State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2006

Methamphetamine-Related Legislation
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Introduction

Methamphetamine is a highly addictive and easily manufactured drug that has made its way from the western and southwestern United States to southwestern Michigan, as well as other regions of this State. Methamphetamine, or "meth", can be produced with common household products, and its ingredients often include pseudoephedrine or ephedrine (found in many over-the-counter cold remedies) and anhydrous ammonia (a popular and inexpensive fertilizer). It is typically "cooked" in clandestine labs, which may be found in homes, barns, recreational vehicles, motels, and open spaces, creating myriad environmental and health hazards. Although meth labs have been present in the State since at least the late 1990s, the number of labs found in Michigan rose from 40 in 2000 to 261 in 2005.[1]

In 2003, the State enacted legislation to combat the increasing meth problem in various ways. Among other things, this legislation extended to pseudoephedrine existing criminal penalties for the possession of large quantities of ephedrine; added criminal penalties for the possession or transport of anhydrous ammonia except in an approved container; enhanced criminal penalties for the operation of illegal drug labs where meth is produced; and required premises where illegal drug labs are located to be inspected for contamination and vacated if contamination is found. As the number of meth labs continued to rise, legislation was enacted in 2005 to restrict over-the-counter sales of products containing pseudoephedrine or ephedrine.

A series of legislation enacted in 2006 continues the State's fight against the manufacture and sale of methamphetamine, and addresses additional aspects of the problem, including the need for standardized reporting, improved interagency communication, and greater public awareness; use of the internet to sell ephedrine or pseudoephedrine or to publish instructions on manufacturing meth; and the impact on children who are exposed to meth production. Public Acts 255 through 265 of 2006, as well as the previously enacted measures, are described below.

Background

Methamphetamine is a synthetic drug classified as a Schedule 2 controlled substance under the Public Health Code. (The Code requires a substance to be placed in Schedule 2 if it has a high potential for abuse; its abuse may lead to severe psychiatric or physical dependence; and it has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions.) According to the Office of National Drug Control Policy, meth has limited medical uses for the treatment of narcolepsy, attention deficit disorders, and obesity. Also known as "speed", "crank", or "ice", meth can be injected, snorted, smoked, or ingested orally. It appeals to users because it creates a sense of enhanced alertness, euphoria, and increased energy. Over time, however, meth use can lead to nervousness and irritability, violent behavior, extreme paranoia, prolonged psychosis, hallucinations, insomnia, brain

[1] According to the Michigan Department of State Police, the number of meth labs seized in this State was 19 in 1999, 40 in 2000, 91 in 2001, 189 in 2002, 186 in 2003, 209 in 2004, and 261 in 2005. In 2006, as of August 8, 69 meth labs had been seized.

damage, and increased risk of stroke and heart attack. In addition, a recent study at the University of Buffalo found that the use of meth can promote the spread of HIV in users.

The popularity of meth can be attributed both to its highly addictive nature and its ease of production. The clandestine labs where it is cooked can be set up with simple household items such as mason jars, coffee filters, hot plates, pressure cookers, plastic tubing, and gas cans. Although there are several production methods, the meth labs discovered in Michigan typically have used a process that involves extracting pseudoephedrine or ephedrine from cold tablets. As noted above, other ingredients used in the process often include the nitrogen-based fertilizer anhydrous ammonia.

Despite the simplicity of production, manufacturing meth can be very dangerous and some of the chemicals used can be hazardous. Solvents and fumes are flammable and gases formed in the process can be deadly. The labs also produce highly toxic waste, which can pollute soil, groundwater, drinking water supplies, vehicles, and dwellings (saturating the carpet, walls, ceilings, drapery, and furnishings). 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.

The methamphetamine problem originally was concentrated in the southwestern and western United States, and spread steadily eastward during the 1990s. It is reported that the number of addicts using meth in the country doubled from 63,000 in 2002 to 130,000 in 2004, and addicts using meth committed 6.0 million crimes in 2004—more than double the 2002 rate.[2] According to the Office of National Drug Control Policy, the number of admissions to treatment in which meth was the primary drug of abuse increased from 33,443 in 1994 to 129,079 in 2004. In Michigan, the number of admissions in which meth was the primary, secondary, or tertiary drug of abuse rose from 314 in fiscal year (FY) 1999-2000 to 1,341 in FY 2003-04.[3]

While the meth labs discovered in Michigan continue to be concentrated in the southwestern portion of the State, they also are found elsewhere, particularly in the central Lower Peninsula.

Previously Enacted Legislation

In 2003, there were 186 meth labs found in Michigan. While the situation in this State had not reached the severity that states like Idaho, Iowa, Nebraska, and Washington were experiencing, many believed that a relatively early response to the problems surrounding meth use and production would help to blunt the spread of the drug in Michigan. Thus, Public Acts 307 to 313 of 2003 were enacted to establish criminal penalties and address environmental contamination.[4]

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[2] "Meth Crime Rises as Budget Axe Falls: Will Congress Cut Law Enforcement and Investments that Help Get Kids on the Right Track?", A Report from Fight Crime: Invest in Kids, 2006.

[3] "Michigan Methamphetamine Prevention Project Baseline Data Report", Prepared by the Pacific Institute for Research and Evaluation and Richard Calkins for the Michigan Department of Community Health, Office of Drug Control Policy and the Michigan Methamphetamine Task Force, March 2005.

[4] For a detailed analysis of these laws, please see the Senate Fiscal Agency Enrolled Analysis of Senate Bills 648-652, 698, and 777, dated 6-17-04, at http//senate.michigan.gov/sfa/.

Since 1994, the Public Health Code had prohibited the possession of more than 10 grams of ephedrine (which is used to manufacture another popular and addictive drug, methcathinone ("Cat"), as well as methamphetamine). Public Act 308 of 2003 amended the Code to include pseudoephedrine in that prohibition, and increase the prohibited amount to 12 grams or more. An offense is a felony punishable by up to two years' imprisonment and/or a maximum fine of $2,000.

Under amendments enacted in 2000, the Public Health Code also prohibits a person from owning, possessing, or using a vehicle, structure, or place, or owning, possessing, or providing to another person any chemical or lab equipment, that the violator knows or has reason to know is to be used to manufacture a controlled substance illegally. The standard penalty is up to 10 years' imprisonment and/or a fine of up to $100,000. Under Public Act 310 of 2003, for a violation that involves manufacturing a substance that contains any quantity of methamphetamine, the maximum term is 20 years and the maximum fine is $25,000.

Public Act 312 amended the Michigan Penal Code to prohibit a person from transporting or possessing anhydrous ammonia except in a container approved by law, or tampering with such a container. A violation is punishable by up to four years and/or $5,000.

Public Acts 309, 311, and 313 amended the sentencing guidelines in the Code of Criminal Procedure to include the offenses under Public Acts 308, 310, and 312, respectively.

On the environmental front, Public Act 307 amended the Housing Law of Michigan to require a State or local law enforcement agency to notify the Housing Law enforcing agency and the Department of Environmental Quality (DEQ) regarding the potential contamination of any property or dwelling that was or had been the site of illegal drug manufacturing. The DEQ was required to review the information received from the law enforcement agency, emergency first responders, or hazardous materials team called to the site, and make a determination about the likelihood of contamination and the health or safety hazard to occupants. (As discussed below, these responsibilities recently were transferred from the DEQ to the Department of Community Health.) If it is determined that contamination is likely, the enforcing agency must order the property to be vacated until the owner establishes that it is decontaminated or the risk of likely contamination no longer exists.

In order to restrict the availability of ephedrine and pseudoephedrine, Public Acts 86 and 87 of 2005 amended the Public Health Code to limit over-the-counter sales of products containing these ingredients, effective December 15, 2005. The Acts require a retail seller to 1) maintain the products behind a counter, within a locked case, or where an attendant can monitor them, or use an antitheft device along with constant video surveillance; 2) require photo identification for the purchase of an ephedrine or pseudoephedrine product; and 3) maintain a log of purchases, if the retailer does not keep the products behind a counter or in a locked case. The Acts also limit the quantity of products that may be sold in a single over-the-counter sale, prohibit sales to someone under 18, and prescribe a $50 civil infraction penalty for violations.

Recently Enacted Legislation

The measures enacted to date in 2006 follow up on some of the earlier legislation, as well as address additional issues. An overview of the legislation follows.[5]

Environmental Contamination; Reporting Requirements

Although Public Act 307 of 2003 provides for notification to State and local officials when an illegal drug lab is discovered, requires a determination of contamination, and requires the property to remain vacant until decontaminated, there continued to be complaints about the problems that meth labs pose for landlords, realtors, and prospective tenants or home-buyers, who do not always know whether property has been contaminated or properly cleaned. It was reported that the presence of meth lab sites can be a disincentive to operate, or invest in, rental property in some areas. It also was pointed out that the DEQ does not deal with indoor contamination, while the Department of Community Health (DCH) is actively involved in the State's efforts to address meth activity.

Several of the recent amendments, including Public Acts 258 and 260 of 2006, responded to these concerns. Public Act 258 amended the Housing Law provisions enacted in 2003, to transfer the DEQ's responsibilities to the DCH, set a deadline of 48 hours after discovery of an illegal drug lab for a law enforcement agency to notify the DCH and a local agency, and require notice to the local health department if it is not the enforcing agency. The Act also allows a property owner to establish that the property is decontaminated by submitting to the enforcing agency written assessments of the property before and after decontamination, along with a certification that the property has been decontaminated and the risk of likely contamination no longer exists. Public Act 260 added parallel language to the Public Health Code.

Public Act 260 also requires the DCH, in consultation with the DEQ, to develop a cleanup of clandestine drug labs guidance document. The DCH must make the document available on its website and, upon request, give a copy of it to a local health department.

Several other measures address the need for reporting. Public Act 262 creates the Methamphetamine Reporting Act to require the Michigan Department of State Police (MSP) to collect and compile information regarding methamphetamine manufacture, use, possession, and distribution from various State departments and law enforcement agencies. The Act also requires the MSP to report annually to the Legislature regarding methamphetamine trends in Michigan, and make the report publicly available on the MSP website. Under Public Act 255, which creates a new statute, the MSP must transmit to the DCH information obtained under the Methamphetamine Reporting Act regarding the discovery of a meth lab. The DCH must post on its website the location of the lab as well as a statement as to whether the remediation of a site has been completed.

[5] For detailed analyses of these laws, please see the Senate Fiscal Agency Enrolled Analysis of Senate Bills 1112, 1115, & 1119 and House Bills 5798, 5841, & 5845, the Enrolled Analysis of Senate Bill 1116 and House Bills 5843, 5844, & 5930, and the Enrolled Analysis of Senate Bill 1282 and House Bill 5822, each dated 8-16-06, at http//senate.michigan.gov/sfa/.

Another reporting provision was enacted by Public Act 265, which amended the Natural Resources and Environmental Protection Act to require the DEQ to report to the Legislature every two years on environmental contamination caused by releases associated with clandestine drug labs.

Public Acts 258, 260, and 265 took effect on July 6, 2006. Public Act 262 will take effect on October 1, 2006, and Public Act 255 will take effect on January 1, 2007.

Criminal Penalties; Civil Action

Several measures continue efforts to deter the production of methamphetamine, by enhancing the restrictions on access to ephedrine and pseudoephedrine, and allowing a civil action for posting manufacturing instructions on the internet.

Public Act 261 of 2006 amends the Public Health Code to prohibit a person from selling, distributing, delivering, or otherwise furnishing a product that contains any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, if the sale is transacted through the mail, internet, telephone, or other electronic means (subject to several exceptions). A violation is a felony punishable by up to four years' imprisonment and a maximum fine of $5,000. Public Act 259 includes this offense in the sentencing guidelines.

Under Public Act 257, which amends the Revised Judicature Act, the Attorney General may bring an action against a person who develops or maintains a website for the purpose of publishing instructions on manufacturing meth or information on how to obtain substances that may be used in its manufacture. The court may order various forms of relief, including actual damages sustained by the State or its residents and punitive damages.

Public Acts 257, 259, and 261 will take effect on October 1, 2006.

Child Protection

An issue new to the 2006 legislation involves the protection of children who are exposed to meth production. Children living in homes where the drug is cooked often are subjected to a highly toxic environment, where their clothes, blankets, and toys may be contaminated. More than adults, children are susceptible to the harmful health effects of meth production and can develop respiratory ailments, brain or organ damage, or other serious health conditions. These children also are at risk of being abused or neglected, since parents using or cooking meth are unlikely to be in the proper frame of mind to care for their children. In addition, children living where meth is produced may be exposed to firearms and violence.

Public Acts 256, 263, 264, and 266 of 2006 amended the Child Protection Law (CPL) to address this situation. Under the CPL, certain professionals (such as physicians, nurses, social workers, teachers, and clergy) are required to report to the Department of Human Services (DHS) if they have reasonable cause to suspect child abuse or neglect. When a report is made, the DHS and law enforcement agencies are subject to various reporting and investigative requirements, including requirements that they report certain cases to each other and refer some cases to the prosecuting attorney.

The 2006 amendments, which took effect on July 6, 2006, do the following:

-- Require reporting and investigation by the DHS and law enforcement agencies if a report or investigation of child abuse indicates a drug lab violation involving meth, or if there is evidence that a child has been exposed to meth production.
-- Require the DHS to submit a petition for family court jurisdiction over a child who was allowed to be exposed to or have contact with meth production.
-- Require the DHS to refer to the prosecuting attorney a central registry case (one in which there is evidence of abuse or neglect and other criteria are met) if the case involves a child's exposure to meth production; and require the prosecutor to review the investigation of the case.
-- Require the DHS to have a medical evaluation made without a court order if a child is suspected of being exposed to meth production.

Conclusion

According to the Department of State Police, the number of meth labs seized in Michigan dropped from 261 in 2005 to 69 in 2006, as of August 8. The reasons for this decline are unclear, although it may be attributable to the restrictions on over-the-counter sales of products containing ephedrine or pseudoephedrine, which took effect in December 2005. Whether the decline will persist also is unknown. The small number of meth lab seizures this year, however, does not necessarily imply a reduction in meth sales or use, since more of the finished product is coming into Michigan from out of State, according to the MSP.

As described above, the State has enacted comprehensive legislation to deter the production of methamphetamine, penalize offenders, identify meth lab sites, and protect children who are exposed to meth production. Additional measures have been proposed, as well. These include bills that would do the following: establish anhydrous ammonia safety and security practices (AASSPs) and provide tort immunity to sellers and end users who comply with them (House Bill 4108, which has passed the House and the Senate, and Senate Bill 877, which has passed the Senate); create an income tax credit for the cost of tank or valve locks or dye additive to prevent anhydrous ammonia theft (Senate Bill 492 and House Bill 5037); create a tax credit for farmers for the cost of complying with AASSPs (Senate Bill 878); and require anhydrous ammonia manufacturers and distributors to add a dye to the product (House Bill 4894).

While only one of these bills has passed both houses of the Legislature to date, it is not unforeseeable that additional measures--perhaps with a different focus--may be enacted. Although the environmental contamination and safety and health problems related to meth labs might be diminishing, the social welfare and criminal justice impacts of meth use and sales remain.