

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 77 (First Edition)
SHORT TITLE: MDPV/Schedule I Controlled Substance.
SPONSOR(S): Senator Bingham

FISCAL IMPACT table with columns for Yes (X), No ( ), and No Estimate Available ( ) across fiscal years FY 2011-12 to FY 2015-16. Rows include GENERAL FUND (Correction, Probation, Judicial) and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch. Includes an EFFECTIVE DATE and a disclaimer note.

BILL SUMMARY:

The proposed legislation amends G.S. 90-89(5) to add methylenedioxypropylamphetamine (MDPV) to the list of Schedule I controlled substances. The act also amends G.S. 90-95(d)(1) (penalty for possessing Schedule I controlled substance as Class I felon) to add that if the controlled substance in possession is MDPV and the quantity of MDPV is 1 gram or less, then the violation is punishable as a Class 1 misdemeanor. The proposed legislation enacts new G.S. 90-95(h)(3d) to provide that any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of MDPV, or any mixture containing such substance, will be guilty of the felony known as trafficking in MDPV. The offense classification and punishment for trafficking MDPV is based upon the quantity involved. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Source: Bill Digest S.B. 77 (02/16/2011).

## **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**

#### **Sections 1:**

The bill amends G.S. 90-89, Schedule I controlled substances, by adding subsection (5)(h), 3, 4-methylenedioxypryovalerone (MDPV). The addition of MDPV to Schedule I extends the reach of the existing offenses involving Schedule I controlled substances throughout G.S. 90-95.

**Impact:** The offenses set forth in the proposed legislation could result in additional convictions of Class 1 Misdemeanors, as well as Class I, H, G, F, E, D, and C felonies. In FY 2009-10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 misdemeanor convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions that occur as a result of the proposed offenses would not be expected to have a significant impact on the prison population. Convictions for the proposed offenses may have an impact on local jail populations, but the impact cannot be determined.

In FY 2009-10, the average estimated time served for the felonies included in the bill ranged from 7 to 82 months. It is not known how many additional convictions would occur as a result of the proposed broadening of the current statute. Since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there would also be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

#### **Section 2:**

The bill amends G.S. 90-95(d)(1) to create the new Class 1 misdemeanor offense of possession of one gram or less of MDPV, as proscribed by G.S. 90-95(a)(3). Under G.S. 90-98, it would be a Class 1 misdemeanor to conspire or attempt to possess one gram or less of MDPV.

Under G.S. 90-95(e)(1), it would be a Class I felony to possess one gram or less of MDPV after having a prior conviction under the Controlled Substances Act (G.S. 90-86 through 90-113.8) or a similar federal or state law.

Under G.S. 90-98, it would be a Class I felony to conspire or attempt to possess one gram or less of MDPV after having a prior conviction under the Controlled Substances Act (G.S. 90-86 through 90-113.8) or a similar federal or state law.

**Impact:** Since the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

In FY 2009-10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions that occur as a result of the proposed offenses would not be expected to have a significant impact on the prison population. Convictions for the proposed offenses may have an impact on local jail populations, but the impact cannot be determined.

In FY 2009-10, 17% 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 the current statute, 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.

### **Section 3:**

This section adds subpart (h)(3d) to G.S. 90-95, Violations; penalties, to create the offense of “trafficking in MDPV,” which is defined as the sale, manufacture, delivery, transport, or possession of 28 grams or more of the drug. The offense classification and punishment for trafficking in MDPV is based upon the quantity involved, as follows:

- a. At least 28 grams but less than 200 grams – Class F felony punishable by an active<sup>1</sup> prison term of 70 to 84 months and a fine of not less than \$50,000;
- b. At least 200 grams but less than 400 grams – Class E felony punishable by an active<sup>1</sup> prison term of 90 to 117 months and fine of not less than \$100,000; and
- c. 400 grams or more – Class C felony punishable by an active<sup>1</sup> prison term of 225 to 279 months and fine of not less than \$250,000.

Under G.S. 90-95(i), conspiracy to traffic in MDPV would also be a Class F, E, or C felony (based on the quantities set forth above) and punished in the same manner as the substantive offense.

**Impact:** Since the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. With the exception of offenders who render substantial assistance, all drug trafficking offenders are required to receive an active sentence. The following estimates for the proposed Class F, E, or C trafficking offenses would apply to *each* offense *separately*, but, for brevity, is noted once.

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<sup>1</sup> Subpart G.S. 90-95(h)(5) allows the judge in a drug trafficking case to suspend the sentence and impose probation or impose a prison term less than the prescribed minimum upon a finding that the defendant rendered substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals.

- **Class F:** If, for example, there was one Class F conviction per year for the proposed offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.
- **Class E:** If, for example, there was one Class E conviction per year for the proposed offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.
- **Class C:** If, for example, there was one additional Class C conviction for the proposed offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

### **Judicial Branch**

The Administrative Office of the Courts (AOC) 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.

#### **Sections 1 & 2:**

AOC anticipates a somewhat larger number of charges initially, due to charges for possession of controlled substances purchased prior to the effective date of this legislation. AOC expects the number of charges to decline over time.

**Impact:** Using a time study conducted by the National Center for State Courts for North Carolina District Attorneys' offices and adjusting for the type of drug and other factors, AOC anticipates that, on average, each charge will require 2.5 hours of an assistant district attorney's time, of which half will be spent in court. This average includes all types of dispositions, such as trials, pleas, and dismissals. In 2010, there were 17,172 non-trafficking cocaine, methamphetamine, and MDMA-related charges. (This count does not include other general drug charges such as selling a controlled substance near a public school.) If, for example, in the first full year of implementation defendants charged with MDPV-related offenses were equivalent to 10 percent of cocaine, methamphetamine, and MDMA charges, there would be approximately 1,700 charges for new offenses, and costs would be as follows:

<b>Scenario: 1,700 Defendants Charged (10% of Cocaine/Methamphetamine/MDMA Charges)</b>				
<b>Position Type</b>	<b>Number*</b>	<b>Cost per Position</b>		<b>Total</b>
		<b>R</b>	<b>NR</b>	
Assistant District Attorney	3	\$108,829	\$3,739	\$337,704
Victim Witness Legal Assistant	2	\$57,481	\$5,155	\$125,272
Superior Court Judge	2	\$183,654	\$6,572	\$380,452
Deputy Clerk	3	\$45,652	\$2,620	\$144,816
Court Reporter	2	\$68,625	\$4,857	\$146,964
<b>Total Positions</b>	<b>12</b>	<b>\$1,082,963</b>	<b>\$52,245</b>	<b>\$1,135,208</b>

\*Rounded to nearest whole FTE

Note: The workload used in the above scenario is based on 2.5 hours per case for Assistant District Attorneys, of which half is in court and is therefore used to estimate the workload for Superior Court Judges and court reporters. The workload for deputy clerks is based on Superior Court in-court criminal dispositions from the NCSC study of clerks' workload. The workload for VWLAs is based on the NCSC VWLA study, using felony workload adjusted for the difference between trafficking and non-trafficking Schedule I drug cases from the ADA study. (Only the ADA study distinguished drug cases from other cases.)

### **Section 3:**

Drug trafficking charges are subject to a separate grid with substantially longer active prison terms. These cases tend to be more complex and require substantially greater workload on the part of assistant district attorneys (ADAs).

**Impact:** Based on a time study conducted by the National Center for State Courts for North Carolina District Attorneys' offices, each drug trafficking charge requires, on average, 8.7 hours of an Assistant District Attorney's time, of which 3.2 hours would be in court. This average includes all types of dispositions, such as trials, pleas, and dismissals. In 2010, there were 1,903 charges for trafficking or conspiring to traffic in cocaine, amphetamines, methamphetamines, and MDMA. AOC cannot project the number of charges that would result from this legislation. As with Section 1, the workload would impact assistant district attorneys, victim witness legal assistants, superior court judges, deputy clerks, and court reporters.

In FY 2009-10, a typical felony case took approximately 206 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:** Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

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