

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 324 (First Edition)
SHORT TITLE: Amend Possession of Marijuana.
SPONSOR(S): Representatives Hall and K. Alexander

Table with 5 columns: FISCAL IMPACT, Yes (X), No (), No Estimate Available (), and fiscal years FY 2011-12 to FY 2015-16. Rows include EXPENDITURES (Correction, Probation, Judicial) and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

FISCAL SUMMARY:

Department of Correction: The reclassification of any of the offenses for possession of marijuana under the proposed bill would not have a significant impact on the prison population in terms of prison bed savings. The jail bed savings impact is unknown. The Sentencing Commission was unable to provide the exact number of convictions for possession of marijuana that would "shift" from one offense class to another under the bill.

Judicial Branch: Although the reduction in misdemeanor offense classes and the shift to infractions would decrease workload, the impact would be insufficient to eliminate the current backlogs and shortages. In addition, there would be workload increases in district court due to a shift from superior to district court for some cases.

The act could also substantially increase the number of petitions for expunction. Each new petition would impact workload for court personnel. Additionally, each petition would generate \$125 in fee revenue, which would be remitted to the General Fund.

BILL SUMMARY:

The proposed legislation amends G.S. 90-95(d)(4). The act provides that when a person possesses a controlled substance classified in Schedule VI and that controlled substance is marijuana, if the quantity weighs (1) less than one ounce the violation is an infraction; (2) one ounce or more but less than one and one-half ounces, the violation is a Class 3 misdemeanor; (3) one and one-half ounces or more, but less than two ounces, the violation is a Class 1 misdemeanor; and (4) two ounces or more, the violation is a Class I felony. Under current law, possession of a controlled substance classified in Schedule VI is a Class 3 misdemeanor, possession of more than one-half ounce of marijuana is a Class 1 misdemeanor, and possession of more than one and one-half ounces is a Class I felony.

The act provides that if the quantity of marijuana possessed is one ounce or more but less than one and one-half ounces, that any sentence imposing imprisonment must be suspended, and prohibits the judge from requiring at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation.

The act provides that possession of a controlled substance that is hashish is a (1) Class 3 misdemeanor if the quantity weighs one-twentieth of an ounce or less; (2) Class 1 misdemeanor if the quantity weighs three-twentieths of an ounce or less but more than one-twentieth of an ounce; or a (3) Class I felony if the quantity weighs more than three-twentieths of an ounce. The act also provides that if the quantity by weight of hashish possessed is one-twentieth of an ounce or less that any sentence imposing imprisonment must be suspended, and prohibits the judge from requiring at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation.

The proposed legislation enacts new G.S. 15A-145.4 to provide that a person convicted of a Class 3 misdemeanor under G.S. 90-95(d)(4) for possession of marijuana before December 1, 2011, and who has not been previously convicted of any felony or misdemeanor other than a traffic violation may file a petition for expunction of the offense from the person's criminal record in the court where the person was convicted. The act prohibits filing the petition for expunction earlier than two years after the date of the conviction or the completion of any period of probation, whichever occurs later. In addition, the act specifies what the petition must contain, and requires the filing of affidavits, and the service of the petition on the district attorney of the court where the conviction was obtained. The act sets the factors to be considered by the judge at the hearing in deciding to grant or not grant the expunction. Finally, the act requires that the person seeking expunction of

the record must pay a fee of \$125 to the clerk of superior court at the time of the filing, and provides that the fee requirement does not apply to petitions filed by an indigent.

The proposed legislation is effective December 1, 2011.

SOURCE: BILL DIGEST H.B. 324 (03/10/201)

ASSUMPTIONS AND METHODOLOGY:

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.

Section 1:

Amends subpart (d)(4) of G.S. 90-95, Violations; penalties, to reclassify the possession of various quantities of marijuana, as follows:

Table 1

| | Infraction | Class 3 Misdemeanor | Class 1 Misdemeanor | Class I felony |
|----------------------------|-------------------|----------------------------|----------------------------|-----------------------|
| Current 90-95(d)(4) | -- | ≤ ½ oz. | > ½ oz. but ≤ 1½ oz. | > 1½ ounces |
| HB 324 | < 1oz. | ≥ 1 oz. but < 1½ oz. | ≥ 1½ oz. but < 2 oz. | ≥ 2 ounces |

Note: Possessing in excess of 10 pounds of marijuana constitutes trafficking under G.S. 90-95(h)(1).

Marijuana offenses: The Administrative Office of the Courts (AOC) provides separate offense codes for possession of marijuana offenses. Each of the three AOC offense codes for marijuana possession correspond to the entire quantity range covered by the offense (i.e., the Class 3 misdemeanor; the Class 1 misdemeanor; and the Class I felony). The codes do not indicate the specific amount of marijuana within the range that was possessed by a given offender. Therefore, due to the overlap between the current quantity ranges and those proposed in H.B. 324, the Sentencing Commission is unable to provide the exact number of convictions for possession of marijuana that would shift from one offense class to another under the bill.

Table 2 provides information on the number of convictions; the type of punishment; and the minimum sentence imposed for each of these convictions in FY 2009-10:

Table 2: Marijuana Possession Convictions, FY 09-10

| Type of Offense | Offense Class | # Conv. | Type of Punishment | | | | | | Estimated Time Served |
|--|---------------|---------|---------------------|------|--------------|------|-----------|------|-----------------------|
| | | | Active ¹ | | Intermediate | | Community | | |
| <i>Felony</i> | | | # | % | # | % | # | % | (Months) |
| Possess Marijuana > 1½ oz | I | 388 | 15 | 3.9 | 111 | 28.6 | 262 | 67.5 | 5.5 |
| <i>Misdemeanor</i> | | | # | % | # | % | # | % | (Days) |
| Possess Marijuana greater than ½ oz, up to 1½ oz | 1 | 1,164 | 179 | 15.4 | 76 | 6.5 | 909 | 78.1 | 23.1 |
| Possess Marijuana up to ½ oz | 3 | 8,296 | 1,356 | 16.4 | 52 | 0.6 | 6,888 | 83.0 | 3.8 |

Class I Felony to Class 1 Misdemeanor: Of the 388 Class I felony convictions for possession of marijuana greater than 1½ ounces, it is not known how many convictions involved quantities that would qualify for the proposed Class 1 misdemeanor (*i.e.*, at least 1½ ounces but less than 2 ounces) or would remain as Class I felonies (*i.e.*, at least 2 ounces).

In FY 2009-10, 3.9 percent of the 388 Class I felony marijuana possession convictions had an active sentence imposed with an estimated time served of 5.5 months. (The active rate for all Class I felonies is 17 percent with an average minimum sentence imposed of seven months.) In FY 2009-10, 15.4 percent of Class 1 misdemeanor marijuana possession convictions resulted in active sentences, with an average estimated time served of 23 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, the reclassification of any of the 388 Class I felony convictions to Class 1 misdemeanors under this proposed bill would have some impact on the prison population in terms of prison bed savings. However, it is unknown how many prison beds would be saved. The reclassification of Class I felony convictions to Class 1 misdemeanors may also result in the need for additional jail beds; however, the actual jail bed impact is unknown.

Class 1 to Class 3 Misdemeanor: Of the 1,164 Class 1 misdemeanor convictions for possessing more than ½ ounce but not more than 1½ ounces of marijuana, it is not known how many of these convictions involve quantities amounting to an infraction (*i.e.*, less than 1 ounce), a Class 3 misdemeanor (*i.e.*, at least 1 ounce but less than 1½ ounces); or a Class 1 misdemeanor (*i.e.*, at least 1½ ounces but less than 2 ounces) under the bill. The effect of any shift in offense classifications are as follows:

In FY 2009-10, 15.4 percent of the 1,164 Class 1 misdemeanor marijuana possession convictions had an active sentence imposed with an estimated time served of 23 days. (The active rate for all Class 1 misdemeanors is 24 percent with an estimated time served of 27 days.) In FY 2009-10, 16.4 percent of Class 3 misdemeanor marijuana possession convictions resulted in active sentences, with an average estimated time served of 3.8 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 convictions for this offense that would be reclassified to Class 3 convictions under this proposed bill would not be expected to have

¹ Because a misdemeanant is eligible for a sentence of “time served” under the Active Punishment Exception in G.S. 15A-1340.20(c1), the active rates for misdemeanors tend to be higher than for low-level felonies.

a significant impact on the prison population. If any of the 1,164 Class 1 misdemeanor convictions would become a Class 3 misdemeanor, there would be jail bed savings; however, the jail bed savings impact is unknown.

Class 1 to Infractions: In FY 2009-10, 15.4 percent of the 1,164 Class 1 misdemeanor marijuana possession convictions had an active sentence imposed with an average estimated time served of 23 days. (The active rate for all Class 1 misdemeanors is 24 percent with an average estimated time served of 27 days. Offenders serving active sentences of 90 days or less are housed in county jails.) The North Carolina Sentencing and Policy Advisory Commission does not maintain data on infractions. Infractions are punishable only by a monetary penalty and do not have any impact on prison or jail populations. Therefore, while the shifting of any of the 1,164 Class 1 misdemeanor convictions to infractions under the bill would not be expected to have a significant impact on the prison population, it would result in jail bed savings. However, the actual jail bed savings impact is unknown.

Class 3 to Infractions: Under the proposed bill, all of the 8,296 Class 3 misdemeanor convictions for the possession of marijuana up to ½ ounce would shift to infractions.

In FY 2009-10, 16.4 percent of the 8,296 Class 3 misdemeanor marijuana possession convictions had an active sentence imposed with an average estimated time served of 3.8 days. (The active rate for *all* Class 3 misdemeanors is 28 percent with an average estimated time served of three days. Offenders serving active sentences of 90 days or less are housed in county jails.) The North Carolina Sentencing and Policy Advisory Commission does not maintain data on infractions. Infractions are punishable only by a fine and do not have any impact on prison or jail populations. Therefore, the reclassification of any of the 8,296 Class 3 misdemeanor convictions to infractions under this proposed bill would not be expected to have a significant impact on the prison population, but would result in jail bed savings. However, the actual jail bed savings is unknown.

General Schedule VI offenses: Although the AOC has assigned separate offense codes for marijuana offenses, it is possible that some marijuana convictions are entered into the AOC's database using the offense codes for generic Schedule VI controlled substance offenses under G.S. 90-95(d)(4). It is not known how many of these generic Schedule VI drug possession convictions are for marijuana possession. Table 3 provides information on the number of convictions, the type of punishment, and the minimum sentence imposed for each of the convictions for a Schedule VI Controlled Substance possession in FY 2009-10.

Table 3: Possession Schedule VI Controlled Substances Convictions

| Type of Offense | Offense Class | # Conv. | Type of Punishment | | | | | | Estimated Time Served |
|------------------------------------|---------------|---------|---------------------|------|--------------|------|-----------|------|-----------------------|
| | | | Active ² | | Intermediate | | Community | | |
| <i>Felony</i> | | | # | % | # | % | # | % | (Months) |
| Felony Possession Schedule VI C.S. | I | 63 | 3 | 4.8 | 17 | 27.0 | 43 | 68.2 | 6.1 |
| <i>Misdemeanor</i> | | | # | % | # | % | # | % | (Days) |
| Simple Possess Schedule VI C.S. | 3 | 1,255 | 178 | 14.2 | 10 | 0.8 | 1,067 | 85.0 | 6.0 |

Note: There is no AOC offense code for the Class 1 misdemeanor offense of possessing more than 1/20 ounce but not more than 3/20 ounce of the Schedule VI controlled substance hashish.

Class I Felony to Class 1 Misdemeanor: Of the 63 Class I felony convictions for possession of possession of Schedule VI Controlled Substance, it is not known how many, if any, of these convictions involve marijuana or how many would shift to the proposed Class 1 misdemeanor (*i.e.*, at least 1½ ounces but less than 2 ounces) or remain a Class I felony (*i.e.*, at least 2 ounces).

In FY 2009-10, 4.8 percent of the 63 Class I felony marijuana possession convictions had an active sentence imposed with an average estimated time served of 6.1 months. (The active rate for all Class I felonies is 17 percent with an average minimum sentence imposed of seven months.) In FY 2009-10, 15.4 percent of Class 1 misdemeanor marijuana possession convictions resulted in active sentences, with an average estimated time served of 23 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, the reclassification of any of the 63 Class I felony convictions to Class 1 misdemeanors under this proposed bill would have some impact on the prison population in terms of prison bed savings. However, it is unknown how many prison beds would be saved. The reclassification of Class I felony convictions to Class 1 misdemeanors may also result in the need for additional jail beds; however, the actual jail bed impact is unknown.

Class 3 to Infractions: Of the 1,255 Class 3 misdemeanor convictions for possession of a Schedule VI controlled substance, it is not known how many, if any, involved marijuana. Under the bill, any of these convictions based on possession of marijuana would shift to infractions.

In FY 2009-10, 14.2 percent of the 1,255 Class 3 misdemeanor simple possession of Schedule VI controlled substance convictions had an active sentence imposed with an average estimated time served of 6 days. (The active rate for *all* Class 3 misdemeanors is 28 percent with an average minimum sentence imposed of 3 days.) Offenders serving active sentences of 90 days or less are housed in county jails. The North Carolina Sentencing and Policy Advisory Commission does not maintain data on infractions. Infractions are punishable only by a fine and do not have any impact on prison or jail populations. Therefore, any of the 1,255 Class 3 convictions for this offense that would be reclassified to infractions under this proposed bill would not be expected to have a significant impact on the prison population but would result in jail bed savings. The actual jail bed savings impact is unknown.

² Because a misdemeanant is eligible for a sentence of “time served” under the Active Punishment Exception in G.S. 15A-1340.20(c1), the active rates for misdemeanors tend to be higher than for low-level felonies.

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:

Because the current charge codes do not specify the exact amount of marijuana that was in the possession of any given offender, there may be some overlap between the current charge codes and those proposed by this bill (i.e. an individual with $\frac{3}{4}$ oz of marijuana who would currently be charged with a Class 1 misdemeanor but would be charged with an infraction under this bill, is indistinguishable from other charges in the current group of “over $\frac{1}{2}$ oz up to $1\frac{1}{2}$ oz.”). Thus, AOC is unable to estimate the shift in distribution of infraction and criminal charges resulting from the implementation of this bill.

| Charges and Convictions, Calendar Year 2010 | | | |
|--|--|--|--|
| Current Law | Class 3 Misdemeanor | Class 1 Misdemeanor | Class I Felony |
| | Possess Marijuana up to $\frac{1}{2}$ oz | Possess Marijuana At least $\frac{1}{2}$ oz, less than $1\frac{1}{2}$ oz | Possess Marijuana At least $1\frac{1}{2}$ oz |
| Total Defendants Charged in 2010 | 34,887 | 2,273 | 1,698 |
| Shift due to H.B. 324 | All infractions | Some infractions, some Class 3 misdemeanors | Some Class 1 misdemeanors, some Class I felonies |

In general, the higher the offense class, the greater the workload to process a case. Thus, AOC anticipates some reduction in workload from a shift downwards in offense class and from a shift from Class 3 misdemeanors to infractions. This workload would primarily impact district court personnel – district court judges, deputy clerks, assistant district attorneys, and other district attorney office staff. In addition, magistrates would not be required to issue warrants or process arrestees for first appearances for citations of infractions for marijuana possession. However, since magistrates can accept pleas of responsibility to some infractions, some workload could be shifted to magistrates as well.

In addition, some offenses that are currently disposed as Class I felony charges in superior court under the proposed legislation would be disposed instead as Class 1 misdemeanor charges in district court. Due to backlogs and personnel shortages in both superior and district court, and since the number of charges would be insufficient to cancel a session of superior court in any given district, no resources would follow these cases from superior to district court.

Overall, although the reduction in misdemeanor offense classes and the shift to infractions would decrease workload, the impact would be insufficient to eliminate the current backlogs and

shortages. In addition, there would be some workload increases in district court due to a shift from superior to district court for some cases. As a result, no monetary savings would result from this proposal.

Section 2:

Section 2 provides for expunction of Class 3 marijuana possession convictions that occurred prior to December 1, 2011. Expunction for a misdemeanor drug possession conviction is already available to some offenders under G.S. 15A-145.2(c), who were age 21 or younger at the time of the offense. There are some differences between the proposed and current expunctions:

| | Current 15A-145.2(c) | Proposed 15A-145.4 |
|---------------------------------|---|--|
| Age Limit | Not over 21 at time of offense | No limit |
| Timeframe | At least 12 months after conviction | At least 2 years after conviction or completion of probation, whichever is later |
| Hearing required? | No | Yes |
| Prior convictions | No prior drug convictions | No prior convictions (excl. traffic) |
| Number of expunctions permitted | One | No limit specified |
| Impact on other expunctions | May not subsequently have a dismissed charge expunged under 15A-146 | No limitation noted in 15A-146 |
| Fee | \$65 (fee under 15A-145 is \$125) | \$125 |

In 2010, there were 99 requests for expunction for applicable drug possession offenses for offenders age 21 or younger. AOC anticipates an increase in both the pool of eligible offenders and in the expunction petitions by currently eligible offenders due to the proposed legislation. While there are some differences in the eligibility requirements, the elimination of the age limit would substantially broaden the potential pool.

According to the Sentencing & Policy Advisory Commission, in 2009-10 there were 4,152 defendants with no prior record points convicted of possession of marijuana. These defendants represented half of those convicted for possession of marijuana. AOC cannot project the number who would have no subsequent convictions and would petition for expunction after two years; however, the number could be substantial. In 2010, the courts received a total of 12,819 petitions for all expunctions. Thus, the proposed legislation could substantially increase the number of petitions for expunction.

Each new petition would impact workload for court personnel. Each petition would also generate \$125 in fee revenue, which would be remitted to the General Fund. This revenue is not retained by the courts.

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

TECHNICAL CONSIDERATIONS: None

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