

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 474

(Delegate Menes, *et al.*)

(Chairman, Special Committee on Drug and Alcohol Abuse)

Judiciary

Judicial Proceedings

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**Crimes - Controlled Dangerous Substances - Restitution for Cleanup Costs**

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This bill establishes that, in addition to any other legally authorized penalty, a person convicted or found to have committed a delinquent act under various prohibitions relating to controlled dangerous substances (CDS) may be ordered by the court to pay restitution for actual costs reasonably incurred in cleaning up or remediating laboratories or other facilities operated for the illegal manufacture of a CDS. If such a person is a minor, the court may order the minor and/or the minor's parent to pay the restitution.

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**Fiscal Summary**

**State Effect:** The federal Drug Enforcement Administration (DEA) generally funds clean ups of methamphetamine lab sites. Any potential cost recovery for units of State government responsible for site clean ups or remediations (subsequent to a conviction for a CDS offense) is not expected to be significant.

**Local Effect:** For the same reason cited above, any potential cost recovery for units of State government responsible for site clean ups or remediations (subsequent to a conviction for a CDS offense) is not expected to be significant.

**Small Business Effect:** Potential meaningful positive impact on some small businesses (including motel and apartment building owners), but only to the extent that restitution is actually paid.

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## Analysis

**Current Law:** A person is prohibited from:

- manufacturing, distributing, or dispensing a CDS or possessing a CDS in sufficient quantity reasonably to indicate an intent to manufacture, distribute, or dispense the CDS;
- manufacturing, distributing, or possessing equipment for producing a CDS;
- creating or distributing a counterfeit CDS or possessing a counterfeit CDS with intent to distribute it;
- keeping a common nuisance (a building or vehicle resorted to by individuals for the purpose of administering a CDS or where a CDS is manufactured, distributed, stored, or concealed); and
- issuing or possessing a false or altered prescription for a CDS with the intent to distribute the CDS.

A violator of any of these provisions is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. A repeat offender is subject to a mandatory minimum sentence of two years. The law does not specifically provide that a person convicted of a CDS offense is responsible for clean up costs as an element of restitution.

**Background:** Of all of the controlled dangerous substances that pose a challenge for clean up costs, the manufacturer of methamphetamines has been the most troublesome.

Methamphetamine can be produced almost anywhere – from abandoned buildings in rural areas to apartments and even cars in more populated areas. Over the counter cold medicines containing pseudoephedrine are “cooked” with reagents such as iodine and solvents such as paint thinner to make the synthetic drug. While relatively simple and inexpensive to manufacture, the production of methamphetamine is hazardous. Eighty percent of methamphetamine manufactured in the United States is produced in sophisticated super labs; however, makeshift “mom and pop” labs make smaller quantities under conditions that often result in toxic explosions, fires, hazardous waste dumping, and child endangerment.

To date, methamphetamine’s impact in Maryland is minimal, but surrounding areas have seen much more activity with an increasing number of methamphetamine labs seized. One methamphetamine lab was seized in Virginia in 2000 compared to 61 in 2004. The number of labs seized in West Virginia between 2000 and 2004 increased from 3 to 84

and in Pennsylvania from 8 to 63. As is true nationwide, methamphetamine users in Maryland have historically been concentrated in rural areas.

Three meth labs have been uncovered in Anne Arundel County recently. For one of them, a Millersville couple was indicted by a federal grand jury on four drug counts, including manufacturing with the intent to distribute and possession of methamphetamines. The couple's operation was on rented property in the county and they have also been accused of operating one of the other two labs uncovered. In January 2006, two Harford County residents were sentenced to federal prison terms in connection with 2005 raids of several methamphetamine laboratories in Maryland and Pennsylvania.

The manufacturing of methamphetamine poses a significant danger to first responders. Poisonous gases are released when the highly flammable and explosive chemicals are "cooked." Every pound of methamphetamine produced generates five to seven pounds of toxic waste. Lab operators have dumped the toxic waste down household drains, in fields, in yards, and on rural roads. Emergency personnel require appropriate training in identifying and handling the contents of a lab as clean up of contaminated sites is critical. Some states (*e.g.*, Kentucky) have made methamphetamine producers civilly liable for clean up costs.

According to the U.S. Drug Enforcement Administration (DEA), when a federal, state, or local agency seizes a clandestine methamphetamine laboratory, U.S. Environmental Protection Agency regulations require that DEA ensure that all hazardous waste materials are safely removed from the site. In 1990, DEA established a Hazardous Waste Cleanup Program to address environmental concerns from the seizure of clandestine drug laboratories. This program promotes the safety of law enforcement personnel and the public by using qualified companies with specialized training and equipment to remove hazardous waste. Private contractors provide hazardous waste removal and disposal services to DEA, as well as to state and local law enforcement agencies. DEA's Hazardous Waste Program, with the assistance of grants to state and local law enforcement, supports and funds the clean up of a majority of the laboratories seized in the United States.

Several states (such as Arkansas, California, Colorado, Minnesota, Missouri, Montana, Oklahoma, South Dakota, and Virginia) have established guidelines, protocols, or standards for the clean up of methamphetamine labs. Some states (*e.g.*, Kentucky) have made methamphetamine producers civilly liable for clean up costs.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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