

Department of Legislative Services  
 Maryland General Assembly  
 2006 Session

FISCAL AND POLICY NOTE

House Bill 1098  
 Judiciary

(Delegate McComas, *et al.*)

**Criminal Law - "Meth Precursors" - Restrictions on Sale and Purchase**

This bill prohibits the sale of specified amounts of products that can be used in the manufacture of methamphetamine and requires the Department of Health and Mental Hygiene (DHMH) to track the sale of those products.

**Fiscal Summary**

**State Effect:** General fund expenditures for DHMH could increase by \$83,000 in FY 2007 to hire a pharmacist to monitor the real-time statewide electronic log of products that can be used in the manufacture of methamphetamine. One-time FY 2007 expenditure to develop the log could be as much as \$500,000 or more (not reflected below). The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
GF Expenditure	83,000	91,400	96,200	101,300	106,700
Net Effect	(\$83,000)	(\$91,400)	(\$96,200)	(\$101,300)	(\$106,700)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

**Small Business Effect:** Minimal. Based on the Oklahoma experience, the effect of this bill on small business pharmacies and pharmacists would be minimal.

## Analysis

**Bill Summary:** The bill prohibits a person from selling or purchasing or attempting to sell or purchase: (1) a methamphetamine precursor containing more than 6 grams of pseudophedrine, phenylpropanolamine, or ephedrine base, salts or isomers, or salts of those ingredients; or (2) methamphetamine precursors containing a combined total of more than 7.5 grams of an ingredient listed above in transactions with the same individual in a 30-day period without a prescription. A violator is guilty of a misdemeanor and on conviction is subject to imprisonment of up to one year and/or a maximum \$1,000 fine.

In assisting in the regulation of the sale of methamphetamine precursors, DHMH's Alcohol and Drug Abuse Administration (ADAA) must:

- develop and maintain a list of methamphetamine precursors that list the quantity each precursor contains of the substances specified in the bill;
- adopt regulations requiring pharmacies and retailers to: (1) maintain the substances in a location that requires a purchaser to request the product and the seller to record the transaction; (2) prevent the sale of the substances to a minor without a prescription; (3) require the name and address and a photo identification from each purchaser; (4) record the date and amount of the substance sold in each signed transaction; (5) provide sales records to the appropriate law enforcement agencies; (6) maintain purchase records for two years after the date of the sale; and (7) affix at least one warning notice in a conspicuous place near where the products are displayed for sale;
- establish and maintain a real-time statewide electronic log of methamphetamine precursor purchases that is available to law enforcement officers; and
- provide technical assistance to pharmacies and retailers in meeting the bill's requirements.

A pharmacy or retailer may not sell a methamphetamine precursor listed by ADAA in violation of an ADAA requirement. A person who willfully does so is guilty of a misdemeanor and on conviction is subject to a maximum \$10,000 fine.

**Current Law:** A person may not dispense a controlled dangerous substance without a written prescription from an authorized provider if the substance is: (1) listed in Schedule II; and (2) a drug limited to prescription use under the Health – General Article. Such a controlled dangerous substance may only be dispensed without a written prescription by: (1) an authorized provider who is not a pharmacist and who dispenses the controlled dangerous substance directly to an ultimate user; or (2) a pharmacist if an emergency exists, the pharmacist dispenses the drug under regulations of DHMH on an

oral prescription that the pharmacist reduces promptly to writing and keeps on file, and federal law authorizes the oral prescription.

A prescription for a controlled dangerous substance listed in Schedule II shall be kept on file in conformity with applicable requirements for records and inventories of these provisions. A person may not refill a prescription for a controlled dangerous substance listed in Schedule II.

Currently, Maryland law subjects a person convicted of manufacturing methamphetamine to maximum imprisonment of five years and subjects a person convicted of importation to a maximum of 25 years.

**Background:** Pseudoephedrine is a decongestant in several over-the-counter medications used to relieve nasal discomfort caused by colds, allergies, and hay fever. This medication is sometimes prescribed for other uses.

Pseudoephedrine is also used to make methamphetamine, a Schedule II controlled dangerous substance. A substance is listed in Schedule II if the substance includes a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system: (1) amphetamine, its salts, optical isomers, and salts of its optical isomers; (2) phenmetrazine and its salts; (3) a substance that contains any methamphetamine, including salts, optical isomers, and salts of its optical isomers, in combination with one or more active nonnarcotic ingredients in recognized therapeutic amounts; (4) methylphenidate; and (5) methamphetamine, its salts, optical isomers, and salts of optical isomers.

The Board of Pharmacy repeatedly proposed a regulation requiring a pharmacy to keep single-entity pseudoephedrine products in a secured area with the prescription drugs. Pseudoephedrine would only be dispensed to people who are 18 years old or older with a valid government-issued driver's license or identification card that includes the date of birth. This regulation would not apply to pseudoephedrine products dispensed with a prescription. This proposed regulation has not yet gone into effect.

Federal officials have called methamphetamine "the fastest growing drug threat in the United States." Its popularity began 20 years ago among biker gangs in the Southwest and is steadily advancing eastward. A 2005 survey of the National Association of Counties reported that over 75% of county law enforcement agencies in the Northwest and Southwest named methamphetamine as the number one drug problem. Over half of the agencies in the Midwest made the same report. By contrast, 25% of agencies in the Southeast, including Maryland, and 4% of Northeast agencies called methamphetamine their primary drug problem.

Methamphetamine-related hospital admissions mirror this trend. Treatment admissions from 1998 to 2002 in California grew from 49 to 200 per 100,000; in Iowa the rate went from 9 to 198 per 100,000. The National Survey of Drug Abuse and Health, reports that the number of people seeking methamphetamine-related treatment has increased nationwide from 2% in 1993 to 7% in 2003. California's increase over 10 years was 30%; the number seeking treatment in Arkansas rose 20%.

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. The most likely users are white, working class, in their twenties or thirties, and almost as likely to be female as male. However, use among white-collar professionals and long-distance truckers is increasing.

An Oklahoma law that took effect in April 2004 provides that medicines with pseudoephedrine must be dispensed by a licensed pharmacist or pharmacy technician, and purchasers must show identification with their date of birth and sign for the product. Buyers are limited to nine grams (or 366 30-milligram pills) in a 30-day period. The government can make exceptions in areas where pharmacies are not easily accessible. Oklahoma officials report that their law has driven down methamphetamine lab seizures by more than 80%. The Drug Enforcement Administration has reported that more than 7,000 methamphetamine labs were dismantled nationwide in 2003.

Twenty-two bills have been introduced in the 109th Congress to address the problems connected with pseudoephedrine products used in the manufacture of methamphetamine. Federal legislation introduced in 2005 and 2004 to limit purchases of pseudoephedrine products was not passed. See Appendix 1 for a list compiled by the National Conference of State Legislatures to track State action on this issue (as of August 11, 2005).

The Consumer Health Products Association (CHPA) is promoting legislation both at the State and federal level that would create a two package/six gram sales limit on all pseudoephedrine and ephedrine containing products. The association also wants to implement registration procedures for retailers of pseudoephedrine and ephedrine containing products that lack U.S. Drug Enforcement Administration certification and stiffen criminal penalties for those producing methamphetamine and certain "club drugs" for distribution.

CHPA is providing funding directly to states interested in implementing Meth-Watch programs in their communities; making available a national web site and resource center; and providing training, technical assistance, and retail support. CHPA created a model Meth-Watch program for states to help curtail sales of pseudoephedrine products for illicit purposes and to promote cooperation between retailers and law enforcement.

**State Expenditures:** General fund expenditures could increase by an estimated \$82,968 in fiscal 2007, which accounts for the bill’s October 1, 2006 effective date. This estimate reflects the cost of hiring a pharmacist to monitor the statewide electronic log of methamphetamine precursor purchases and provide pharmacies and retail establishments with technical assistance. It includes a salary, fringe benefits, one-time start-up costs, a vehicle, and ongoing operating expenses. This estimate does not reflect the costs of developing a real-time statewide electronic log of methamphetamine precursor purchases, which cannot be reliably estimated at this time but may cost as much as \$500,000 or more. It also does not reflect the costs for maintaining the electronic log, which may cost as much as \$50,000 annually. The costs for developing and maintaining the electronic log cannot be reliably determined at this time.

Salary and Fringe Benefits	\$63,664
Vehicle	11,000
Other Operating Expenses	<u>8,304</u>
<b>FY 2007 Administrative Expenditures</b>	<b>\$82,968</b>

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

General fund expenditures in fiscal 2007 for one-time computer programming costs to develop a real-time statewide electronic log of methamphetamine precursor purchases would be significant. The Department of Legislative Services (DLS) advises that it has received two different estimates from DHMH for the cost of developing and maintaining the electronic log, one for this bill and one for similar bills, HB 41/SB 774 of 2006.

DHMH’s Laboratories Administration (LA) advised for HB 41/SB 774 that the one-time computer programming costs would be \$500,000 in fiscal 2007 but did not provide any justification for that amount. LA’s estimate also included an annual \$50,000 cost for software maintenance, again without justification.

ADAA advised for this bill that the one-time computer programming costs would be \$1,500,000 in fiscal 2007 and that the annual maintenance cost would be \$500,000 beginning in fiscal 2008. ADAA advised that its estimate is based on its current

experience with maintaining confidential computer records of individuals in substance abuse treatment programs.

General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2007 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,974 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$341 per month.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2007.

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### **Additional Information**

**Prior Introductions:** SB 372 of 2005, which would have prohibited dispensing, selling, or distributing pseudoephedrine except when done by or supervised by a licensed pharmacist, received an unfavorable report by the Judicial Proceedings Committee.

**Cross File:** None.

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

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