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SENATE BILL 1054
Judiciary II Committee Substitute Adopted 5/27/04
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Short Title: Increase Methamphetamine Penalties.

(Public)

Sponsors:

Referred to:

May 12, 2004

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT THE UNLAWFUL DISTRIBUTION OF
2 METHAMPHETAMINE THAT PROXIMATELY RESULTS IN THE DEATH OF
3 A PERSON IS SECOND DEGREE MURDER, TO MAKE IT AN
4 AGGRAVATING FACTOR TO MANUFACTURE METHAMPHETAMINE IN A
5 LOCATION THAT ENDANGERS A CHILD, TO INCREASE THE CRIMINAL
6 PENALTY FOR THE UNLAWFUL MANUFACTURE OF
7 METHAMPHETAMINE, AND TO INCREASE THE CRIMINAL PENALTY FOR
8 THE POSSESSION OF PRECURSOR SUBSTANCES FOR
9 METHAMPHETAMINE, AS RECOMMENDED BY THE JOINT LEGISLATIVE
10 CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT
11 COMMITTEE, TO REQUIRE THE COMMISSION FOR HEALTH SERVICES
12 TO ESTABLISH DECONTAMINATION STANDARDS FOR PROPERTY USED
13 FOR THE MANUFACTURE OF METHAMPHETAMINE AND TO IMPOSE AN
14 ENHANCED SENTENCE FOR CONVICTION OF MANUFACTURE OF
15 METHAMPHETAMINE IF THE OFFENSE RESULTS IN SERIOUS INJURY TO
16 A LAW ENFORCEMENT OFFICER, PROBATION OR PAROLE OFFICER,
17 EMS EMPLOYEE, OR FIREFIGHTER.

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** G.S. 14-17 reads as rewritten:

20 **"§ 14-17. Murder in the first and second degree defined; punishment.**

21 A murder which shall be perpetrated by means of a nuclear, biological, or chemical
22 weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait,
23 imprisonment, starving, torture, or by any other kind of willful, deliberate, and
24 premeditated killing, or which shall be committed in the perpetration or attempted
25 perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other
26 felony committed or attempted with the use of a deadly weapon shall be deemed to be
27 murder in the first degree, a Class A felony, and any person who commits such murder
28

1 shall be punished with death or imprisonment in the State's prison for life without parole
2 as the court shall determine pursuant to G.S. 15A-2000, except that any such person
3 who was under 17 years of age at the time of the murder shall be punished with
4 imprisonment in the State's prison for life without parole. Provided, however, any
5 person under the age of 17 who commits murder in the first degree while serving a
6 prison sentence imposed for a prior murder or while on escape from a prison sentence
7 imposed for a prior murder shall be punished with death or imprisonment in the State's
8 prison for life without parole as the court shall determine pursuant to G.S. 15A-2000.
9 All other kinds of murder, including that which shall be proximately caused by the
10 unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or
11 preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or
12 methamphetamine, when the ingestion of such substance causes the death of the user,
13 shall be deemed murder in the second degree, and any person who commits such
14 murder shall be punished as a Class B2 felon."

15 **SECTION 2.** G.S. 15A-1340.16(d) is amended by adding a new subdivision
16 to read:

17 "(16a) The offense is the manufacture of methamphetamine and was
18 committed where a person under the age of 18 lives, was present, or
19 was otherwise endangered by exposure to the drug, its ingredients, its
20 by-products, or its waste."

21 **SECTION 3.** G.S. 90-95(b) reads as rewritten:

22 "(b) Except as provided in subsections (h) and (i) of this section, any person who
23 violates G.S. 90-95(a)(1) with respect to:

24 (1) A controlled substance classified in Schedule I or II shall be punished
25 as a Class H felon, except ~~that~~ as follows: (i) the sale of a controlled
26 substance classified in Schedule I or II shall be punished as a Class G
27 felon; felony, and (ii) the manufacture of methamphetamine shall be
28 punished as provided by subdivision (1a) of this subsection.

29 (1a) The manufacture of methamphetamine shall be punished as a Class C
30 felony unless the offense was one of the following: packaging or
31 repackaging methamphetamine, or labeling or relabeling the
32 methamphetamine container. The offense of packaging or repackaging
33 methamphetamine, or labeling or relabeling the methamphetamine
34 container shall be punished as a Class H felony.

35 (2) A controlled substance classified in Schedule III, IV, V, or VI shall be
36 punished as a Class I felon, except that the sale of a controlled
37 substance classified in Schedule III, IV, V, or VI shall be punished as a
38 Class H felon. The transfer of less than 5 grams of marijuana for no
39 remuneration shall not constitute a delivery in violation of
40 G.S. 90-95(a)(1)."

41 **SECTION 4.** G.S. 90-95(d1) reads as rewritten:

42 "(d1) Except as authorized by this Article, it is unlawful for any person to:

43 (1) Possess an immediate precursor chemical with intent to manufacture a
44 controlled substance; or

1 (2) Possess or distribute an immediate precursor chemical knowing, or
2 having reasonable cause to believe, that the immediate precursor
3 chemical will be used to manufacture a controlled substance.

4 Any person who violates this subsection shall be punished as a Class ~~H~~F felon."

5 **SECTION 5.** G.S. 90-95(d2) reads as rewritten:

6 "(d2) The immediate precursor chemicals to which subsection (d1) of this section
7 applies are those immediate precursor chemicals designated by the Commission
8 pursuant to its authority under G.S. 90-88, and the following (until otherwise specified
9 by the Commission):

- 10 (1) Acetic anhydride.
11 (2) Acetone.
12 ~~(1)~~(3) Anhydrous ammonia.
13 ~~(1a)~~(4) Anthranilic acid.
14 (5) Benzyl chloride.
15 ~~(2)~~(6) Benzyl cyanide.
16 (7) 2-Butanone (Methyl Ethyl Ketone).
17 ~~(3)~~(8) Chloroephedrine.
18 ~~(4)~~(9) Chloropseudoephedrine.
19 ~~(5)~~(10) D-lysergic acid.
20 ~~(6)~~(11) Ephedrine.
21 ~~(7)~~(12) Ergonovine maleate.
22 ~~(8)~~(13) Ergotamine tartrate.
23 (14) Ethyl ether.
24 ~~(9)~~(15) Ethyl Malonate.
25 ~~(10)~~(16) Ethylamine.
26 (17) Gamma-butyrolactone.
27 (18) Hydrochloric Acid.
28 ~~(10a)~~(19) Iodine.
29 ~~(11)~~(20) Isosafrole.
30 ~~(11a)~~(21) Lithium.
31 ~~(12)~~(22) Malonic acid.
32 ~~(13)~~(23) Methylamine.
33 (24) Methyl Isobutyl Ketone.
34 ~~(14)~~(25) N-acetylanthranilic acid.
35 ~~(15)~~(26) N-ethylephedrine.
36 ~~(16)~~(27) N-ethylepseudoephedrine.
37 ~~(17)~~(28) N-methylephedrine.
38 ~~(18)~~(29) N-methylpseudoephedrine.
39 ~~(19)~~(30) Norpseudoephedrine.
40 ~~(20)~~(31) Phenyl-2-propane.
41 ~~(21)~~(32) Phenylacetic acid.
42 ~~(22)~~(33) Phenylpropanolamine.
43 ~~(23)~~(34) Piperidine.
44 ~~(24)~~(35) Piperonal.

1 ~~(25)~~(36) Propionic anhydride.
2 ~~(26)~~(37) Pseudoephedrine.
3 ~~(27)~~(38) Pyrrolidine.
4 ~~(27a)~~(39) Red phosphorous.
5 ~~(28)~~(40) Safrole.
6 ~~(28a)~~(41) Sodium.
7 (42) Sulfuric Acid.
8 (43) Tetrachloroethylene.
9 ~~(29)~~(44) Thionylchloride.
10 (45) Toluene.
11 ~~(30)~~ Gamma-butyrolactone."

12 **SECTION 6.** Article 8 of Chapter 130A of the General Statutes is amended
13 by adding a new Part to read:

14 "Part 12. Decontamination Standards for Methamphetamine Sites.

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16 "**§ 130A-284. Decontamination of property used for the manufacture of**
17 **methamphetamine.**

18 For the protection of the public health, the Commission shall adopt rules establishing
19 decontamination standards to ensure that certain property is reasonably safe for
20 habitation. An owner, lessee, operator or other person in control of a residence or place
21 of business or any structure appurtenant to a residence or place of business, and who has
22 knowledge that the property has been used for the manufacture of methamphetamine,
23 shall comply with these rules. For purposes of this section, the terms "residence" and
24 "place of business" shall be defined as set forth in G.S. 130A-334."

25 **SECTION 6.1.** Chapter 15A of the General Statutes is amended by adding a
26 new section to read:

27 "**§ 15A-1340.16D. Enhanced sentence if defendant is convicted of manufacture of**
28 **methamphetamine and the offense resulted in serious injury to a law**
29 **enforcement officer, probation officer, parole officer, emergency medical**
30 **services employee, or a firefighter.**

31 (a) If a person is convicted of the offense of manufacture of methamphetamine
32 under G.S. 90-95(b)(1a) and it is found as provided in this section that a law
33 enforcement officer, probation officer, parole officer, emergency medical services
34 employee, or a firefighter suffered serious injury while discharging or attempting to
35 discharge his or her official duties, then the person shall have the minimum term of
36 imprisonment to which the person is sentenced for that felony increased by 60 months.
37 The maximum term of imprisonment shall be the maximum term that corresponds to the
38 minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e)
39 and (e1).

40 (b) An indictment or information for the offense of manufacture of
41 methamphetamine under G.S. 90-95(b)(1a) shall allege in that indictment or information
42 the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges
43 that the defendant committed the offense of manufacture of methamphetamine and that
44 as a result of the offense a law enforcement officer, probation officer, parole officer,
45 emergency medical services employee, or firefighter suffered serious injury while
46 discharging or attempting to discharge his or her official duties. One pleading is
47 sufficient for all felonies that are tried at a single trial.

48 (c) The State shall prove the issue set out in subsection (b) of this section beyond
49 a reasonable doubt during the same trial in which the defendant is tried for the offense

1 of manufacture of methamphetamine unless the defendant pleads guilty or no contest to
2 the issue. If the defendant pleads guilty or no contest to the offense of manufacture of
3 methamphetamine but pleads not guilty to the issue set out in subsection (b) of this
4 section, then a jury shall be impaneled to determine the issue.

5 (d) This section does not apply if the offense is packaging or repackaging
6 methamphetamine, or labeling or relabeling the methamphetamine container."

7 **SECTION 7.** Sections 1 through 5 of this act and Section 6.1 of this act
8 become effective December 1, 2004, and apply to offenses committed on or after that
9 date. Prosecutions for offenses occurring before the effective date of this act are not
10 abated or affected by this act, and the statutes that would be applicable but for this act
11 remain applicable to those prosecutions. Section 6 of this act becomes effective January
12 1, 2005. The remainder of this act is effective when it becomes law, at which time the
13 Commission for Health Services may adopt rules under Section 6 of this act.