



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Regulate Hemp-Derived Consumables & Kratom.
Bill Number: House Bill 563 (Third Edition)
Sponsor(s):

FISCAL IMPACT SUMMARY

Criminal offenses are classified as misdemeanors (Class 3 as the lowest and Class A1 as the highest) and felonies (Class I to Class A). There are three types of legislative changes to offenses that may result in a fiscal impact to the State’s criminal justice system: creating a new offense, changing the class of an existing offense, or changing the scope of an existing offense.

This proposed legislation would **create two new Class 1 misdemeanors, two new Class 2 misdemeanors, and four new class A1 misdemeanors**. Because there are new charges and the Administrative Office of the Courts (AOC) does not have an offense code for violations of the expanded offense, **there is no data** to predict how many individuals may be charged or convicted. **As a result, Fiscal Research is unable to project the fiscal impact** of the proposed legislation on the criminal justice system.

Each additional person charged under the proposed offenses will have a cost to the judicial system and each additional person convicted will have a cost to the correction system. The **cost of one charge and conviction** is listed in the table below, along with the percent of cases that incur those costs at that offense level.

Cost of One Charge and Conviction										
Offense Class	Prosecution and Defense			Active Sentence			Suspended Sentence			
	Admin. Office of the Courts	Indigent Defense Services		DAC - Confinement		DAC - Post-Release Supervision (PRS)	DAC – Probation			
Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Days)		Rate	Cost	Length (Mo.)
New A1	\$580	52%	\$281	Active sentences for misdemeanor convictions are served in County jail.			Misdemeanants do not receive PRS.	64%	\$3,797	16
New 1	\$335	62%	\$237					64%	\$3,322	14
New 2	\$178	30%	\$237					78%	\$3,085	13

Note: Court costs reflect the average cost per disposition. Costs for active sentences, probation, and post-release supervision reflect the total cost of the sentence or supervision period. Costs to the Statewide Misdemeanant Confinement Program (SMCP) only occur for active sentences > 90 days and for impaired driving.

FISCAL IMPACT OF H.B.563, V.3

	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>	<u>FY 2026-27</u>	<u>FY 2027-28</u>
State Impact					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

FISCAL ANALYSIS

Section 1 of the PCS creates the new G.S. 18D, “Regulation of Hemp-Derived Cannabinoid Products.”

The new G.S. 18D-101 creates a **new Class A1 misdemeanor** for the second and subsequent violations of engaging in the business of selling a hemp-derived consumable product without a valid license (the first violation is a civil penalty).

The new G.S. 18D-102 creates a number of new offenses related to the purchase, attempted purchase, or possession of hemp-derived consumable products by a person under 18 years of age. Specifically, the following behaviors are prohibited:

- A. It is unlawful for any person to give a hemp-derived consumable product to anyone less than 18 years old without the consent of the underaged person's parent or legal guardian.
- B. It is unlawful for a person less than 18 years old to purchase or attempt to purchase a hemp-derived consumable product.
- C. It is unlawful for any person to enter or attempt to enter a place where hemp-derived consumable products are sold or consumed, or to obtain or attempt to obtain hemp-derived consumable products, or to obtain or attempt to obtain permission to purchase hemp-derived consumable products, in violation of subsection (b) of this section, by using or attempting to use any of the following:
 1. A fraudulent or altered drivers license.
 2. A fraudulent or altered identification document other than a drivers license.
 3. A drivers license issued to another person.
 4. An identification document other than a drivers license issued to another person.
 5. Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing a hemp-derived consumable product under this section.
- D. It is unlawful for any person to permit the use of the person's drivers license or any other form of identification of any kind issued or given to the person by any other person who violates or attempts to violate subsection (b) of this section.

Violation of any of these subsections is punished as follows:

- (1) Any person less than 18 years old who violates this section is guilty of a **Class 2 misdemeanor**.
- (2) Any person at least 18 years old who violates this section is guilty of a **Class 1 misdemeanor**.
- (3) Aiding or abetting a violation of this section shall be punished as provided in subdivisions (1) and (2) of this subsection, and all other provisions of this section shall apply to that offense.

The new G.S. 18D-103 creates a number of new offenses involving the manufacture and distribution of hemp-derived consumable products. Specifically, it is a violation of this section to do any of the following:

- (1) Knowingly, or having reason to know, distribute samples of a hemp-derived consumable product in or on a public street, sidewalk, or park.
- (2) Engage in the business of manufacturing or distributing a hemp-derived consumable product without a valid license issued in accordance with this Chapter.
- (3) Knowingly, or having reason to know, manufacture or distribute a hemp-derived consumable product that has a concentration of more than three-tenths of one percent (0.3%) on a dry weight basis total combined of delta-9 tetrahydrocannabinol, delta-7 tetrahydrocannabinol, delta-8 tetrahydrocannabinol, or delta-10 tetrahydrocannabinol.

Violation of this section is a **Class A1 misdemeanor**.

The new G.S. 18D-201, G.S. 18D-202, and G.S. 18D-203 create **identical criminal penalties** as the new sections above, but for kratom products rather than hemp-derived products. These include a **new**:

- (1) **Class A1 misdemeanor** for second or subsequent violations of selling kratom without a valid license;
- (2) **Class 2 misdemeanor** for violating the new statutes related to the purchase, attempted purchase, or possession of kratom products while under the age of 18;
- (3) **Class 1 misdemeanor** for violating the new statutes related to the purchase, attempted purchase, or possession of kratom products while 18 years old or older;
- (4) **Class 2 or Class 1 misdemeanor** for aiding or abetting a violation of the sales regulations; and
- (5) **Class A1 misdemeanor** for violating the new regulations involving the manufacture and distribution of kratom products.

Several of the proposed offenses created by this PCS apply only to offenders under the age of 18 and thereby would be adjudicated by the juvenile justice system, as they are “status offenses,” defined as offenses that are tied to the offender’s age. Specifically, the offenses created under G.S. 18D-101, G.S. 18D-102, G.S. 18D-201, and G.S. 18D-203 could result in an impact to the juvenile justice system. Impacts to the juvenile justice system are not typically considered as part of the analysis for Incarceration Notes.

Because all of the criminal violations created in this section are new offenses, there is not any historical charge or conviction data to estimate the fiscal impact of the proposal on the criminal justice system. As such, Fiscal Research is unable to project the fiscal impact of these changes. Please

see the Operating Expenses section below for the average costs associated with Class 2, Class 1, and Class A1 misdemeanors.

Capital Expenses

Capital costs emerge when prison bed demand exceeds capacity. Based on the most recent prison population and bed capacity projections from the Sentencing and Policy Advisory Commission (SPAC), the State will have sufficient prison beds available beyond the five-year fiscal note horizon. Therefore, Fiscal Research anticipates there will be **no additional prison capital requirements** as a result of this proposed legislation.

Operating Expenses

The following section explains the source of potential costs for State agencies because of this proposed legislation. The table in the Fiscal Impact Summary lists the costs specific to the charge or charges included in this proposal.

Charge: Prosecution and Defense

- **Administrative Office of the Courts (AOC)**: Adding to or expanding the scope offenses in the criminal code may increase charges, resulting in corresponding increases in court time and workload for judges, clerks, and prosecutors. AOC provides FRD with an average cost based on offense level. Any new charges brought because of this proposed legislation are assumed to carry the following additional average cost to the court system.
 - **Class A1 misdemeanors** carry an average cost of \$580 per charge to the judicial system.
 - **Class 1 misdemeanors** carry an average cost of \$335 per charge to the judicial system.
 - **Class 2 misdemeanors** carry an average cost of \$178 per charge to the judicial system.

- **Indigent Defense Services (IDS)**: Persons who cannot afford to hire legal counsel will be provided a public defender (PD), if available, or a private assigned counsel (PAC) attorney paid by IDS. The cost provided is the actual average cost for a PAC attorney and serves as a proxy for the additional workload cost to PD offices.
 - **Class A1 charges** utilize IDS in 52% of cases at a cost of \$281 per charge.
 - **Class 1 charges** utilize IDS in 62% of cases at a cost of \$237 per charge.
 - **Class 2 charges** utilize IDS in 30% of cases at a cost of \$237 per charge.

Conviction: Active Sentence

- **Department of Adult Correction – Confinement**: Felony convictions that result in an active sentence are served in a State prison. The cost to add one offender to the prison system is \$24.26 per day or \$727.80 per month.
 - **Active sentences for misdemeanor convictions** are served in local jails and only incur costs to the Statewide Misdemeanant Confinement Program (SMCP) when the sentence exceeds 90 days, or the conviction is for impaired driving. Because the **new misdemeanors** in the proposed legislation don't meet either criterion, Fiscal

Research anticipates convictions of the new charge resulting in active sentences would have no fiscal impact to the State.

- Department of Adult Correction – Community Corrections: All active sentences from Class B1- I felony convictions result in a period of post-release supervision (PRS) between 12 and 9 months, depending on the severity of the charge. There is a one-time cost of \$146 per PRS hearing. Supervision by a probation officer costs \$237.30 per offender per month.
 - **Misdemeanants** do not receive PRS.

Conviction: Suspended Sentence

- Department of Adult Correction – Community Corrections: Convictions that receive a suspended sentence result in a period of supervised probation based on the severity of the charge and the offender’s prior record. Supervision by a probation officer costs \$237.30 per offender per month.
 - **64% of Class A1 convictions** resulted in a suspended sentence with an average length of 16 months at a cost of \$3,797.
 - **64% of Class 1 convictions** resulted in a suspended sentence with an average length of 14 months at a cost of \$3,322.
 - **78% of Class 2 convictions** resulted in a suspended sentence with an average length of 13 months at a cost of \$3,085.

TECHNICAL CONSIDERATIONS

- Offense changes are typically effective on December 1. FRD assumes that costs incurred in the first year to the judicial and correction systems would be less than annualized costs due to lag time in charges and convictions.
- This estimate assumes that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime rates. Likewise, FRD assumes no deterrent effects for any modifications to criminal penalties. The estimates in this Incarceration Note make no assumptions about the larger impact on crime rates or costs to society or the State.
- This estimate makes no prediction regarding the likelihood that a prosecutor will charge an offense based on any proposed increases or decreases to the offense class level. This estimate also does not attempt to predict the impact of offense class changes on plea negotiations. FRD assumes the proposed offense class is charged and convicted at the same rate as the prior level.
- For reference, Appendix A to this document shows the costs per charge/conviction for each class of offense in North Carolina.

DATA SOURCES

Department of Adult Correction; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are

based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

CONTACT INFORMATION

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

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Signed copy located in the NCGA Principal Clerk's Offices

APPENDIX A: COSTS PER CHARGE/CONVICTION BY OFFENSE CLASS

Cost of One Charge and Conviction											
	Prosecution and Defense			Active Sentence					Suspended Sentence		
Offense Class	Admin. Office of the Courts	Indigent Defense Services		DAC - Confinement			DAC - Post-Release Supervision (PRS)		DAC - Probation		
Felony	Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost	Length (Mo.)
A	\$55,469	95%	\$11,967	100%	NA	Life	N/A	N/A	0%	N/A	0
B1	\$23,852	78%	\$4,187	100%	\$178,610	242	\$2,994	12	0%	N/A	0
B2	\$17,704	85%	\$4,187	100%	\$115,137	156	\$2,994	12	0%	N/A	0
C	\$8,598	82%	\$2,317	100%	\$63,473	86	\$2,994	12	0%	N/A	0
D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	N/A	0
E	\$3,281	79%	\$909	57%	\$19,928	27	\$2,994	12	43%	\$7,356	31
F	\$1,849	74%	\$849	51%	\$13,285	18	\$2,282	9	49%	\$7,119	30
G	\$1,525	78%	\$706	39%	\$11,071	15	\$2,282	9	61%	\$6,170	26
H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,221	22
Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Days)			Rate	Cost	Length (Mo.)
A1	\$580	52%	\$281	Active sentences for misdemeanor convictions are served in County jail.			Misdemeanants do not receive PRS		64%	\$3,797	16
1	\$335	62%	\$237						64%	\$3,322	14
2	\$178	30%	\$237						78%	\$3,085	13
3	\$63	14%	\$202						84%	\$3,085	13

Note: Court costs reflect the average cost per disposition. Costs for active sentences, probation, and post-release supervision reflect the total cost of the sentence or supervision period. Costs to the Statewide Misdemeanant Confinement Program (SMCP) only occur for active sentences > 90 days and for impaired driving.