

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 84 (First Edition)

SHORT TITLE: Enact Medical Cannabis Act.

SPONSOR(S): Representatives Harrison and Alexander

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
 Department of Public Safety, Administrative Office of the Courts, Office of Indigent Defense Services

EFFECTIVE DATE When the bill becomes law

TECHNICAL CONSIDERATIONS:
 None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those persons convicted of the new offenses. However, since there is no historical data on this new offense, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$31-\$165
- Indigent Defense Services: \$166-\$847
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: \$1,416-\$1,634

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill creates a new Article 43, North Carolina Medical Cannabis Act, in Chapter 90 of the General Statutes. The Article introduces multiple statutes that include civil and criminal protections and penalties relating to the prescription, production, and consumption of medical cannabis.

ASSUMPTIONS AND METHODOLOGY:

General

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

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial System

The Administrative Office of the Courts (AOC) and the Office of Indigent Defense Services (IDS) provide Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

NC AOC does not have data upon which to estimate the impact of this bill, specifically:

- a potential reduction in the number of charges for existing offenses for those actions that would be considered lawful under this bill
- a potential increase in the number of charges for existing offenses due to violations of provisions and conditions contained in this bill
- the number of cases in which the affirmative defense created in this bill is used, and any subsequent increase court time required to handle these matters, or
- the number of charges for the five new offenses created in this bill.

New misdemeanor and infraction charges would impact District Court Judges, Deputy Clerks, Assistant District Attorneys, and other judge and district attorney support staff; superior court personnel could be impacted due to appeals. On average, the cost to process a Class 1 misdemeanor is estimated at \$165. The cost to process a Class 2 misdemeanor is estimated at \$88. The cost associated with processing an infraction is \$31. As the misdemeanors and infractions in this bill will represent new charges in district court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for a potential reduction in criminal charges under this bill, the average fiscal impact of each case would be the estimate amount listed above.

IDS estimates that the provisions in House Bill 84 (should they result in a net increase in charges) will increase the costs per case by \$166 in District Court. Should the charges be heard in Superior Court, the additional costs to IDS will be \$321 for a non-trial case and \$847 for a case that goes to trial.

There are a number of other penalty provisions in the bill that would not have an impact on IDS because they create new infractions for which there is no entitlement to appointed counsel, or they allow for an administration suspension or revocation.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will not add any inmates to the prison system by the end of FY 2014-15.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill³	<i>None</i>				
5. Additional Beds Required	<i>None</i>				

The proposed bill creates one new Class 2 misdemeanor offense and two new Class 1 misdemeanor offenses. First, subsection (d) of this statute would make it a Class 2 misdemeanor for any person to fraudulently represent to a law enforcement official any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution. Violation is punishable by a fine of \$500.00 in addition to any other applicable penalties for making a false statement about the medical use of cannabis. Since this creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

³ Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill. In FY 2011-12, 29% of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Secondly, the bill creates two new Class 1 misdemeanor offenses. Subsection (m) of this statute would make it a Class 1 misdemeanor for any person to breach the confidentiality of information obtained pursuant to this section. Subsection (p) of this statute would make it a Class 1 misdemeanor for any person to breach the confidentiality of information obtained pursuant to the application and licensure of (1) medical cannabis centers, (2) producers of medical cannabis, and (3) producers of cannabis-infused products by the North Carolina Department of Agriculture and Consumer Services.).

Since these are new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill. In FY 2011/12, 26% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 39 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Department of Public Safety – Community Correction Section

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations. In FY 2010-11, 79% of offenders convicted of a Class 2 misdemeanor were sentenced to community supervision, for an average of 13 months. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor is \$1,416 (390 days times \$3.63 per day). Similarly, in FY 2010-11, 74% of offenders convicted of a Class 1 misdemeanor were sentenced to community supervision, for an average of 15 months. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor is \$1,634 (450 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced to community supervision under the proposed bill.

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

⁴ CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

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