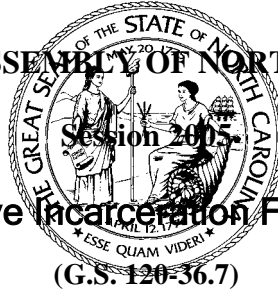


GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

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

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

**SPONSOR(S):** Senator Dalton

|  |   | <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</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>NCGA</b>  | See assumptions and methodology, p. 3                                     |                      |                   |                           |                   |                   |
| <b>ADDITIONAL PRISON BEDS*</b>   | Exact amount cannot be determined   |                      |                   |                           |                   |                   |
| <b>POSITIONS: (cumulative)</b>   | Exact amount cannot be determined   |                      |                   |                           |                   |                   |
| <b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Department of Health & Human Services, General Assembly   |   |                      |                   |                           |                   |                   |
| <b>EFFECTIVE DATE:</b> Sections 1 and 2 are effective December 1, 2005; Section 3 is effective July 1, 2005.   |   |                      |                   |                           |                   |                   |
| *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.** As with other Schedule V controlled substances, prohibits pseudoephedrine sales to persons less than 18 years of age and requires that pharmacist maintain a record of the names and addresses of all pseudoephedrine purchasers. Further prohibits the purchase or receipt of more than nine grams of any mixture or product containing pseudoephedrine within any 30-day period, unless dispensed pursuant to a prescription, and to require that a person purchasing the drug provide photo identification showing the person's date of birth. States that multi-state or wholesale may continue to store these drugs as they do currently. Authorizes Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to exempt a product from Schedule V if the Commission finds that it is not used in the illegal manufacture of methamphetamine or if it has been formulated to prevent conversion into methamphetamine's active ingredient. The third edition specifies that the person requesting the exemption has the burden of proof, including a valid scientific study, and outlines factors for the Commission to consider when deciding whether to grant an exemption.

**Section 2.** Adds a new aggravating factor for the commitment of the offense methamphetamine manufacture in a dwelling that is one of four or more contiguous dwellings to those cases.

**Section 3.** Authorizes Legislative Research Commission to study methamphetamine precursor abuse. If Commission undertakes study, act requires that Commission create study committee including 5 members appointed by the Speaker and 5 members by the President Pro Tempore and that Commission report study findings to the 2007 General Assembly.

*Adapted from Bill Digest S.B. 686 (03/21/0200)*

## **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 in four ways. Because this bill creates new offenses, the amounts of these increases cannot be projected.

1. Increased charges and convictions for unlawful possession (Class 2 misdemeanor), sale (Class H felony), delivery (Class I felony), or possession with intent to sell or deliver (Class I felony) a Schedule V controlled substance. In 2004, there were 50 charges for these offenses; in 2003-04, there were no reported convictions for these offenses.
2. Increased charges and convictions for obtaining or attempting to obtain a controlled substance through fraud or forgery – a Class I felony if committed with intent, a Class 1 misdemeanor without intent. In 2004, there were 1,145 charges for those offenses.
3. Increased charges and convictions for possession of a methamphetamine (“meth”) precursor with attempt to manufacture (Class F felony). The Sentencing Policy and Advisory

Commission has noted that acquiring an amount in excess of the nine grams permitted in 30 days may be charged as possession of a precursor.

4. Increased time served for manufacture of meth (a Class C offense), in cases in which the proposed “contiguous dwellings” aggravated factor applies. 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.

**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 December 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 the number, complexity, and length of jury trials.

*See table on following page for details on DOC and Court costs.*

**Department of Health & Human Services:** Section 1 authorizes the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission), by rule, to exempt other products from Schedule V 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.

**General Assembly:** The Legislative Services Commission selects topics or categories from bills introduced in the session that are included in the annual studies bill adopted by the General Assembly. These topics or categories either as a single subject matter or combined as related items are designated as Legislative Research Commissions (LRC). Funding for LRC is allocated from a reserve in the General Assembly’s budget. Therefore, methamphetamine abuse issues will be studied and funding provided if included in the studies bill and designated as an LRC.

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

| Sec. | Description   | Offense Effect   | Fiscal Impact   |  |  |
|------|---|--|---|--|--|
|      |   |  | <i>Prisons*</i>   | <i>Community Corrections*</i>  | <i>Judicial</i>                          |
| 1    | Expands Schedule V substances to include pseudoephedrine  | Potential increase in Class 2 misdemeanors   | None anticipated  | unknown:<br>85% non-active, mostly \$1.87 per offender per day                           | unknown:<br>\$ 272/plea<br>\$2,322/trial |
|      |   | Potential increase in Class 1 misdemeanors   | Payments to jails for misdemeanants (sentences > 30 days at \$18/day)                   | unknown:<br>81% non-active, mostly \$1.87 per offender per day                           | unknown:<br>\$ 284/plea<br>\$3,224/trial |
|      |   | Potential increase in Class I felonies   | unknown; example:<br><u>10 convictions</u> =<br>1 bed in FY 06-07<br>3 beds in FY 07-08 | unknown:<br>89% non-active, \$1.87 - \$10.94 per offender per day                        | unknown:<br>\$ 330/plea<br>\$5,835/trial |
|      |   | Potential increase in Class H felonies   | unknown; example:<br><u>3 convictions</u> =<br>1 bed in FY 06-07,<br>2 beds in FY 07-08 | unknown:<br>63% non-active, \$1.87 - \$10.94 per offender per day                        | unknown:<br>\$ 360/plea<br>\$6,224/trial |
| 1    | Places limits on the amount of pseudoephedrine that can be procured without a prescription                            | Potential increase in Class 2 misdemeanors   | None anticipated  | unknown:<br>85% non-active, mostly \$1.87 per offender per day                           | unknown:<br>\$ 272/plea<br>\$2,322/trial |
|      |   | Potential increase in Class F felonies (possession of a meth precursor w/ intent to manufacture) | unknown; example:<br><u>2 convictions</u> =<br>1 bed in FY 06-07,<br>3 beds in FY 07-08 | unknown:<br>53% non-active, \$10.94 per offender per day (\$1.87 per day after 6 months) | unknown:<br>\$ 397/plea<br>\$8,179/trial |
| 2    | Expands the aggravated factor for meth manufacture to include manufacture in one of four or more contiguous dwellings | Average increase of 21 months for some Class C sentences   | Long-term impact on prison population; no impact within first 5 years                   | no impact  | unknown increase                         |

\* Criminal penalty bills effective December 1, 2005 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.

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

**TECHNICAL CONSIDERATIONS:** The Sentencing Commission has noted that there is no offense class specified for violation of proposed G.S. 90-93(e) (acquisition in excess of nine grams in 30 days without a prescription), so it is unclear whether or not this subsection creates a criminal offense. The Commission notes that excess acquisition could be convicted as unlawful possession

of a Schedule V substance under G.S. 90-95(a)(3), or excess acquisition could be evidence of possession of a methamphetamine precursor with intent to manufacture.

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Fiscal Research Division



**DATE:** April 29, 2005

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