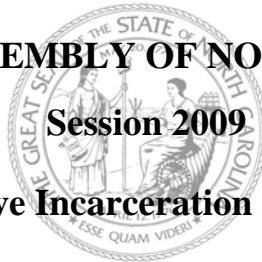


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 167 (Second Edition)

SHORT TITLE: No Smoking/Cell Phones on Prison Grounds.

SPONSOR(S): Senator Albertson

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
EXPENDITURES					
GENERAL FUND					
Correction					Indeterminate fiscal impact
Probation					Indeterminate fiscal impact
Judicial					Indeterminate fiscal impact
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: March 1, 2010					
<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:

- This edition of the bill changes the title of the original bill to “An act to prohibit smoking on the premises of correctional institutions, to prohibit the possession of tobacco products or cell phones outside of a locked vehicle on the premises of correctional institutions, and to make it a criminal offense to provide tobacco products or cell phones to inmates in the custody of the department of correction.”
- This bill prohibits any person from possessing tobacco products on the premises of a state correctional facility, but provides an exception for an employee or visitor to possess tobacco products within the confines of a motor vehicle located in a designated parking area of the facility provided that the tobacco a product remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle
- Clarifies that inmates and persons facilitating religious observances may use and possess tobacco products for religious purposes consistent with the policies of the Department of Correction (DOC).

- Adds new G.S. 148-23.2 to prohibit any person from possessing a mobile telephone or other wireless communications device on the premises of a state correctional facility, but provides an exception for an employee or visitor to possess a mobile telephone or other wireless communications device within the confines of a motor vehicle located in a designated parking area of the facility provided that the phone or device remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle.
- Establishes as a Class 1 misdemeanor (was Class I felony) (1) the offense of giving or selling tobacco products to an inmate of a state correctional facility (also clarifies that this provision applies to an inmate in the custody of DOC and on the premises of a correctional facility) or (2) giving the same to someone who is not an inmate for delivery to an inmate.
- Makes conforming changes.
- Changes the effective date to March 1, 2010 (was December 1, 2009).

ASSUMPTIONS AND METHODOLOGY:

General

The North Carolina 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.

Department of Correction – Division of Prisons

This bill creates two new offenses by amending G.S. 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities; furnishing tobacco products or mobile phones to inmates.

Section 3, subsection (c) makes it a Class 1 misdemeanor offense for a person to knowingly give or sell any tobacco product (as defined by statute) to an inmate in the custody of the Department of Correction (DOC) and on the premises of a correctional facility, other than for authorized religious purposes. Because this subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. *It is not known how many offenders might be convicted and sentenced under this proposed subsection.*

Section 3, subsection (d) makes it a Class 1 misdemeanor offense for a person to knowingly give or sell a mobile telephone or other wireless communications device, or a component of one of those devices, to an inmate in the custody of DOC, or to knowingly give or sell any such device or component to a person who is not an inmate for delivery to an inmate. Because this subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. *It is not known how many offenders might be convicted and sentenced under this proposed subsection.*

In FY 2007-08, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* DOC reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 1 misdemeanors are less than 31 days, *the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.*

The Department of Correction, Division of Prisons, reports that it found 216 cell phones in the possession of inmates in Calendar Year 2008. In addition, it found 42 cell phones from staff, 0 from visitors, and 22 from unknown origins. It is not known how many different individuals provided these cell phones.

There is no data available to estimate the number of charges that may be brought in relation to the tobacco section of this bill.

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2007-08, 21% of Class 1 misdemeanor offenders received active sentences; 2% received intermediate and 77% received community punishments. Because this is a new charge and there is no historical data upon which to base an estimate, *potential costs to DCC cannot be determined.*

Judicial Branch

The Administrative Office of the Courts (AOC) 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.

Approximately 67,000 offenders were in Department of Correction (DOC) custody for all or part of FY 2007-08. In Calendar Year 2008, 16 defendants were charged under G.S. 14-258.1(a) with furnishing deadly weapons, cartridges, ammunition, controlled substances, or poison to inmates. DOC reports that it found 216 cell phones from inmates in Calendar Year 2008. If half of these resulted in charges against separate defendants, the impact on the court system could be substantial. For example:

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

- If 10% of the cell phones found by DOC resulted in charges, the cost for court personnel time and indigent defense would be approximately \$5,100 annually for 22 charges.
- If 50% of the cell phones found by DOC resulted in charges, the cost for court personnel time and indigent defense would be approximately \$25,000 annually for 108 charges.

In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

AOC has no data to estimate the number of charges for furnishing tobacco products to inmates.

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

TECHNICAL CONSIDERATIONS: None

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