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BILL ANALYSIS

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House Bill 6095 (Substitute H-2 as passed by the House)
 House Bill 6096 (as passed by the House)
 Sponsor: Representative Jennifer Faunce (House Bill 6095)
 Representative Tom Meyer (House Bill 6096)
 House Committee: Criminal Justice
 Senate Committee: Judiciary

Date Completed: 12-3-02

CONTENT

House Bill 6095 (H-2) would amend the Public Health Code to include "3, 4-Methylenedioxymethamphetamine" (which is also know as Ecstasy and MDMA) in the statutory list of Schedule 1 controlled substances. The bill also would increase criminal penalties for manufacturing, creating, delivering, possessing, or using Ecstasy or a counterfeit substance or controlled substance analogue of Ecstasy.

House Bill 6096 would amend the Code of Criminal Procedure to include felony violations involving Ecstasy in the sentencing guidelines.

The bills would take effect on January 1, 2003. House Bill 6096 is tie-barred to House Bill 6095.

House Bill 6095 (H-2)

Currently, Ecstasy is listed as a Schedule 1 controlled substance in administrative rules (R 338.3113(j)), and is subject to general criminal penalties for violations involving Schedule 1 drugs. The bill would increase criminal penalties for Ecstasy violations as shown in Table 1.

Table 1

Violation	Level	Current Penalty	Proposed Penalty for Ecstasy
Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver	Felony	Up to 7 years and/or \$10,000	Up to 20 years and/or \$25,000
Creating, manufacturing, delivering, or possessing with intent to deliver a counterfeit substance or controlled substance analogue intended for human consumption	Felony	Up to 5 years and/or \$5,000	Up to 10 years and/or \$10,000
Knowingly or intentionally possessing Ecstasy or an analogue of it	Felony	Up to 2 years and/or \$2,000	Up to 10 years and/or \$15,000
Using Ecstasy or an analogue of it	Misdemeanor	Up to 1 year and/or \$1,000	Up to 1 year and/or \$2,000

(The proposed penalties are the same as for violations involving methamphetamine.)

House Bill 6096

Under the sentencing guidelines, delivery or manufacture of methamphetamine is a Class B controlled substance felony with a statutory maximum sentence of 20 years' imprisonment. Possession of methamphetamine is a Class D controlled substance felony with a statutory maximum sentence of 10 years' imprisonment. The bill would add a violation involving Ecstasy to those provisions.

MCL 333.7212 et al. (H.B. 6095)
777.13m (H.B. 6096)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

There are no data to indicate how many offenders are currently convicted specifically for Ecstasy violations. Ecstasy offenders are currently convicted under several provisions [MCL 333.7401(2)(b)(ii), MCL 333.7402(2)(b), and MCL 333.7403(2)(b)(ii)] for Schedule 1 controlled substances. Table 2 shows the current sentencing guideline minimum ranges for these felonies.

Table 2

Violation	Felony Class	Sentencing Guideline Minimum Range
Delivery or manufacture of certain Schedule 1, 2, or 3 controlled substances	E	0-3 months to 24-38 months
Delivery or manufacture of Schedule 1, 2, or 3 imitation controlled substance	E	0-3 months to 24-38 months
Possession of certain Schedule 1, 2, 3, or 4 controlled substances or controlled substances analogue	G	0-3 months to 7-16 months

Table 3 shows the sentencing guideline minimum ranges for the three proposed Ecstasy felonies (which are the same as the current ranges for methamphetamine).

Table 3

Violation	Felony Class	Sentencing Guideline Minimum Range
Delivery or manufacture	B	0-18 months to 117-160 months
Delivery or manufacture of counterfeit or analogue	D	0-6 months to 43-76 months
Possession	D	0-6 months to 43-76 months

For each offender convicted of delivery or manufacture, the longest allowable minimum sentence would increase from 38 months to 160 months. For an offender convicted of delivery or manufacture of a counterfeit or analogue, the longest allowable minimum sentence would increase from 38 months to 76 months. Finally, for an offender convicted of possession, the

longest allowable minimum sentence would increase from 16 months to 76 months. If, in the absence of data, one assumes that 10 offenders a year would be convicted of each of the violations, go to prison, and receive the longest allowable minimum sentence, it would cost the State an additional \$4.6 million, given that the average annual cost of incarceration is \$25,000.

Use of Ecstasy as a Schedule 1 controlled substance is currently a misdemeanor with a sentence of up to one year's imprisonment. Under the bills, the misdemeanor sentence length would not change, and therefore this provision would have no fiscal impact on State or 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.

Fiscal Analyst: Bethany Wicksall