

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill strengthens penalties already in place as well as introduces new crimes and programs concerning the manufacture, possession, and sale of methamphetamine and its precursors. Specifically, the bill: places meth precursor drugs on Controlled Substance Schedule V; establishes limitations, requirements, and penalties relating to over-the-counter sales of methamphetamine precursors; increases the penalty for possession of certain substances with intent to manufacture methamphetamine; requires criminal restitution in cases where the crime required an emergency response due to the presence of dangerous chemicals; allows innocent property owners to receive restitution; requires notification of county health officials of clandestine lab sites; requires remediation of lab sites prior to re-occupation of the land or property; creates two new crimes related to the illegal use of anhydrous ammonia; criminalizes various methamphetamine-related activities that may impact children or vulnerable adults; establishes a methamphetamine laboratory cleanup revolving fund; and appropriates funds: for methamphetamine crime enforcement and investigation, the district courts, the public defender, corrections, methamphetamine treatment, methamphetamine lab clean-up, and methamphetamine education.

### Article 1

#### Methamphetamine Policy Provisions

## Section

- 1**     **Narcotic drug.** Adds methamphetamine to the definition of narcotic drug in chapter 152. This change is intended to give law enforcement more crimes to charge meth defendants with. Currently sale and possession of meth are expressly addressed in 1<sup>st</sup> and 2<sup>nd</sup> degree controlled substance offenses. These crimes require the defendant to have a certain minimum amount of the drug. Third degree *sale* does not mention meth but forbids the sale of any narcotic drug. By adding meth to the definition of narcotic drug, a prosecutor can charge a person who sells a small amount of meth with a 3<sup>rd</sup> degree offense rather than a 4<sup>th</sup> degree offense. (Meth is covered by the 4<sup>th</sup> and 5<sup>th</sup> degree offenses.)
- 2**     **Schedule V.** Adds methamphetamine precursor drugs to controlled substance schedule V. Regulates the over-the-counter sale of methamphetamine precursor drugs.

**Para. (a): Definitions.** Defines methamphetamine precursor drug, over-the-counter sale, and suspicious transaction.

**Para. (b): Schedule V.** Adds methamphetamine precursor drugs to controlled substance schedule V.

**Para. (c): Sale - Quantity limitations.** Limits the amount that may be sold per transaction -- two package maximum and not to exceed six grams.

**Para. (d): Limitations on form of package.** Prohibits the sale of packages that contain more than three grams of precursor drugs, unless the product is sold in blister packs. If sold in blister packs, each blister may only contain two dosage units at most.

**Para. (e): Storage, display, distribution restrictions.** Requires display of the drugs behind a secure counter. Requires a pharmacist, pharmacy technician or a pharmacy clerk to dispense meth precursor drugs. Requires buyers to show photo id for purchase and to sign a log in writing or electronically.

**Para. (f): Purchase amount limitation.** Limits the quantity that a person may purchase to no more than six grams in a 30-day period.

**Para. (g): Minors.** Prohibits sale to minors.

**Para. (h): Penalties.** Imposes a misdemeanor for those who exceed purchasing limits and those who sell in violation of the sales restrictions (paragraphs c, d, e, f, or g).

**Para. (i): Owner criminal immunity.** Extends immunity to certain supervisors of employees who violate sale restrictions.

**Para. (j): Reporting suspicious transactions.** Requires employees to report to their supervisor any suspicious transactions involving meth precursor drugs.

**Para. (k): Product exemptions.** Exempts pediatric products, gel caps and

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liquid meth precursors, and forms of the drugs that are difficult to use in making methamphetamine.

**Para. (l): Board of Pharmacy.** Charges the Board of Pharmacy with responsibility for certifying substances that are exempt under paragraph (k).

**Para. (m): Drug wholesalers; exemption.** Exempts licensed wholesale distributors from the methamphetamine precursors drug storage requirements.

**Para. (n): Local ordinance preemption.** Preempts all local ordinances or regulations governing the sale of methamphetamine precursor drugs.

- 3 Methamphetamine manufacture crime; possession of substances with intent to manufacture methamphetamine crime.** Amends the attempted manufacture of methamphetamine crime to clarify that this crime is not an "attempt crime" but rather a crime of possession of "any chemical reagents or precursors with the intent to manufacture methamphetamine." Provides that the list of chemical reagents or precursors in the statute is not an exclusive one. Strikes the cross-referenced definition of "anhydrous ammonia."
- 4 Penalty.** Increases the maximum criminal penalty for a violation of section 3 from a three-year/\$5,000 felony to a ten-year/\$20,000 felony and for a repeat offense from a four-year/\$5,000 felony to a 15-year/\$30,000 felony.
- 5 Sale of schedule V controlled substances.** Exempts the authorized sales of meth precursor drugs regulated by section 2 of the bill from the current law that imposes a gross misdemeanor for the unlawful sale of a schedule V drug.
- 6 Possession of schedule V controlled substances.** Exempts the lawful possession of meth precursor drugs provided for in section 2 of the bill from the current law that imposes a gross misdemeanor for the unlawful possession of a schedule V drug.
- 7 Certain controlled substance offenses; restitution; prohibitions on property use.**

**Subd. 1. Restitution.** Requires restitution from persons convicted of manufacturing or attempting to manufacture a controlled substance or of illegal activities involving precursors where the crime involved an emergency response.

**Para. (a): Definitions.** Defines terms used in this section.

**Para. (b): Restitution; public entities.** Restitution may be awarded to the public entities that participated in the response.

**Para. (c): Restitution; private citizens.** Restitution may also be awarded to innocent property owners to cover removal and remediation costs.

**Para. (d): Judicial waiver of restitution.** The court may reduce the restitution if the restitution payment would create an undue hardship for the convicted person's immediate family. If the court concludes a person is indigent, there is a presumption that restitution is waived.

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**Subd. 2. Property-related prohibitions.** Places prohibitions and regulations on meth-tainted property.

**Para. (a): Definitions.** Defines clandestine lab site, property, remediation, and removal.

**Para. (b): Police notification of health agency.** Mandates that police officers who arrest a person at a clandestine lab site notify the appropriate county or local health department and other entities of the arrest and the location of the site.

**Para. (c): Occupation prohibition order.** Requires that local units of government, local health departments and sheriffs prohibit all clandestine property from being occupied, or used until it has been assessed and remediated.

**Para. (d): Procedures and remedies.** Specifies that the procedures of chapter 145A, the Local Public Health Act, and the remedies provided to property owners therein, apply to this subdivision.

**Para. (e): Remediation verification procedures.** Specifies the process for establishing remediation, including the circumstances under which the applicable authority must vacate its property use restriction order. Requires use of a contractor to do the work. Specifies contractor duties and imposes contractor liability if the work is not done properly.

**Para. (f): Contaminated motor vehicles.** The registrar of motor vehicles must be notified when a motor vehicle has been contaminated and also when the authority vacates its order.

**Para. (g): Agency affidavit of remediation.** Requires the applicable authority to give notice by affidavit to the county recorder for disclosure to any potential transferee that a piece of property was the site of a meth lab - if the property is remediated properly and agency order is vacated, requires notice by affidavit to the recorder of the same.

**Para. (h): Property owner's affidavit of remediation.** Allows owners of contaminated property to file with the county recorder an affidavit of removal and remediation completion. Specifies that failure to do so does not affect ability to transfer property ownership.

**Para. (i): Recording affidavits.** Requires the county recorder to file all affidavits submitted pursuant to this subdivision in a manner that assures their disclosure during a title search.

**Para. (j): Internet posting.** Requires the commissioner of health to list contact information for each local health services administrator on the Internet.

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**Para. (k): Local agency records.** Requires each local community health services administrator to maintain information related to property within the administrator's jurisdiction that has been contaminated. Requires the information to be made available to the public.

**Para. (l): Owner disclosure.** Requires the seller of land to disclose to the buyer if the seller knows meth has been produced on the property and related information. A seller who does not provide this disclosure is liable for buyer's remediation costs.

[Effective date: This section is effective January 1, 2006.]

### 8 **Precursor substances; retail establishments.**

**Subd. 1. Permitted sales.** Notwithstanding the sale restrictions established in section 2, permits retail establishments to sell ephedrine and pseudophedrine if the products are:

- sold in packages containing four (4) or less pills that contain no more than 240 milligrams of pseudophedrine;
- limited to no more than two packages per transaction;
- displayed behind the checkout counter where the public is not permitted; and
- sold by employees who receive annual training on state laws regarding meth precursors and meth manufacturing.

**Subd. 2. Product exemption.** Exempts gel capsules and liquid products.

**Subd. 3. Photo identification; log.** Requires consumers to show photo identification to purchase the drugs and retailers to maintain a log of those who purchase the drugs.

**Subd. 4. Age restriction.** Prohibits the sale of methamphetamine precursors to persons under the age of 18.

### 9 **Exceptions.** Amends the current ephedrine statute to add a cross-reference to section 2.

### 10 **Anhydrous ammonia; prohibited conduct; criminal penalties; civil liability.**

**Subd. 1. Definitions.** Defines the term tamper.

**Subd. 2. Prohibited conduct.** Recodifies the prohibited fertilizer activities currently codified in Minnesota Statutes, sections 18C.201 and 18D.331. (These provisions are repealed in section 17.) A person may not steal, unlawfully take or carry away any amount of anhydrous ammonia; or purchase, possess, transfer or distribute any amount of anhydrous ammonia knowing or having reason to know that it will be used to unlawfully manufacture a controlled substance. Includes requirements for

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containing and transporting anhydrous ammonia.

**Subd. 3. No cause of action.** Prohibits a person who is injured while tampering with a container storing anhydrous ammonia to seek damages from a person who is the rightful owner of the container.

**Subd. 4. Criminal penalty.** A knowing violation of these provisions results in a felony and imprisonment of not more than five years or a fine of not more than \$50,000 or both.

### 11 **Methamphetamine-related crimes involving children and vulnerable adults.**

**Subd. 1. Definitions.** Defines chemical substance, child, methamphetamine paraphernalia, methamphetamine waste products, and vulnerable adult.

**Subd. 2. Prohibited conduct.** Criminalizes various methamphetamine-related activities that may impact children or vulnerable adults. Prohibited conduct includes knowingly engaging in manufacturing or attempting to manufacture methamphetamine, storing any chemical substance, storing any methamphetamine waste products, or storing any methamphetamine paraphernalia in the presence of a child or a vulnerable adult. These activities are prohibited in the residence, building, structure, conveyance, or outdoor location where a child or vulnerable adult may reasonably be, or in a room offered to the public for overnight accommodation or any multiple unit residential building. Also prohibits persons from knowingly causing or permitting a child or vulnerable adult to inhale, be exposed to, have contact with, or ingest methamphetamine, a chemical substance, or methamphetamine paraphernalia.

**Subd. 3. Criminal penalty.** Violation of these provisions results in a felony and imprisonment of not more than five years or a fine of not more than \$10,000 or both.

**Subd. 4. Multiple sentences.** A sentence under this section is not a bar to a sentence for any other crime committed by the defendant as part of the same conduct.

**Subd. 5. Protective custody.** Police officers may take children who are found in areas where prohibited activities are taking place into protective custody. Requires children taken into protective custody to undergo health screening assessments.

**Subd. 6. Reporting maltreatment of vulnerable adult.** Proposes reporting obligations for police officers and mandated reporters for vulnerable adults who were exposed to a methamphetamine lab. Instructs county entry point staff and county social service agency staff how to respond to a police report indicating a vulnerable adult has been exposed to a meth lab. Requires county social services to respond immediately when notified.

### 12 **Content of certificate.** Mandates that each certificate of title issued for a vehicle contaminated by methamphetamine production contain the term "hazardous waste contaminated vehicle" if the registrar has received the notice described in section 7.

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**13**      **Notice to school.** Requires law enforcement to notify the chief administrator of a school when a student has been placed in protective custody after being exposed to a meth lab.

**14**      **Methamphetamine laboratory cleanup revolving account.**

**Subd. 1. Definitions.** Defines clandestine lab site, property, and remediate.

**Subd. 2. Fund established.** Mandates the Public Facilities Authority to establish a methamphetamine laboratory cleanup revolving account.

**Subd. 3. Applications.** Specifies the application process for loans from the account.

**Subd. 4. Loan eligibility.** Specifies county or city eligibility for loans from the account including issuance of a revenue bond to secure the loan.

**Subd. 5. Use of loan proceeds; reimbursement by property owner.** Mandates that loans be used to remediate contaminated sites or to reimburse the applicable county or city fund. A loan recipient must seek reimbursement for the costs of remediation from the owner of the property containing the clandestine lab site. A mortgagee that takes ownership of real property through foreclosure is not liable for remediation costs.

**Subd. 6. Award and disbursement of funds.** Outlines the procedures for awarding and disbursing loans.

**Subd. 7. Loan conditions and terms.** Specifies terms and conditions of loans made under this section.

**Subd. 8. Authority to incur debt.** Authorizes counties and cities to incur debt under this section by resolution of the board or council authorizing issuance of a revenue bond to the authority. Only revenues derived from the contaminated sites (e.g., assessments or payments by the property owner) may be used to secure and pay the revenue bond.

**15**      **Definitions.** Expands the definition of "violent crime" in the criminal code's sentencing provision for certain dangerous and repeat felony offenders to include the crimes in section 11 (meth crimes involving kids and vulnerable adults).

**16**      **Revisor's instruction.** Instructs the Revisor to recodify a statute in a manner consistent with the changes contained in section 3.

**17**      **Repealer.** Repeals provisions in Minnesota Statutes, chapters 18C and 18D, relating to anhydrous ammonia, that are addressed in this article.

**Article 2**

**Appropriations**

**1 1**      **Appropriations.**

**2 2**      **Corrections.** Appropriates \$351,000 in FY06 and \$551,000 in FY07 to fund the anticipated increase in prison population.

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- 3 3 **Board of Public Defense.** Appropriates \$300,000 in FY06 and \$400,000 in FY07 to fund additional caseloads.
- 4 4 **Human services.** Appropriates \$300,000 in FY06 and \$300,000 in FY07 to fund three county treatment pilot programs.
- 5 5 **Employment and economic development.** Appropriates \$250,000 in FY06 and \$250,000 in FY07 to administer revolving loan program (section 13).
- 6 6 **Public safety.** Appropriates \$1,000,000 in FY06 and \$1,000,000 in FY07 to the BCA to fund meth investigations and enforcement. The money is intended to fund new officers.
- 7 7 **Health.** Appropriates \$100,000 in FY06 and \$100,000 in FY07 to fund meth lab remediation.
- 8 8 **Education.** Appropriates \$50,000 in FY06 and \$75,000 in FY07 to develop and distribute to schools materials addressing the dangers of meth.
- 9 9 **District courts.** Appropriates \$80,000 in FY06 and \$100,000 in FY07 to offset the cost increased trial court caseloads.