



**House
Legislative
Analysis
Section**

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METH MANUFACTURING

**Senate Bill 648 with House committee
amendment**

Sponsor: Sen. Bruce Patterson

**Senate Bill 649 with House committee
amendment**

Sponsor: Sen. Patricia L. Birkholz

**Senate Bill 650 with House committee
amendment**

Sponsor: Sen. Alan L. Cropsey

**Senate Bill 651 with House committee
amendment**

Sponsor: Sen. Alan Sanborn

**Senate Bill 652 with House committee
amendment**

Sponsor: Sen. Ron Jelinek

**Senate Bill 698 with House committee
amendment**

Sponsor: Sen. Michael D. Bishop

**Senate Bill 777 with House committee
amendment**

Sponsor: Sen. Tom George

House Committee: Criminal Justice

Senate Committee: Judiciary

First Analysis (12-2-03)

Senate Bills 648-652 and Senate Bills 698 and 777 (12-2-03)

THE APPARENT PROBLEM:

The manufacture and use of methamphetamine (meth) is on the rise in Michigan, particularly in rural areas in the southern and southwestern parts of the State. While the situation in Michigan has not yet reached the severity that states like Iowa, Nebraska, Idaho, and Washington have experienced, some people believe a quick and early response to some of the problems surrounding meth use and production would help to blunt the spread of the drug in Michigan.

Under the Public Health Code, methamphetamine is classified as a Schedule 2 controlled substance. This means that it has a high potential for abuse; if abused, it may lead to severe psychic or physical dependence; and it has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions. The National Drug Intelligence Center (NDIC) of the U.S. Justice Department reports that methamphetamine (also known as “speed”, “crank”, or “ice”, among other street names) appeals to drug abusers because it creates a sense of enhanced alertness, euphoria, and

increased energy; over time, however, unsupervised use can lead to nervousness and irritability, extreme paranoia, prolonged psychosis, hallucinations, insomnia, brain damage, and increased risk of stroke and heart failure.

Methamphetamine is manufactured with common chemicals in clandestine laboratories. These labs can be set up with simple household items, such as mason jars, coffee filters, hot plates, pressure cookers, plastic tubing, and gas cans. Meth can easily be “cooked” from ingredients that may be purchased legally or stolen. According to the Office of Drug Control Policy in the Michigan Department of Community Health (DCH), although there are several production methods, meth labs discovered in Michigan typically have used a manufacturing process that involves extracting pseudoephedrine or ephedrine from cold tablets. Other ingredients used in this process include anhydrous ammonia, which is a nitrogen-based fertilizer. Reportedly, this substance increasingly is being stolen from farmers’ fertilizer tanks or agricultural sales and storage facilities.

Methamphetamine production can be very dangerous and the chemicals used in its manufacture can be hazardous. Solvents and fumes are flammable and gases formed in the process can be deadly. The lab operations also produce highly toxic waste, which can pollute dwellings, soil, and water supplies. Waste products include corrosive liquids, acid vapors, and heavy metals. Reportedly, for every pound of methamphetamine, meth labs produce five to six pounds of toxic waste, which almost always is illegally dumped.

It has been suggested that various Michigan statutes be revised to prohibit the possession of large amounts of pseudoephedrine, prohibit the possession or transport of anhydrous ammonia except in legally approved containers, increase criminal penalties for the operation of methamphetamine labs, and require inspections for environmental contamination of meth lab locations.

THE CONTENT OF THE BILL:

The bills would amend various statutes to do all of the following:

- Provide for the inspection of a premises for contamination if the property had been the site of illegal drug manufacturing.

- Prescribe a maximum penalty of 20 years and/or \$25,000 for owning or using a vehicle, building or place, owning or possessing chemical or laboratory equipment, or providing any chemical or laboratory equipment to another in order to manufacture methamphetamine.

- Include pseudoephedrine in provisions that prohibit the possession of more than 10 grams of ephedrine, increase the prohibited level to more than 12 grams, and specify some exceptions to the prohibition.

- Prohibit, and prescribe felony penalties for, transporting or possessing anhydrous ammonia in a container other than one approved by law or tampering with a lawful container.

- Include the proposed felonies in the sentencing guidelines.

Senate Bill 648 would amend the Housing Law of Michigan (MCL 125.485a); Senate Bills 649 and 650 would amend the Public Health Code (MCL 333.7401c and 333.17766c); Senate Bill 652 would amend the Michigan Penal Code (MCL 750.512d); and Senate Bills 651, 698, and 777 would amend the Code of Criminal Procedure (MCL 777.13n and 777.16x).

The bills would take effect on April 1, 2004.

Senate Bill 648 would require a state or local law enforcement agency to notify the Housing Law enforcing agency regarding the potential contamination of any property or dwelling that is or was the site of illegal drug manufacturing. (“Enforcing agency” means the designated officer or agency charged with responsibility for administration and enforcement of the Housing Law.)

Within three days after receiving this notice, the enforcing agency would have to post a written warning on the premises regarding potential contamination. Within 14 days after receiving notice, the enforcing agency, or that agency and representatives of other agencies that formed a team to undertake an inspection under the bill and applicable laws, would have to inspect the premises for contamination.

If an inspector or team of inspectors determined that the property or dwelling had been contaminated and was unfit for human habitation or presented a danger to the life or health of others, the health officer or other appropriate public official would have to issue

an order requiring the property or dwelling to be vacated until it was decontaminated or the risk no longer existed. Upon the issuance of that order, the enforcing agency would have to give the property owner an opportunity for a hearing pursuant to the Administrative Procedures Act within 15 days after the order was issued.

The Department of Community Health would have to promulgate rules and procedures necessary to implement the bill.

Senate Bill 649. The Public Health Code, under provisions enacted by Public Act 314 of 2000, prohibits a person from doing any of the following in violation of Section 7401 or Section 7402 of the Code:

-- 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 or a counterfeit substance or controlled substance analogue.

-- 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 or a counterfeit substance or controlled substance analogue.

-- 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 or a counterfeit substance or controlled substance analogue.

(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.)

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 penalty is imprisonment for up to 20 years, a maximum fine of \$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, 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 of up to two years.

Under Senate Bill 649, a violation that involved or was intended to involve manufacturing a substance that contained any quantity of methamphetamine, including its salts, stereoisomers, and salts of stereoisomers, would be punishable by up to 20 years' imprisonment, a maximum fine of \$25,000, or both.

Senate Bill 650. The Public Health Code prohibits a person from possessing more than 10 grams of ephedrine, alone or in a mixture. A violation is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,000. The bill would include possession of pseudoephedrine in that provision and raise the prohibited level to more than 12 grams.

The violation does not apply to any of the following:

-- A person who possesses ephedrine pursuant to a license issued by the State or the United States to manufacture, deliver, dispense, possess with intent to manufacture or deliver, or possess a controlled substance, prescription drug, or other drug.

-- A person who possesses ephedrine for retail sale pursuant to a sales tax license.

-- A person who possesses ephedrine in the course of his or her business of selling or transporting ephedrine to a person described above.

-- A person who, in the course of his or her business, stores ephedrine for sale or distribution to a person described above.

-- An individual who possesses ephedrine pursuant to a prescription.

The bill would include pseudoephedrine in those exceptions. The bill also would exclude both of the following from the prohibition:

-- Any product that the State Board of Pharmacy, upon a manufacturer's application, exempted from the prohibition because it had been formulated in a way that effectively would prevent the conversion of the ephedrine or pseudoephedrine into methamphetamine.

-- Any pediatric product primarily intended for administration to children under 12 years old according to label instructions.

Senate Bill 651 would revise the sentencing guidelines listing for possession of more than 10 grams of ephedrine. The offense is listed as a Class G controlled substances felony with a statutory maximum penalty of two years' imprisonment. The bill would refer to possession of 12 grams or more and include pseudoephedrine in that provision. The bill is tie-barred to Senate Bill 650.

Senate Bill 652 would prohibit transporting or possessing anhydrous ammonia in a container other than "a container approved by law" and tampering with a container approved by law. A violation would be a felony punishable by up to four years' imprisonment, a maximum fine of \$5,000, or both.

"Container approved by law" would mean a container that was manufactured to satisfy the requirements for storing and handling anhydrous ammonia pursuant to R 408.17801 of the Michigan Administrative Code or its successor rule. (That rule adopts by reference the provisions of Federal Occupational Safety and Health Administration regulations pertaining to the design, construction, location, installation, and operation of anhydrous ammonia systems (29 CFR 1910.111).)

Under Senate Bill 698, operating or maintaining a controlled substance laboratory involving methamphetamine would be listed in the sentencing guidelines as a Class B controlled substances felony with a statutory maximum penalty of 20 years' imprisonment, as proposed by Senate Bill 649. Senate Bill 698 is tie-barred to Senate Bill 649.

Senate Bill 777 would include in the sentencing guidelines unlawfully possessing or transporting anhydrous ammonia or tampering with containers (as

Senate Bill 652 would prohibit). The offense would be listed as a Class F felony against the public safety with a statutory maximum sentence of four years' imprisonment. Senate Bill 777 is tie-barred to Senate Bill 652.

HOUSE COMMITTEE ACTION:

The House Committee on Criminal Justice adopted a new effective date of April 1, 2004. As passed by the Senate, the bills contained an effective date of January 31, 2004.

BACKGROUND INFORMATION:

The information in this analysis was derived almost entirely from an analysis prepared by the Senate Fiscal Agency and dated 10-30-03.

FISCAL IMPLICATIONS:

As mentioned above, the following information was derived from the analysis of this package of bills by the Senate Fiscal Agency.

Senate Bill 648 would have no fiscal impact on state or local government.

Senate Bills 649 and 698 would have an indeterminate fiscal impact on state and local government. There are no data to indicate how many new offenders would be convicted or how many offenders who are currently convicted of other substance abuse offenses would be convicted instead of operating or maintaining a controlled substance laboratory involving methamphetamine. Offenders would receive a sentencing guidelines minimum sentence range from 0-18 months to 117-160 months. Local units of government would incur the cost of incarceration in a local facility, which varies by county. The state would incur the cost of felony probation at an average annual cost of \$1,750, as well as the cost of incarceration in a state facility at an average annual cost of \$27,000. For each offender who was convicted, was sent to prison, and received the longest allowable minimum sentence, it would cost the state approximately \$360,000.

Senate Bills 650 and 651 would have an indeterminate fiscal impact on state and local government. According to the Department of Corrections Statistical Report, in 2001 no offenders were convicted of possessing more than 10 grams of ephedrine. There are no data to indicate whether increasing the prohibited amount to more than 12

grams would reduce the number of convicted offenders, or whether adding possession of pseudoephedrine to this offense would increase the number of convicted offenders. Offenders would receive a sentencing guidelines minimum sentence range from 0-3 months to 7-16 months. Because the longest allowable minimum sentence would be less than 18 months, offenders would likely receive probation or incarceration in a local facility. The State would incur the cost of felony probation, while local units of government would incur the cost of incarceration, which varies by county.

Senate Bills 652 and 777 would have an indeterminate fiscal impact on state and local government. There are no data to indicate how many offenders would be convicted of transporting or possessing anhydrous ammonia in an unapproved container or tampering with an approved container. Offenders convicted of the proposed Class F crime would receive a sentencing guidelines minimum sentence range from 0-3 months to 17-30 months. Local units would incur the cost of incarceration in a local facility, and the state would incur the cost of felony probation as well as the cost of incarceration in a state facility.

Public libraries would benefit from any additional penal fine revenue raised due to the proposed changes.

ARGUMENTS:

For:

Methamphetamine is a dangerous and highly addictive drug that has led to America's first major homegrown drug epidemic. Meth has been compared with crack cocaine because of its highly addictive nature and low cost. A person can ingest meth by swallowing, inhaling, injecting, or smoking, and the typical high is said to last at least 12 hours. The manufacture and use of methamphetamine have been a major problem in states to Michigan's west in recent years. According to a July 2002 report from the DCH Office of Drug Control Policy and the Michigan Department of State Police ("Michigan Methamphetamine Control Strategy"), 80% of the Federal drug cases in Nebraska now involve meth; Spokane County, Washington, in 1999 had more arrests for meth than for cocaine, crack, and heroin combined; in Idaho, nine out of 10 drug cases handled by the state police are meth-related; and Iowa uncovered 803 meth labs in 1999, up from just two in 1994.

In Michigan, only six meth labs were found and investigated in 1996, but 120 labs were seized in 2001. Some expect that number to exceed 300 in 2003. Of the 120 labs seized in 2001, 80 were located in just six counties in the southwestern corner of Michigan. Meth labs increasingly are being found in mid-Michigan, too, and Jackson County reportedly is now second behind Allegan County in the number of meth labs busted.

The costs of numerous meth labs and increased methamphetamine addiction go far beyond investigating and seizing illegal drug labs. Meth use and production can lead to an increase in other types of crimes, as users are considered more likely to commit acts of violence and property offenses either because they are high or in order to satisfy their addiction. The rise in these other crimes leads to increased demands on law enforcement and corrections budgets. According to the Allegan County prosecutor, that county never had a jail crowding problem until meth use and production became prevalent there. Allegan County apparently has seen steady increases in incidents of domestic violence and theft over the last few years. According to the July 2002 methamphetamine report, in 1999, nearly 20% of new jail inmates in Spokane County, Washington, tested positive for methamphetamine, and 14% of the people arrested for any crime in Des Moines, Iowa, tested positive for meth. Also, meth users can develop serious physical and mental health problems, ranging from alarming weight loss, skin infections, and tooth loss to paranoia, hallucinations, and depression. There is a high cost to treating these users for their addictions and their accompanying health problems.

Although Michigan already has strong penalties for the manufacture, delivery, and possession of meth, the bills would give law enforcement more tools to thwart the spread of methamphetamine manufacture in clandestine labs. The bills also should provide a greater deterrent to meth use and production than current penalties do.

For:

Public Act 314 of 2000 amended the Public Health Code to prescribe felony penalties for owning or using a vehicle, building, or place, owning or possessing chemicals or laboratory equipment, or providing any chemical or laboratory equipment to another in order to manufacture a controlled substance or controlled substance analogue. Generally, a violation is punishable by up to 10 years' imprisonment and/or a maximum fine of

\$100,000. Since the presence and operation of methamphetamine labs are on the rise in at least one part of the State, owning, operating, or maintaining meth labs should be dealt with more severely, in order to deter their spread throughout Michigan. Under Senate Bill 649, a violation of the drug lab prohibition that involved or was intended to involve methamphetamine would be punishable by up to 20 years' imprisonment.

For:

Pseudoephedrine is the artificial version of ephedrine, which is a derivative of the Chinese herb Ma Huang. Ephedrine can be found in a wide variety of products marketed as energy boosters and weight-loss aids that are distributed in drug stores, gas stations, and health food stores. Truck drivers and students reportedly use those products to stay awake and alert; body builders have been known to use them to increase muscle mass; and, since ephedrine suppresses the appetite, many dieting aids contain ephedrine. In addition, ephedrine and pseudoephedrine can act as a bronchial dilator, and pseudoephedrine is the active ingredient in most prescription and over-the-counter (OTC) medications for the treatment of such common maladies as asthma, allergies, and nasal congestion.

Despite their widespread and common usage, ephedrine and pseudoephedrine can result in serious, life-threatening conditions, especially if combined with caffeine or alcohol, and even when used in low doses by healthy individuals. The United States Food and Drug Administration (FDA) has said that ephedrine alkaloids are amphetamine-like compounds that have a powerful stimulant effect on the central nervous system. Reported adverse effects of ephedrine and pseudoephedrine include insomnia, headaches, nausea and vomiting, kidney problems, heart irregularities, seizures, strokes, heart attacks, and even death. The FDA reportedly has received hundreds of reports of adverse effects and dozens of reports of death associated with ephedrine.

In recent years, many states, including Michigan, have banned or strictly regulated the sale and use of products containing ephedrine. Public Act 38 of 1994, for instance, added a provision to the Public Health Code to prohibit the possession of more than 10 grams of ephedrine, with certain exceptions, and Public Act 144 of 1999 included ephedrine as a Schedule 5 controlled substance, except as used in small doses in legitimate products. By including pseudoephedrine in the ban against possession of certain amounts of ephedrine, Senate Bill 650 would recognize that large amounts of pseudoephedrine can

be just as harmful as ephedrine. Also, since pseudoephedrine derived from OTC medications is an important ingredient in the production of methamphetamine, its possession and use should be tightly regulated. Prohibiting the possession of significant amounts of pseudoephedrine would give law enforcement authorities one more tool to combat meth manufacture and use.

In addition, testimony before the Senate Judiciary Committee revealed that purchasing four, 96-tablet packages of a cold medication such as Suda-Fed would result in the buyer's being in violation of the proposed prohibition against pseudoephedrine possession, if possession of more than 10 grams were banned. Buying an OTC medication in that quantity could be reasonable for a large family or for someone who suffered from chronic allergies or other sinus problems. To accommodate such a purchase, the bill would increase the prohibited amount of ephedrine (and pseudoephedrine) to over 12 grams. Also, some products reportedly are formulated in a manner that effectively prevents the conversion of pseudoephedrine into methamphetamine. The bill would exclude those products and products primarily intended for pediatric use from the prohibition.

For:

Anhydrous ammonia is a nitrogen and hydrogen combination that is useful as a fertilizer in many farming operations. The volatile substance is packaged and transported in tanks that must meet Federal health and safety regulations. Typically, anhydrous ammonia is stored and transported in, and applied from agricultural "nurse tanks" that rest on trailers that can be towed by a tractor or other farm vehicle into the field. Anhydrous ammonia also is a key ingredient in producing methamphetamine. Increasingly, especially in southwestern Michigan, people have stolen or vandalized these nurse tanks in order to remove the anhydrous ammonia for use in manufacturing meth. By establishing a felony penalty for the possession or transport of anhydrous ammonia in containers not approved by law, and for tampering with anhydrous ammonia containers, Senate Bill 652 would aid law enforcement efforts to quash meth labs in Michigan.

For:

The illegal production of methamphetamine is dangerous to those who come into contact with or get close to the operations. Meth labs also pose an environmental hazard. Gases and solvents used in the production process are highly flammable and inhaling them can cause serious health problems and

even death. It has been estimated that the production of methamphetamine generates toxic waste in an amount that is five-to-six times the quantity of the drug produced. Often, this waste is left in public places or abandoned building or vehicles where the labs have been set up, or it is dumped on the ground, in waterways, or down sewers, contaminating soil, recreational waters, and sources of drinking water. Exposure to these contaminated sites can be very dangerous. Indeed, a sheriff in another state who dismantled a meth lab without protective gear or proper procedures reportedly is now terminally ill from exposure to the toxic waste.

In order to ensure that dangerous illegal drug lab sites are secured and properly decontaminated, Senate Bill 648 would require law enforcement agencies to notify the Housing Law enforcing agency of the possible contamination. The enforcing agency then would have to inspect the premises, alone or with a team of other agencies. If the property were contaminated and unfit for human habitation or presented a danger to others, the health officer would have to order the property vacated and the enforcing agency would have to give the property owner an opportunity for an administrative hearing regarding the order.

Against:

Local enforcing agencies under the Housing Law should not be required to head up contamination inspections or decontamination efforts. These agencies typically deal with issues of structural integrity in a community's housing stock and are not equipped to assess environmental health hazards or contamination. Perhaps this task should be the responsibility of local health departments. Moreover, the Department of Environmental Quality has expressed concerns about duties they would likely assume under this legislation. The DEQ has estimated that the costs for sampling alone could cost \$1.8 million (staff, staff training, protective gear) annually. There would be additional costs for cleanup activities (although the legislation does not appear to say directly who would be responsible for cleanups).

Against:

Representatives of the organization Families Against Mandatory Minimums has opposed these bills because FAMM believes that changes to the state's sentencing guidelines should be enacted only after a thoughtful review process that includes treatment experts and that considers the impact of new sentences on bed space, the interaction of new

sentences with other sentences, and other long-term unintended consequences. The organization says the bills have not yet received such a review. FAMM notes in its written comments on the proposed legislation that there is a growing awareness that exceptionally long prison terms are not an effective deterrent to drug crimes and that treatment of heavy drug users is many times more effective than longer sentences in reducing drug abuse and sales.

POSITIONS:

Among those who indicated support for the bills to the House Committee on Criminal Justice were the Prosecutors Association of Michigan, the Michigan State Police, the sheriffs of Eaton and Allegan Counties, the Farm Bureau, Johnson and Johnson, and the Consumer Healthcare Products Association. (11-12-03)

Among those who indicated opposition to the bills to the House Committee on Criminal Justice were the Department of Community Health, the Department of Environmental Quality, and Families Against Mandatory Minimums. (11-12-03)

Analyst: C. Couch/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.