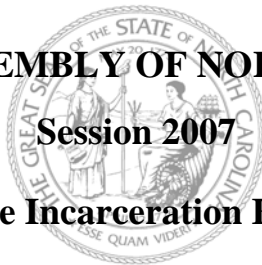


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 953 (Second Edition)
SHORT TITLE: Regulate Sales/Glass Vials and Cigarette Wrap
SPONSOR(S): Representatives Kiser, Hilton, and R. Warren

Table with FISCAL IMPACT header and columns for Yes (X), No (), and No Estimate Available () across fiscal years 2007-08 to 2011-12. Rows include GENERAL FUND (Correction, Judicial), TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS, POSITIONS, and EFFECTIVE DATE.

BILL SUMMARY: H.B. 953 enacts new Article 5F within Chapter 90 of the General Statutes, entitled "Control of Certain Products That May Be Used as Drug Paraphernalia."

- I. New G.S. 90-113.80 requires retailers to do the following:
a. Store and sell certain glass vials and cigarette wrapping papers from behind-the-counter;
b. Require each purchaser of these items to provide photo identification, enter his or her name and address in a record of sale, and sign the record of sale attesting to the validity of the information;
c. Maintain the record of sale for a period of two years from the date of each transaction; and,
d. Make the record readily available, within 48 hours of the transaction, to an authorized federal, State, or local law enforcement official for inspection.
II. New G.S. 90-113.81 provides that violation of G.S. 90-113.80 is a criminal offense.

- a. G.S. 90-113.81(a) makes first offense by a retailer a Class 2 misdemeanor, and second or subsequent offense a Class 1 misdemeanor. Upon third offense, the offending retailer is barred from selling glass vials.
 - b. G.S. 90-113.81(b) makes first offense by a purchaser or employee a Class 3 misdemeanor; second offense a Class 2 misdemeanor; and third or subsequent offense a Class 1 misdemeanor.
 - c. G.S. 90-113.81(c) provides that any retailer who fails to adequately supervise employees in such transactions, or to discipline employees for violations of Article 5F, is subject to a fine of up to \$500 for the first violation; \$750 for the second violation; and \$1,000 for a third or subsequent violation.
- III. New G.S. 90-113.82 provides for retailer and employee immunity from civil liability, if a report of alleged criminal activity is made in good faith to law enforcement.

The act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

The second edition makes the following changes to the first edition:

- Amends G.S. 90-113.80 to provide that a retailer must require employees, involved in the sale of these glass vials or cigarette wrapping papers, to be trained in the statute’s requirements. Also requires the retailer to supervise employees to ensure compliance with the statute.
- Modifies G.S. 90-113.81 to remove the penalties for violation by purchasers or employees, and the fines for retailers who fail to adequately supervise employees. Alters the penalties for retailers who willfully and knowingly violate G.S. 90-113.80 as follows:
 - 1. From a Class 2 to a Class 3 misdemeanor for a first offense;
 - 2. From a Class 1 to a Class 2 misdemeanor for a second offense; and,
 - 3. A Class 1 misdemeanor for a third or subsequent offense that occurs on the same premises or in another establishment owned or operated by the same retailer.

Source: Adapted from Bill Digest H.B. 953 (03/21/0200) and N.C. Sentencing and Policy Advisory Commission

ASSUMPTIONS AND METHODOLOGY:

General

Because the proposed offenses are new, there is no historical data from which to project the potential impact of this legislation. However, given current Courts and Corrections resources, any new charge and/or conviction for the proposed offenses will generate some additional fiscal impact.

Though the proscribed actions may constitute some economic disincentive for retailers, Fiscal Research assumes that the affected businesses will substantially comply with the regulations this bill sets forth. Furthermore, *the nature of these offenses and proposed penalty levels do not suggest that H.B. 953 will have a significant fiscal impact.*

Department of Correction: Division of Prisons

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. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Based on the most recent prison population projections and estimated available bed capacity, there are no surplus prison beds available over the immediate five-year horizon or beyond. Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Since Classes 1, 2, and 3 misdemeanants serve their designated terms of incarceration within local jails, any resultant active sentence due to this proposal should not impact the state’s prison population.¹ The potential impact on local jail populations is unknown.

Because the proposed offenses are new, there is no historical data from which to project the future number of violations. In FY 2005-06, 23% of Class 3, 17% of Class 2, and 20% of Class 1 misdemeanor convictions resulted in active sentences, with average estimated times served of 3, 13, and 31 days, respectively. Accordingly, to the extent that future convictions result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. However, the average lengths of active sentences for Classes 2 and 1 misdemeanor convictions do not suggest a significant increase in DOC reimbursements.

Department of Correction: Division of Community Corrections

In FY 2005-06, 77% of Class 3, 83% of Class 2, and 80% of Class 1 misdemeanor convictions resulted in either intermediate or community punishments – predominantly special, intensive, or general supervision probation. *Thus, if future convictions for these offenses occur, the Division of Community Corrections (DCC) could assume some additional costs for offenders placed under its supervision.* However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

- Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program.
- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

Although it is not known how many charges that might occur for violation of Article 5F, the Administrative Office of the Courts expects that any additional case will increase court-time requirements and workloads for district attorneys, district court judges, clerks, court reporters, and indigent defense counsel. The estimated single trial/plea costs for Classes 1, 2 and 3 misdemeanor cases are shown below. Actual costs may vary from these general estimates, which include indigent defense.

| Table 1. AOC Cost Estimates Per Trial and Plea: FY 2007-08 | | |
|---|--------------|-------------|
| <i>Offense Class</i> | <i>Trial</i> | <i>Plea</i> |
| Class 3 Misdemeanor | \$ 2,770 | \$ 226 |
| Class 2 Misdemeanor | \$ 2,770 | \$ 230 |
| Class 1 Misdemeanor | \$ 3,702 | \$ 243 |

¹ Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball and Denise Thomas

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

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