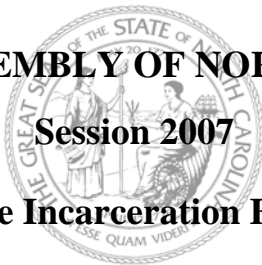


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 180 (Third Edition)

SHORT TITLE: Prohibit Certain Sweepstakes.

SPONSOR(S): Rep. Melanie Goodwin

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
GENERAL FUND					
Correction	Potential minimal fiscal impact; no estimate available				
Judicial	Potential minimal fiscal impact; no estimate available				
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS:					
(cumulative)*	Little if any impact expected; exact amount cannot be determined				
POSITIONS:					
(cumulative)	Impact cannot be determined				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE:					
<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:

The third edition of this bill completely rewrites Senate Bill 180 and changes the name. The bill enacts new GS 14-306.3, defining “server-based electronic sweepstakes” to mean a system in which (1) a database contains a pool of sweepstakes entries, with each entry associated with a prize value, (2) participants purchase a prepaid card, (3) each prepaid card provides one or more sweepstakes entries, and (4) sweepstakes entries may be revealed either (a) at a point of sale terminal at the time of purchase or later or (b) at a game terminal with a display that simulates a game ordinarily played on a slot machine or video gaming machine.

The bill makes it unlawful to possess such a game terminal for the purpose of a server-based electronic sweepstakes or to promote, operate, or conduct a server-based electronic sweepstakes on such a game terminal. The bill also provides that it is not unlawful to promote, operate, or conduct a server-based electronic sweepstakes in which entries are revealed by the seller only at a point of sale terminal at the time of purchase or later. The bill also makes conforming change to GS 14-298 (Seizure of illegal gaming items). The bill becomes effective December 1, 2008, and applies to offenses committed on or after that date

Source: Bill Digest S.B. 180 (02/14/0200).

ASSUMPTIONS AND METHODOLOGY:

General

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

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 inmates resulting from this bill will create the need for an equal number of new prison beds.**

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;¹ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”² Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

¹ New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

² Close and medium custody “add-on” facilities 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 built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

Estimated Construction Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC "Stand Alone"	\$55,000	\$63,000	\$114,000
Cost Per Bed: EOC "Add-On"	\$52,000	\$39,000	\$73,500

Construction costs are shown as *non-recurring costs in the "Fiscal Impact" table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.³ As illustrated (p.1), these costs also assume that funds to construct beds at a "stand alone" facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition ("add-on") is shorter, requiring that funds be budgeted three years in advance.

OPERATING: Operating costs are based on actual FY 2006-07 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the "Fiscal Impact" table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$57.48	\$74.71	\$88.93	\$71.52

Analysis of potential new convictions:

This bill creates two new criminal offenses. Subsection (a) makes it unlawful for any person to promote, operate, or conduct a server-based electronic sweepstakes. Subsection (b) makes it unlawful for any person to keep in that person's possession any game terminal with a display that simulates a game ordinarily played on a slot machine (regulated by statute) or a video gaming machine (regulated by statute) for the purpose of promoting, operating, or conducting a server-based electronic sweepstakes. Pursuant to G.S. 14-309, violation is a Class 1 misdemeanor for the first offense, a Class H felony for the second offense, and a Class G felony for a third or subsequent offense.

Since the proposed bill 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 the proposed bill. It is also not known how many offenders may be repeat offenders under the proposed statute.

- In FY 2006/07, 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, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.
- In FY 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result

³ Office of State Construction, March 24, 2006.

in the need for one additional prison bed the first year and two additional prison beds the second year.

- In FY 2006/07, 41% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill 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.

For comparative purposes, G.S. 14-301, G.S. 14-302, and G.S. 14-306.1A cover similar offenses to those created in subsection (a) and subsection (b) of the proposed bill. In FY 2006/07, there were 11 Class 2 misdemeanor convictions under G.S. 14-301, three (3) Class 2 misdemeanor convictions under G.S. 14-302, and two (2) Class 1 misdemeanor convictions and one (1) Class I felony conviction under G.S. 14-306.1A. (Note: It is not clear whether the Class I felony under G.S. 14-306.1A is a data error or an attempted offense, as there are only Class H and Class G felony offenses under this statute). It is important to note that the Administrative Office of the Courts' offense codes do not distinguish between operation or possession for these offenses.

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.⁴

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 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 \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 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.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

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.

⁴ 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.

Due to the creation of this new offense, AOC has no data from which to estimate the number of charges that might arise; however, similar video poker gaming laws may be comparable to the offenses created in the bill. AOC data for calendar year 2007 show the following number of defendants charged under current GS 14-306.1A for the unlawful operation or possession of a video gaming machine: 32 charges for the Class 1 misdemeanor offense, 1 charge for the Class H felony offense, and 7 charges for the Class G felony offense of operating 5 or more machines. Assuming the prevalence of server based electronic sweepstakes is comparable to video poker and the same number of charges would arise from the proposed legislation as the current legislation, disposing of the 32 Class 1 misdemeanor charges under new GS 14-306.3 (although some could be charged as Class H or G felonies) would cost an additional \$4,600 in the first full year. The Fiscal Research Division assumes that many of the charges that would occur as a result of the proposed bill are currently charged under video poker legislation; therefore, a minimal fiscal impact is anticipated for the court system.

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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