

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: HB 1091 2nd Edition
SHORT TITLE: Penalty for Illegal Indoor Pyrotechnics
SPONSOR(S): Representatives Goodwin, Blackwood, Dickson

	FISCAL IMPACT				
	Yes (X)	No ()		No Estimate Available ()	
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
Correction					
Recurring	Unable to determine exact amount; no substantial impact anticipated.				
Nonrecurring					
Judicial					
Recurring			No substantial impact anticipated.		
Nonrecurring					
TOTAL					
EXPENDITURES:			Unable to determine exact amount.		
ADDITIONAL PRISON BEDS*	It is likely that most misdemeanants sentenced to an active sentence under this bill would be housed in local jails at a cost to the state of \$18/day. The exception is Class 1 offenders falling in Prior Record Level III who may receive active sentences that might be served in the state prison system.				
POSITIONS: (cumulative)	Unable to determine exact amount; additional positions not anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction (DOC); Judicial Branch				
EFFECTIVE DATE:	December 1, 2003.				
<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: HB 1091 amends Article 54 to provide enhanced regulation for indoor pyrotechnic displays. The bill amends G.S. 14-415 to make it a Class 1 misdemeanor if an exhibition is indoors. Current G.S. 14-515 makes any violation of Article 54, except as otherwise specified in the Article, a Class 2 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

General

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 (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, 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.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

Since HB 1091 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 sentenced under this bill. In FY 2001-02, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served was 35.2 days.

The Sentencing Commission does note that in FY 2001-2002, 26 offenders were convicted for the unlawful possession of pyrotechnics, a Class 2 misdemeanor. However, data are not available concerning whether these involved indoor displays. In FY 2001-2002, the average estimated time served for Class 2 misdemeanants sentenced to active sentences was 23.4 days.

Because of the increase in punishment from Class 2 to Class 1 misdemeanors for indoor pyrotechnic displays, misdemeanants sentenced to active punishment would still be housed in local jails, but would now be paid for by the State at a cost of \$18/day. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days). Because only Class 1 offenders falling in Prior Record Level III receive active sentences that might be served in the state prison system, convictions for this proposed offense would not be expected to have a significant impact on the prison population. Therefore, convictions as a result of this bill would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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.

The AOC anticipates that some defendants currently charged with Class 2 misdemeanors would be charged with Class 1 misdemeanors under the bill. AOC data show that 159 defendants were charged with the unlawful possession of pyrotechnics. Data are not available on the number of defendants who were charged for violations relating specifically to indoor pyrotechnic displays. The AOC does not anticipate a significant change in court time or litigation strategies required to dispose of the Class 1 misdemeanor cases under this bill, compared to the Class 2 misdemeanors under current law.

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

TECHNICAL CONSIDERATIONS: None

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