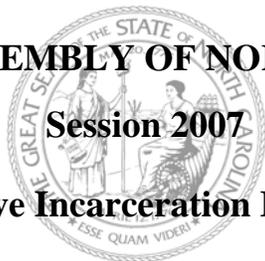


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1491 (Second Edition)

SHORT TITLE: Prohibit Blunt Wraps.

SPONSOR(S): Senator Hartsell

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction	No significant impact is anticipated for the Courts or Corrections; however, the exact amount cannot be determined.				
Judicial					
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS: (cumulative)*	Amount cannot be determined. Impact on local jails is indeterminate.				
POSITIONS: (cumulative)	Amount cannot be determined.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch; Local Government.				
EFFECTIVE DATE:	December 1, 2007				
<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: Current G.S. 90-113.21(a) identifies certain equipment, materials, and products that may constitute drug paraphernalia. Subdivision (12) lists, specifically, examples of objects that may be used for “ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body...”

The proposed committee substitute adds a new subdivision to G.S. 90-113.21(a)(12), which includes “blunt wraps” among the objects that may be used to introduce marijuana, cocaine, or hashish into the body. Specifically, a “blunt wrap” includes: 1) a product that contains less than 50% tobacco or has a homogenized tobacco leaf wrapper containing more than 16% moisture, and

which is designed as a wrap for smoking another substance; or 2) a product marketed and sold as a “blunt wrap.”

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

ASSUMPTIONS AND METHODOLOGY:

General

It is unclear whether offenses involving “blunt wraps” are now prosecuted under current law. G.S. 90-113.21 seemingly provides a non-exclusive list of drug paraphernalia examples; therefore, *equipment, materials, and products that are not explicitly identified by the statute may also constitute drug paraphernalia*, contingent upon their use, design, or intended use to facilitate violation of the Controlled Substances Act. However, current offense data does not distinguish violations involving “blunt wraps” as defined, so it is not known whether the proposed definition expansion will result in more charges or convictions for relevant offenses.

Though the prosecutorial effect is unknown, it is assumed that the inclusion of “blunt wraps” as drug paraphernalia (G.S. 90-113.21(a)(12)) could expand the pool of offenders for the offenses contained in Article 5B, and potentially increase the likelihood of violation:

- G.S. 90-113.22 - *Possession of drug paraphernalia*: Makes it a Class 1 misdemeanor offense to possess a blunt wrap.
- G.S. 90-113.23 - *Manufacture or delivery of drug paraphernalia*: Makes it a Class 1 misdemeanor offense to deliver, possess or manufacture with the intent to deliver a blunt wrap. Inclusion also makes it a Class I felony for an adult (person age 18 or older) to deliver a blunt wrap to a minor.
- G.S. 90-113.24 - *Advertisement of drug paraphernalia*: Makes it a Class 2 misdemeanor to advertise a blunt wrap for sale.

The Administrative Office of the Courts currently does not maintain offense codes for the offenses in G.S. 90-113.23 and 90-113.24, possibly indicating that violations are infrequently charged and/or result in conviction. However, given the high number of drug paraphernalia charges in CY 2006, approximately 46,279, it is probable that some offenses under these statutes are instead recorded as unlawful possession (G.S. 90-113.22). This prevalence of offense also suggests that at least some additional charges and/or convictions could result due to this legislation.

Consequently, if additional charges and convictions result, additional costs will also be incurred by the Courts, Corrections, and local governments (i.e. administration of jails). However, *based on the specific definition of the item and applicable penalty levels (primarily Classes 1 and 2 misdemeanors)*, Fiscal Research does not assume this legislation will generate a significant fiscal impact.

Department of Correction: Division of Prisons

Because Classes 1 and 2 misdemeanants serve their designated terms of incarceration within local jails, resultant misdemeanor active sentences will not impact the State prison population.¹

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.

However, it is not known how many additional convictions might occur; therefore, the potential impact on local jail populations is indeterminate.

In FY 2005-06, 20% of Class 1 and 17% of Class 2 misdemeanor convictions resulted in active sentences, with average estimated times served of 31 and 13 days, respectively. Thus, if future convictions result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. But, based on the average sentence lengths for Classes 1 and 2 misdemeanors, DOC reimbursements should not increase significantly.

Conversely, because there are no surplus prison beds, any resultant Class I felony active sentence (G.S. 90-113.23) will necessitate the construction of an additional bed. In FY 2005-06, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. For illustration, if *twelve* Class I convictions occur annually, *the combination of active sentences and probation revocations will require one additional prison bed in the first applicable year; four additional beds in the second year; and 2 new employees in the second year.*

Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State approximately \$272,160 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$168,480.² These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$116,390 by FY 2009-10.³

Department of Correction: Division of Community Corrections

In FY 2005-06, 83% of Class 2, 80% of Class 1, and 85% of Class I convictions resulted in either intermediate or community punishments – predominantly special, intensive, or general supervision probation. Consequently, *if additional non-active sentences occur, the Division of Community Corrections (DCC) could incur 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. Included below is a brief discussion of DCC supervision costs, per offender:

- 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.

² New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

³ Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

- 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 additional charges might occur for the relevant offenses, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and workloads for district attorneys, superior and district court judges, clerks, court reporters, juries, and indigent defense counsel. The estimated single trial/plea costs for Classes 1 and 2 misdemeanors cases, as well as Class I felony 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 2 Misdemeanor	\$ 2,770	\$ 230
Class 1 Misdemeanor	\$ 3,702	\$ 243
Class I Felony	\$ 6,980	\$ 298

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

DATE: May 18, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices