

PENALTIES FOR POISONING

House Bill 5507 (Substitute H-1) First Analysis (1-24-02)

Sponsor: Rep. Gary Woronchak
Committee: Criminal Justice

THE APPARENT PROBLEM:

Though the United States boasts one of the safest supply systems for food, water, and consumer products, there have been sporadic incidents through the years involving the deliberate tampering with or poisoning of foods and over-the-counter medications, such as the deliberate contamination of an over-the-counter pain medication in the 1980s that resulted in a number of deaths. In response to several such highly publicized incidents, many states enacted or amended existing laws to provide stiffer penalties for willfully poisoning any food, drink, nonprescription medicine, pharmaceutical product, or public water supply with the knowledge that the material could be ingested to a person's harm.

For over a decade, the enhanced penalties enacted in the 1980s, as well as changes to product packaging, seemed to effectively deter further attempts at public poisonings. However, since the events of September 11, 2001, when terrorists attacked the World Trade Center in New York City and the Pentagon, there has been a growing concern over the safety of the nation's food, drug, and water supply. Though existing penalties may deter a single individual from contaminating a food or drug product or a water supply, many now believe that current penalties would do little to adequately deter a person contemplating a widespread terrorist attack on the public through these systems, or adequately punish the person or persons perpetrating such an attack.

THE CONTENT OF THE BILL:

Under the Michigan Penal Code, it is a felony to willfully poison any food, drink, nonprescription medicine, pharmaceutical product, spring, well, reservoir, or public water supply if the poisoner knew or should have known that the material could be ingested or used by a person to his or her injury. An offense carries a penalty of up to five years in prison. An incident involving an amount of a toxic substance sufficient to cause death or that could inflict great bodily injury can result in imprisonment for life or for any term of years.

The bill would amend the penal code to increase the penalties for the above offenses as follows:

- A violation that does not damage property or cause physical injury or death to another would be a felony punishable by imprisonment for up to 15 years or a fine of not more than \$10,000, or both.
- A violation that damages another person's property would be a felony punishable by imprisonment for up to 20 years or a fine of not more than \$15,000, or both.
- A violation that causes physical injury to another individual, other than serious impairment of a body function, would be a felony punishable by imprisonment for not more than 25 years or a fine of not more than \$20,000, or both.
- A violation causing serious impairment of a body function to another would be a felony punishable by life imprisonment or imprisonment for any length of years or a fine of not more than \$25,000, or both. "Serious impairment of a body function" would be defined as it is in the Michigan Vehicle Code (MCL 257.58c).
- A violation that causes another person's death would be a felony punishable by mandatory life imprisonment without parole and the violator could also be fined not more than \$40,000.

Further, under current law a person who maliciously informs another that a poison or harmful substance has been or will be placed in food, over-the-counter drugs or pharmaceutical products, or water sources with the knowledge that the information is false and that the information is likely to be disseminated to the public is guilty of a felony punishable by imprisonment for not more than two years. The bill would increase the penalty for a first offense to a maximum term of imprisonment of four years or a fine of not more than \$2,000, or both. A second or subsequent violation would result in a felony

punishable by imprisonment for not more than ten years or a fine of not more than \$5,000, or both.

MCL 750.436

BACKGROUND INFORMATION:

The penalty structure for the deliberate poisoning of food, drugs, or a water supply was last amended by Public Act 87 of 1988. For more information, see the House Legislative Analysis Section's analysis of House Bill 4832 of 1988 dated 3-21-88.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would increase state and local correctional costs. In 1999, two offenders were sentenced under the statute; one received probation and one received a prison sentence. Any revenue received in penal fines is constitutionally dedicated to local libraries. (1-23-02)

ARGUMENTS:

For:

The world changed on September 11, 2001. Actions that were thought to be too heinous for a modern world now must be considered as possibilities. Therefore, laws must be reexamined and amended to adequately deter any terrorist attempts to harm the public by poisoning or contaminating the food, drug, or water supplies of the state. Further, adequate penalties must be established to punish those who would attack an innocent public. The bill would address this concern by greatly increasing the penalties for the willful poisoning of food, drugs, or public water supplies, yet would maintain the current protective standard requiring proof that the perpetrator knew or had reason to know that the poisoned product would be ingested by another to that person's harm. Though the penalties may seem harsh, they are virtually identical to current penalties prohibiting the manufacture, possession, use, and so on, of explosives and other harmful substances. It is time to give a clear message that terrorist acts, or the threat of a terrorist act, is not to be tolerated.

Against:

There is some merit to the argument that existing penalties for deliberately contaminating food, drugs, or water are inadequate to effectively deter or punish those who would mount a terrorist attack against the public. However, the bill makes no distinction between the actions of a would-be terrorist and the

actions of a single, perhaps mentally ill, person. Nor would the bill give a court the discretion to set a penalty for an offense in which a person died, like the offenses contained in the explosives chapter of the penal code; under the bill, regardless of the circumstances involved, the level of the involvement of the offender, or the age of the offender, the penalty would have to be life in prison without the possibility of parole. Terrorist organizations target young people for new recruits, and may use propaganda and other brainwashing techniques to manipulate these recruits to do the leadership's bidding. Since there is a possibility for these youths to be rehabilitated in prison, the court should have the discretion to weigh each case individually and to fit the years of imprisonment to the facts of the case.

Further, the bill would not be limited to a "terrorist activity". Conceivably, a person who poisoned an acquaintance could be subject to the same penalties as someone who, as part of a well-organized terrorist plan, placed a toxic substance in a municipal water supply. Also, the bill could apply to people or companies who pollute lakes and rivers with toxic waste products. Yes, these people should be punished, but perhaps not at the same level as a member of a terrorist organization carrying out a planned attack.

Against:

The bill is not needed. For several years, the federal Food and Drug Administration has worked with various food safety agencies at the local, state, and federal levels to increase the safety of the food delivery system from both natural and accidental threats. In a November 15, 2001 report addressing food safety and terrorism, the FDA reports that since September 11, it has increased its emergency response capability and, along with industry stakeholders, is "developing a Food Security Guidance that food producers can use to improve the protection of their products against tampering or terrorist actions." In addition, the newly formed Food Security Alliance is a group "dedicated to strengthening the physical security of industrial food production." Also, besides current state laws criminalizing the contamination of food, drug, and water supplies, there are also federal penalties that are triggered when contaminated products cross state lines.

Further, with regard to poisoning municipal water supplies, the U.S. Environmental Protection Agency's Office of Water reports that due to the successful treatment systems employed by municipalities, there is a very small chance that

someone could effectively poison a public water system. If anything, the greater danger to the state's water supply systems would come from infrastructure attacks. Other bills in the anti-terrorism package would more effectively deal with this threat. House Bill 5511 would add an attack on water supply facilities to the list of "vulnerable targets" that trigger enhanced penalties under the penal code. Another bill, House Bill 5349, would limit the public's access to information relating to security measures of public bodies. This would protect the infrastructure of public services by limiting access to documents that could supply information to potential terrorists such as blueprints for governmental buildings.

Response:

There is precedent for a state to enact laws that mirror federal law. Further, some acts prohibited under the bill would not necessarily trigger federal penalties. It is important for the state to enact laws to protect Michigan residents. Due to the increasing sophistication of organized attacks, and the potential for a large-scale impact, laws need to be tightened and toughened, both on the state and federal level.

POSITIONS:

The office of the attorney general supports the bill. (1-22-02)

The office of the governor supports the concept of the bill. (1-22-02)

The Prosecuting Attorneys Association of Michigan supports the concept of the bill. (1-22-02)

Analyst: 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.