

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 12 (First Edition)
SHORT TITLE: Make Synthetic Cannabinoids Illegal.
SPONSOR(S): Representatives Cleveland, McElraft, and Horn

FISCAL IMPACT table with columns for Yes (X), No ( ), and No Estimate Available ( ) across fiscal years 2011-12 to 2015-16. Rows include GENERAL FUND, Correction, Probation, and Judicial, all with 'Exact amount cannot be determined\*'. Includes footnotes on methodology and assumptions.

BILL SUMMARY:

The proposed legislation adds "synthetic cannabinoids" to the list of Schedule I controlled substances in G.S. 90-89, thereby expanding all current offenses that involve Schedule I drugs. Currently, synthetic cannabinoids are not regulated by North Carolina law. The proposed legislation also creates the new Class F felony of trafficking in synthetic cannabinoids in G.S. 90-95(h). The act 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.

## 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. 90-89, Schedule I controlled substances, by adding subsection (6), Synthetic cannabinoids. Subsection (6) 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 I expands the reach of all existing offenses involving Schedule I 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 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 Class 1 misdemeanor convictions was 27 days. In FY 2009-10, the average estimated time served for felonies included in the bill 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 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. The offense is defined as the sale, manufacture, delivery, transport, or possession of more than 35 grams of synthetic cannabinoids.

**Impact:** 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.<sup>1</sup> 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.

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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.”

## **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 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 expects 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 2.5 hours 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. (This count does not include non-marijuana-specific charges such as selling a controlled substance near a public school.) If, for example, in the first full year of implementation defendants charged with synthetic cannabinoids-related offenses were equivalent to 10 percent of marijuana charges, there would be approximately 5,000 charges for new offenses, and costs would be as follows:

| <b>Scenario: 5,000 Defendants Charged (10% of Marijuana Charges)</b> |                |                    |                  |                    |
|--|----------------|--------------------|------------------|--------------------|
|  |                | Cost per Position  |                  |                    |
| <b>Position Type</b>   | <b>Number*</b> | <b>R</b>           | <b>NR</b>        | <b>Total</b>       |
| Assistant District Attorney  | 8              | \$108,829          | \$3,739          | \$900,544          |
| Victim Witness Legal Assistant                                       | 7              | \$57,481           | \$5,155          | \$438,452          |
| Superior Court Judge   | 5              | \$183,654          | \$6,572          | \$951,130          |
| Deputy Clerk   | 8              | \$45,652           | \$2,620          | \$386,176          |
| Court Reporter   | 5              | \$68,625           | \$4,857          | \$367,410          |
| <b>Total Positions</b>   | <b>33</b>      | <b>\$2,556,485</b> | <b>\$119,817</b> | <b>\$2,676,302</b> |

\*Rounded to nearest whole FTE

**Note:** The workload used in the above scenario is based on 2.5 hours 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 Superior Court in-court criminal dispositions from the NCSC study of clerks' workload. The workload for VWLAs is based on the NCSC VWLA study, using felony 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. As with Section 1, 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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