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Senate Bill 1043 (as introduced 2-22-00)
Sponsor: Senator John J. H. Schwarz, M.D.
Committee: Health Policy

Date Completed: 3-27-00

CONTENT

The bill 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; 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 change the classification of methamphetamine from a Schedule 2 to a Schedule 1 controlled substance, and would make violations involving methamphetamine subject to the same penalties the Code specifies for violations involving cocaine and narcotics.

Illegal Manufacturing

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

- Owning, possessing, or using a building, structure, place, or area as a location to manufacture a controlled substance in violation of Section 7401 of the Code. (Section 7401 prohibits a person from manufacturing, possessing, creating, or delivering a controlled substance.)
- 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.
- 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.

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 bill would classify as a Schedule 1 controlled substance any substance that contained any quantity of methamphetamine, including its salts, stereoisomers, and salts of stereoisomers; and remove the substance from Schedule 2. (Under the Code, to be classified as a Schedule 1 substance, a substance must have a high potential for abuse and no accepted medical use as a treatment in the United States; or lack accepted safety for use in treatment under medical supervision. 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.)

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. The penalty for 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.

MCL 333.7212 et al.

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bill 1043 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 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 or Prescription of a Controlled Substance	1,238	2.7
333.7403	Manufacture, Delivery, or Possession of Drugs	469	1.9
333.7341	Manufacturing an imitation of a Controlled	17	1.3

Substance

If one assumed that the number of offenders convicted and sentenced to prison for one of these enhanced crimes 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.

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.