

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 1043 (Substitute S-1 as reported)
Senate Bill 1186 (Substitute S-1 as reported)
Sponsor: Senator John J. H. Schwarz, M.D.
Committee: Health Policy (S.B. 1043)
Judiciary (S.B. 1186)

Date Completed: 4-4-00

RATIONALE

Under the Public Health Code, methamphetamine is classified as a Schedule 2 controlled substance. To be classified as a Schedule 2 substance, a substance must have a high potential for abuse; if abused, lead to severe psychic or physical dependence; and have currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions. (A Schedule 1 controlled substance has a high potential for abuse and no accepted medical use.) The National Drug Intelligence Center (NDIC) of the U.S. Justice Department reports that methamphetamine (also known as "speed", "crank", or "ice") appeals to drug abusers because it increases alertness, creates euphoria, and gives the abuser a sense of increased energy; however, unsupervised use, over time, can lead to nervousness and irritability, extreme paranoia, prolonged psychosis, hallucinations, insomnia, and brain damage, as well as increase the risk of stroke and heart failure.

The NDIC reports that methamphetamine use is spreading rapidly. Reportedly, demand for "meth" is met not from smuggling, but from clandestine laboratories throughout the United States. Recipes to make meth are available on the Internet, and the ingredients, by themselves, are legal and easy to obtain. They include battery acid, drain cleaner, lye, lantern fuel, antifreeze, hydrochloric acid, anhydrous ammonia, and large quantities of over-the-counter cold medicines from which ephedrine is extracted. The "cooking" process produces a powder, which can be taken orally, smoked, or injected. The Drug Enforcement Administration (DEA) reports that in 1993, it seized 218 meth labs in the United States; this number increased each year, and 1,600 meth labs were seized in 1998.

Law enforcement officials point out that the ease with which meth can be made has caused the drug to be readily available. While this presently is a much larger problem in other states, particularly California, than in Michigan, evidently there is no reason to believe that the incidence of meth use will not be a

problem here. It has been suggested that the State make it a specific crime, with severe penalties, to own or possess a place or equipment for illegally manufacturing a controlled substance.

CONTENT

Senate Bill 1043 (S-1) would amend the Public Health Code to make it a felony to own or use a building or place, or own or possess chemical or laboratory equipment, in order to manufacture a controlled substance, or a counterfeit substance or controlled substance analogue; and establish penalties for commission of the felony, including enhanced penalties for a violation that involved unlawfully disposing of hazardous waste, using a device intended to injure a person, or committing a violation in the presence of a minor. Further, the bill would make violations involving methamphetamine subject to the same penalties the Code specifies for violations involving cocaine and narcotics.

Senate Bill 1186 (S-1) would amend the Code of Criminal Procedure to add to the sentencing guidelines felony penalties for operating or maintaining a controlled substance laboratory as proposed by Senate Bill 1043. Senate Bill 1186 (S-1) is tie-barred to Senate Bill 1043 and would take effect 90 days after its enactment.

Senate Bill 1043 (S-1)

Illegal Manufacture

The bill would prohibit a person from doing any of the following:

- Owning, possessing, or using a vehicle, building, structure, place, or area as a location to manufacture a controlled substance in violation of Section 7401 of the Code, or a counterfeit substance or a controlled substance analogue in

violation of Section 7402. (Section 7401 prohibits a person from manufacturing, possessing with intent to deliver, creating, or delivering a controlled substance. Section 7402 prohibits a person from creating, manufacturing, delivering, or possessing with intent to deliver a counterfeit substance or a controlled substance analogue intended for human consumption.)

- Owning or possessing any chemical or any laboratory equipment that the person knew or had reason to know was to be used for the purpose of manufacturing a controlled substance in violation of Section 7401, or a counterfeit substance or a controlled substance analogue in violation of Section 7402.
- Providing any chemical or laboratory equipment to another person knowing or having reason to know that the other person intended to use that equipment for the purpose of manufacturing a controlled substance in violation of Section 7401, or a counterfeit substance or a controlled substance analogue in violation of Section 7402.

A person who violated any of these provisions would be guilty of a felony, punishable by imprisonment for up to 10 years, a fine of up to \$100,000, or both. The bill also would establish the following penalties:

- If a violation were committed in the presence of a minor, imprisonment for up to 20 years, a fine of up to \$100,000, or both.
- If a violation involved the unlawful generation, treatment, storage, or disposal of a hazardous waste, imprisonment for up to 20 years, a fine of up to \$100,000, or both.
- If a violation occurred within 500 feet of a residence, business establishment, school property, or church or other house of worship, imprisonment for up to 20 years, a fine of up to \$100,000, or both.
- If a violation involved the possession, placement, or use of a firearm, or any other device designed or intended to be used to injure another person, imprisonment for up to 25 years, a fine of up to \$100,000, or both.

The penalties prescribed by the bill would not apply to a violation involving the manufacture of marijuana only, except for a violation that involved the possession, placement, or use of a firearm, or any other device designed or intended to be used to injure another person.

The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate the bill. A term of imprisonment imposed under the bill could be served consecutively to any other term of imprisonment

imposed for a violation of law arising out of the same transaction.

The bill provides that the court could, as a condition of sentence, order a person convicted of a violation involving the unlawful generation, treatment, storage, or disposal of a hazardous waste to pay response activity costs arising from the violation. ("Hazardous waste" and "response activity costs" would mean those terms as defined in the Natural Resources and Environmental Protection Act.)

Methamphetamine

The Code specifies penalties for a violation involving a Schedule 1 or 2 narcotic or cocaine. Separate penalties apply to manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver; knowingly or intentionally possessing; using; and creating, manufacturing, delivering, or possessing with intent to deliver, a counterfeit substance. Except for a violation involving use or counterfeiting, the prescribed penalties increase with the amount of the substance involved in the violation. The penalties range from imprisonment for up to four years and maximum fine of \$25,000, or both, for possession of less than 25 grams, to imprisonment for life for possession of 650 grams or more. The penalty for counterfeiting a substance is imprisonment for up to 10 years, a maximum fine of \$10,000, or both. Use is a misdemeanor, punishable by imprisonment for up to one year, a maximum fine of \$2,000, or both.

Under the bill, a violation involving methamphetamine would be subject to these penalties.

Further, in addition to the penalties described above, the Code prescribes other penalties for violations involving an individual 18 years old or older and less than 50 grams of a Schedule 1 or 2 narcotic or cocaine. An individual who delivers or distributes in this manner to another individual under 18 (who is at least three years younger than the deliverer or distributor) is subject to imprisonment for at least one year to a maximum of 40 years, a maximum fine of \$25,000, or both. An individual who delivers the substance to another person on or within 1,000 feet of school property is subject to imprisonment for at least two years to a maximum of 60 years, and a maximum fine of \$75,000. (The court may depart from the minimum term of imprisonment if the court finds substantial and compelling reasons to do so.) An individual who possesses the substance with intent to deliver to another person on or within 1,000 feet of school property is subject to imprisonment for at least two years to a maximum of 40 years, and a maximum fine of \$75,000. (The court may depart

from the minimum term of imprisonment if the court finds substantial and compelling reasons to do so.) An individual who delivers the substance, or possesses with intent to deliver, to a minor in a public or private park is subject to imprisonment for up to two years.

Under the bill, a violation involving methamphetamine would be subject to these penalties.

Senate Bill 1186 (S-1)

Under the bill, operating or maintaining a controlled substance laboratory would be categorized as a Class D controlled substances felony, with a statutory maximum penalty of 10 years' imprisonment. Operating or maintaining a controlled substances laboratory in the presence of a minor, involving hazardous waste, or near certain places specified in Senate Bill 1043 would be categorized as a Class B controlled substances felony with a statutory maximum penalty of 20 years' imprisonment. Operating or maintaining a controlled substances laboratory involving a firearm or other harmful device would be categorized as a Class A controlled substances felony with a statutory maximum penalty of 25 years' imprisonment.

MCL 333.7401 et al. (S.B. 1043)
777.13 (S.B. 1183)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The use of methamphetamine by drug abusers reportedly is increasing rapidly, and the demand for this substance has encouraged many people to supply it. This has presented law enforcement officials with some unique problems. Other highly addictive drugs, such as cocaine, have to be produced in another country and smuggled into the United States. Thus, getting from the point of production to the customer requires an organization of suppliers and workers. Since meth can be produced almost anywhere, by a single individual, a large organization is not required.

Methamphetamine can be produced from readily available chemicals and quantities of over-the-counter cold medicines. This means that if there is a demand for meth, a clandestine laboratory quickly can be assembled. Reportedly, for an investment of \$100, a manufacturer can produce about \$2,000 worth of meth. It is easy to see how such a large profit margin can be a strong incentive to produce

the substance. Law enforcement officials across the country report that there is a rapid increase in the number of clandestine labs that produce meth. By making it a felony to own or possess a place or equipment to produce a controlled substance, and by providing severe fines and incarceration times for committing the felony, the bills would discourage the proliferation of meth labs and should decrease meth abuse.

Supporting Argument

Senate Bill 1043 (S-1) specifically would make it a crime to own or possess a clandestine lab to produce controlled substances illegally. While this would help to control the increase of meth production, it also would apply to any illegally manufactured substance. This is important because it would make this tool available to law enforcement officials in the future to combat the manufacture of new drugs that may become popular.

Supporting Argument

The production of methamphetamine involves the use of many harsh substances, including battery acid, lye, drain cleaners, lantern fuel, antifreeze, hydrochloric acid, sulfuric acid, and anhydrous ammonia. Reportedly, for every pound of meth produced, there are five to six pounds of toxic by-products that often are dumped on the ground or into a sewer system. Depending upon how long a meth lab has been in production, when one is found the location may have to be treated as a hazardous waste site, and it can be costly to clean the area properly. Senate Bill 1043 (S-1) specifically would allow the court to order a person convicted of a violation to pay environmental response activity costs arising from the violation.

Further, meth labs produce various types of gases during production. In addition, ether and other highly flammable substances are used during production. There have been reports of meth labs that have caught on fire

or exploded, and killed or injured those on the premises, including investigators. Anything that can be done to discourage the development of these labs should be done, as they present a clear danger to the public.

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bill 1043 (S-1)

The bill would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many people would be convicted of owning, possessing or using a structure or equipment to manufacture controlled substances or how many people would be convicted under the enhanced penalties for offenses involving the presence of a minor, unlawful disposal of hazardous waste, use of a device intended to injure a person, or the site of the crime. Additionally, the bill would establish the maximum penalties for these offenses, but their fiscal impact is based on the minimum sentence imposed by the judge, because this represents the expected length of incarceration.

In 1997, there were 1,724 prison commitments of offenders convicted of offenses involving the manufacture of a controlled substance. The breakdown of the commitments is shown in Table 1.

Table 1

MCL Section	Offense	Commitments	Average Minimum Sentence
333.7401	Manufacture, Delivery, Possession w/ Intent to Deliver, or Prescription of a Controlled Substance	1,238	2.7
333.7403	Possession of a Controlled Substance	469	1.9
333.7341	Manufacturing an Imitation Controlled Substance	17	1.3

If one assumed that the number of offenders convicted and sentenced to prison for one of the enhanced crimes under the bill would be equal to 10% of the 1997 new commitments and that the sentences served were equivalent to two-thirds of the maximum penalty of 20 years, given that the average annual cost of incarceration is \$22,000, costs for incarceration could increase \$51 million annually in the long run. This example does not include the costs of incarceration for an underlying offense. An offender convicted under the bill could be charged under other existing statutes for an offense arising from the same activity and the penalties could be served consecutively.

Senate Bill 1186 (S-1)

The bill would have an indeterminate fiscal impact on State and local government. There are no data available to indicate how many people could be convicted of the proposed offenses. The felonies would be incorporated into the sentencing guidelines as Class D, Class B, and Class A offenses, as described above. The minimum sentence ranges are shown in Table 2 below.

Table 2

Crime Class	Minimum Sentence Range (Months)	
	<u>From</u>	<u>To</u>
A	21-35	270-450, or Life
B	0-18	117-160
D	0-6	43-76

(Note: The life sentence would not be the maximum for the Class A felony, because the statutory maximum would be 25 years and a minimum sentence cannot exceed two-thirds of the maximum sentence.)

Assuming that five offenders a year would be convicted of crimes from each category and that they would receive the highest minimum sentence, given that the average annual cost of incarceration is \$22,000, the cost of incarceration would be \$4 million, in the long run. This could be in addition to other incarceration costs for other crimes arising from the same act.

A local sanction is appropriate for offenders who score sentencing guideline recommendations where the minimum sentence is less than 12 months. Local units of government would incur the cost of a local sanction and the costs vary among the counties.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.