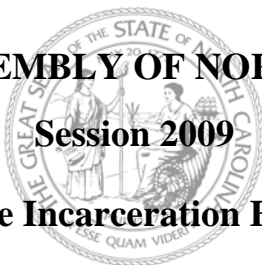


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 167 (First Edition)
SHORT TITLE: No Smoking/Cell Phones on Prison Grounds.
SPONSOR(S): Senator Albertson

Table with fiscal impact data for FY 2009-10 to FY 2013-14. Includes categories for Expenditures (Correction, Probation, Judicial) and Principal Department(s) Affected (Department of Correction; Judicial Branch). Effective date: December 1, 2009. Includes a disclaimer about the fiscal analysis.

BILL SUMMARY:

Amends GS 148-23.1 to ban the use of tobacco products on the premises of state correctional facilities (currently, such use is banned inside correctional facilities). Enacts new GS 14-258.1(c) making it a Class 1 felony to knowingly give or sell a tobacco product to an inmate (or to another person for delivery to an inmate) other than for authorized religious purposes. New GS 14-258.1(d) makes it a Class I felony to knowingly give or sell a mobile telephone or other wireless communication device or a component of one of those devices to an inmate or to another person for delivery to an inmate. Requires the Department of Correction to post signs informing inmates, staff, and the public of the act's prohibitions and penalties. Effective December 1, 2009, for acts committed on or after that date
Source: Bill Digest S.B. 167 (02/12/0200).

ASSUMPTIONS AND METHODOLOGY:

General

This bill creates two new offenses by amending N.C.G.S. 14-258.1. Subsection (c) makes it a Class I felony 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, or to knowingly give or sell any tobacco product to a person who is not an inmate for delivery to an inmate, other than for authorized religious purposes. Subsection (d) makes it a Class I felony 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 the Department of Correction, 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 and Policy Advisory 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 the proposed bill.*

In Calendar Year 2008, 16 defendants were charged under N.C.G.S. 14-158.1(a) with furnishing deadly weapons, cartridges, ammunition, controlled substances, or poison to inmates. The Department of Correction reports that it found 216 cell phones in the possession of inmates in Calendar Year 2008. There is no data available to estimate the number of charges that may be brought in relation to the tobacco section of this bill.

The 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

Because this proposed legislation creates a new offense, the Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this bill on the prison population. Therefore, *it is not known how many additional prison beds may be needed* under the proposed legislation.

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

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.

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, 12% of Class I felony offenders received active; 42% received intermediate; and 46% received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 28 months and 24 months, respectively. 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 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.

In Calendar Year 2008, 16 defendants were charged under N.C.G.S. 14-158.1(a) with furnishing deadly weapons, cartridges, ammunition, controlled substances, or poison to inmates. Presently, the AOC estimates a cost of \$7,687 per trial for a charge of furnishing deadly weapons, cartridges, ammunition, controlled substances, or poison to inmates, a Class I felony offense; cost per plea is an estimated \$332 for the same offense. AOC cost estimates account for indigent defense. In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. A typical Class I felony case took approximately 200 days. Any increase in juridical caseload due to this new Class I felony offense without accompanying resources could be expected to further delay the disposition of cases.

AOC cannot project the number of offenses that would be charged with furnishing tobacco products and cell phones. The Department of Correction reports that it found 216 cell phones in the possession of inmates in calendar year 2008. It is not known how many different individuals provided these cell phones. If half of these resulted in charges against separate defendants, *the impact on the court system could be substantial*. There is no data available to estimate the number of charges that may be brought in relation to the tobacco section of this bill.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Danielle Seale

Douglas Holbrook

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 2, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices