

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 926 (Second Edition)

SHORT TITLE: Continuous Alcohol Monitoring Systems.

SPONSOR(S): Representatives M. Alexander, Faison, and Guice

	FISCAL IMPACT				
	Yes ()	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
GENERAL FUND					
Correction		Costs cannot be determined			
Recurring					
Nonrecurring					
Probation					
Judicial		Costs cannot be determined			
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS: (cumulative)*					
POSITIONS: (cumulative)					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	December 1, 2009				
<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:

H 926. CONTINUOUS ALCOHOL MONITORING SYSTEMS.

The House committee substitute reorganizes the bill and makes substantial changes to 1st edition, including: (1) Eliminates proposed amended GS 20-19(e2)(3), which allowed voluntary submission to continuous alcohol monitoring for 120 days to serve as evidence of abstinence from alcohol consumption. (2) Eliminates proposed amended GS 20-28, which allowed a judge to order a defendant whose license was revoked as a result of a DWI to abstain from alcohol, verified by continuous alcohol monitoring, for a minimum of 90 days instead of incarceration.

Section 1 of the committee substitute modifies a provision in section 4 of the previous edition by adding a new provision in GS 15A-1343(b1) that allows (1) abstinence from alcohol, verified by continuous alcohol monitoring and/or (2) submission to recommended treatment when alcohol dependency or chronic abuse has been identified by substance abuse assessment (was, that verified abstinence from alcohol through continuous monitoring was applicable if the person had two or more convictions for an alcohol-related offense, including impaired driving offenses) to be a special condition of probation. If the court finds that the defendant should not be required to pay the costs of monitoring, it must not impose that condition, unless a state or local government agency agrees to pay the costs, in which case the agency shall pay the service provider directly. Requires the entity providing the continuous alcohol monitoring system to maintain records of all payments, which must be made available to the clerk of court upon request.

Provides in proposed amended GS 15A-1340.11 that, in addition to other conditions for an offender on probation, a sentence may also require that the defendant abstain from alcohol as verified by a continuous alcohol monitoring system and/or submit to recommended treatment (was, in the previous edition listed as a condition of an intermediate punishment).

Deletes in proposed amended GS 15A-1343 that a defendant is not required to pay costs associated with special conditions of probation in lieu of, or prior to, payments required under the regular conditions of probation. Instead, the committee substitute retains current law and creates an exception for the costs of continuous alcohol monitoring when paid by a state or local government agency.

Adds to proposed amended GS 15A-534.1(a)(2) to allow a judge to make abstinence from alcohol, verified by continuous alcohol monitoring, and/or alcohol abuse treatment to be conditions of pretrial release (was, abstain from alcohol consumption verified by a continuous alcohol monitoring system).

Amends GS 15A-1343.3 to broaden the scope of the Department of Correction's regulations for continuous alcohol monitoring to include parole and pretrial release as well as probation.

Amends GS 20-19(d)(2) to provide that voluntary submission to continuous alcohol monitoring for 120 days or longer may serve as evidence of abstinence for certain applicants for conditional restoration of driving privileges.

Provides in proposed amended GS 20-179 that (1) for Level One DWI sentences, imprisonment may be suspended if the judge requires the defendant to abstain from alcohol, verified by continuous monitoring, for at least 120 days (was, 180 days) and comply with treatment recommendations; (2) for Level Two DWI sentences, imprisonment may be suspended if the judge requires the defendant to abstain from alcohol, verified by continuous monitoring, for at least 90 days and comply with treatment recommendations; (3) the cost to a Level One or Level Two DWI offender for continuous alcohol monitoring may not exceed \$1,500 (previous edition deleted this entire provision); and (4) the court (was, judge) may order abstinence from

alcohol and continuous monitoring for any DWI offender as a condition of probation. Deletes that probation officers may require defendants to submit to continuous alcohol monitoring for assessment purposes.

Makes technical and conforming changes.

Provides that the December 1, 2009, effective date applies to all criminal or civil proceedings, regardless of their commencement date (was, applied to offenses committed or any custody and visitation orders issued on or after December 1, 2009).

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.* The Sentencing and Policy Advisory Commission can not estimate how many additional revocations would result from this proposed change. Any additional revocations or increases in revocation rates could have a significant impact to the prison and local jail population, but the effect can not be ascertained.

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 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.

HB 926 adds another special condition of probation. Subdivision (2c) allows the court to require a probationer to (i) abstain from consuming alcohol, as verified by continuous alcohol monitoring and/or (ii) submit to recommended treatment when alcohol dependency or chronic abuse has been identified by substance abuse assessment. As currently drafted, it does not appear that special condition (2c)(i) is

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.

contingent upon a finding of alcohol dependency or chronic abuse, as is (2c)(ii). Special conditions of probation may be imposed at the discretion of the court. Violation of the conditions of probation may result in the activation of a suspended sentence.

Of the state's 116,148 supervised probationers, sixty-four percent probationers have substance provisions as a condition of their probation, and two-thirds (67%) have to submit to drug testing as one of their probation conditions. The Sentencing Commission developed a scenario if revocations increased by 1%, with a potential impact of 165 beds over the next five years.

Table 1
Estimated Additional Prison Beds Needed
Based on Scenario for a 1% Increase in Revocation Rates

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS
Year 1	122
Year 2	144
Year 3	150
Year 4	157
Year 5	165
Year 6	169
Year 7	159
Year 8	171
Year 9	173
Year 10	181

Source: Sentencing and Policy Advisory Commission

Subdivision (2c)(a) provides that if a court finds (for good cause shown) that a probationer should not have to pay the costs of continuous alcohol monitoring, it may not impose special condition (2c)(i) unless the State, a state agency, or a local governmental entity agrees to pay the costs. Failure to reach an agreement with the State, a state agency, or a local governmental entity may limit the availability of this condition.

The Division of Community Corrections finds that there are no resource issues for DCC. The proposal requires offenders to pay a vendor for the monitoring. Despite modifying a special condition of probation, these offenders will still be supervised by DCC.

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.

AOC may incur some training costs for judges and information technology changes. In addition, this bill may result in additional probation violation hearings, by (1) shifting some offenders from active time to a suspended sentence with continuous alcohol monitoring, (2) adding a new condition of probation that could be violated, and (3) increasing scrutiny of some probationers through the use of continuous alcohol monitoring. Any additional workload would impact the court system and could further delay the disposition of cases.

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

TECHNICAL CONSIDERATIONS: None

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