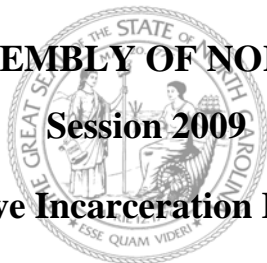


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 138 (Second Edition)

SHORT TITLE: Salvia Divinorum Unlawful.

SPONSOR(S): Senator Purcell

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
EXPENDITURES					
GENERAL FUND					
Correction			Indeterminate fiscal impact		
Probation			Indeterminate fiscal impact		
Judicial			Indeterminate fiscal impact		
ADDITIONAL PRISON BEDS:					
(cumulative)*			No prison bed impact anticipated		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2009					
<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:

Amends G.S. 90-89(3) to add Salvia Divinorum to the Schedule I controlled substance list of hallucinogenic substances. Enacts new GS 14-401.23 to make it illegal to knowingly or intentionally manufacture, sell or deliver; possess with intent to manufacture, sell or deliver; or possess Salvia divinorum or Salvinorin A. Makes a first or second offense punishable by a \$25 fine and a third or subsequent offense a Class 3 misdemeanor. Exempts (1) employees or contractors of an accredited college or school of medicine or pharmacy at a public or private university in the state while performing medical or pharmacological research and (2) possession, planting, cultivation, growing, or harvesting of a plant for aesthetic, landscaping, or decorative purposes. Effective for acts committed on or after December 1, 2009.

Source: Bill Digest S.B. 138 (02/11/0200)

ASSUMPTIONS AND METHODOLOGY:

General

The North Carolina 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

This proposed bill enacts G.S. 14-401.23, Unlawful manufacture, sale, delivery, or possession of *Salvia divinorum*, making it unlawful to knowingly or intentionally possess, manufacture, sell, or deliver, or possess with intent to manufacture, sell, or deliver *Salvia divinorum* or *Savinorin A*. (The bill exempts medical or pharmacological research performed by employees or contractors of an accredited college or school of medicine or pharmacy at a university within the State, and the possession, planting, cultivation, growing or harvesting of a plant for aesthetic, landscaping or decorative purposes.) Because the proposed bill creates a new offense, *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.*

A first or second offense is an infraction punishable by a fine of at least \$25. *The Sentencing Commission does not maintain data on infractions. Infractions are punishable only by a fine, and therefore, do not have an impact on the prison population.*

A third or subsequent offense is a Class 3 misdemeanor. It is not known how many offenders might be convicted of a third and subsequent offense under the proposed bill and would be sentenced as Class 3 misdemeanants. In FY 2007-08, 24% of Class 3 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 3 convictions was 3 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 3 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 3 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

Department of Correction – Division of Community Corrections

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). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

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.

This bill would create a new offense, therefore *the AOC cannot project the number of new charges that might occur.* In general, AOC would not expect infractions or Class 3 misdemeanors to require a considerable amount of court time to dispose, but any new charge will impact the court system to some extent. For infractions and misdemeanors, the impact would be primarily on District Court judges, assistant district attorneys, deputy clerks, bookkeepers, and cashiers. New convictions under this bill could also result in revenue for the local schools (fines), State General Fund, counties, and other funds, but *AOC cannot project the amount of the fine that will be charged or the collection rate of monies owed.*

In FY 2007-08, a typical misdemeanor case took approximately 87 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: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices