

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

## Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 29 (First Edition)

**SHORT TITLE:** Methamphetamine Offense Penalties.

**SPONSOR(S):** Representatives Tolson, Stevens, Faircloth, and Horn

### FISCAL IMPACT

(\$ in millions)

Yes

No

No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				

### PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts (AOC), Indigent Defense Services (IDS), Department of Public Safety (DPS)

**EFFECTIVE DATE** December 1, 2013

### TECHNICAL CONSIDERATIONS:

None

### FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on this new offense, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$501 per disposition
- Indigent Defense Services: Minimum \$235 for district court case
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$980 per conviction

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

H.B. 29, Methamphetamine Offense Penalties, creates a new offense of possession of pseudoephedrine if a defendant has certain prior methamphetamine-related convictions and adds aggravating factors to the penalty for manufacturing methamphetamine if children or the elderly reside in the manufacturing facility.

### **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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Section 1 of H.B. 29, Methamphetamine/Offense/Penalties, adds a new statute, G.S. 90-95(d1)(1)(c), to make it a Class H felony for any person to possess a pseudoephedrine product if the person has a prior conviction for the possession or manufacture of methamphetamine. The new statute requires that a person have a prior conviction for "the possession or manufacture of methamphetamine," but it does not cite a statutory reference for the offenses; therefore, it is possible for a person to qualify for the new offense with a prior conviction for any of the offenses listed in the following table.

Offense Text and G.S. Citation	Offense Class	# of Convictions
Manufacture methamphetamine. 90-95(b)(1a)	C	42
Trafficking in methamphetamine.* 90-95(h)(3b)	C, E, F	12
Possess with intent to manufacture, sell, or deliver methamphetamine. 90-95(a)(1)	H	41
Possess with intent to manufacture, sell, or deliver a Schedule II controlled substance. 90-95(a)(1)	H	277
Manufacture a Schedule II controlled substance. 90-95(a)(1)	H	4
Possess methamphetamine. 90-95(a)(3)	I	171
Simple possession of a Schedule II, III, or IV controlled substance. 90-95(d)(2)	I	0
Felony possession Schedule II controlled substance. 90-95(a)(3)	I	399
<b>Total</b>		<b>946</b>

\* "Trafficking in methamphetamine" may include selling, manufacturing, delivering, transporting, or possessing.

*Source: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data*

In FY 2011-12, there were a total of 946 felony convictions for the offenses listed. While the 946 convictions occurred during a fiscal year, the new statute does not limit the timeframe to only a year – meaning the prior conviction can occur at any point in the offender's entire criminal history.

Section 2 of H.B. 29 amends G.S. 15A-1340.16D, Manufacturing Methamphetamine, enhanced sentence, to add three new enhancements that would require the court to increase the minimum sentence by 24, 48, or 72 months if, at the time of the offense:

- A minor child resides or is present on the property,
- A disabled or elderly adult resides or is present on the property, or
- Both a minor child and a disabled or elderly adult reside or are present on the property.

The statute currently has a sentence enhancement if a first responder is injured as a result of the offense. H.B. 29 states that if that occurs in conjunction with one of the new enhancements, the penalties are cumulative. The following table illustrates the effect of the new bill:

Options	Average Minimum Sentence* (Months)	Proposed Enhancement Length (Months)	New Minimum Sentence (Months)
• Minor Present OR Disabled/Elderly Present OR ‘Service’ Personnel Injured	65	24	89
• Minor Present AND Disabled/Elderly Present			
• Minor Present AND ‘Service’ Personnel Injured	65	48	113
• Disabled/Elderly Present AND ‘Service’ Personnel Injured			
• Minor Present AND Disabled/Elderly Present AND ‘Service’ Personnel Injured	65	72	137

### **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.

Section 1 of the bill creates a new criminal offense, so AOC is unable to estimate the number of new charges that may arise from the passage of this bill. Presently, the AOC estimates a cost of \$501 per disposition for a Class H felony.

Section 2 of the bill creates a sentencing enhancement that would increase the minimum sentences for persons found to be manufacturing methamphetamine where children, or disabled or elderly adults lived or were present at the time of the offense, or when first responders were injured as a result of the offense.

The pool of potential offenders would be those charged with manufacturing methamphetamine, G.S. 90-95(b)(1). There were 469 individuals charged with this offense in CY 2012. NCAOC does not track information about the specific nature of these individual offenses (i.e. were there minor children and/or disabled or elder adults on the property or at the location, etc.), thus, there is no data upon which to estimate the number of enhancements that may have been potentially associated with the conviction of these charges.

An increase in the type or severity of a potential sentence is often associated with a more vigorous defense, which can result in fewer pleas and more trials and, thus, an increased cost to the court system. The offense of manufacturing methamphetamine is a Class C felony offense. Because Structured Sentencing dictates that the punishment for this offense is an active sentence (except in cases of extraordinary mitigation), any additional time and costs will be due to the potential for increase in sentence length. AOC does not have any data upon which to estimate the costs associated with this potential increase.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a Class H felony defense is \$235 if the case is heard in District court; \$446 for a plea in superior court, or \$1,180 if the case goes to trial in superior court.

### **Department of Public Safety –Prison Section**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill.

It is not known how many of the offenders convicted under Section 1 of the bill would possess a pseudoephedrine product. Since the bill creates a new offense, 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 new statute.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2013</b>	<b>June 30 2014</b>	<b>June 30 2015</b>	<b>June 30 2016</b>	<b>June 30 2017</b>
1. Inmates <sup>2</sup>	38,999	39,062	39,091	39,047	39,135
2. Prison Beds (Expanded Capacity)	40,926	40,926	40,926	40,926	40,926
3. Beds Over/(Under) Inmate Population	(1,927)	(1,864)	(1,835)	(1,879)	(1,791)
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

<sup>1</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2012.

<sup>3</sup> Criminal penalty bills effective December 1, 2013, should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Section 2 of the bill will not have an immediate impact on the Prison Section. In FY 2011-12, there were 42 Class C convictions for manufacturing methamphetamine. The average minimum sentence imposed was 65 months (median = 60 months). Of the 42 convictions, the minimum sentence imposed ranged from 44 months to 116 months. It is not known how many of these 42 convictions had minor children under 18 years of age and/or disabled or elderly adults residing on the property or present at the location where methamphetamine was being manufactured. It is also not known if the offense caused serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. Since the punishment type (e.g., active versus non-active) is not expected to change, the impact would result from the additional months added to the minimum sentence length. The impact on prison resources would not occur until after 5 years (based on the average minimum sentence imposed for Class C felonies for manufacturing methamphetamine) and would occur due to these offenders ‘stacking up’ in prison with the longer prison sentence lengths.

### **Department of Public Safety – Community Correction Section**

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.<sup>4</sup> General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 39% of Class H offenders received active sentences; 45% received intermediate sentences; and 16% received community punishments. All active sentences result in nine months of post-release supervision (PRS) for this felony class. The average lengths of intermediate and community punishment imposed for this offense class were 30 and 27 months, respectively. Therefore, at a minimum, one conviction resulting from Section 1 of this bill will require at least nine months of PRS. The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup>

Section 2 of the bill will not have an immediate fiscal impact on CCS.

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** None

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<sup>4</sup> CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

<sup>5</sup> Due to the effective date of December 1, 2012, and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2012-13. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2013-14.

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Kristine Leggett

**APPROVED BY:** Mark Trogdon, Director  
Fiscal Research Division

**DATE:** February 18, 2013



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