

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 888 (Third Edition)

SHORT TITLE: Cockfighting/Increase Penalty.

SPONSOR(S): Representative Allred

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
EXPENDITURES:					
GENERAL FUND:					
Correction:	Exact amount cannot be determined. No substantial impact anticipated				
Judicial:	Exact amount cannot be determined. No substantial impact anticipated				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS: (cumulative)	No additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: December 1, 2005					
<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 bill would amend G.S. 14-362 to reclassify offenses related to cockfighting from Class 2 misdemeanors to Class I felonies. (*Editions 1 and 2*). *Edition 3 increases the penalty from a Class 2 misdemeanor to Class 1 while making a second or subsequent offense a Class H felony.*

ASSUMPTIONS AND METHODOLOGY:

General

Convictions for offenses related to cockfighting at the Class 1 misdemeanor level could increase costs paid by DOC to county jails and increase cost to local jails. The increase in penalties to a Class H felony for a second offense has the potential for more substantial fiscal impact because of longer sentences and a greater proportion of active prison time or intermediate sanctions. Costs to the Courts to process charges for these offenses would also be expected to increase due to more vigorous defense and prosecution as a result of the more severe penalties. Due to the small number of charges and convictions under current G.S. 14-362, however, the fiscal impact associated with this bill is not expected to be substantial.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Class 1 Misdemeanors

During fiscal year 2003-04 there were ten Class 2 misdemeanor convictions for cockfighting. The Sentencing Commission is unable to model the prison population impact that would result from reclassifying this offense as a Class 1 misdemeanor or Class H felony for second offense. Increasing the penalties will increase the fiscal impact. However, since the pool of offenses is so small (20 charges and 10 convictions in 2003-04), no substantial fiscal impact is expected

The following compares the differences in penalties:

- In FY 2003-04, 19 percent of Class 1 misdemeanors resulted in active sentences and the average active sentence length was 43 days. (Class 2 is 15% and 23 days)
- Offenders with active sentences of less than ninety days are housed in county jails (same for Class 1 and 2 in most cases).
- DOC reimburses counties for housing offenders between thirty and ninety days at a rate of \$18 per day per offender. If, for example, one offender were sentenced to 43 days active time as a result of this bill, costs to DOC to reimburse the county would be \$774. (County likely to bear all expense for active Class 2 sentences)
- The remaining 81 percent of Class 1 misdemeanants received non-active sentences – 79% community and 2% intermediate. (Class 2 is 85% non-active). For those offenders

sentenced to supervised probation, the Division of Community Correction (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

Class H Felony

Convictions of Class H felonies for second or subsequent offense are most likely to have fiscal impact as described below

Active Sentences: In FY 2003-04, 37 percent of Class H felony convictions resulted in active sentences, a considerable difference from Class 1 and 2 misdemeanors. If, for example, there were three additional Class H convictions per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. The average annual operating cost for one prison bed in FY 2006-07 is an estimated \$24,740.

Non-Active Sentences: In FY 2003-04, 50 percent of Class H felony convictions resulted in intermediate sentences and 13 percent resulted in community sentences. Probation officers in the Division of Community Correction (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction. The estimated cost for a supervised community offender is \$1.87 per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

For calendar year 2004, AOC data indicates that 20 individuals were charged with a Class 2 misdemeanor in relation to cockfighting. As a result of this legislation, these violations would be charged as Class 1 misdemeanors. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 1 misdemeanor is approximately \$3,224 per trial and \$284 per guilty plea. The trial cost includes an estimated \$1,891 in jury fees, costs of time in court, and attorney costs and an additional \$1,333 in indigent defense. Based on prior-year data, the majority of any new Class 1 misdemeanor charges are likely to be settled by plea.

AOC cannot estimate the cost for potential Class H felonies since it is unknown how many current offenders committed a second or subsequent offense. The following is cost information for Class H charges.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class H felony via trial is approximately \$6,224. This cost includes an estimated \$4,124 in jury fees, costs of time in court, and attorney costs and an additional \$2,100 in indigent defense. However, based on prior-year data, the majority of any new Class H felony charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$360 per plea.

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

TECHNICAL CONSIDERATIONS: None

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