

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-178
SENATE BILL 1054**

AN ACT TO PROVIDE THAT THE UNLAWFUL DISTRIBUTION OF METHAMPHETAMINE THAT PROXIMATELY RESULTS IN THE DEATH OF A PERSON IS SECOND DEGREE MURDER, TO MAKE IT AN AGGRAVATING FACTOR TO MANUFACTURE METHAMPHETAMINE IN A LOCATION THAT ENDANGERS A CHILD, TO INCREASE THE CRIMINAL PENALTY FOR THE UNLAWFUL MANUFACTURE OF METHAMPHETAMINE, AND TO INCREASE THE CRIMINAL PENALTY FOR THE POSSESSION OF PRECURSOR SUBSTANCES FOR METHAMPHETAMINE, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE, TO REQUIRE THE COMMISSION FOR HEALTH SERVICES TO ESTABLISH DECONTAMINATION STANDARDS FOR PROPERTY USED FOR THE MANUFACTURE OF METHAMPHETAMINE, TO IMPOSE AN ENHANCED SENTENCE FOR CONVICTION OF MANUFACTURE OF METHAMPHETAMINE IF THE OFFENSE RESULTS IN SERIOUS INJURY TO A LAW ENFORCEMENT OFFICER, PROBATION OR PAROLE OFFICER, EMS EMPLOYEE, OR FIREFIGHTER AND TO PROVIDE IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY FOR CERTAIN GOOD FAITH ACTIONS OF A PERSON PARTICIPATING IN A METHAMPHETAMINE WATCH PROGRAM.

The General Assembly of North Carolina enacts:

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

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

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

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

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

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

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

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

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

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

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

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

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

Any person who violates this subsection shall be punished as a Class H felon, unless the immediate precursor is one that can be used to manufacture methamphetamine."

SECTION 5. G.S. 90-95 is amended by adding a new subsection to read:

"(d1a) Except as authorized by this Article, it is unlawful for any person to:

- (1) Possess an immediate precursor chemical with intent to manufacture methamphetamine; or
- (2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture methamphetamine.

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

SECTION 6. G.S. 90-95(d2) reads as rewritten:

"(d2) The immediate precursor chemicals to which subsection (d1) and (d1a) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

- (1) Acetic anhydride.
- (2) Acetone.
- ~~(1)~~(3) Anhydrous ammonia.
- ~~(1a)~~(4) Anthranilic acid.
- (5) Benzyl chloride.
- ~~(2)~~(6) Benzyl cyanide.

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

SECTION 7. Article 8 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 12. Decontamination Standards for Methamphetamine Sites.

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

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

SECTION 8. Chapter 15A of the General Statutes is amended by adding a new section to read:

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

(a) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter suffered serious injury while discharging or attempting to discharge his or her official duties and that the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

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

(c) The State shall prove the issue set out in subsection (b) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the offense of manufacture of methamphetamine unless the defendant pleads guilty or no contest to the issue. If the defendant pleads guilty or no contest to the offense of manufacture of methamphetamine but pleads not guilty to the issue set out in subsection (b) of this section, then a jury shall be impaneled to determine the issue.

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

SECTION 9. Chapter 114 of the General Statutes is amended by adding a new article to read:

"Article 7.

"Methamphetamine Watch Program

"§ 114-43. Methamphetamine Watch Program – good faith actions immune from civil and criminal liability.

Anyone who, in good faith, does any of the acts listed in subdivisions (1) through (3) of this section as part of a Methamphetamine Watch Program approved by the Department of Justice is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action. In any proceeding involving liability, good faith is presumed. The actions for which immunity is granted under this section are as follows:

- (1) The person files a report with a law enforcement agency concerning the purchase or theft of ingredients used to manufacture methamphetamine.
- (2) The person cooperates in any law enforcement investigation concerning the manufacture of methamphetamine.
- (3) The person testifies in any judicial proceeding concerning the manufacture of methamphetamine."

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

In the General Assembly read three times and ratified this the 16th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:45 a.m. this 3rd day of August, 2004