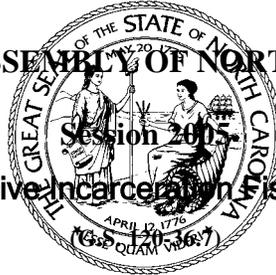


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Incarceration Fiscal Note

REVISED

**BILL NUMBER:** Senate Bill 686 (Fourth Edition)

**SHORT TITLE:** Meth. Lab Prevention Act.

**SPONSOR(S):**

		<b>FISCAL IMPACT</b>				
		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>
<b>GENERAL FUND REVENUE</b>						
<b>Agriculture</b>	(R)	\$ 87,500	\$175,000	\$175,000	\$175,000	\$175,000
<b>GENERAL FUND EXPENDITURES</b>						
<b>Correction</b>		Exact amount cannot be determined; impact could be substantial (see p. 4)				
<b>Judicial</b>		Exact amount cannot be determined; impact could be substantial (see p. 4)				
<b>HHS</b>		No impact anticipated				
<b>Justice</b>	(R)	\$199,618	\$212,957	\$218,196	\$223,431	\$228,756
	(NR)	\$46,508				
<b>Agriculture</b>	(R)	\$ 63,019	\$131,087	\$136,404	\$141,898	\$147,538
	(NR)	\$ 15,000	\$0	\$0	\$0	\$0
<b>Local Gov'ts</b>		No estimate available				
<b>ADDITIONAL PRISON BEDS*</b> Exact amount cannot be determined						
<b>POSITIONS: (cumulative)</b>						
<b>Correction/Judicial</b>		Exact amount cannot be determined				
<b>Justice</b>		3.0	3.0	3.0	3.0	3.0
<b>Agriculture</b>		3.0	3.0	3.0	3.0	3.0
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Department of Health & Human Services; Department of Justice; Department of Agriculture; county governments						
<b>EFFECTIVE DATE:</b> G.S. 90-113.60 as enacted by Section 1, and Sections 8 and 9 become effective when the act becomes law. G.S. 90-113.58 as enacted by Section 1 becomes effective September 1, 2005. The remainder of Section 1, and Sections 2, 3, 4, 5, 6 and 7 become effective January 1, 2006.						
<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 as well as the Judicial Department.</i>						

**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 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. Also creates the Methamphetamine Abuse Task Force. (**Section 8** requires that the Task Force report annually to the Justice and Public Safety Subcommittee of the Joint Legislative Commission on Governmental Operations.)

**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** makes larceny of any product containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients a Class H felony without regard to the value of the property. Currently, this conduct would be punished as misdemeanor larceny (Class 1 misdemeanor) if the value of the property was \$1,000 or less.

**Section 6** 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 7** 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.

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

*See pages 7 – 8 for a description of each criminal offense in this bill*

## **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 12 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]
- Two 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. [Sections 3 and 4: 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 two offenses:***

- 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.
- G.S. 14-72(b)(6) makes larceny of any product containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients a Class H felony without regard to

the value of the property. Currently, this conduct would be punished as misdemeanor larceny (Class 1 misdemeanor) if the value of the property was \$1,000 or less. This excludes larceny by an employee, which is already a felony under G.S. 14-74. The number of charges and convictions cannot be projected. However, as an example, if one percent of larceny and shoplifting/concealment of goods charges and convictions were elevated to Class H felonies under this bill, there would be approximately 313 Class 1 and 73 Class 3 misdemeanor charges increased to Class H charges, and 144 Class 1 and 29 Class 3 misdemeanor convictions increased to Class H convictions.

### Summary of Impact on Department of Correction and Court System

Offense	Criminal Penalty	Prisons*	Fiscal Impact	
			Community Corrections*	Judicial
<b>Sections 1 &amp; 6:</b> 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
<b>Sections 1 &amp; 6:</b> 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
<b>Section 1:</b> 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
<b>Section 2:</b> 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
<b>Section 4:</b> 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
<b>Section 5:</b> Larceny of pseudoephedrine	Potential increase in Class H felonies (elevated from Class 1 misdemeanors)	unknown; example: <u>3 convictions</u> = 1 bed in FY 06-07 2 beds in FY 07-08	unknown: decrease in non-active sentences, but increase in cost of those sentences	unknown: \$75/plea \$2,100/trial
<b>Section 7:</b> 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 7 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 from retail restrictions pseudoephedrine products that the Commission finds are not used in the illegal manufacture of methamphetamine or other dangerous controlled substances. 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.

***Department of Justice:*** Section 1 creates the North Carolina Methamphetamine Abuse Task Force supported by the Department of Justice. The bill requires DOJ to provide office space and staffing for the task force and related task force responsibilities. The Department has stated that it does not have the professional and support staff or the office space to provide support to the Task Force. Three new positions would be required: two grade 72 Criminal Justice Specialist IVs and a grade 62 Administrative Secretary III. One Specialist would focus on task force professional support and retail reporting analysis, illegal retail trend analysis and enforcement. The second Specialist would oversee training program development, implementation, rule development and training compliance activities. If this bill is enacted, the Department plans to transfer experienced individuals into the new positions to staff the task force, and has provided position costs accordingly. These position costs are above the mid-point of the salary grade ranges. The Department believes that it would be unable to hire personnel at the midpoint who could adequately staff the task force. The Fiscal Research Division uses the minimum of the salary

range for the purpose of estimating position costs in fiscal notes; therefore, the costs in the front page box reflect the minimum salary for each position grade.

<b>Grade</b>	<b>Hiring Salary</b>	<b>Minimum</b>	<b>Midpoint</b>	<b>Maximum</b>	<b>DOJ proposed</b>
62	\$23,037	\$24,108	\$29,500	\$35,962	\$32,000
72	\$34,050	\$35,671	\$44,923	\$55,795	\$47,000

Total position costs (using the minimum salary), including benefits, office space, and related expenditures, would be \$157,118 recurring and \$46,508 non-recurring (vehicles, computer equipment, and office equipment). In addition, the Department estimates that task force meetings would require financial support as follows:

- \$32,000 Per diem reimbursement for 20 task force members (\$400 each, 4 meetings/yr)
- \$ 3,000 Outside consultant/expert testimony travel costs related to board agenda items
- \$ 5,500 Printing, office supply and postage costs
- \$ 2,000 Room rental, refreshment and other misc. meeting planning expenses
- \$42,500 Total

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. DOJ has assumed that these reports will be submitted electronically and can therefore be processed without additional resources.

**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 bill 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).

<b>Grade</b>	<b>Hiring Salary</b>	<b>Minimum</b>	<b>Midpoint</b>	<b>Maximum</b>	<b>DOA proposed</b>
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 FY05/06 is 50% of the anticipated annual revenue for the first year due to an effective date of January 1, 2006.

### **Summary of Each New Offense**

***G.S. 90-113.52(a)*** makes it a criminal offense for a retailer to willfully and knowingly sell a product whose sole active ingredient is pseudoephedrine in strength of 30 milligrams or more per tablet or caplet loose in bottles (must be sold in blister packages). Violation would be a Class A1 misdemeanor for the first conviction, and a Class I felony for a second or subsequent conviction.

***G.S. 90-113.52(b)*** makes it a criminal offense for a retailer to willfully and knowingly offer pseudoephedrine products for retail sale by self-service. The statute sets out the guidelines for establishments that have a pharmacy on the premises and those that do not. Violation would be a Class A1 misdemeanor for the first conviction, and a Class I felony for a second or subsequent conviction.

***G.S. 90-113.52(c)*** makes it a criminal offense for a retailer that does not have a pharmacy on the premises to willfully and knowingly fail to maintain continuous recorded video surveillance of the portion of the premises where the pseudoephedrine products are available for sale. Violation would be a Class A1 misdemeanor for the first conviction, and a Class I felony for a second or subsequent conviction.

***G.S. 90-113.52(d)*** makes it a criminal offense for a retailer to willfully and knowingly sell a pseudoephedrine product at retail without a prescription to a person less than 18 years of age. This subsection also makes it a criminal offense for a retailer to willfully and knowingly fail to record the name and address of the purchaser and the pseudoephedrine product purchased in a record of disposition of pseudoephedrine products to consumer. Violation would be a Class A1 misdemeanor for the first conviction, and a Class I felony for a second or subsequent conviction.

***G.S. 90-113.52(e)*** makes it a criminal offense for a retailer to willfully and knowingly fail to maintain each monthly record of disposition for a period of two years from the date of submittal for inspection by any law enforcement officer. Violation would be a Class A1 misdemeanor for the first conviction, and a Class I felony for a second or subsequent conviction.

***G.S. 90-113.53(a)*** makes it a criminal offense for a person to deliver or purchase, or attempt to deliver or purchase, in any single transaction more than two packages containing a combined total of more than six grams of any pseudoephedrine products. If a retailer knowingly and willfully violates this subsection, it would be a Class A1 misdemeanor for the first offense, a Class I felony for second or subsequent offenses. If a purchaser or employee willfully and knowingly violates this subsection, it would be 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. This does not apply to products dispensed under a valid prescription.

**G.S. 90-113.53(b)** makes it a criminal offense for a person to purchase, receive, or otherwise acquire more than nine grams of pseudoephedrine products within any 30-day period. If a purchaser or employee willfully and knowingly violates this subsection, it would be 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. This does not apply to products dispensed under a valid prescription.

**G.S. 90-113.54** makes it a criminal offense for a retailer to willfully and knowingly fail to post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale stating the restrictions set out in G.S. 90-113.53. Violation would be a Class A1 misdemeanor for the first conviction, and a Class I felony for a second or subsequent conviction.

**G.S. 106-145.2** adds pseudoephedrine products to the definition of "prescription drugs" for the purpose of regulating and licensing wholesalers. Violation of this Article is a Class H felony.

**G.S. 15A-1340.16(d)(16b)** creates a new aggravating factor for manufacture of methamphetamine in a dwelling that is one of four or more contiguous dwellings. The aggravated sentence range allows the judge to impose a sentence that is up to 25 percent longer than the longest sentence in the presumptive sentence range.

**G.S. 14-72(b)(6)** makes larceny of any product containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients a Class H felony without regard to the value of the property. Currently, this conduct would be punished as misdemeanor larceny (Class 1 misdemeanor) if the value of the property was \$1,000 or less. This excludes larceny by an employee, which is already a felony under G.S. 14-74.

**G.S. 66-254.1** 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 three or more grams of 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). Violation would be 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.

*(Source: Sentencing and Policy Advisory Commission)*

**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.

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**DATE:** July 27, 2005

**Signed Copy Located in the NCGA Principal Clerk's Offices**