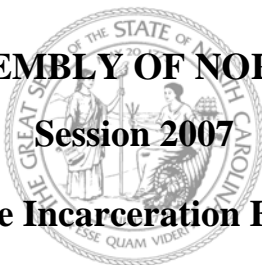


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** House Bill 267 (Second Edition)

**SHORT TITLE:** Alcohol Inhalers Illegal.

**SPONSOR(S):** Representative Gibson

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<u><b>FY 2007-08</b></u>	<u><b>FY 2008-09</b></u>	<u><b>FY 2009-10</b></u>	<u><b>FY 2010-11</b></u>	<u><b>FY 2011-12</b></u>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Judicial</b>					
<b>DHHS</b>					
<b>TOTAL EXPENDITURES:</b>					
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>					
<b>POSITIONS: (cumulative)</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Department of Health and Human Services; and Local Government.					
<b>EFFECTIVE DATE:</b> October 1, 2007.					
<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:** The second edition of H.B. 267 amends Article 5A of Chapter 90, the North Carolina Toxic Vapors Act, to include ethyl alcohol as an unlawful substance when used for the purpose of inducing intoxication. The bill would also make it unlawful to knowingly sell, give, deliver, possess, or use any instrument to prepare a substance for intoxicating inhalation. Per G.S. 90-113.13, violation of Article 5A is a Class 1 misdemeanor.

*Section 1.* Rewrites G.S. 90-113.10 to add ethyl alcohol to the list of substances that are unlawful to inhale for the purpose of intoxication. Alters the current exception for medical inhalation of covered substances, specifying that inhalants may be used under the “direction of a licensed medical provider authorized to prescribe the inhalant or chemical substance possessed” (formerly stated physician or dentist).

*Section 2.* Enacts new G.S. 90-113.10A to make it unlawful to sell, give, deliver, possess, or use any instrument to prepare a substance for intoxicating inhalation. Excepts instruments used to deliver substances that are dispensed or prescribed by a licensed medical provider, or which are sold as over-the-counter medications, so long as these instruments are not used for intoxication. Provides that this new offense is not a lesser included offense of G.S. 90-113.22 (possession of drug paraphernalia).

*Section 3.* Rewrites G.S. 90-113.11 to add ethyl alcohol to the list of substances that are unlawful to possess for the purpose of violating G.S. 90-113.10 (inhalation).

*Section 4.* Rewrites G.S. 90-113.12 to add ethyl alcohol to the list of substances that are unlawful to sell, offer to sell, deliver, give, or possess with the intent therefor, if the person should reasonably know that the substance will be used to violate G.S. 90-113.10 (inhalation).

*Section 5.* Effective October 1, 2007, and applies to offenses committed on or after that date.

*Source: Adapted from Bill Digest H.B. 267*

## **General**

*Section 1.* Under current G.S. 90-113.10, it is a Class 1 misdemeanor offense to knowingly inhale “any compound, liquid, or chemical containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, *or any other substance for the purpose of inducing a condition of intoxication.*” Thus, to the extent that the inhalation of substances containing ethyl alcohol is not being punished under current law, H.B. 267 would expand this offense by adding ethyl alcohol to the list of specific chemical compounds. This analysis does not assume that persons are now prosecuted for using inhalants under the direction of licensed medical professionals other than physicians or dentists; therefore, no forgone charges and/or convictions are assumed for such offense. *It is not known how many violations involving ethyl alcohol would occur, or how many would otherwise be prosecuted under current law.*

*Section 2.* H.B. 267 also creates the new Class 1 misdemeanor offense of unlawfully selling, giving, delivering, possessing, or using any instrument to prepare a substance for intoxicating inhalation. This offense is not a lesser included offense of G.S. 90-113.22 (Class 1 misdemeanor possession of drug paraphernalia), which permits charging for both offenses in the same incident. *Because this proposed offense is new, there is no historical data from which to project future charge or conviction frequencies.*

*Section 3.* By adding ethyl alcohol to the list of substances that are unlawful to possess for the purpose of violating G.S. 90-113.10 (inhalation), H.B. 267 expands the Class 1 misdemeanor offense provided in G.S. 90-113.11. *It is not known how many violations involving ethyl alcohol would occur.*

*Section 4.* By adding ethyl alcohol to the list of substances that are unlawful to sell, offer to sell, deliver, give, or possess with the intent therefore, H.B. 267 expands the Class 1 misdemeanor

offense provided in G.S. 90-113.12. *It is not known how many violations involving ethyl alcohol would occur.*

Based on current data, it is not known how many violations would occur for the proposed offenses. *However, the nature of these offenses, relatively low number of prior year charges and convictions, and applicable penalty level (Class 1 misdemeanor) do not suggest a significant fiscal impact.*

### **Department of Correction: Division of Prisons**

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond. Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.*

In FY 2005-06, there were 29 convictions under G.S. 90-113.10; 11 under G.S. 90-113.11; and, none under G.S. 90-113.12. However, it is not known how many additional convictions might result under the proposed broadening of these existing offenses, nor how many might result for the proposed offense in new G.S. 90-113.10A. In FY 2005-06, 20% of all Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days. Because Class 1 misdemeanants serve their designated terms of incarceration within local jails, additional convictions for the proposed offenses are not expected to impact the state's prison population.<sup>1</sup> The potential impact on local jail populations is unknown.

To the extent that future convictions for the proposed offenses were to result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. However, given the typical length for Class 1 misdemeanor active sentences, Fiscal Research does not anticipate a significant increase in reimbursements due to this proposal.

### **Department of Correction: Division of Community Corrections**

Per G.S. 90-113.14, the court may defer judgment of guilt and sentence an individual to probation upon first conviction only of G.S. 90-113.10 (inhalation offense). If imposed, probation must last no less than one year and the offender must successfully complete, within 150 days of when probation is imposed, a drug education program approved by the Department of Health and Human Services (G.S. 90-96.01). Successful completion of probation results in discharge and dismissal, without an adjudication of guilt; failure results in probation revocation and the adjudication of guilt. G.S. 90-113.14 also provides that probation is authorized for a first substance possession offense under Article 5A, if the offender has no prior conviction for an offense involving a substance covered under Article 5, 5A, or 5B of Chapter 90, or covered under similar law of another state or the United States. However, the court may allow the individual to fulfill the terms of probation through participation in a drug education program.

*Consequently, to the extent that future convictions for the proposed offenses were to occur, the Division of Community Corrections (DCC) could assume some additional costs for offenders placed under its supervision. In FY 2005-06, 80% of all Class 1 misdemeanor convictions resulted in either intermediate or community punishments, predominantly special, intensive, or*

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<sup>1</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

general supervision probation. However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

### **Department of Health and Human Services**

The Department of Health and Human Services oversees drug education schools that are provided locally through area mental health, developmental disabilities, and substance abuse authorities (MH/DD/SA).<sup>2</sup> Participants in these schools must pay a fee of \$150 to offset the costs of service (G.S. 90-96.01), unless an individual can demonstrate a reasonable inability to pay. Each area MH/DD/SA authority must remit five percent of fees collected to the Department on a monthly basis, for the sole purpose of administration, support, and evaluation of the schools. *Because these schools are self-supporting, no significant impact is assumed for any potential increase in enrollment.*

### **Judicial Branch**

Based on current data, the Administrative Office of the Courts cannot distinguish the number of prior year charges for offenses under Article 5A that involved ethyl alcohol specifically. Thus, an estimate of the number of offenses which would not otherwise be subject to prosecution is unavailable. Furthermore, there is no historical data from which to project the number of charges that might result for the proposed alcohol vaporizing devices offense (G.S. 90-113.10A).

In calendar year 2006, there were 65 defendants charged with inhaling toxic vapors under G.S. 90-113.10. *Given this relatively low charge frequency, the Administrative Office of the Courts does not anticipate that this proposal will have a significant impact for the court system.* However, if additional cases were to result, the AOC would expect increased court-time requirements and workloads for district attorneys, district court judges, clerks, court reporters, and indigent defense counsel. Presently, the estimated cost per Class 1 misdemeanor trial is \$3,702; the estimated cost per plea is \$243. Actual costs may vary from this general estimate, which includes indigent defense costs. This analysis does not assume that additional costs would be incurred for potential expunction petitions.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Health and Human Services.

**TECHNICAL CONSIDERATIONS:** None

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

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<sup>2</sup> Area authorities may contract with public or private organizations for the operation of these schools.

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**APPROVED BY:** Lynn Muchmore, Director  
Fiscal Research Division

**DATE:** April 16, 2007



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