

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 12 (Second Edition)

SHORT TITLE: Stop Methamphetamine Labs.

SPONSOR(S): Representatives Cleveland, Horn, and McElraft

FISCAL IMPACT

Yes (X)	No ()	No Estimate Available ()		
<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>

EXPENDITURES:

Correction	*See Assumptions and Methodology*
Probation	*See Assumptions and Methodology*
Judicial	*See Assumptions and Methodology*

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: Sections 2 and 3 of the act become effective January 1, 2012, and Section 3 applies to offenses occurring on or after that date. The remainder of the act is effective when it becomes law.

**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:

The proposed legislation provides for the electronic tracking of pseudoephedrine sales in order to combat the manufacture of methamphetamine.

Section 2 enacts G.S. 90-113.52A, Electronic Record Keeping. G.S. 90-113.52A requires retailers, before completing a sale of pseudoephedrine, to submit the required purchaser information to the National Precursor Log Exchange (NPLEx) (provided the system is available without charge and the retailer has Internet access), and to abort the sale if the NPLEx system generates a stop alert. It further requires a pharmacy to record sales that are made without submission to the NPLEx system due to mechanical or electronic failure.

Section 3 amends subsections (a) and (b) of G.S. 90-113.56, Penalties, to account for the new NPLEx electronic sales tracking requirements for pseudoephedrine products.

Sections 2 and 3 of the act become effective January 1, 2012, and Section 3 applies to offenses occurring on or after that date. The remainder of the act is effective when it becomes law.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

As amended, subsection (a) makes it a Class A1 misdemeanor (first offense) or Class I felony (second/subsequent offense) for a retailer to willfully and knowingly violate the provisions of G.S. 90-113.52A. The Administrative Office of the Courts (AOC) currently does not have any specific offense codes for violations of G.S. 90-113.52A. The lack of AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions.

It is not known how many additional Class A1 misdemeanor (first offense) or Class I felony (second/subsequent offense) convictions may result from the proposed broadening of subsection (a). In FY 2009-10, 32 percent of Class A1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class A1 convictions was 69 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, additional Class A1 misdemeanor convictions that result from the proposed broadening of subsection (a) would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. It is also not known how many offenders would be repeat offenders and would be convicted of the Class I felony offense. In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten additional Class I felony convictions per year as a result of the proposed broadening of subsection (a), the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Subsection (b) makes it Class 1 misdemeanor (first offense), Class A1 misdemeanor (second offense), or Class I felony (third or subsequent offense) for a purchaser¹ or employee to willfully and knowingly violate G.S. 90-113.52A. In FY 2009-10, there were 63 Class 1 misdemeanor convictions (first offense), no Class A1 misdemeanor convictions (second offense), and no Class I felony convictions (third or subsequent offense) for violations of G.S. 90-113.52A.

¹Because G.S. 90-113.52A imposes no requirements on purchasers, the expansion of G.S. 90-113.56(b) will affect only employees.

It is not known how many additional Class 1 misdemeanor (first offense), Class A1 misdemeanor (second offense), or Class I felony (third or subsequent offense) convictions may result from the proposed broadening of subsection (b). In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions that result from the proposed broadening of subsection (b) would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

It is also not known how many offenders would be repeat offenders and would be convicted of the Class A1 misdemeanor offense (second offense) or the Class I felony offense (third or subsequent offense). In FY 2009-10, 32 percent of Class A1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class A1 convictions was 69 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, additional Class A1 misdemeanor convictions that result from the proposed broadening of subsection (b) would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten additional Class I convictions per year as a result of the proposed broadening of subsection (b), the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Note: If the bill results in reduced sales of pseudoephedrine to would-be methamphetamine producers, it may also have a secondary impact in reducing convictions for methamphetamine-related offenses, including but not limited to the following:

- G.S. 90-95(d1)(2): Possession or distribution of an pseudoephedrine knowing, or having reasonable cause to believe that it will be used to manufacture methamphetamine (Class F felony).
- G.S. 90-95(a)(1), (b)(1): Sale, delivery, or possession with intent to manufacture, sell, or deliver a Schedule II controlled substance (e.g., methamphetamine) (Class H felony).
- G.S. 90-95(1a): Manufacture of methamphetamine (Class C or Class H felony).
- G.S. 90-95(a)(3), (d)(2): Possession of Schedule II controlled substance (Class I felony).
- G.S. 90-95(e): Various age- and location-specific controlled substance offenses.
- G.S. 90-95(h)(3b), (i): Trafficking in methamphetamine (Class C, E, or F felony).
- G.S. 90-95.1: Continuing criminal enterprise (Class C felony).
- G.S. 90-95.4, -95.6, -95.7: Various controlled substance offenses involving a minor.

However, the extent of these secondary effects cannot be determined.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.²

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC is not able to estimate how many new charges might arise from the passage of the bill. In calendar year 2010 there were 139 defendants charged with either the Class 1 or Class A1 misdemeanor of violating 90-113.53. However, it is not known how many of these were retailers and how many were purchasers or employees. In addition, two defendants were charged with the Class I felony of violating 90-113.53 but their role(s) is also unknown.

New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff; superior court personnel could be impacted due to appeals. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee

² DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

applications found that the average indigent defense cost for a misdemeanor case was \$225 (three hours at \$75 per hour) per indigent defendant.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. Overall, the monetary value of the average workload of a lower level (Class I through F) felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$945. As the Class I felonies in the bill will represent new charges in superior court, the average fiscal impact of each case would be the full \$945. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class H felony case was \$540 per indigent defendant.

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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

TECHNICAL CONSIDERATIONS: None

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