

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2002	FY 2003	FUTURE YEARS
Counties & Municipalities			
Revenues	Minimal likely gain	Minimal likely gain	Minimal likely gain
Expenditures	Increase, potentially significant	Increase, potentially significant	Increase, potentially significant

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- With a large number of new cases and convictions expected, county and municipal criminal justice systems will experience potentially significant increases in annual expenditures related to arresting, adjudicating, prosecuting, defending (if indigent), and sanctioning those who violate the bill's prohibitions.
- Counties and municipalities will also collect additional court cost and fine revenue. Given the difficulties of collecting such moneys from offenders, many of whom are indigent, these additional local revenues will likely be no more than minimal annually.

Detailed Fiscal Analysis

With respect to the illegal manufacture or production of methamphetamine, the bill creates two new drug offenses, as well as a penalty enhancement tied to existing law prohibiting the illegal manufacture of drugs.

Penalty Enhancement

The bill increases the penalty for the offense of illegal manufacture of drugs if the drug in question is methamphetamine, or a variation thereof, and if the offense is committed in the vicinity of a juvenile, school or other public premises. A public premise would include, among other things, hotel rooms, which law enforcement officials have discovered are increasingly common locations for methamphetamine laboratories. The volatile and toxic nature of many of the chemicals used in the methamphetamine manufacturing process present extreme public health threats when laboratories are located in public places. The illegal manufacture of drugs is currently a felony of the second degree carrying a mandatory determinate prison sentence of 2, 3, 4, 5, 6, 7, or 8 years. Under the enhanced penalty specification created by the bill, the offense would be a felony of the first degree carrying a mandatory determinate prison sentence of 3, 4, 5, 6, 7, 8, 9 or 10 years.

Problem Growth. The bill's penalty enhancement provision will not create any new criminal cases since the manufacture of methamphetamine is currently illegal. The bill will, however, affect the length of the mandatory prison sentence imposed on some percentage of those convicted after its enactment. To estimate the number of offenders likely to receive longer mandated prison sentences, the growth of the methamphetamine phenomenon must be considered in conjunction with current sentencing data.

The genesis of the rapidly growing methamphetamine problem in the United States is clearly the west coast states and Mexico. Based on data compiled by the United States Drug Enforcement Administration (DEA), the problem is clearly moving eastward, as evidenced by the explosive growth in the numbers of illegal methamphetamine laboratory seizures. States to the west of Ohio, including Iowa, Missouri and Arkansas, have recently witnessed five and six times the number of laboratory seizures compared to just a few years ago. For 1999, the DEA reported 16 illegal laboratory seizures in Ohio, followed by approximately 27 in 2000. The number of seizures thus far in 2001 has jumped to 48. It appears as though the wave of growth in methamphetamine production has reached Ohio. This growth reflects the increasing effort by local entrepreneurs, operating on the periphery of the methamphetamine market, to exploit the expanding demand for the drug by producing smaller amounts of the drug in less complex, often very mobile, laboratories.

Intake data from the Department of Rehabilitation and Correction (DRC) indicate that, in FY 2000, 22 inmates were sentenced to prison for illegal manufacture of drugs, predominately involving methamphetamine, and to a lesser extent GHB, a date rape drug. This intake level reflects the smaller

number of laboratory seizures in 1999 and 2000. As Ohio experiences the expected growth in methamphetamine production, arrests, convictions and incarcerations will all increase accordingly. Law enforcement experts in this field have stated that Ohio can expect between 100 and 200 illegal laboratory seizures over this next year. It is important to note that this growth is not a result of the bill, but rather the natural eastward expansion of this phenomenon.

Additional Incarceration Cost. The bill will only increase the state's annual incarceration costs to the extent that these additional arrests for the illegal manufacture of methamphetamine occur in the vicinity of juveniles and/or public premises. Data from the State of California suggests that children are present in about 25 percent of the illegal laboratory raids. Ohio law enforcement officials concur with this proportion and agree that we could expect perhaps a third of the arrests for methamphetamine production to occur in the vicinity of juveniles or some public premises, so defined by the bill. If 200 arrests occur over the next year, and assuming nearly all are convicted, then approximately 66 individuals would face the enhanced felony one penalty. The key fiscal question is how much additional prison time would they receive?

Time served data from DRC sheds some light on the sentencing differences between a felony of the second degree drug offense and a felony of the first degree drug offense. While this data does not specifically list illegal manufacture of drugs, it does show, on average, the differences in time served between different classes of felonies. If a felony of the second degree drug offense is enhanced to a felony of the first degree, then the time served is increased by an average of 1.5 years. This average figure can then be used to provide an estimate of the potential additional annual cost to the state resulting from the bill's penalty enhancement provision. If 66 inmates serve an additional 1.5 years due to the enhancement, and the current marginal cost of incarceration is about \$4,000, then the total potential annual increase in incarceration costs to the state is approximately \$396,000. This figure could grow if the number of methamphetamine laboratory seizures continues to increase annually. This fiscal effect would not be fully realized for several years; that will be the point in time at which the additional time served as a result of the bill's penalty enhancement will actually kick in.

Criminal Offenses

The bill also creates two new drug offenses related to: (1) assembly of chemicals, and (2) possession of drug paraphernalia.

Assembly of Chemicals. The first of these new drug offenses involves the assembly of chemicals for the manufacture of illegal drugs. This would be a felony of the third degree and carries no presumption for or against prison.

Additional Cost. Law enforcement officials knowledgeable in this area have indicated that the assembly of chemicals for the manufacture of illegal drugs is a much more common occurrence than the actual operation of methamphetamine laboratories. Those who "cook" the drug often utilize a large number of individuals to gather, store and transport the necessary chemical ingredients. This provision of the bill would also affect arrests and prosecution of those possessing the chemicals to manufacture GHB, a date rape drug. Law enforcement officials estimate that, as a result of this new "assembly"

charge, the number of new arrests could be three or four times the number of arrests for the illegal manufacture of methamphetamine. Again assuming a high rate of conviction, this provision of the bill could produce several hundred new convictions annually. Under the bill, judges would have a wide range of discretion in determining the appropriate sanctions. Since this is a new crime, there is unfortunately no sentencing data, and no way to make any precise predictions as to how judges will respond.

The minimum prison term for a felony of the third degree is 1 year. Given the judicial discretion built into the sentencing presumptions for a felony of the third degree, we can be reasonably certain that not everyone will be sent to prison. According to DRC data, the average prison time served for a felony of the third degree drug conviction is 1.8 years, compared with a possible maximum prison term of 5 years. The key fiscal question here is how many of these drug offenders would be sent to prison?

When changes were made to felony sentencing practices at the time of S.B. 2 in 1996, the intent was to incarcerate those offenders who were clearly linked to the illegal drug business. To the extent that an offender was peripheral to the illegal drug business, sentencing options other than prison were to be utilized more frequently. Despite the difficulties of predicting how judges will respond to a new law, LSC fiscal staff believe it is most prudent to express potential cost estimates in terms of an upper and lower range. If there are as many as 400 new convictions annually for this new crime, and because it is essentially a non-violent offense that could be judged as being somewhat farther removed from the illegal drug business than would be trafficking, then perhaps as few as 20 percent would be sent to prison. If this were the case, then 80 new prison inmates annually serving, on average, 1.8 years would cost the state approximately \$3.1 million in annual incarceration costs. If 50 percent of these new convictions were sent to prison annually for an average of 1.8 years, then the annual incarceration cost to the state would be approximately \$7.9 million.

Many variables affect such estimates, not the least of which is judicial discretion. If judges choose not to rely on prison, but instead utilize other community based sentencing options, then the estimated annual incarceration cost to the state would be much lower. On the other hand, if judges perceive methamphetamine as a serious threat to their communities, they may adopt tougher sentencing standards in an effort to stem the tide. Another possibility is that judges may order a defendant convicted of this illegal assembly of chemicals charge to serve time in a local jail. Data from the Ohio Criminal Sentencing Commission suggests that about 8 percent of those convicted of a felony of the third degree drug offense were sentenced to a local jail. The average time served was 20.5 days. If 8 percent of 400 new annual convictions, or 32 offenders, received the average 20.5 days in a local jail, at an average cost of about \$60 per day, then the additional annual cost to counties statewide would be around \$39,360.

Drug Paraphernalia. The second drug offense created by the bill involves the possession of the equipment, instruments, and so forth, used in the manufacture of methamphetamine. The definition of “drug paraphernalia” is expanded to include such equipment. The offense of possessing or using methamphetamine drug paraphernalia would be a misdemeanor of the fourth degree and selling such paraphernalia would be a misdemeanor of the second degree. The fiscal impact of this provision of the bill will likely be small as much more serious charges will be filed when a methamphetamine laboratory is raided. A drug paraphernalia charge would likely be stacked on to the more serious felony charges.

Local Costs. Given the new drug offenses created by the bill will likely result in a large number of new arrests being made annually statewide, significant fiscal burdens will be placed on counties and municipalities. As these new criminal cases are processed, counties and municipalities will experience annual expenditure increases related to the adjudication, prosecution, defense (if indigent), and sanctioning of these drug offenders, including the cost of pre-trial and post-conviction stays in local jails.

Revenue. In addition to any fines and local court costs charged, those convicted must pay locally collected state court costs. State court costs for a felony conviction total \$41 (\$30 for the Victims of Crime/Reparations Fund and \$11 goes to the GRF). State court costs for a misdemeanor conviction total \$20 (\$9 for the Victims of Crime/Reparations Fund and \$11 goes to the GRF). Given the relatively large number of additional annual convictions expected, state court cost revenue for the GRF and the Victims of Crime/Reparations Fund will be gained, possibly reaching several thousand dollars annually. Collecting this revenue can also be very problematic, so the actual gain in annual revenue is uncertain.

Cleanup. Another important area of cost to be mentioned involves the toxic waste cleanup required when methamphetamine laboratories are raided. The production process yields a great deal of dangerous chemical waste that is often just dumped at the site of the laboratory. The laboratories also usually have containers of dangerous chemicals that must be subject to toxic waste disposal procedures. The average cost of a cleanup following a laboratory seizure is between \$3,000 and \$5,000. Most local jurisdictions cannot afford these cleanup costs. At the present time, local law enforcement agencies usually request DEA assistance when a laboratory is seized. If they are present, DEA will pay the cost of an independent toxic waste disposal company to perform an emergency cleanup of the laboratory site. Thus, at present, the federal government and not state or local agencies pay for the removal of the toxic waste. A problem may develop if the rapid growth of methamphetamine sweeps across Ohio as expected. If federal cleanup resources become depleted, the state or local governments will be forced to bear the significant expenses associated with emergency cleanups. This has already happened in Arkansas, which seized 540 illegal laboratories in 1999. Local law enforcement agencies face great difficulties in paying for the hazardous waste cleanup.

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