

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 1043 (as enrolled)
Senate Bill 1186 (as enrolled)
Sponsor: Senator John J. H. Schwarz, M.D.
Senate Committee: Health Policy (S.B. 1043)
Judiciary (S.B. 1186)
House Committee: Health Policy (S.B. 1043)
Criminal Law and Corrections (S.B. 1186)

PUBLIC ACT 314 of 2000
PUBLIC ACT 315 of 2000

Date Completed: 1-30-01

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 was 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, and to establish specific penalties for the manufacture, possession, or use of methamphetamine.

CONTENT

Senate Bill 1043 amended 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 involves unlawfully disposing of hazardous waste, using a firearm or other device intended to injure a person, or committing a violation in the presence of a minor or within 500 feet of certain property. Further, the bill makes violations involving methamphetamine subject to specific penalties.

In addition, the bill revised the procedures that emergency medical services personnel must follow when applying to renew their occupational licenses.

Senate Bill 1186 amended the Code of Criminal Procedure to add to the sentencing guidelines felony penalties for operating or maintaining a controlled substance laboratory, and for delivering or possessing methamphetamine, as provided by **Senate Bill 1043**. Senate Bill 1186 was tie-barred to Senate Bill 1043.

Senate Bill 1043

Illegal Manufacture

The bill prohibits a person from doing any of the following:

- Owning, possessing, or using a vehicle, building, structure, place, or area that he or she knows or has reason to know is to be used 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 knows or has reason to know is 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 intends to use that chemical or 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 violates any of these provisions is guilty of a felony, punishable by imprisonment for up to 10 years, a fine of up to \$100,000, or both. The bill also establishes a penalty of imprisonment for up to 20 years, a fine of up to \$100,000, or both, for the following violations:

- A violation committed in the presence of a minor.
- A violation that involves the unlawful generation, treatment, storage, or disposal of a hazardous waste.
- A violation that occurs within 500 feet of a residence, business establishment, school property, or church or other house of worship.

If a violation involves the possession, placement, or use of a firearm, or any other device designed or intended to be used to injure another person, it is punishable by imprisonment for up to 25 years, a fine of up to \$100,000, or both.

Further, in addition to these penalties, a person 18 years old or older who commits a violation within 1,000 feet of a public or private park is subject to an additional term of imprisonment for up to two years.

The penalties prescribed by the bill do not apply to a violation involving only cocaine or marijuana.

The bill states that it does 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 may 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 may, 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" mean those terms as defined in the Natural Resources and Environmental Protection Act.)

Under the bill, "manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. "Manufacture" does not include any of the following:

- The packaging or repackaging of the substance or labeling or relabeling of its container.
- The preparation or compounding of a controlled substance by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of his or her professional practice; or a practitioner, or by the practitioner's authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

Methamphetamine

The bill provides that a person who manufactures, creates, delivers, or possesses with intent to manufacture, create, or deliver methamphetamine is guilty of a felony, punishable by imprisonment for up to 20 years, a fine of up to \$25,000, or both.

A person who knowingly or intentionally possesses methamphetamine (except with a valid prescription) is guilty of a felony, punishable by imprisonment for up to 10 years, a fine of up to \$15,000, or both. A person who uses methamphetamine (unless obtained with a valid prescription) is guilty of a misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both.

The Code prohibits a person from creating, manufacturing, delivering, or possessing with intent

to deliver a counterfeit substance or controlled substance analogue intended for human consumption. A person who violates this provision with a counterfeit substance classified as a narcotic drug or cocaine is guilty of a felony, punishable by imprisonment for up to 10 years, a fine of up to \$10,000, or both. Under the bill, a person who violates this provision with a counterfeit substance classified as methamphetamine is subject to the same penalty.

The bill provides that, in addition to the penalties in the Code and in the bill, an individual 18 years old or older is subject to imprisonment for up to two years for delivering, or possessing with intent to deliver, methamphetamine to a minor who is in a public or private park, or within 1,000 feet of a park.

EMS Licensure

The Code requires the Department of Consumer and Industry Services (DCIS) to license emergency medical services (EMS) personnel (a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, and emergency medical services instructor-coordinator). For licensure, EMS personnel must meet the requirements specified in the Code and complete required ongoing educational requirements established by the DCIS.

Previously, if the DCIS did not receive an application for renewal of an individual's EMS license within 60 days of its expiration, the DCIS could not issue a renewal unless the individual completed the requirements for initial licensure and paid any required late fee. The bill eliminated this provision and specifies new renewal requirements. Under the bill, a license or registration for EMS personnel must be renewed by the licensee on or before the expiration date as prescribed by rule. The Department must mail a notice to the licensee at the last known address on file with the DCIS advising of the time, procedure, and fee for renewal. Failure of the licensee to receive notice does not relieve the licensee of the responsibility for renewing his or her license. A license not renewed by the expiration date may be renewed within 60 days of that date upon application, payment of renewal and late renewal fees, and fulfillment of any continuing education requirements. The licensee may continue to practice and use the title during the 60-day period; however, if the license is not renewed within 60 days of the expiration date, it is void and the licensee may not practice or use the title. An individual may be relicensed within three years of the expiration date upon application, payment of the application processing, renewal, and late renewal fees, and fulfillment of any continuing education requirements in effect at the time of the expiration date, or that

would have been required had the individual renewed his or her license. An individual may be relicensed more than three years after the expiration date by applying as a new applicant, meeting all licensure requirements, taking or retaking and passing any examinations required for initial licensure, and paying required fees.

Senate Bill 1186

Under the bill, operating or maintaining a controlled substance laboratory is 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 is 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 is categorized as a Class A controlled substances felony with a statutory maximum penalty of 25 years' imprisonment.

Delivery or manufacture of methamphetamine is categorized as a Class B controlled substances felony with a statutory maximum penalty of 20 years' imprisonment. Possession of methamphetamine is categorized as a Class D controlled substances felony with a statutory maximum penalty of 10 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 will discourage the proliferation of meth labs and should decrease meth abuse.

Supporting Argument

Senate Bill 1043 specifically makes it a crime to own or possess a clandestine lab to produce controlled substances illegally. While this will help to control the increase of meth production, it also applies to any illegally manufactured substance. This is important because it makes 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 specifically allows the court to order a person convicted of a violation involving a hazardous waste 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 must be done, as they present a clear danger to the public.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people will be convicted of delivery, manufacture, or possession of methamphetamines; operating or maintaining a controlled substance laboratory; operating or maintaining a controlled substance laboratory in the presence of a minor, involving hazardous waste, or near certain places; or operating or maintaining a

controlled substance laboratory involving a firearm or other harmful device. The crime class and the sentencing range for each offense are shown in Table 1.

Assuming that five offenders a year are convicted of each of these crimes and that they receive the highest minimum sentence, given that the average annual cost of incarceration is \$22,000, the cost of incarceration for these crimes will be \$9.1 million. This is 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 of less than 18 months. Local units of government will incur the costs of a local sanction and the costs vary among the counties.

Table 1

Offense	Crime Class	Minimum Sentence Range (months)	
		<u>From</u>	<u>To</u>
Delivery or manufacture of methamphetamine	B	0-18	117-160
Possession of methamphetamine	D	0-6	43-76
Operating a controlled substance laboratory	D	0-6	43-76
Operating a controlled substance laboratory in the presence of a minor	B	0-18	117-160
Operating a controlled substance laboratory involving hazardous waste	B	0-18	117-160
Operating a controlled substance laboratory near certain places	B	0-18	117-160
Operating a controlled substance laboratory involving a firearm or other harmful device	A	21-35	270-450, or life*
*Note: The life sentence would not be the maximum for this felony, because the statutory maximum would be 25 years and a minimum sentence cannot exceed two-thirds of the maximum sentence.			

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.