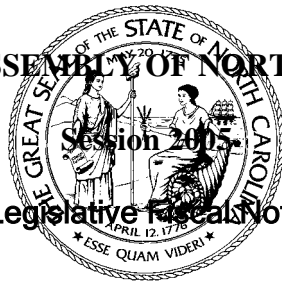


GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 248 (Third Edition)

SHORT TITLE: Meth. Lab Prevention Act.

SPONSOR(S):

		FISCAL IMPACT				
		Yes (X)	No ()	No Estimate Available ()		
		<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND REVENUE						
Agriculture	(R)	\$ 87,500	\$175,000	\$175,000	\$175,000	\$175,000
GENERAL FUND EXPENDITURES						
Correction		Exact amount cannot be determined; impact could be substantial (see p. 4)				
Judicial		Exact amount cannot be determined; impact could be substantial (see p. 4)				
HHS	(R)	\$27,950	\$75,900	\$78,177	\$80,522	\$82,938
	(NR)	\$40,000	\$0	\$0	\$0	\$0
NCGA		Refer to assumptions for Section 7 on pages 5-6.				
Agriculture	(R)	\$ 63,019	\$131,087	\$136,404	\$141,898	\$147,538
	(NR)	\$ 15,000	\$0	\$0	\$0	\$0
Local Gov'ts		No estimate available				
ADDITIONAL PRISON BEDS* Exact amount cannot be determined						
POSITIONS: (cumulative)						
Correction/Judicial		Exact amount cannot be determined				
HHS		0.5	1.0	1.0	1.0	1.0
Agriculture		3.0	3.0	3.0	3.0	3.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Health & Human Services; Department of Justice; Department of Agriculture; NC General Assembly; county governments						
EFFECTIVE DATE: G.S. 90-113.59 as enacted by Section 1, and Sections 7 - 10 become effective when the act becomes law. The remainder of Section 1, and Sections 2 - 6 become effective January 15, 2006.						
*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.						

BILL SUMMARY:

Section 1 creates a new Article in Chapter 90 of the General Statutes titled "Control of Methamphetamine Precursors." Places restrictions on the sale of certain products containing pseudoephedrine, requires employee training, establishes criminal penalties for violating the sales restrictions, and provides a mechanism to exempt qualifying products from the restrictions.

Sections 2 and 3 add wholesale distributors of pseudoephedrine products to the licensing provisions of Article 12A (Wholesale Prescription Drugs) of Chapter 106 (Agriculture), place record-keeping and other requirements on these wholesalers, and require a monthly report to the State Bureau of Investigation.

Section 4 creates a new aggravating factor for the manufacture of methamphetamine in one of four or more contiguous dwellings. Manufacture of methamphetamine is a Class C felony.

Section 5 prohibits certain persons (itinerant merchants, peddlers, specialty market operators, and specialty market vendors as defined by statute) from selling or offering to sell any product that contains pseudoephedrine as the sole active ingredient or in combination with other active ingredients or any product that is defined as a drug by G.S. 106-121(6).

Section 6 creates a rebuttable presumption that no conditions of release on bond would assure the safety of the community if the State shows by clear and convincing evidence that (i) the person was arrested for manufacturing methamphetamine, or possessing or distributing an immediate precursor with reason to know that it would be used to manufacture methamphetamine; and (ii) he is dependent on or regularly uses methamphetamine, and committed the violation in order to maintain or facilitate such activity.

Section 7 creates a Legislative Commission on Methamphetamine Abuse.

Section 8 directs the State Bureau of Investigation to study issues regarding the use of pseudoephedrine products and report annually.

(Source: Adapted from Sentencing and Policy Advisory Commission and Administrative Office of the Courts summaries)

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill 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 any criminal penalty bill.

This bill has the potential to increase court, prison, and community corrections costs. Because this bill creates new offenses, the amounts of these increases cannot be projected.

This bill creates 13 new offenses:

- Eight offenses relate to the retail sale of pseudoephedrine products, and are punishable as a Class A1 misdemeanor for the first conviction, and a Class I felony for a second or subsequent conviction. [G.S. 90-113.52(a – e), G.S. 90-113.53(a), G.S. 90-113.54]
- Three offenses relate to employees and purchasers involved in the non-prescription purchase, delivery, receipt, or acquisition of pseudoephedrine products in greater quantities than permitted by this bill. Violations are punishable as a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for the second offense, and a Class I felony for a third or subsequent offense. [G.S. 113.52(c); G.S. 90-113.53(a)-(b)]
- One new offense relates to the wholesale distribution of pseudoephedrine products, and is punishable as a Class H felony. [G.S. 106-145.6]
- One new offense prohibits certain persons (itinerant merchants, peddlers, specialty market operators, and specialty market vendors as defined by statute) from selling or offering to sell pseudoephedrine or any product that is defined as a drug by G.S. 106-121(6). Violations are punishable as a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for the second offense, and a Class I felony for a third or subsequent offense. [G.S. 66-254.1]
- In addition, the Sentencing Policy and Advisory Commission has noted that new G.S. 90-113.53(a), relating to acquiring an amount in excess of nine grams of pseudoephedrine in 30 days, may be charged as possession of a methamphetamine precursor, a Class F felony.

The bill also increases the punishment for one offense:

- Creates a new aggravating factor for the manufacture of methamphetamine in one of four or more contiguous dwellings. This allows a sentence that is up to 25 percent longer than the longest sentence in the presumptive sentence range. [G.S. 15A-1340.16(d)(16b)] In 2003-04, Class C offenses in the aggravated range averaged 21 months longer than sentences in the presumptive range. The Department of Justice reports that, in 2004, there were 10 meth labs found in dwellings that would meet this condition. The number of meth labs found in North Carolina has increased each year, from 34 labs in 2001 to 322 labs in 2004, and the Department of Justice anticipates further increases this year. Therefore, the number of meth labs found in dwellings that meet the condition of the aggravated factor could be greater than 10 in 2005.

Summary of Impact on Department of Correction and Court System

Offense	Criminal Penalty	Prisons*	Fiscal Impact	
			Community Corrections*	Judicial
Sections 1 & 6: Limitations on retail sales – purchasers, employees, certain merchants	Potential increase in Class 1 misdemeanors	Payments to jails for misdemeanants (sentences > 30 days at \$18/day)	unknown: 81% non-active, mostly \$1.87 per offender per day	unknown: \$284/plea \$3,224/trial
Sections 1 & 6: Limitations on retail sales – retailers, purchasers, employees, certain merchants	Potential increase in Class A1 misdemeanors	Payments to jails for misdemeanants (sentences > 30 days at \$18/day)	unknown: 76% non-active, mostly \$1.87 per offender per day	unknown: \$286/plea \$3,601/trial
Records of transactions	Potential increase in Class I felonies	unknown; example: <u>10 convictions</u> = 1 bed in FY 06-07 3 beds in FY 07-08	unknown: 89% non-active, \$1.87 - \$10.94 per offender per day	unknown: \$330/plea \$5,835/trial
Section 1: Transaction limits	Potential increase in Class F felonies (possession of a meth precursor w/ intent to manufacture)	unknown; example: <u>2 convictions</u> = 1 bed in FY 06-07, 3 beds in FY 07-08	unknown: 53% non-active, \$10.94 per offender per day (\$1.87 per day after 6 months)	unknown: \$397/plea \$8,179/trial
Section 2: Wholesale distribution violations	Potential increase in Class H felonies	unknown; example: <u>3 convictions</u> = 1 bed in FY 06-07 2 beds in FY 07-08	unknown: 63% non-active, \$1.87 - \$10.94 per offender per day	unknown: \$360/plea \$6,224/trial
Section 4: Aggravating factor for meth manufacture	Potential increase of up to 25% in length of some Class C sentences	Average increase of 21 months for aggravated sentences; no impact in five-year fiscal note horizon	none	Unknown
Section 6: Consider meth in bail hearings	Potential increase in length and complexity of bail hearings	(See "Local Governments")		Unknown

* Criminal penalties effective January 1, 2006 will not affect community corrections or prison population and bed needs until FY 2006-07 due to the lag time between when an offense is committed and an offender is sentenced

DOC Costs: The Department of Correction would incur costs due to new convictions resulting in prison time or increased probationers supervised by the Division of Community Corrections. Additional long-term prison costs would result from increased time served due to the expansion of the aggravated factor, but these costs would not appear in the five-year fiscal note horizon. 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.

In FY 2006-07, each prison bed, on average, is estimated to cost \$24,020 to operate. Division of Community Corrections costs will range from \$1.87 (probation) to \$10.94 (intensive probation) per offender per day. (Due to the January 1 effective date and the lag time between charge and conviction, DOC costs will begin in 2006-07.)

Court Costs: The Administrative Office of the Courts (AOC) anticipates an increase in workload for district attorneys, district court judges, superior court judges, court reporters, clerks, and indigent defense counsel. In addition to new misdemeanor and felony filings, the AOC anticipates cost increases from the expanded aggravated factor, due to a more vigorous defense and prosecution of those cases and a potential increase in the number, complexity, and length of jury trials. Finally, AOC data for calendar year 2004 indicate that 22 offenders were charged with methamphetamine manufacture or possession of a precursor. Under Section 7 of this bill, AOC anticipates that the bail hearings for those offenses will be longer and more complex.

Local Governments: Section 6 requires the court to consider methamphetamine use or manufacture when determining bail and other pretrial issues. If this requirement results in fewer offenders released prior to trial, there will be an impact on county jails.

Department of Health & Human Services: Section 1 authorizes the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) to exempt a retailer from the requirements for restricting and recording access to pseudoephedrine products if certain conditions are met, and requires the Commission to approve the form retailers use to record information on pseudoephedrine purchasers. Section 1 also authorizes the Commission, by rule, to exempt pseudoephedrine products to or from retail restrictions that the Commission finds are not used in the illegal manufacture of methamphetamine or other dangerous controlled substances, and to add products or modify storage requirements. This authority will not increase costs to the Commission because it is discretionary and the Commission exists to make rules. Any changes to the drug list would be handled during its normal course of business.

The Commission is also directed to develop training and education programs for employees, and may conduct employee-training programs for retail establishments. The training program would entail the one-time development of brochures, videos, and train-the-trainer information that would be used repeatedly. The program would also require ongoing program management and support. The program and materials development would likely occur through a contract with an outside entity for these products. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services would provide support for this training effort through initially ½ time Program Manager and in year two one full-time Program Manager at a pay grade 71, the midpoint (\$43,000 + benefits) who would further develop, manage, and monitor the training program. It is assumed there would be costs associated with the development and dissemination of materials and conducting some training throughout the state. The funding needed for the first year of development for the program is estimated to cost approximately \$40,000 for the contract and ongoing expenses and the ½ time Program Manager would cost \$27,950 (including benefits). Beginning in year two, it is estimated that a full time Program Manager is needed in addition to \$20,000 for reproducing training materials and other operating expenses. The following years are showing growth at 3% annually.

Department of Justice: Section 3 requires wholesale distributors of pseudoephedrine products to submit monthly reports to the State Bureau of Investigation (SBI) within DOJ on all transactions involving pseudoephedrine products with persons or firms located within North Carolina. These reports will be submitted electronically and can therefore be processed by the SBI without additional resources.

North Carolina General Assembly: Section 7 creates a 22-member Legislative Commission on Methamphetamine Abuse. The President Pro Tempore will appoint two (2) members of the Senate, and a representative from the NC Association of County Directors of Social Services, NC Association of Community Pharmacists, Consumer Healthcare Products Association, NC Narcotic Enforcement Officers' Association, and the National Association of Chain Drug Stores. The Speaker of the House of Representatives will appoint two (2) members of the House of Representatives and a representative from the NC Retail Merchants Association, Conference of District Attorneys of NC, NC Sheriffs' Association, Inc., NC Association of Chiefs of Police, and a child advocacy organization. The eight (8) remaining members will represent the Attorney General, Governor, Secretary of Health and Human Services, Director of the State Bureau of Investigation, Commissioner of Agriculture, Chair of the Commission on Mental Health, Director of the National Drug Intelligence Center, and Administrator of the United States Drug Enforcement.

In accordance with Section 7(e) the commission will have two (2) cochairs selected by the President Pro Tempore and Speaker of the House of Representatives with initial terms to commence on September 1, 2005. Additionally, Section 7(h) indicates the cochairs will convene meetings as necessary, but not less than four times a year. Following the directive of Section 7(h), the estimated minimum annual cost of the commission is \$26,416. This cost is allocated as follows: \$4,256 for legislative members' subsistence and travel; \$18,000 for non-legislative members' subsistence and travel; \$2,660 for clerical support; and \$1,500 for postage and telephone, supplies, and copying and printing. If the commission meets more than the minimum number of required meetings, the additional cost per meeting for members and clerical staff is \$6,229.

The Commission shall report its activities and recommendations, including any legislative proposals, to the General Assembly beginning November 1, 2005, and annually thereafter.

A separate appropriation is not required to support the commission, as funding will be allocated from the General Assembly's budget for the Legislative Services Commission.

Department of Agriculture: Sections 2 and 3 add wholesale distributors of pseudoephedrine products to the licensing provisions of Article 12A (Wholesale Prescription Drugs) of Chapter 106 (Agriculture) and requires the distributors to submit monthly reports. According to the Department of Agriculture the PCS would require approximately 500 additional manufacturers to be licensed. Currently the Department has two Drug Specialists who license 380 manufacturers statewide each year. This legislation would potentially double the number of manufacturers the Department would license and inspect. The Department has determined that the legislation would require 3 new positions. Two additional Drug Specialists (Pay Grade 71) and one Processing Assistant IV (Pay Grade 59) would be required.

The total salary costs for the three additional positions reflected in the box on page one is based on the minimum hiring salary for each position. The Fiscal Research Division uses the minimum hiring rate to determine position costs. Based on the minimum hiring rate for each of the three

positions the total salary for the positions is \$90,144 (\$21,576+\$34,284+\$34,284). The Department has stated that it would be unlikely that they could fill the positions at the minimum salary and below you will find that the anticipated salary cost estimated by the Department to be \$108,729 (\$26,233+\$41,248+\$41,248).

Grade	Hiring Salary	Minimum	Midpoint	Maximum	DOA proposed
59	\$20,626	\$21,576	\$26,233	\$31,839	\$26,233
71	\$32,729	\$34,284	\$43,046	\$53,363	\$41,248
71	\$32,729	\$34,284	\$43,046	\$53,363	\$41,248

Total recurring position costs (based on the minimum salary rate) is estimated to be \$126,038 (\$112,578 salary and benefits + \$13,460 operating expenses) and \$15,000 in non-recurring expenses (computer and other office equipment) for the 2005/2006 fiscal year. The \$63,019 amount in the box on the first page assumes the positions would be effective January 1, 2006.

Assuming that the Department will charge a minimum fee of \$350 per license application for the anticipated new wholesalers, the annual revenue would be approximately \$175,000 (\$350 * 500 new wholesalers). The revenue amount shown in the box on page one for FY 05-06 is 50% of the anticipated annual revenue for the first year due to an effective date of January 1, 2006.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Justice; and, Department of Agriculture.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Chloe Gossage, Michele Nelson, Susan Morgan, and L. Carol Shaw

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



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Signed Copy Located in the NCGA Principal Clerk's Offices