

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 80 (Third Edition)

SHORT TITLE: Ban Electronic Sweepstakes

SPONSOR(S): Rep. Goodwin

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>
EXPENDITURES					
GENERAL FUND:					
Correction					Exact amount cannot be determined*
Probation					Exact amount cannot be determined*
Judicial					Exact amount cannot be determined*
<i>*See Assumptions and Methodology</i>					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice; Judicial Branch					
EFFECTIVE DATE: December 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:

The 3rd Edition of House Bill 80 would ban the use of electronic machines and devices for sweepstakes purposes. The bill also creates a new offense punished pursuant to G.S. 14-309(a) as follows: (1) first violation is a Class 1 misdemeanor; (2) second violation is a Class H felony; and (3) third or subsequent violation is a Class G felony. The bill also expands the reach of certain existing offenses. This act becomes effective December 1, 2010, and is applicable to offenses committed on after that date.

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

An analysis of selected sections of HB 80 affecting the Department of Correction follows:

Section 1:

G.S. 14-306.4. Electronic sweepstakes machines and devices sweepstakes prohibited; penalties. Subpart (b) makes it an offense (Class 1 misdemeanor/Class H felony/Class G felony) for any person to operate, allow to be operated or placed into operation an electronic machine or device, knowing that it is being used to engage in any process or activity associated with a sweepstakes. Subpart (a)(4) defines “sweepstakes” as any game, advertising, scheme, plan, or other promotion in which a person may enter and become eligible to receive, with or without consideration, any prize based upon chance. Subpart (a)(1) defines “electronic machine or device” to include any object powered by electricity and capable of displaying information on a screen or mechanism that can be viewed by a person in order to enter a sweepstakes or engage in any activity of process associated with a sweepstakes. This section expressly includes both server-based and non-server-based machines or devices. Each violation of either subpart is a separate offense under subsection (f) of the statute.

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 convicted and sentenced under the proposed bill. It also is not known how many offenders may be repeat offenders under the proposed bill. Therefore, it is not known what proportion of offenders would be convicted as Class 1 (first offense), Class H (second offense), or Class G offenders (third or subsequent offense) under the proposed statute.

In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions (first offense) 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 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions (second offense) 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.

In FY 2008-09, 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 (third or subsequent offense) 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.

Based on the expansive definitions of “sweepstakes” and “electronic machine or device” in G.S. 14-306.4(a), the new offense created by G.S. 14-306.4(b) would also overlap with existing offenses involving electronic gaming tables, slot machines, punchboards, video gaming machines, and server-based electronic game promotion terminals under the following statutes:

General Statute	Offense Description	Current Class	FY 2008/09 Convictions
14-295	Keeping gaming tables, illegal punchboards or slot machines, or betting thereat	Class 2	No Code
14-297	Allow gaming tables	Class 2	0
14-301	Operate/possess slot machine	Class 2	1
14-302	Operate/possess gambling devices	Class 2	5
14-304	Manufacture/sell slot machine (1 st offense)	Class 1	0
14-304	Manufacture/sell slot machine (2 nd offense)	Class H	0
14-304	Manufacture/sell slot machine (3 rd or subsequent offense)	Class G	0
14-305	Slot machine agreement (1 st offense)	Class 1	0
14-305	Slot machine agreement (2 nd offense)	Class H	0
14-305	Slot machine agreement (3 rd or subsequent offense)	Class G	0
14-306.1A(a)	Operate video gaming machine (1 st offense)	Class 1	9
14-306.1A(a)	Operate video gaming machine (2 nd offense)	Class H	0
14-306.1A(a)	Operate video gaming machine (3 rd /subs. offense)	Class G	0
14-306.1A(a)	Operate video gaming machines (5+ machines)	Class G	0
14-306.3	Certain game promotions unlawful (1 st offense)	Class 1	No Code
14-306.3	Certain game promotions unlawful (2 nd offense)	Class H	No Code
14-306.3	Certain game promotions unlawful (3 rd /subs. offense)	Class G	No Code
14-306.3	Certain game promotions unlawful (5+ machines)	Class G	No Code

Source: NC Sentencing and Policy Advisory Commission, FY 2008/09 Structured Sentencing Simulation Data

The offense in G.S. 14-306.4(b) may also embrace certain conduct covered by the Class 2 misdemeanors in G.S. 14-292, Gambling (51 convictions in FY 2008-09), and G.S. 14-293, Allowing gambling in houses of public entertainment (3 convictions in FY 2008-09), as well as G.S. 14-290, Dealing in lotteries (7 convictions in FY 2008-09), G.S. 14-291, Selling lottery tickets and acting as agent for lotteries (1 conviction in FY 2008-09), and 14-291.1, Selling “numbers” tickets; possession prima facie evidence of violation (51 convictions in FY 2008-09), insofar as the lottery or gambling in question involves the use of an electronic machine or device.

It is not known how many of the convictions noted above involve the same conduct as that covered by the bill. For these instances, impact would occur if any Class 2 misdemeanor convictions would become Class 1 misdemeanor, Class H felony, or Class G felony convictions under the proposed bill (*see* above analysis for impact).

G.S. 14-306.4 excludes certain machines and conduct from the offense in subsection (b). Subsection (c) excludes video arcade games within the existing exclusion in G.S. 14-306(b)(1), as well as machines or devices whereby a promotional sweepstakes is entered via cash register or the

scanning of a store's customer rewards card and, *inter alia*, no purchase is necessary for entry and the prize is awarded at a later date. Subsection (d) allows a person to use an electronic machine or device (1) to electronically transmit the person's identifying information in order to enter the sweepstakes, or (2) to transmit notice that an entrant has received or is eligible to receive a sweepstakes prize, provided the notice does not contain or lead to an entertaining display, or reveal a prize associated with an entry. Subsection (e) exempts (1) activity on Indian lands which accords with an approved Tribal-State Gaming Compact, (2) lotteries authorized under G.S. Chapter 18C (North Carolina State Lottery), and (3) bingo and raffles permitted under G.S. Chapter 14, Article 37, Part 2 (Bingo and Raffles).

Section 2:

This section amends subsection (a) of G.S. 14-306, Slot machine or device defined. The amendment expands the definition of "slot machine or device" for purposes of G.S. 14-296 through 14-309 to include machines that accept credit cards, debit cards "or any other method that requires payment to activate play." This language adds to the current definition of machines operated by "the insertion of any piece of money or coin or other object[.]"

Note: It is assumed that the definition in G.S. 14-306(a) is intended to apply (via G.S. 14-296) to G.S. 14-295, Keeping gaming tables, illegal punchboards or slot machines, or betting thereat, despite language in G.S. 14-306(a) limiting its reach to G.S. 14-296 through 14-309.

The expanded definition of "slot machine" applies to the offenses set forth in the following table. However, it is not known how many additional convictions may result from the proposed broadening of the current statute.

General Statute	Offense Description	Current Class	FY 2008/09 Convictions
14-295	Keeping gaming tables, illegal punchboards or slot machines, or betting thereat	Class 2	No Code
14-297	Allow gaming tables	Class 2	0
14-300	Opposing destruction of gamine tables and seizure of property	Class 2	No Code
14-301	Operate/possess slot machine	Class 2	1
14-302	Operate/possess gambling devices	Class 2	5
14-304	Manufacture/sell slot machine (1 st offense)	Class 1	0
14-304	Manufacture/sell slot machine (2 nd offense)	Class H	0
14-304	Manufacture/sell slot machine (3 rd or subsequent offense)	Class G	0
14-305	Slot machine agreement (1 st offense)	Class 1	0
14-305	Slot machine agreement (2 nd offense)	Class H	0
14-305	Slot machine agreement (3 rd or subsequent offense)	Class G	0
14-306.1A(a)	Operate video gaming machine (1 st offense)	Class 1	9
14-306.1A(a)	Operate video gaming machine (2 nd offense)	Class H	0
14-306.1A(a)	Operate video gaming machine (3 rd /subs. offense)	Class G	0
14-306.1A(a)	Operate video gaming machines (5+ machines)	Class G	0
14-306.3	Certain game promotions unlawful (1 st offense)	Class 1	No Code
14-306.3	Certain game promotions unlawful (2 nd offense)	Class H	No Code
14-306.3	Certain game promotions unlawful (3 rd /subs. offense)	Class G	No Code
14-306.3	Certain game promotions unlawful (5+ machines)	Class G	No Code

Source: NC Sentencing and Policy Advisory Commission, FY 2008/09 Structured Sentencing Simulation Data

In FY 2008-09, 23% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 11 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 2 misdemeanor convictions that result from the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions (first offense) that result from the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H felonies (second offense) 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.

In FY 2008-09, 41% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two additional Class G felonies (third or subsequent offense, or 5+ machines) 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.

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.

In 2006, the General Assembly enacted a phased in ban of video poker machines. The Sheriff’s Association has indicated that the ban was for the most part complied with, thus charges were relatively minimal. They anticipate similar results from this legislation banning electronic sweepstakes machines. AOC data reveals that there was some increase in charges in the first year of the video poker ban, followed by reductions in charges over the next two years (see table below). The same pattern appears in the first year following the earlier video poker ban in 2000. Therefore, AOC anticipates that there will be some initial workload resulting from this legislation, but that over time the impact would diminish as compliance increased.

Statute	Select Offenses	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Offenses From July 2007 Forward											
14-306.1A(a)	Operate Video Gaming Machine (Class 1 misd.)								32	53	31
14-306.1A(a)	2nd Offense (Class H felony)								1	1	1
14-306.1A(a)	3rd Offense (Class G felony)										
14-306.1A(a)	Operate 5+ Machines (Class G felony)								7	9	8
	Subtotal								40	63	40
Offenses Prior to July 2007											
14-306.1(a)	Operate/Possess New Video Game (M)	3	2	9	0	1	0	3	1		
14-306.1(a)	Operate/Possess New Video Game (F)										
14-306.1(a)	Operate 5+ new video games (F)	0	0	0	0	2	0	0	0		
14-306.1(b)	Operate/Possess Video Game Machines (M)	4	25	20	17	15	7	15	17		
14-306.1(b)	Operate/Possess Video Game Machines (F)	17	10	0	5	8	4	4	0		
14-306.1(b)	Operate > 5 video games (F)	5	3	2	7	6	10	5	0		
14-306.1	Other Video Game Machine Violation (M)	15	31	25	23	22	32	34	18		
14-306.1	Other Video Game Machine Violation (F)	0	2	2	8	3	2	0	3		
14-306.1	Other Violation - > 5 video machines (F)	2	1	3	3	3	1	4	0		
	Subtotal	46	74	61	63	60	56	65	39		
	Grand Total	46	74	61	63	60	56	65	79	63	40

A closer look at the data reveals that most of the impact of the 2000 and 2006 bans was in the Class 1 misdemeanor charge. The pattern shows significant increases after a change in law, followed by a dip leveling off around 40 charges a year and, in the case of the 2000 ban, an

increase again five years later. Based on the pattern, it appears that at least initially approximately 18 Class 1 misdemeanor charges a year could be attributed to the ban. Assuming the same impact from a ban on electronic sweepstakes machines, and accounting for the December 1 effective date, impact would be as follows:

Note: Due to the uncertainty of the long term trend, AOC cannot project the impact beyond two years. AOC is also unable to project the impact, if any, of this legislation on the number of Class H and G felony charges.

Costs Based on In-Court Time, ADA Preparation Time, and Indigent Defense

	FY 2010-11	FY 2011-12
In-Court Time and DA Office	\$1,453	\$2,616
Indigent Defense	\$262	\$472
Total	\$1,715	\$3,088

Because the impact is the equivalent of less than 0.5 FTE for any one position type, the costs provided are for the value of the time that would be spent by existing personnel. However, the National Center for State Courts has developed workload standards for North Carolina’s court personnel after extensive studies. For FY 2010-11, based on workload formulas, the court system has the following shortages statewide:

District Court Judges:	67
Deputy Clerks:	524
Assistant District Attorneys:	79
DA Victim Witness Legal Assistants:	54
Judicial support staff:	49
Magistrates:	160

Therefore, any increase in workload could not be absorbed by existing staff without impacting case dispositions. In FY 2008-09, a typical felony case took approximately 203 days to dispose in Superior Court. A typical misdemeanor case took approximately 88 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

Other Offenses:

The new offense may overlap with some gambling-related Class 2 misdemeanors (see below). AOC cannot determine the number of charges that would be covered by the new statutes. The fiscal impact of each charge would depend on the mode of disposition of the case. The range of costs per offense for new or increased offense classes is listed in the table below. The changes to each offense would involve changes to offense classes and/or expanding the scope of the offenses.

Penalty		Cost per Trial	Cost per Plea	Indigent Defense*
1 st Offense	Increase Class 2 to Class 1	\$126	\$56	-
2 nd Offense	Increase Class 2 to Class H	\$7,625	\$624	\$315
3 rd Offense	Increase Class 2 to Class G	\$8,919	\$1,059	\$458

*Average cost per indigent defendant

General Statute	Offense Description	Current Class	Class in this PCS	FY 2008/09 Defendants Charged
14-290	Operating a lottery	Class 2	Class 1 misdemeanor/Class H Felony /Class G Felony	16
14-291	Selling lottery tickets and acting as agent for lotteries	Class 2	1/ H/ G (see above)	9
14-291.1	Selling "numbers" tickets; possession prima facie evidence of violation	Class 2	1/ H/ G (see above)	38
14-292	Gambling	Class 2	1/ H/ G (see above)	205
14-293	Allow gambling in public house	Class 2 & license forfeiture	1/ H/ G (see above)	53

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

TECHNICAL CONSIDERATIONS: None

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