

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: Senate Bill 1054 (Fourth Edition)

SHORT TITLE: Increase Methamphetamine Penalties.

SPONSOR(S): Senator Dalton

	FISCAL IMPACT				
	Yes (X)	No ()		No Estimate Available ()	
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>
GENERAL FUND					
Correction					
Sections 1, 4 - 7	\$ -	Cannot be determined			
Sections 2 & 3	\$ -	FY 05-06 range: \$336,420 - \$1,704,528		FY 06-07 range: \$716,131 - \$3,557,554 (see p. 4)	
Section 8	Amount cannot be determined; impact begins after 8 years				
There are no available prison beds in this time frame. This note assumes the use of contractual prison beds (\$57.92 per bed per day). In the long term, due to the limited availability of contractual beds, the State will need to construct new cells at \$69,500 per bed. Construction would have to begin in FY 04-05 for beds to be available in FY 07-08.					
Judicial					
Sections 1, 2, 4 - 8	Cannot be determined				
Section 3	FY 04-05 range (7 months): \$85,134 - \$464,366		FY 05-06 range: \$153,241 - \$835,859 (see p. 4)		
HHS -Public Health	Cannot be determined. See page 6 – Decontamination Rules				
ADDITIONAL PRISON BEDS*					
Section 1	For every 1 conviction, 1 bed each year				
Sections 2 & 3	-	15 – 76 beds	31 – 154 beds	increase in later years	
Sections 4 - 6	For every 6 convictions, 1 bed in year 1 and 2 beds in year 2				
Section 8	Amount cannot be determined; impact begins after 8 years				
POSITIONS:	See Assumptions & Methodology				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Health & Human Services (HHS)					
EFFECTIVE DATE: Sections 1 – 6, 8: December 1, 2004. Section 7: January 1, 2005. Section 9: when it becomes law.					

BILL SUMMARY:

Section 1 would add methamphetamine (“meth”) to the list of controlled substances for which an overdose death can lead to a charge of second-degree murder (a B2 felony). Under current law, a person who proximately causes a death by the unlawful distribution of methamphetamine could be charged with involuntary manslaughter (a Class F felony) or perhaps some other offense.

Section 2 would create an aggravated factor for the presence, exposure, or endangerment of a child as a result of methamphetamine manufacture. In conjunction with Section 3, offenders convicted of this offense with the aggravating factor would be sentenced in the aggravated range for Class C.

Section 3 of the proposed legislation would increase the penalties for the manufacture (other than packaging/labeling) of methamphetamine from a Class H to a Class C felony.

Sections 4 and 5 would increase the felony punishment level from Class H to Class F for possession of a precursor chemical with intent to manufacture methamphetamine or possession or distribution of a precursor chemical knowing or having reasonable cause to believe that it will be used to manufacture methamphetamine. Precursors are component substances used in drug manufacture, and are listed in G.S. 90-95. *Section 6* would add new precursor chemicals to the list in statute.

Section 7 would direct the Commission for Health Services to adopt rules establishing the decontamination standards in which any person in control of an applicable residence or place of business must comply. Failure to comply could result in an individual being subject to the general penalties that apply to public health laws, G.S. 130A-18 and 130A-25.

Section 8 would create a 24-month sentence enhancement for the serious injury of a law enforcement officer, probation/parole officer, emergency medical services employee or firefighter, during the commission of their duties, directly caused by one of the hazards associated with methamphetamine manufacture. The amendment also sets out the procedure for making the factual finding that might result in the greater prison sentence.

Section 9 would provide immunity from civil and criminal liability to retail merchants who, as part of a “Methamphetamine Watch Program,” report the purchases or theft of ingredients used to manufacture meth to law enforcement, cooperate in any law enforcement investigation of meth manufacture, or testify in judicial proceedings concerning meth manufacture.

Sections 1 through 6 and 8 would be effective December 1, 2004. Section 7 would be effective January 1, 2005, and the Commission for Health Services would be able to adopt rules when this legislation becomes law. Section 9 would be effective when the Bill becomes law.

ASSUMPTIONS AND METHODOLOGY:

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Section 1: Second Degree Murder

The Medical Examiner's Office reported three deaths due to methamphetamine overdose in 2003 and one meth-related fatal auto accident. However, many people who take methamphetamine also manufacture it for their own use, so we cannot determine whether another manufacturer or provider could have been charged in those deaths. Based on survey results from AOC, for every four second-degree murder (Class B2) charges under this bill there would be, on average, two trials and one plea to a lesser offense. If offenders are now charged under involuntary manslaughter (Class F), the AOC anticipates that the increase in penalty would increase the jury trial rate and court time for such cases. For example, the difference between the cost of a *guilty plea* for a Class F felony and a *jury trial* for a Class B2 felony is \$13,000. Every Class B2 conviction would lead to one prison bed, with an average minimum sentence of 174 months.

Sections 2 and 3: New Aggravating Factor & Increase Penalty for Manufacture

When legislation proposes to increase the felony class of an existing offense, the Sentencing Commission and AOC typically project court and prison impact based on the historic number of charges and convictions for the offense and the difference in average length of sentence, active sentence rate, and trial versus plea rate for the new offense class compared to the old offense class. However, this method is not necessarily appropriate for this particular legislation. First, we cannot identify the exact historic number of charges, because methamphetamine manufacture cannot be separated out from the data on other non-cocaine Schedule II controlled substances. Second, there has been a rapid increase in the number of meth labs found each year – 98 labs in 2002, 177 labs in 2003, 350 to 375 labs projected for 2004, and 500 labs projected for 2005. Therefore, using the number of charges and convictions in 2002 may significantly underestimate the number of charges and convictions that will occur in 2005.

Rather than rely solely on historic court data, we have identified four scenarios for the percentage of charges and convictions under Manufacture Schedule II Controlled Substance that are for manufacture – not packaging or labeling – of methamphetamine:

1. Assume 25 percent of charges and convictions are for meth.
2. Assume 50 percent of charges and convictions are for meth.
3. Assume 75 percent of charges and convictions are for meth.
4. Assume 100 percent of charges and convictions are for meth (AOC and Sentencing Commission believe that most of the charges and convictions are for meth).

For these Scenarios, we have also used the following projections and assumptions:

- SBI projected increase in labs – 2002 to 2004: 98 to 367 - increase by 3.74 times
- SBI projected increase in labs – 2003 to 2004: 177 to 367 - increase by 2.07 times
- SBI projected increase in labs – 2002 to 2005: 98 to 500 - increase by 5.10 times
- SBI projected increase in labs – 2003 to 2005: 177 to 500 - increase by 2.82 times

Note: SBI projection for 2004 is based on the number of labs found in the first four months of 2004 – 121 labs. If the same number of labs are found in 2005 as 2004, then 367 labs should be used. If, as the SBI projects, there are 500 labs found in 2005, then the 500 labs should be used. The (a) Scenarios use 367 labs, and the (b) Scenarios use 500 labs.

Assumptions:

- Meth manufacture charges and convictions will increase at same rate as meth labs.
- Conviction rate for meth is the same as average conviction rate for offense class. (The change in conviction rate from Class H to Class C: $(23.8)/(29.3) = 0.81$ times)
- Aggravated factor will be applied to 25 percent of charges and convictions (SBI estimate).

Scenario		Charges	Convictions	Prison Beds		FY 05-06 Costs	
				Yr 1	Yr 2	AOC	Prison
Scen. 1: 25% meth	(a) 367 labs	220	21	15	31	\$153,241	\$336,420
	(b) 500 labs	300	28	20	41	\$208,965	\$448,560
Scen. 2: 50% meth	(a) 367 labs	440	40	28	58	\$306,482	\$627,984
	(b) 500 labs	600	53	37	76	\$417,929	\$829,836
Scen. 3: 75% meth	(a) 367 labs	660	61	43	87	\$459,722	\$964,404
	(b) 500 labs	900	83	59	120	\$626,894	\$1,323,252
Scen. 4: 100% meth	(a) 367 labs	880	97	69	140	\$612,963	\$1,547,532
	(b) 500 labs	1,200	107	76	154	\$835,859	\$1,704,528

Please note:

1. An AOC survey of seven District Attorneys in counties with methamphetamine charges found an average of four manufacturing charges (excluding packaging/labelling) per meth lab. However, there may be four charges against one person, or one charge against four people.
2. The number of convictions does not take into account any convictions for a methamphetamine-related offense other than manufacturing due to plea bargains or other charges.
3. Due to the December 1 effective date, court costs will include seven months of FY 2004-05 and prison costs will begin in FY 2005-06. Court costs assume that one charge = one case.

Department of Correction

In FY 2002-03, 35 percent of the offenders convicted of the Class H offense of manufacturing a Schedule II substance received active sentences; the average sentence length was 7.6 months. Increasing these offenses to Class C would require all offenders to serve active sentences; the average sentence imposed for Class C felons in FY 2002-03 was 92 months. Under Scenario 1(a), there would be a need for 15 additional prison beds in FY 2005-06, and 31 additional prison beds in FY 2006-7 due to sentence lengths and revocations, for a cost of \$336,420 in FY 2005-06 and \$716,131 in FY 2006-07. Under Scenario 4(b), there would be a need for 76 additional prison beds in FY 2005-06, and 154 additional prison beds in FY 2006-07 due to sentence lengths and revocations, for a cost of \$1.7 million in FY 2005-06 and \$3.6 million in FY 2006-07.

Prison Costs Methodology: The average daily cost per prison bed is \$57.92. Fiscal Research uses the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost. Based on the most recent population projections and estimated available prison bed capacity, there are no surplus prison beds available for the five year Fiscal Note horizon and beyond. That means the number of beds needed is always equal to the projected additional inmates due to a bill.

Under Scenario 1(a), approximately 12 positions would be needed to supervise the additional inmates housed under this bill by 2006-07; under Scenario 4(b), 62 positions would be needed. These position totals include security, program, and administrative personnel at a ratio of one

employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

Community Corrections Savings: Over the short term, the Division of Community Corrections (DCC) will see a caseload decrease from this bill. DCC supervises offenders given non-active (community or intermediate) sentences, at a cost of \$1.75 to \$10.06 per offender per day. Class H felons serve an average of two years on non-active sentences. Sixty-five percent of offenders convicted of Schedule II manufacture were given Class H non-active sentences, and 42 percent of those offenders, on average, will have their probation revoked and be sent to prison.

Under this legislation, all offenders convicted of methamphetamine manufacture (except packaging/labeling) would serve active sentences, so DCC would no longer supervise these offenders as probationers. However, unlike Class H felons, Class C felons enter Community Corrections after prison, under post-release supervision, for a term of nine months. Once the Class C felons serve their terms (average minimum sentence is 92 months), DCC will see an increase in post-release supervision caseload.

Judicial Branch

For charges increased from Class H to Class C, the AOC anticipates that cases will be more complex, require more time, and have a higher rate of trials (5% instead of 1%). Costs increases primarily reflect increases in workload for superior court judges, clerks, court reporters, jury costs, and indigent defense. The AOC estimates an increase in costs of \$663 per case. The estimates on page 1 reflect seven months of costs for FY 2004-05 and annual inflation of five percent. The estimates also reflect AOC's anticipated indigency rate of 100 percent.

The number of positions required by AOC will depend on the number of charges. For example, under Scenario 1(a) (220 charges) the systemwide increase in workload would be the equivalent of just under one Assistant District Attorney position. Under Scenario 4(b) (1,200 charges), the systemwide increase would be the equivalent of just under four Assistant District Attorney positions and about two-thirds of a position each for a Superior Court Judge, Court Reporter, and Deputy Clerk.

The AOC estimates that, at a minimum, the aggravating factor would create two hours of additional work at the guilt/innocence and sentencing phases. If, for example, the aggravated factor added two hours per case to trials, there would be an additional 165 to 225 hours of court time required. In addition, if there were two additional hours per conviction for pleas, another 11 to 54 hours of court time would be required. Six hours of court time cost \$1,510, and six hours of indigent defense cost \$390. Court costs would increase by 5 percent each year.

Sections 4 - 6: Precursor Chemicals

The AOC does not have an offense code for this offense, so we cannot determine the number of historical charges or convictions. However, in a search of the free text field, the Sentencing Commission discovered six convictions for possession of a precursor chemical in FY 2002-03 (the free text field is optional, so not all convictions may have been captured, and we cannot determine whether these offenses related to methamphetamine precursors). We also cannot determine the increase in offenses resulting from the addition of new precursors to the list.

Judicial Branch

The AOC notes that, for a higher felony offense, litigation would be more vigorous, time-consuming, and costly, and a greater percentage of cases would be resolved by trial rather than guilty plea. The difference in cost between a *guilty plea* for a Class H felony and a *jury trial* for a Class F felony is approximately \$8,000. Without additional data, we cannot project the impact of this bill on the court system.

Department of Correction

The Sentencing Commission estimates that, for every six convictions that are increased from a Class H to a Class F, there will be the need for one additional prison bed in the first year and two additional beds in the second year due to sentence lengths and revocations. Each prison bed costs approximately \$22,428 per year. There would be some savings for the Division of Community Corrections, as a greater percentage of Class F felons (50%) versus Class H felons (36%) serve active sentences. These savings would range from \$1.75 to \$10.06 per offender per day.

Section 7: Decontamination Rules

Department of Health & Human Services

Due to the rules adopted by the Commission for Health Services, there would be a cost associated with local public health officials enforcing the abatement of a public health threat through the court system when cleanup does not properly occur and costs associated with a local public health official's time in an inspection of a site. The enforcement and inspection would only occur in response to a request or complaint. The amount of the cost is undeterminable at this time.

Department of Correction

A person who violates the rules adopted by the Commission or a local health board may be convicted of a misdemeanor. If a person was convicted of a misdemeanor and given supervised probation or community service, the Division of Community Corrections would be impacted.

Judicial Branch

If a person violates this rules adopted by the Commission or a local health board, the Commission or board may institute an action for injunctive relief in Superior Court. If this new rule results in increased regulation and enforcement, there may be court actions appealing enforcement actions or to obtain injunctions or other relief. The AOC has no data to estimate the number of such matters or the impact on the courts. Depending on the number and complexity of such proceedings, the court impact could be significant. A person who violates these rules may also be charged with a misdemeanor. The AOC has no data available from which to estimate the number of charges that would arise from this provision. There could be an increase in workload affecting primarily district court judges, district attorneys, clerks, defense counsel, and indigent defense.

Section 8: Sentence Enhancement for Injury to Law Enforcement/Public Safety Employee

Under current law, there is an aggravating factor for offenses that proximately cause serious injury to a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

This section would create a 24-month sentence enhancement if a law enforcement officer, probation/parole officer, emergency medical services employee or firefighter is seriously injured in the course of their duties by the hazards associated with methamphetamine manufacture. This section has long-term potential fiscal impact, but we are unable to determine the amount. Section 3 increases the penalty for manufacture of methamphetamine from a Class H to a Class C felony. In conjunction with Section 8, an offender whose manufacturing of meth causes serious injury to a law enforcement officer or firefighter could be charged *either* (1) in the aggravated range of Class C *or* (2) in the presumptive range of Class C plus 24 months. Section 2 also creates the aggravating factor of child endangerment. If applicable, this factor or another aggravating factor in current statute¹ could be applied to the Class C manufacturing offense. Thus, an offender who, in the course of manufacturing methamphetamine, both endangers a child and inflicts serious injury on a law enforcement officer or firefighter, could be charged with Class C Aggravated *plus* a sentence enhancement of 24 months. The longest possible minimum sentence under each option is listed below (in number of months):

	Prior Record Level					
	I	II	III	IV	V	VI
Manufacture Meth & Seriously Injure Law Enforcement/Firefighter						
Options:						
Class C Aggravated	92	125	145	167	188	210
Class C Presumptive + 24 months	109	136	152	169	187	204
Plus Child Endangerment or Other Existing Aggravating Factor¹						
Options:						
Class C Aggravated	92	125	145	167	188	210
Class C Aggravated + 24 months	128	163	181	203	224	244

For example, the longest minimum sentence an offender with no prior record could receive with the aggravating factor is 7.7 years. With the sentence enhancement, the longest minimum sentence would be 9.1 years. If another aggravating factor could be applied, the longest minimum sentence with the sentence enhancement would be 10.7 years. Thus, this section has the potential to increase sentence lengths and therefore increase the need for prison beds over the long term.

It is likely that there will be some cases in which the enhanced sentence could be applied. The SBI reports that, in 2003, 27 law enforcement officers and firefighters were injured by methamphetamine labs. The number of labs is projected to increase in 2004, and this may impact the number of injuries.

We do not know whether, in the cases in which officers were injured, there were offenders charged and convicted of manufacturing, whether the aggravating factor of injury to a law enforcement or other officer was applied, or whether the new aggravating factor of child endangerment proposed

¹ § 15A-1340.16 lists other aggravating factors in addition to the serious injury of a criminal justice or public safety officer. Examples include joining with other offenders to commit the offense, commission of the offense while on pre-trial release for another crime, sale or delivery of a controlled substance to a minor, etc. These other factors, if applicable, could be used to move the offender into the aggravated sentencing range.

in Section 2 could have been applied. Furthermore, we do not know whether a District Attorney will choose, in the future, to indict with the sentencing enhancement, rather than the aggravating factor for Class C manufacturing, or whether the offender would be sentenced to the enhanced sentence or plea to Class C aggravated, Class C presumptive, or another offense.

Judicial Branch

It is possible that the sentencing enhancement would increase the time required for each case. However, we cannot determine how often this enhancement would be used in the indictment or sentencing phases, and we cannot project the increase in workload, if any, that would result from the use of this enhancement.

Department of Correction

The average minimum sentence for a Class C felon is 92 months (more than seven years). This enhancement would add an additional 24 months (2 years) to the sentences. Since the offender would already be in prison for at least the first 92 months under the Class C (longer if the aggravating factor already in statute was used), the earliest potential impact due to the sentencing enhancement would be eight years in the future (FY 2011-12).

Section 9: Retail Merchant Immunity from Liability

We do not project a direct impact from this section. If more retail merchants report suspicious purchases or cooperate with law enforcement as a result of this section, and those activities lead to more charges for possession of precursors or manufacture of methamphetamine, there could be an impact on the court and prison systems.

SOURCES OF DATA: Division of Public Health; State Bureau of Investigation; Department of Correction; Judicial Branch; and, North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

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