

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

BILL NUMBER: House Bill 1537 (First Edition)
SHORT TITLE: Manufacture of Meth/Increase Penalty.
SPONSOR(S): Representatives Kiser and Haire

	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	\$ -	FY 05-6 range: \$336,420 - \$1,704,528			(see p. 3)
		FY 06-7 range: \$716,131 - \$3,557,554			
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 04-5 for beds to be available in FY 07-8.					
Judicial		FY 04-5 range (7 months): \$85,134 - \$464,366			
		FY 05-6 range: \$153,241 - \$835,859			(see p. 3)
ADDITIONAL PRISON BEDS*	-	15 – 76 beds	31 – 154 beds	increase in later years	
POSITIONS:					
(cumulative)	-	6 - 30	12 - 62	increase in later years	
DOC					
AOC	Cannot be determined				(see p. 4)
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: December 1, 2004					
<i>*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 and the Judicial Department.</i>					

BILL SUMMARY: The bill would increase the penalties for the manufacture (other than packaging/labeling) of methamphetamine from a Class H to a Class C felony.

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 (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

When legislation proposes to increase the felony class of an existing offense, the Sentencing Commission and Administrative Office of the Courts (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)

Scenario		Charges	Convictions	Prison Beds		FY 05-6 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/labeling) 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 2006-07 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: In FY 2002-03, the average daily cost per prison bed was \$57.92. Fiscal Research uses the Department of Correction (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 Class H 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, district attorneys, 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.

TECHNICAL CONSIDERATIONS: In conjunction with HB 1536 (Manufacture Meth/Endanger Children), offenders charged and convicted of manufacture with a child present or otherwise endangered could be sentenced in the aggravated range of Class C.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Chloe Gossage

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



DATE: June 22, 2004

Signed Copy Located in the NCGA Principal Clerk's Offices