

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 10, 2005**

**TO:** Honorable Joe Driver, Chair, House Committee on Law Enforcement

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB164** by Berman (Relating to the civil and criminal consequences of engaging in certain conduct related to the manufacture of methamphetamine and to the distribution and retail sales of pseudoephedrine; providing penalties.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB164, As Introduced: a negative impact of (\$18,260,219) through the biennium ending August 31, 2007.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$4,400,095)
2007	(\$13,860,124)
2008	(\$20,428,717)
2009	(\$26,316,134)
2010	(\$31,759,006)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>GENERAL REVENUE FUND</i> 1	Probable Revenue Gain from <i>GENERAL REVENUE FUND</i> 1	Change in Number of State Employees from FY 2005
2006	(\$4,405,095)	\$5,000	1.0
2007	(\$13,865,124)	\$5,000	1.0
2008	(\$20,433,717)	\$5,000	1.0
2009	(\$26,321,134)	\$5,000	1.0
2010	(\$31,764,006)	\$5,000	1.0

**Fiscal Analysis**

The bill would amend the Health and Safety Code by enhancing the punishment for the offense of manufacture or delivery of substance in penalty group 1 from a state jail felony to a felony of the third degree if the controlled substance is methamphetamine, and the amount by aggregate weight is less than one gram. The bill would also amend the Health and Safety Code by enhancing the punishment for the offense of manufacture or delivery of substance in penalty group 1 from a second degree felony to a felony of the first degree if the controlled substance is methamphetamine, and the amount by aggregate weight is one gram or more but less than four grams.

The bill would require the Department of State Health Services (DSHS) to implement a methamphetamine watch program.

The bill would place strict limitations on over-the-counter sales of certain forms of pseudoephedrine. The bill establishes an administrative penalty to be imposed by DSHS for violations. A process for administrative hearings before the State Office of Administrative Hearings (SOAH) and appeals for judicial review would also be established. The Attorney General is authorized to sue to collect penalties that have been imposed and are not paid.

Additionally, the bill would allow the Department of Family and Protective Services (DFPS) to take possession of a child that is on the premises where there is the manufacture of methamphetamine.

## **Methodology**

In fiscal year 2004, there were 2,740 state jail admissions to the Texas Department of Criminal Justice for the offense of manufacture or delivery of substance in penalty group 1. It is assumed that 1,370 of the offenders would have punishment enhanced from a state jail felony to a felony of the third degree as required by the bill. It is also assumed that 408 of 816 offenders for the offense of manufacture or delivery of substance in penalty group 1 with punishment as a felony of the second degree would have punishment enhanced to a felony of the first degree as required by the bill.

In order to estimate the future impact of the proposal, the changes proposed in the bill are applied in a simulation model using the estimated number of felony admissions identified in the bill, reflecting the distribution of offenses, sentence lengths, and time served for those offenders. Included in the estimated costs are projected parole supervision operating costs.

Costs of incarceration are estimated at \$40 per inmate per day, reflecting approximate costs of either operating facilities or contracting with other entities. No costs are included for prison construction. Options available to address the increased demand for prison capacity that would result from implementation of this bill include construction of new facilities and contracting with counties or private entities for additional capacity. Increased correctional costs are estimated to be \$1,713,269 in fiscal year 2006, \$8,361,577 in fiscal year 2007, \$14,930,170 in fiscal year 2008, \$20,817,587 in fiscal year 2009, and \$26,260,459 in fiscal year 2010.

DSHS will adopt the existing MethWatch program materials developed by the Consumer Healthcare Product Association. Printing, postage, and supplies for this program will total \$12,860 per year.

It is assumed that any new complaints, investigations or cases referred to the Office of the Attorney General as a result of implementation of the provisions of the bill could be absorbed by current resources.

It is assumed that DSHS would require one new full-time-equivalent position (FTE) to investigate complaints of retail firms. The FTE would be hired December 1, 2005, so salary, benefits, travel, and certain operating costs would be for only nine months of fiscal year 2006. Salary is assumed to be \$24,741 in the first year and \$32,988 in each subsequent year. Benefits are assumed at 29.74 percent of salary. Operating costs are assumed to be \$11,408 in the first year and \$5,786 in subsequent years. In-state travel costs are assumed to be \$12,334 in the first year and \$16,445 in each subsequent year. Total costs for the investigation of complaints are estimated to be \$55,841 in fiscal year 2006 and \$65,030 in subsequent fiscal years.

It is assumed that existing staff at DSHS would promulgate rules related to the bill.

It is assumed that one case per year would be referred to SOAH. Based on historical average cost data, it is assumed that each case would cost \$3,262.

It is assumed that five penalties would be assessed each year, each for \$1,000.

Under the bill, DFPS would be able to take possession of a child where the respondent has personal knowledge or information furnished by another indicating that the parent or person who has possession of the child permitted the child to remain on the premises used for the manufacture of methamphetamine. DFPS reports there would be an additional 250 foster care placements per year as a result. The estimate includes the percentage of children that may be placed with relatives. The average

stay in foster care after removal for these children would be seven months with an average daily rate of \$52.68. DFPS noted that General Revenue Funds were utilized in their estimate as it is believed that the agency would no longer be able to meet the "reasonable effort to prevent removal" statutes and, as a result, Federal Title IV-E funding would be lost. The total estimated costs for foster care are \$2,619,863 in fiscal year 2006 and \$5,422,395 in subsequent fiscal years.

### **Technology**

Computer hardware costs would total \$2,224 in fiscal year 2006 and \$1,468 in subsequent fiscal years.

### **Local Government Impact**

Local judges may note an increase in the number of removals in which no alternate options to prevent removal of a children could be taken because the manufacture of methamphetemines was involved.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 301 Office of the Governor, 302 Office of the Attorney General, 360 State Office of Administrative Hearings, 515 Board of Pharmacy, 530 Department of Family and Protective Services, 537 Department of State Health Services, 665 Juvenile Probation Commission, 696 Department of Criminal Justice

**LBB Staff:** JOB, GG, LW, VDS, LB, KJG