

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 1161 (First Edition)

**SHORT TITLE:** Legalize Medical Marijuana/Const Amendment.

**SPONSOR(S):** Representative Alexander

**FISCAL IMPACT**

(\$ in millions)

Yes     
  No     
  No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**

Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

**EFFECTIVE DATE** December 1, 2014

**TECHNICAL CONSIDERATIONS:**

Yes - See Technical Considerations Section

**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 convicted of the new offenses. However, given there is no historical data on these new offenses, 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: \$88 to \$165 per disposition
- Indigent Defense Services: \$182 in district court  
\$359 in superior court without a trial  
\$847 in superior court with a trial
- Prison Section: No cost
- Community Corrections: Minimum of \$1,606

Please see the Assumptions and Methodology section for additional information.

The AOC does not collect data about the purpose, medical or otherwise, for which marijuana is obtained or consumed. There is no way to tell how many of the current offenders may have had the substance for a medical purpose and as such would not be charged under the proposed new statutes. Therefore, this Incarceration Note does not estimate any reduction in other existing marijuana-related offenses that may result from this bill. Information about those offenses can be found in Appendix A.

#### **BILL SUMMARY:**

Section 4 of the bill creates several three new misdemeanor offenses. First, this section creates a Class 2 misdemeanor for any person to fraudulently represent to law enforcement any fact or circumstance relating to the medical use of cannabis in order to avoid arrest or prosecution. This conduct is covered in existing G.S. 14-225 False reports to law enforcement agencies or officers, also a Class 2 misdemeanor.

Second, Section 4 of the bill creates a new Class 1 misdemeanor for any person who breaches the confidentiality of information obtained pursuant to the issuance of a medical marijuana registry identification card.

Finally, Section 4 of the bill creates a new Class 1 misdemeanor for any person to breach the confidentiality of information obtained pursuant to the licensure of medical cannabis centers, producers, and producers of cannabis-infused products.

#### **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. 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. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS 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.

Since the bill creates three 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 new statute.

##### **Judicial Branch**

The Administrative Office of the Courts 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 4 of the bill creates two new Class 1 misdemeanor offenses. Because these are new offenses, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$165.

Section 4 of the bill also creates a new Class 2 misdemeanor. For every additional person charged with this offense, the average cost to the court would be \$88.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a new misdemeanor (regardless of class) will be \$182 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$359 if the case does not go to trial and 847 if it does. These estimates assume the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

#### **Department of Public Safety –Prison Section**

This bill creates three new misdemeanor offenses. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because offenders who receive active sentences of less than 180 days will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

#### **Department of Public Safety – Community Correction Section**

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$123.50 per offender, per month; 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 active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

Section 4 of the bill creates two new Class 1 misdemeanors. In FY 2012-13, 27 percent of Class 1 misdemeanor offenders received active sentences; two percent received intermediate sentences; and 71 percent received community punishments. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. Therefore, at a minimum, one conviction resulting from either of these new offenses and sentenced to intermediate or community punishment will require at least 12 months of supervision. The cost of 15 months of supervision is \$1,853 per offender (\$123.50 per month times 15 months).<sup>1</sup>

Section 4 of the bill also creates a new Class 2 misdemeanor. In FY 2012-13, 31 percent of Class 2 misdemeanor offenders received active sentences; one percent received intermediate sentences; and 68 percent received community punishments. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 15 and 13 months, respectively. Therefore, at a minimum, one conviction resulting from this new offense and sentenced to either intermediate or community punishment will require at least 13 months of supervision. The cost of 13 months of supervision is \$1,606 per offender (\$123.50 per month times 13 months).<sup>2</sup>

**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

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Kristine Leggett

**APPROVED BY:**

Mark Trogdon, Director  
Fiscal Research Division

**DATE:** June 23, 2014

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<sup>1</sup> Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.

## APPENDIX A

The Sentencing and Policy Advisory Commission provided the following information about current marijuana-related offenses:

[The bill] also provides protection from prosecution for certain parties involved in the production, distribution and use of medical cannabis. Specifically, G.S. 90-730.3, Protections for the medical use of cannabis, exempts qualified patients, designated caregivers with a registry card, licensed producers, physicians, and even persons in the presence or vicinity of the use of medical cannabis from prosecution under existing criminal laws. Proposed G.S. 90-730.3(t) provides that there is no protection for these parties for acquiring, possessing, manufacturing, producing, using, selling, distributing, dispensing or transporting in a manner inconsistent with Article 43 of Chapter 90.

Article 5 of Chapter 90 of the General Statutes, The Controlled Substances Act, provides for the regulation of controlled substances, including marijuana and those other controlled substances found in Schedule VI. Below are the statutory sections that may be affected by exempting certain parties from prosecution for the use of medical cannabis. They fall into three categories: (1) offenses involving marijuana (as identified by statutory language and the AOC Offense Codes); (2) offenses involving Schedule VI controlled substances; and (3) other controlled substances offenses that could be affected by this legislation.

### *Offenses Specific to Marijuana*

- Class D Felonies:
  - G.S. §90-95(h), Trafficking, 10,000 lbs or more
- Class F Felonies:
  - G.S. §90-95(h), Trafficking, 2,000 – 9,999 lbs
- Class G Felonies:
  - G.S. §90-95(h), Trafficking, 50 – 1,999 lbs
- Class H Felonies:
  - G.S. §90-95(a)(1), Sell > 5 grams
  - G.S. §90-95(h), Trafficking, 10 – 49 lbs
- Class I felonies:
  - G.S. §90-95(a)(1), Manufacture
  - G.S. §90-95(a)(1), Deliver > 5 grams
  - G.S. §90-95(a)(1), Possession, intent to manufacture, sell or deliver
  - G.S. §90-95(a)(3), Possession, > 1.5 oz
- Class 1 misdemeanor:
  - G.S. §90-95(a)(3), Possession, > ½ oz to 1.5 oz
- Same class as underlying offense:
  - G.S. §90-98, Conspiracy, sell or deliver
  - G.S. §90-98, Conspiracy, trafficking

In FY 2012/13, there were 1,606 felony convictions and 6,885 misdemeanor convictions for offenses that involved marijuana. In addition, there were 27 drug trafficking convictions for marijuana. Of the 1,606 felony convictions, 48% were for violations of possession with intent to

sell and/or deliver marijuana. Of the 6,885 misdemeanor convictions, 88% were for violations of possess marijuana up to ½ ounces. It is not known how many fewer convictions may result from the proposed constitutional amendment calling for the protection of medical cannabis. Therefore, it is not possible to determine the potential bed savings on the prison population or the Statewide Misdemeanant Confinement Program and local jail populations. This proposed change would also impact probation resources.

### ***Schedule VI Controlled Substance Offenses***

As Schedule VI offenses may include marijuana, below are those statutory sections that may be affected by exempting certain parties from prosecution for the use of medical cannabis. It is not known how many of these offenses actually involved marijuana.

- Class H Felonies:
  - G.S. §90-95(a)(1), Manufacture
  - G.S. §90-95(a)(1), Sell
  - G.S. §90-95(a)(1), Possession, intent to manufacture, sell or deliver
- Class I Felonies:
  - G.S. §90-95(a)(1), Deliver
- Class 3 Misdemeanor:
  - G.S. §90-95(a)(3), Possession
- Same class as underlying offense:
  - G.S. §90-98, Conspiracy, sell or deliver

In FY 2012/13, there were 156 felony convictions and 1,289 misdemeanor convictions for Schedule VI controlled substances. Of the 156 felony convictions, 58% were for violations of possession, intent to manufacture, sell or deliver. All of the 1,289 misdemeanor convictions were for violations of simple possession of a Schedule VI controlled substance. It is not known how many of these convictions involved marijuana and would no longer result in a conviction by exempting certain parties from prosecution for the use of medical cannabis. As a result, it is not possible to determine the potential bed savings on the prison population or the Statewide Misdemeanant Confinement Program and local jail populations. This proposed change would also impact probation resources.

### ***Other Controlled Substances Offenses***

There are a number of other statutes within Chapter 90 that could also be affected by this legislation. Some of those sections include:

- Class C Felonies:
  - G.S. §90-95(e)(5), Sale or delivery by a person 18 or older to a person under 13
  - G.S. §90-95.1, Continuing criminal enterprise
- Class D Felonies:
  - G.S. §90-95(e)(5), Sale or delivery by a person 18 or older to a pregnant female
  - G.S. §90-95(e)(5), Sale or delivery by a person 18 or older to a person under 16, but older than 13

- G.S. §90-95.6(a)(1), Enticing, forcing, encouraging or otherwise facilitating a minor in committing a drug offense, offender is 21 or older
- G.S. §90-95.6(a)(2), Supervising, supporting, advising or protecting a minor in committing a drug offense, offender is 21 or older
- Class E Felonies:
  - G.S. §90-95(e)(8), (10), Manufacture, sale, delivery or possession with intent to manufacture, sell or deliver at or near a school, child care center, playground or public park; transfer of less than 5 grams of marijuana for no remuneration is not delivery
- Class G Felonies:
  - G.S. §90-95.7, Participating in drug violations by a minor, offender is 21 or older
- Class H Felonies:
  - G.S. §90-95(e)(9), Possession on premises of a prison or local confinement facility
- Class I Felonies:
  - G.S. §90-95(a)(2), Create a counterfeit controlled substance
- Class 1 Misdemeanor:
  - G.S. §90-113.22, Possession of drug paraphernalia
- Classification dependent upon underlying offense:
  - G.S. §90-98, Attempt or conspire to commit any Article 90 offense

In FY 2012/13, there were 144 felony convictions and 11,730 misdemeanor convictions for the other controlled substances offenses listed above. Sixty-four percent of the felony convictions were for violations of possession on premises of a prison or local confinement facility. All 11,730 misdemeanor convictions were for possession of drug paraphernalia. It is not known how many of these other controlled substances convictions involved marijuana and would no longer result in a conviction. As a result, it is not possible to determine the potential bed savings on the prison population or the Statewide Misdemeanant Confinement Program and local jail populations. This proposed change would also impact probation resources.

Section 4 is effective upon approval by the voters of the constitutional amendment proposed in Section 1 of the bill. If the constitutional amendment is approved by the voters, Section 4 becomes effective December 1, 2014.

**Juvenile**



**Justice System Impact**

This proposal including

FY 2012/13, there were 567 juveniles adjudicated and disposed with a Chapter 90 drug-related offense. Six of the 567 juveniles received a Level 3 or YDC commitment. It is not known how many of these adjudications involved marijuana and would no longer result in adjudication. As a result, it is not possible to determine the potential bed savings on the YDC population.

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