



**House  
Legislative  
Analysis  
Section**

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## **ECSTASY: INCREASE PENALTIES**

**House Bill 6095 as enrolled  
Public Act 710 of 2002  
Sponsor: Rep. Jennifer Faunce**

**House Bill 6096 as enrolled  
Public Act 711 of 2002  
Sponsor: Rep. Tom Meyer**

**House Committee: Criminal Justice  
Senate Committee: Judiciary**

**Second Analysis (12-27-02)**

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

Part hallucinogen and part amphetamine, MDMA, or “ecstasy” as it is more commonly known, is reportedly moving out of the club and rave scene and into the mainstream, primarily among teenagers. Ecstasy is popular for a number of reasons. First of all, it is relatively cheap (about \$20 to \$40 a pill) and easily obtainable. Secondly, it produces a feeling of euphoria and heightened senses, including touch. Further, it is believed by the majority of its users to be safe. Unfortunately, MDMA can induce a deep depression, chest pain, liver damage, panic attacks, insomnia, seizures, kidney and heart failure, and death (about 100 deaths nationally have been attributed to ecstasy use). Last November, a *Detroit Free Press* article reported that British researchers found ecstasy to have a profound effect on human brains, especially for women (11-30-01). Women who had taken more than 50 pills in a lifetime had significantly fewer brain cells than women who had never used ecstasy. According to the British study, users had persistent memory problems and trouble with verbal reasoning and sustaining attention. In addition, the article reported that just fifty tablets were considered as the threshold for developing psychiatric problems. With some teens using several pills a week, usage over just a few months can result in lifetime effects.

Despite the warning signs, ecstasy use continues to grow, especially among teenagers. In another *Detroit Free Press* article dated 2-12-02, the Partnership For a Drug-Free America reported a 20 percent increase since the previous year and a 71 percent increase in use since 1999. The article also reported that a survey of almost 7,000 teens “found that 12 percent

of 12- to 18-year-olds had used ecstasy at some point in their lives.”

Recognizing the growing danger that ecstasy poses, the U.S. Congress increased federal drug penalties for manufacturing, selling, and possessing ecstasy in 2000. Since roughly 80 percent or more of ecstasy is manufactured in the Netherlands, the Detroit division of the U.S. Drug Enforcement Administration (DEA) increased surveillance over a year ago of the border with Canada and at Detroit Metro Airport. Though MDMA is classified as a Schedule 1 drug in the Michigan administrative rules [R 338.3113(j)], it has not been listed as such in the Public Health Code. As many consider MDMA to be similar to methamphetamine both chemically and in effects, it is believed that MDMA should be listed in the code as a Schedule 1 drug and that the penalties for the manufacture, possession, and use should be similar as to those placed in statute for methamphetamine by Public Act 314 of 2000.

### ***THE CONTENT OF THE BILLS:***

House Bill 6095 would amend the Public Health Code to designate “ecstasy” as a Schedule 1 controlled substance and prescribe penalties for the manufacture, sale or possession of the drug. House Bill 6096 would place the corresponding maximum term of imprisonment in the Code of Criminal Procedure. The bills would take effect April 1, 2003. Specifically, the bills would do the following:

House Bill 6095 would amend the Public Health Code (MCL 333.7214 et. al.) to include 3, 4-methylenedioxymethamphetamine (also known as

**House Bills 6095 and 6096 (12-27-02)**

ecstasy and MDMA) as a Schedule 1 controlled substance. A person who manufactured, created, delivered, or possessed with intent to manufacture, create, or deliver ecstasy would be guilty of a felony, punishable for up to 20 years, a fine of up to \$25,000, or both.

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

In addition, a person who created, manufactured, delivered, or possessed with the intent to do the same with a counterfeit substance classified as ecstasy would be guilty of a felony punishable by imprisonment for not more than 10 years, a fine of not more than \$10,000, or both.

Further, the Senate adopted a “conflict substitute” that would incorporate changes proposed by House Bill 5394. House Bill 5394 would amend the code to eliminate the mandatory minimum prison sentences currently required for some drug offenses.

(Note: To be classified as a Schedule 1 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 1 substances include opiates, opium derivatives, listed hallucinogenic substances, and marijuana used for nontherapeutic purposes.)

House Bill 6096 would amend the Code of Criminal Procedure (MCL 777.13m) to specify that delivery or manufacture of 3, 4-methylenedioxymethamphetamine would be a Class B felony involving a controlled substance with a maximum term of imprisonment of 20 years. Possession of 3, 4-methylenedioxymethamphetamine would be specified as a Class D felony involving a controlled substance with a 10-year maximum term of imprisonment.

In addition, the Senate adopted a “conflict substitute” that would incorporate changes proposed by House Bill 5395. House Bill 5395 would amend the code to place the revised penalties proposed by House Bill 5394 in the corresponding section of the sentencing guidelines contained in the code.

The bill is tie-barred to House Bill 6095.

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

According to the Senate Fiscal Agency, the bills would have an indeterminate impact on state and local government. To the extent that the bills would raise penal fines for all four ecstasy violations, they would increase funds available to public libraries.

There are no data to indicate how many offenders are currently convicted specifically for ecstasy violations. Currently, ecstasy offenders are convicted under several provisions for Schedule 1 controlled substances. House Bill 6095 would increase the longest allowable minimum sentences for each of the three proposed felonies (delivery or manufacture, delivery or manufacture of a counterfeit or analogue, and possession). Therefore, the state could incur additional costs to house an offender sentenced to a longer minimum sentence. (12-12-02)

### ***ARGUMENTS:***

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

MDMA, or ecstasy, is one of a number of potentially dangerous drugs that have been adopted by the young as a club or rave drug. Like rohypnal and GHB before it, ecstasy produces a state of euphoria sought by club goers and others, but carries similar dangers. Ecstasy use is increasing rapidly by young teens, many of whom believe that it is completely safe. Medical and mortality statistics show otherwise. As ecstasy gains in popularity and use, so do the number of physical and psychiatric illnesses and deaths attributed to its use. Currently, MDMA is classified as a Schedule 1 drug in the state’s administrative rules, but not in statute. The bill would rectify this by codifying the administrative rule provisions and giving MDMA the same penalties as recent legislation did for methamphetamine. Hopefully, as manufacturers, dealers, and users are prosecuted under the bill’s provisions, the message will get out that ecstasy’s temporary euphoria is not worth the long-term legal penalties. This may save many from even longer-term physical or psychiatric harm.

#### ***Against:***

According to information supplied by Families Against Mandatory Minimums (FAMM), ecstasy is not equivalent to other controlled substances, including methamphetamine, in terms of addictiveness, physical harm to the user, or in terms of violence or criminal activity associated with its use. However, House Bill 6095 would give MDMA

the same penalties as for methamphetamine. Granted, ecstasy is a dangerous drug and poses health risks; therefore classification as a controlled substance is warranted. However, the penalties for its manufacture, sale, and use should be commensurate with the harm it causes to society and to the user. The effects so far attributed to ecstasy use do not justify having an identical penalty structure to methamphetamine.

In addition, to be a Schedule 1 drug, 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. Some researchers, however, believe that MDMA may have some potential as a therapeutic medicine, including use as an alternative treatment for end-stage cancer and other diseases and mental conditions. Yet, classifying MDMA as a Schedule 1 drug prevents any approved clinical research from being conducted.

Further, ecstasy is primarily used by young teens. Imposing such harsh sentences accomplishes little other than using up money that could be spent on educational campaigns, tighter border patrols, rehabilitation and treatment programs, and drug prevention programs.

***Response:***

The fact that ecstasy use continues to increase among the young, and that recent medical research has shown a connection between a small lifetime consumption of ecstasy (just 50 pills) and the onset of psychiatric problems does support the contention that this drug has a high potential for abuse and harm, and therefore qualifies as a Schedule 1 drug. In addition, a strong disincentive to manufacture and deliver ecstasy needs to be created, especially in light of the high profits associated with the manufacture and sale of the drug. (Reportedly, ecstasy costs about \$.50 to \$1 per pill to manufacture, with a street value of \$20 to \$40 per pill.) Perhaps the stronger penalties created by the bills will send a clear message to dealers that it just isn't worth it to target the young at rave parties. As to the penalties imposed by House Bill 6095 being too harsh on teenagers (who are the primary users of ecstasy), simple use would be a misdemeanor, punishable by a possible fine or up to one year of jail. There would still be ample discretion on the part of a judge to require substance abuse counseling or participation in a rehabilitation or treatment program in lieu of imprisonment. Perhaps such an approach would save lives and prevent further drug addiction on the part of some people.

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■ 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.