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## FISCAL IMPACT REPORT

**SPONSOR** Cervantes      **DATE TYPED** 03/15/05      **HB** 906/aHJC

**SHORT TITLE** Use of Property for Making Methamphetamine      **SB** \_\_\_\_\_

**ANALYST** McSherry

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 825 and HB 110 which propose to amend the Controlled Substance Act with regard to measures dealing with Methamphetamine.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Attorney General's Office (AGO)
- Administrative Office of the District Attorneys (AODA)
- Corrections Department (CD)
- Public Defender (PD)
- Administrative Office of the Courts (AOC)
- Public Education Department (PED)
- Regulations and Licensing Department (RLD)

### SUMMARY

#### Synopsis of House Judiciary Committee Amendment

The first amendment provides that a person who knowingly maintains, manages, controls, owns, rents, leases or makes available for use any building, room, dwelling, rental, store, warehouse, trailer, vehicle, watercraft, aircraft, enclosure or other structure or place that is used for the unlawful manufacture of methamphetamine would be guilty of a fourth, rather than the originally proposed third, degree felony.

The second amendment provides that a person who violates the above within a drug-free school zone guilty of a third, rather than the originally proposed second, degree felony.

The third amendment removes the proposed provision which provided immunity if a person in violation of the above notifies a law enforcement agency within the jurisdiction of the unlawful manufacture of methamphetamine.

### Synopsis of Original Bill

House Bill 906 proposes to create a new second degree felony, "Use of Property for the Manufacture of Methamphetamine," which would be punishable by up to three years in prison. The new crime would be a third degree felony if within a drug-free school zone and punishable by up to nine years in prison. The bill would make it illegal to knowingly maintain, own, rent, lease, etc. any room, vehicle, dwelling, etc. for the unlawful manufacture of methamphetamine.

The Use of Property for the Manufacture of Methamphetamine would be enforceable against a person who "knowingly" maintains, manages, rents, or leases property that is used for the manufacture of methamphetamine."

### Significant Issues

AODA points out that present law makes it illegal to manufacture methamphetamine (meth) and that this new law will make it illegal to use property to manufacture meth as it is necessary to have a laboratory to do so. AODA reports that the meth manufacturing process requires hazardous and volatile chemicals that make the process dangerous to occupants/users of property and to those in the vicinity; mobile labs pose serious threats to the safety of other motorists and officers.

This law will not prevent the prosecution of a violator under other provisions of law. Therefore a person could be prosecuted for manufacturing meth and also for using property to manufacture meth. According to CD, this provision would be a helpful tool for law enforcement.

According to CD, there have been an increasing number of methamphetamine manufacturing in motor vehicles manufacturing cases in recent years with no indications that numbers will not continue to increase. The Department reports that a great majority of parties who manufacture methamphetamines maintain, own, or rent the dwelling, vehicle, or room they use to manufacture methamphetamines and could be convicted under the proposed law; the department predicts that the proposed legislation would significantly increase the amount of time methamphetamine manufacturers would be incarcerated and on probation and parole.

## **PERFORMANCE IMPLICATIONS**

This will result in more cases being referred to the District Attorneys for prosecution and additional cases in the courts, and corrections system.

## **FISCAL IMPLICATIONS**

There is no appropriation in the bill.

Increase costs would likely be incurred by CD, AOC, PD and AODA as a result from the new crime. Enactment of this law could result in increased prosecutions, court cases, and facilities' use costs.

## **ADMINISTRATIVE IMPLICATIONS**

In both the short and long term, this bill will minimally to moderately increase the administrative burden on courts, DAs, prison and probation/parole staff because of the increasing prison population and probation/parole caseloads.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 906 relates to both HB 825 and HB 110, which each propose to amend the Controlled Substance Act with regard to Methamphetamine.

## **TECHNICAL ISSUES**

The Office of the Attorney General asserts that, although prosecution for manufacturing meth and using property to manufacture meth would not be double jeopardy, it could be argued that the sentences would merge because of unitary conduct. Section 30-31-20, NMSA 1978, penalizes the process of manufacturing meth and this proposed law penalizes the use of property to manufacture meth. AGO predicts that the proposed existence of two distinct statutes should be sufficient to avoid a double jeopardy or merger problem as the new law does not require that meth actually be produced, but prohibits the separate action of using property to manufacture. AGO references *State v. Andazola*.

## **OTHER SUBSTANTIVE ISSUES**

The proposed bill's language in subsections A and C may result in challenges due to vagueness, according to AGO, in that terms such as "place" are not defined and how one must notify or when one must notify law enforcement is not specified.

Although subsection E provides that the new provision does not preclude prosecutions under other "provisions of law" it doesn't address civil or administrative remedies.

AGO suggests adding:

1. language that the bill would not foreclose or bar other civil or administrative remedies may be beneficial to the intent of this bill, given that forfeiture and environmental issues and administrative provisions of the pharmacy board.
2. a provision for the bill to take effect immediately might well serve the public's health safety and welfare given the magnitude and gravity of the methamphetamine problem.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

There will be no criminal consequences for owning and/or making available property to manufacture methamphetamines.

**EM/yr:lg**