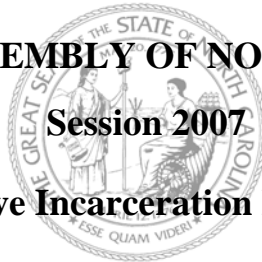


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1749 (Second Edition)

SHORT TITLE: Sale of Drugs near Parks.

SPONSOR(S): Representative Stiller

		FISCAL IMPACT				
		Yes (X)	No ()	No Estimate Available ()		
		<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND						
Correction: Prisons	<i>Estimate represents minimum prison bed needs if 17 Classes I, H, and G offenses are enhanced to the Class E level. See p. 3.</i>					
Recurring*	-	\$ 169,501	\$ 436,466	\$ 449,560	\$ 463,047	
Nonrecurring*	\$ 1,020,600	-	-	-	-	
Correction: DCC	Amount cannot be determined.					
Judicial	<i>Estimate assumes 1% of total CY 2006 Class I felony charges (20,460) would be enhanced to the Class E level; does not account for other offense levels. See p. 4.</i>					
Recurring	\$ 51,739	\$ 93,129	\$ 97,785	\$ 102,674	\$ 107,808	
TOTAL						
EXPENDITURES:	\$ 1,072,339	\$ 262,630	\$ 534,251	\$ 552,234	\$ 570,855	
<i>*Assumes prison bed construction within a stand-alone facility (p. 2-3). Additional prison population (bed) impact and minimum capital and operating costs cannot be projected beyond the two year window (p. 2-3). Estimate represents minimum cost; potential, additional costs cannot be determined.</i>						
ADDITIONAL PRISON BEDS:	-	6	15	15	15	
(cumulative)*						
POSITIONS:						
(cumulative)						
Correction: Prisons	-	2	6	6	6	
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.						
EFFECTIVE DATE: December 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: Current G.S. 90-95(a)(1) provides that it is unlawful to “manufacture, sell or deliver, or possess with the intent to manufacture, sell, or deliver, a controlled substance.” Per G.S. 90-95(b), violation of G.S. 90-95(a)(1) is:

1. A Class H felony if the controlled substance involved is one classified in Schedules I or II.
2. A Class G felony if the offense is the sale of a Schedule I or II substance
3. A Class C felony if the offense is the manufacture of methamphetamine, excluding the packaging/re-packaging of methamphetamine, or labeling/re-labeling of a methamphetamine container – these offenses are Class H felonies.
4. A Class I felony if the controlled substance involved is one classified in Schedules III, IV, V, or VI.
5. A Class H felony if the offense is the sale of a Schedule III, IV, V, or VI substance.

In addition, current G.S. 90-95(e)(10) provides that it is a Class E felony offense for a person 21 years of age or older to violate G.S. 90-95(a)(1) on or within 300 feet of property *that is a playground in a public park* (as defined).

The second edition of H.B. 1749 amends G.S. 90-95 (e) (10) to remove the current playground-specific prohibition, thereby expanding the Class E felony enhancement to include *all public parks* – not just those containing playgrounds. Consequently, the bill makes it a Class E felony for a person 21 years of age or older to violate G.S. 90-95 (a) (1) on or within 300 feet of property *that is a public park* (also provides that the transfer of less than five grams of marijuana for no remuneration does not constitute a delivery in violation of G.S. 90-95 (a) (1)). H.B. 1749 becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Source: Bill Digest H.B. 1749 (04/18/0200).

ASSUMPTIONS AND METHODOLOGY:

General

By expanding the current Class E felony enhancement to include all public parks, not just those containing a playground, some portion of future Classes I, G, and H felony offenses (G.S. 90-95 (b)) could be enhanced to the Class E level - if the offenses occur on or within 300 feet of a public park. However, present offense data provides no reliable indication of how many of the aforementioned offenses occur on or near a public park; therefore, it is not known how many additional charges and/or convictions might result.

Despite only 23 prior year charges and one conviction under the current enhancement for offenses committed *on or near playgrounds* in public parks (G.S. 90-95 (e)(10)), the *high number of charges and convictions for all affected offenses suggests that a significant number of future violations could meet the enhancement criteria*. Consequently, these enhanced charges and convictions could generate significant, additional costs for both Corrections and the Courts; this fiscal impact would be driven primarily by the construction of additional prison beds.

Department of Correction – Division of Prisons

The effective enhancement of otherwise Classes I, H, or G felony offenses to Class E offenses will: 1) increase the rate of active sentencing (incarceration) for affected offenses; and, 2) significantly lengthen the period of incarceration, thereby increasing the demand for prison beds.¹ Table I

¹ The Sentencing and Policy Advisory Commission analyzes each bill that creates or alters a criminal offense, and assesses its impact relative to the Commission’s annual prison population projections. The Commission assumes for

demonstrates the average differences in active sentencing rates per offense class, and shows the minimum number of prison beds required in FY 2008-09 and 2009-10, based on Sentencing Commission threshold assumptions.² These FY 2005-06 statistics represent averages across all prior record levels and sentencing ranges (mitigated, presumptive, and aggravated). Accordingly, the type of sentence imposed (active, intermediate, or community) and length of sentence imposed could vary for affected offenses.

In FY 2005-06, there were 864 Class I felony convictions under G.S. 90-95(a)(1) for persons 21 years of age or older at the time of the offense; 2,064 Class H convictions; and 1,047 Class G convictions. Data does not indicate how many of these underlying offenses occurred on or near a public park. However, if only .4% of all convictions occurred on a public park as indicated in the table, six additional prison beds would be required in the first applicable year; fifteen by the second; and six additional positions by the second year.³ Assuming inmate assignment to medium custody, the construction of fifteen prison beds within a new, stand alone facility could cost the State \$1,020,600 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$631,800.⁴ These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs for the required beds could total \$169,501 in FY 2008-09, and \$436,466 in FY 2009-10.⁵

Table I. Minimum Prison Bed Requirements: FY 09 & FY 10

Current Class	Active Rate (%)	Avg. Time Served	New Class	Active Rate (%)	Avg. Time Served	Convictions	FY 08-09 Min. Beds	FY 09-10 Min. Beds
I	15%	7 mo.	E	49%	31 mo.	12	5	12
<i>Offenses: Controlled substance involved is one classified in Schedules III, IV, V, or VI.</i>								
H	34%	11 mo.	E	49%	31 mo.	3	1	2
<i>Offenses: Controlled substance involved is a Schedule I or II substance; the packaging/re-packaging of methamphetamine, and the labeling/re-labeling of a methamphetamine container; offense is the sale of a Schedule III, IV, V, or VI substance.</i>								
G	42%	16 mo.	E	49%	31 mo.	2	0	1
<i>Offenses: Offense is the sale of a Schedule I or II substance.</i>								
* Due to the mandatory period of Post-Release Supervision for Class E offenders following release from prison, resultant revocations could also increase the demand for prison beds.								

such bills that expanding existing or creating new criminal offenses has no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

² Minimum number of convictions to generate the need for one additional prison bed, based on the active sentencing rate observed in the previous year for all offenses within that offense class.

³ Position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

⁴ New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁵ Impact on incarcerated population is assumed for FY 2008/09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

Department of Correction – Division of Community Corrections

Although an increased rate of active sentencing is expected, the proposed penalty enhancement is also expected to increase the rate of intermediate sanctioning and length of offender supervision for affected non-active Class E felony sentences (intermediate punishment is authorized only for prior record levels I and II). Accordingly, any increase in intermediate sanctioning and supervision length could necessitate additional supervisory officers. Presently, the total estimated position cost of an intermediate officer is approximately \$41,643. In addition, Post-Release Supervision caseloads could increase, due to the requisite period of Post-Release Supervision for those convicted of Classes B1-E felonies upon release from prison. The impact on the Post-Release population is unknown.

Judicial Branch

Though it is not known how many charges might become subject to the proposed enhancement, the Administrative Office of the Courts expects that any penalty enhancement will result in more vigorous defense and prosecution, thereby increasing court-time requirements and the associated costs of case disposal. Specifically, the AOC expected increased prosecution and trial rates, which will increase jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

Data for calendar year 2006 indicates that approximately 56,697 defendants were charged under G.S. 90-95 (a)(1), not excluding those younger than 21 years of age. Most of these charges, approximately 20,460, were for Class I felony offenses. For illustration, assuming that 1% (approx. 205) of these prior year Class I felony charges cases occur annually and are enhanced to the Class E level, the estimated difference in court-time, jury, and indigent defense costs could approach \$88,694 per year (adjusted for 7-month effective period in FY 07-08, and assumed 5% annual inflation in Fiscal Impact Table, p.1). As shown, AOC estimates that a higher percentage of Class E felony cases would result in trial (4%), relative to Class I cases (1%); however, the rate of guilty plea is expected to decrease (from 47% to 45%).

** Actual costs will vary from this example, which does not account for all affected offenses and penalty levels, and does not exclude defendants under the age of 21. This 1% example is merely a conservative, minimum estimate of potential impact.*

Table II. Minimum Court-Time & Indigent Defense Costs: Class I to Class E Enhancement

Table 3. Estimated Court-Time & Indigent Defense Costs							
<i>Trial</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
Offense Class	# Cases	Court-Time*	DA Prep.*	Jury*	Court Costs	# Cases	Defense Cost
Class I felony	2	\$ 2,919	\$ 1,491	\$ 640	\$ 10,100	1	\$ 1,932
Class E felony	8	\$ 4,433	\$ 2,286	\$ 920	\$ 61,112	6	\$ 17,454
<i>* Estimated costs per case</i>				<i>Difference: \$51,012</i>		<i>Difference: \$15,522</i>	
<i>Plea</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
Offense Class	# Cases	Court-Time*	DA Prep.*	Jury*	Court Costs	# Cases	Defense Cost
Class I felony	96	\$ 108	\$ 99	-	\$ 19,872	66	\$ 5,808
Class E felony	92	\$ 192	\$ 199	-	\$ 35,972	69	\$ 11,868
<i>* Estimated costs per case</i>				<i>Difference: \$16,100</i>		<i>Difference: \$6,060</i>	

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

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