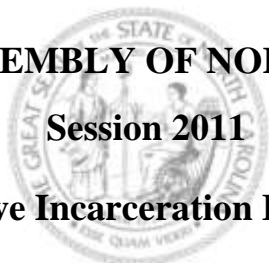


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 9 (Second Edition)

SHORT TITLE: Make Synthetic Cannabinoids Illegal.

SPONSOR(S): Senator Brown

|   | FISCAL IMPACT     |                   |                                    |                   |                   |
|---|-------------------|-------------------|------------------------------------|-------------------|-------------------|
|   | Yes (X)           | No ( )            | No Estimate Available ( )          |                   |                   |
|   | <u>FY 2011-12</u> | <u>FY 2012-13</u> | <u>FY 2013-14</u>                  | <u>FY 2014-15</u> | <u>FY 2015-16</u> |
| <b>GENERAL FUND</b>   |                   |                   |                                    |                   |                   |
| Correction  |                   |                   | Exact amount cannot be determined* |                   |                   |
| Probation   |                   |                   | Exact amount cannot be determined* |                   |                   |
| Judicial  |                   |                   | Exact amount cannot be determined* |                   |                   |
| <i>*See Assumptions and Methodology</i>   |                   |                   |                                    |                   |                   |
| <b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.  |                   |                   |                                    |                   |                   |
| <b>EFFECTIVE DATE:</b> This act becomes effective April 1, 2011, and applies to offenses committed on or after that date.   |                   |                   |                                    |                   |                   |
| <i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i> |                   |                   |                                    |                   |                   |

**BILL SUMMARY:**

The proposed legislation would add synthetic cannabinoids to the list of controlled substances, making possession, manufacture, or the sale or delivery of these substances a criminal offense. The proposed legislation also creates the new Class F felony of trafficking in synthetic cannabinoids.

This bill places synthetic cannabinoids into Schedule VI of the Controlled Substances Act. The proposed legislation becomes effective April 1, 2011, and applies to offenses committed on or after that date. Because of the early effective date, impact could begin in FY 2010-11. Source: Bill Summary for the PCS to the First Edition (02/02/2011).

**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.

## **Department of Correction- Division of Prisons**

### **Section 1:**

This bill amends G.S. 90-94, Schedule VI controlled substances, by adding subsection (6), Synthetic cannabinoids. Subsection (3) includes nine subparts, (a)-(i), providing detailed chemical descriptions of the substances that would qualify as synthetic cannabinoids. The addition of synthetic cannabinoids to Schedule VI expands the reach of all existing offenses involving Schedule VI controlled substances in G.S. 90-95, Violations; penalties, and elsewhere.

**Impact:** The offenses set forth in the proposed legislation could result in additional convictions of Class 3 and 1 Misdemeanors, as well as Class I, H, G, F, E, D, and C felonies. In FY 2009-10, the average estimated time served for misdemeanors ranged from 3 to 27 days. In FY 2009-10, the average estimated time served for felonies ranged from 7 to 82 months. It is not known how many additional convictions would occur as a result of the proposed broadening of the current statute. Since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there would also be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

### **Section 2:**

This section amends G.S. 90-95(b)(2) to provide that a transfer for no remuneration of less than 5 grams of synthetic cannabinoid shall not constitute a delivery for purposes of G.S. 90-95(a)(1), thereby excluding the act from the Class I felony offense of delivery of a Schedule VI controlled substance in G.S. 90-95(b)(2).

### **Section 3:**

This section amends G.S. 90-95(d)(4) to make it a Class 1 misdemeanor to possess more than one-half ounce of a synthetic cannabinoid or any mixture containing such substance, and to make it a Class I felony to possess in excess of one and one-half ounces of a synthetic cannabinoid or any mixture containing such substance.

**Impact:** Since the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

In FY 2009-10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for the proposed

Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2009-10, 17% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten Class I felony convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

#### **Section 4:**

This section adds subpart (h)(2a) to G.S. 90-95, Violations; penalties, to create the offense of “trafficking in synthetic cannabinoids,” a Class F felony punished by an active prison term of 70 months to 84 months and a fine of at least \$50,000.<sup>1</sup> The offense is defined as the sale, manufacture, delivery, transport, or possession of more than 35 grams of synthetic cannabinoids.

Under G.S. 90-95(i), conspiring to traffic in synthetic cannabinoids would also be a Class F felony punished by 70 months to 84 months of active prison time and a fine of no less than \$50,000.

**Impact:** Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. If, for example, there was one Class F conviction per year for the proposed offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.

#### **Judicial Branch**

The Administrative Office of the Courts (AOC) provides 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.

#### **Section 1:**

AOC anticipates a somewhat larger number of charges initially, due to charges for possession of controlled substances purchased prior to the effective date of this legislation. AOC would expect the number of charges to decline over time.

**Impact:** Using a time study conducted by the National Center for State Courts for North Carolina District Attorneys’ offices and adjusting for the type of drug and other factors, AOC anticipates that, on average, each charge will require one hour of an assistant district attorney’s time, of which half will be spent in court. This average includes all types of dispositions, such as trials, pleas, and dismissals. In 2010, there were 50,641 non-trafficking marijuana-related charges, of which 15,108 were felony charges. (This count does not include non-marijuana-specific charges such as selling

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<sup>1</sup>Subpart G.S. 90-95(h)(5) allows the judge in a drug trafficking case to suspend the sentence and impose probation or impose a prison term less than the prescribed minimum upon a finding that the defendant rendered “substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals.”

a controlled substance near a public school.) If, for example, in the first full year of implementation defendants charged with synthetic cannabinoid-related offenses were equivalent to 10 percent of marijuana charges, there would be approximately 3,500 charges for new misdemeanors and 1,500 charges for new felonies, and costs would be as follows:

| <b>Scenario: 3,500 Defendants Charged with Misdemeanors &amp; 1,500 Defendants Charged with Felonies (10% of Marijuana Charges)</b> |           |                    |                 |                    |
|---|-----------|--------------------|-----------------|--------------------|
| Position Type   | Number*   | Cost per Position  |                 | Total              |
|   |           | R                  | NR              |                    |
| Assistant District Attorney   | 3         | \$108,829          | \$3,739         | \$337,704          |
| Victim Witness Legal Assistant  | 3         | \$57,481           | \$5,155         | \$187,908          |
| Superior Court Judge  | 1         | \$183,654          | \$6,572         | \$190,226          |
| District Court Judge  | 1         | \$161,416          | \$9,672         | \$171,088          |
| Deputy Clerk  | 4         | \$45,652           | \$2,620         | \$193,088          |
| Court Reporter  | 1         | \$68,625           | \$4,857         | \$73,482           |
| <b>Total Positions</b>  | <b>13</b> | <b>\$1,026,608</b> | <b>\$53,406</b> | <b>\$1,080,014</b> |

\*Rounded to nearest whole FTE

Note: The workload used in the above scenario is based on 61 minutes per case for Assistant District Attorneys, of which half is in court and is therefore used to estimate the workload for Superior Court Judges and court reporters. The workload for deputy clerks is based on District Court in-court criminal dispositions from the NCSC study of clerks' workload. The workload for VWLAs is based on the NCSC VWLA study, using workload adjusted for the difference between trafficking and non-trafficking Schedule I drug cases from the ADA study. (Only the ADA study distinguished drug cases from other cases.)

**Section 2:**

AOC anticipates a potential increase in Class F drug trafficking charges, due to the proposed legislation. Drug trafficking charges are subject to a separate grid with substantially longer active prison terms. These cases tend to be more complex and require substantially greater workload on the part of assistant district attorneys (ADAs).

**Impact:** Based on a time study conducted by the National Center for State Courts for North Carolina District Attorneys' offices, each drug trafficking charge requires, on average, 8.7 hours of an Assistant District Attorney's time, of which 3.2 hours would be in-court. This average includes all types of dispositions, such as trials, pleas, and dismissals. In 2010, there were 559 charges for trafficking or conspiring to traffic in marijuana. AOC cannot project the number of charges that would result from this legislation; however, the workload would impact assistant district attorneys, victim witness legal assistants, superior court judges, deputy clerks, and court reporters.

In FY 2009-10, a typical felony case took approximately 206 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

**SOURCES OF DATA:** North Carolina Sentencing and Policy Advisory Commission; Judicial Branch

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** February 8, 2011



**Signed Copy Located in the NCGA Principal Clerk's Offices**