

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 530 (First Edition)

SHORT TITLE: Prohibit E-Cigarette Sales to Minors.

SPONSOR(S): Senator Goolsby

FISCAL IMPACT

(\$ in millions)

Yes **No** **No Estimate Available**

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

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

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

EFFECTIVE DATE: December 1, 2013 and applies to offenses committed on or after that date.

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address the expanded scope of several chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the offenses. However, given there is no historical data on these 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 per disposition
- Indigent Defense Services: Unable to estimate
- Prison Section: No cost
- Community Corrections: Minimum of \$1,416-\$1,742

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill amends G.S. 14-213, Youth access to tobacco products, tobacco derived products, vapor products, and cigarette wrapping papers, to prohibit the distribution of tobacco-derived and vapor products to minors, thereby expanding the scope of several existing Class 2 misdemeanor offenses. G.S. 14-313 is amended to add tobacco-derived products, vapor products, or components of vapor products and cigarette wrapping papers to the list of items for which distribution to a person less than 18 years of age is prohibited.

This bill is effective December 1, 2013 and applies to offenses committed on or after that date.

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 (PRS). 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. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies 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.

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.

The changes in this bill expand the scope of several existing Class 2 misdemeanors and one infraction offense:

1. G.S. 14-313(b): Sell or distribute to person under 18 (Class 2 misdemeanor)
2. G.S. 14-313(b): Failure to post the required sign (infraction)
3. G.S. 14-313(b): Failure to demand proof of age (Class 2 misdemeanor)
4. G.S. 14-313(b1): Distribution of tobacco products/tobacco derived products/vapor products through vending machine (Class 2 misdemeanor)
5. G.S. 14-313(c): Purchase by person under 18 (Class 2 misdemeanor)
6. G.S. 14-313(d): sending or assisting person less than 18 to purchase or receive products (Class 2 misdemeanor)

AOC does not have offense codes for all of the violations listed above. Of those offenses that do have an offense code, data shows that in FY 2011-12, 315 defendants were charged with G.S. 14-313(b), Selling tobacco to a minor, two defendants were charged with G.S. 14-313(b), Failure to post the required sign, no defendants were charged with G.S. 14-313(b1), Distribution through a vending machine, and one defendant was charged with G.S. 14-313(c), Purchasing under the age of 18. AOC is unable to estimate the number of

additional charges that may occur due to the broadening of these offenses under this bill. For every additional person charged with a Class 2 misdemeanor, AOC estimates the average cost to the courts 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 is unable to estimate the total number of indigent cases that would be impacted by the creation of new grounds to support existing offenses.

Department of Public Safety –Prison Section

This bill expands the scope of several Class 2 misdemeanors. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population since offenders who receive active sentences will serve them in local jail. The Department of Public Safety does not anticipate an impact on prison custody projections. It is also not known how many offenders might be convicted and sentenced to supervision in the community under the proposed bill.

Department of Public Safety – Community Correction Section

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.¹ General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; 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 intermediate sanctions and supervised probations.

There were 89 Class 2 misdemeanor convictions under G.S. 14-313 in FY 2011-12. There were no convictions for violations of G.S. 14-313(b1) and eight convictions for violations of G.S. 14-313(c). Eighty-one convictions were for violations of G.S. 14-313; however, the distribution of these convictions among the remaining specific subsections cannot be determined. AOC currently does not have a specific offense code for violations of G.S. 14-313(d). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute.

In FY 2011-12, 29% of offenders convicted of a Class 2 misdemeanor were sentenced to active sentences for an average length of 39 days; 1% received intermediate sentences; and 70% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 16 and 13 months, respectively. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives an intermediate sentence is \$1,742 (480 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is \$1,416 (390 days times \$3.63 per day).

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

¹ CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

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