONS:

The Department of State Police supports the bill. (6-1-98)

Analyst: S. Stutzky

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.