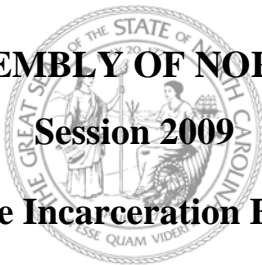


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1456 (First Edition)

SHORT TITLE: Drug Felon/No Large Dogs.

SPONSOR(S): Representatives Burr and Guice

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available (X)		
	<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>
EXPENDITURES					
GENERAL FUND					
Correction	Indeterminate fiscal impact; impact could be substantial				
Probation	Indeterminate fiscal impact				
Judicial	Indeterminate fiscal impact; impact could be substantial				
ADDITIONAL PRISON BEDS: (cumulative)*	Indeterminate prison bed impact; impact could be substantial				
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:

This bill provides that a person who is convicted of a felony drug offense and sentenced to community or intermediate punishment shall have imposed as a special condition of probation that the person shall not own or have a dog that weighs more than fourteen pounds either on her or her residential premises or in a motor vehicle the person is driving and to provide that a person convicted of a felony drug offense shall not own or have a dog that weighs more than fourteen pounds either in a motor vehicle that the person is driving or on her or her residential premises for a period of six years after serving an active sentence for the drug felony.

Adds new G.S. 14-401.23 and amends G.S. 15A-1343 as the title indicates. Violation of this section is a class 3 misdemeanor punishable only by a fine. Effective December 1, 2009, and applies to persons convicted of or placed on probation for a felony offense under G.S. 90-95 on or after that date

ASSUMPTIONS AND METHODOLOGY:

General

The North Carolina 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

This bill creates a new special condition of probation for certain drug offenders, and a new Class 3 misdemeanor offense.

Section 1

This section amends G.S. 15A-1343, Conditions of probation, by adding section (b4), Special conditions of probation for certain drug offenders. This section would provide that as a special condition of probation, a defendant who is convicted of a felony offense under G.S. 90-95, and who is sentenced to community punishment or to intermediate punishment, shall not own or have at his/her residence, dwelling, or in his/her car a dog that weighs more than 14 pounds. The judge has the discretion to impose a special condition of probation. Violation of a condition of probation could result in modification of the conditions or revocation of probation and activation of the suspended sentence.

The proposed amendment results in the potential for impact to the prison population. Because the proposed amendment only applies to certain felony offenders, it is not expected to impact local jail populations. In FY 2007-08, there were 11,539 felony convictions under G.S. 90-95, 8,146 (71%) of which were sentenced to community or intermediate punishments. It is not known how many probationers would be subject to this special condition of probation, as imposed at the discretion of the court. As a result, *the impact of this proposed change cannot be determined and would depend upon the number of probationers who received this special condition of probation.* Impact would result from additional revocations of probation, and the corresponding activation of suspended sentence, for probationers who violate this special condition of probation. Because the bill applies to offenders sentenced to probation on or after December 1, 2009, there would be a buildup of probationers subject to this special condition.

It is not known how many additional revocations of probation may occur as a result of this proposed change and how revocation rates would be affected. Under Structured Sentencing, felony offenders placed on probation range from those convicted of Class E offenses to those convicted of Class I offenses.¹ For any additional revocations, the length of the suspended sentence that would be activated would vary greatly depending on the offense class of the conviction for which the offender originally received a probationary sentence and the offender's prior record. Depending on the numbers affected, any additional revocations or increases in revocation rates could result in substantial impact to the prison; however, the impact cannot be determined. For descriptive purposes, Table 1 provides a scenario for the potential impact on the prison population. The scenario assumes that there would be a 1% increase in overall felony probation revocation rates as a result of revocations relating to violations of the proposed special condition of probation.

¹ Under Structured Sentencing, Class A offenders may receive either a sentence of life without parole or death. With the exception of extraordinary mitigation, all offenders convicted of Class B1 through Class D felonies are required to receive an active sentence.

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

Fiscal Year	Estimated Additional Prison Beds
2009-10	90
2010-11	111
2011-12	117
2012-13	123
2013-14	131
2014-15	135
2015-16	125
2016-17	136
2017-18	138
2018-19	146

Source: NC Sentencing and Policy Advisory Commission, FY 2007-08 Felony and Misdemeanor Simulation Data

In preparing the data shown in the table above, the Sentencing Commission assumed the proposed changes to become effective for offenders sentenced to probation on or after December 1, 2009. Based on this effective date, FY 2010-11 would represent the first full year of impact due to the gap between the time a felony offense is committed and the offender is sentenced. The same percentage of active sentences as found in FY 2007-08 is assumed for the projections shown in this table as well as a 1% increase in the felony probation revocation rates found in FY 2007-08. Sentence length is based on the activated or suspended sentence imposed in court at the time of conviction and sentencing. In preparing these projections the Sentencing Commission assumes no changes in judicial or prosecutorial behavior or any deterrent or incapacitative effects. This data does not take into account proposed changes in other sections of this bill.

Section 2

This section creates a new statute, G.S. 14-401.23, Size limitation on dogs that a drug felon may own or have on residential premises. This section would require a person who is convicted of a felony under G.S. 90-05 to refrain from: (i) owning a dog that weighs more than 14 pounds, or (ii) having a dog that weighs more than 14 pounds either on the premises of his/her residence or in a motor vehicle he/she is driving. This prohibition applies for a six-year period after the person has completed the sentence imposed on the person for the felony conviction under G.S. 90-95. A violation of this section is a Class 3 misdemeanor, punishable only by a fine of \$250 for the first offense, \$500 for a second offense, and \$1,000 for a third and subsequent offenses. A violation of this statute also causes the six-year period to restart.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.* There were 11,539 convictions for felony offenses under G.S. 90-95 during FY 2007-08. Of these convictions, 3,393 (29.4%) received active sentences, 4,939 (42%) received intermediate sentences and 3,207 (27.8%) received community sentences. Because the bill applies to offenders convicted of or sentenced to probation for a felony on or after December 1, 2009, and this prohibition applies for a six-year period after the person has completed their sentence, there would be a buildup of offenders subject to violation of this section. However, because violations of this section would be punishable only by a fine they would not have an impact on prison or jail populations.

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 and 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.²

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.

If a felony drug offender who was sentenced to community or intermediate punishment violates this new special condition of probation, the violation could result in modification of the conditions or revocation of probation and activation of the suspended sentence. If the suspended sentence is activated, the offender may be placed back on community or intermediate punishment at the conclusion of the active sentence. This may result in additional costs to DCC, however, *these potential costs cannot be determined*.

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.

This bill addresses possession of a dog greater than 14 pounds, which includes a large number of dog breeds; AOC has no data on the number of offenders who possess dogs. The bill creates a new offense and a special condition of probation, therefore increasing the potential number of new charges and probation violation hearings. *AOC cannot determine the number of new charges and revocation hearings that would occur under this bill, but the amount could be considerable*.

The Sentencing Commission reports that in FY 2007-08, there were 11,539 felony convictions under G.S. 90-95, of which 8,146 (71%) were sentenced to community or intermediate punishments. Because special conditions of probation are imposed at the discretion of the judge, AOC cannot project the number of

² 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.

offenders that would be subject to this new condition of probation, but the number could be considerable; AOC cannot project the number of violations that would occur.

Because this bill applies to convictions on or after December 1, 2009, there would be a gradual buildup of offenders subject to the special conditions of probation and the six-year ban. To provide a long-term perspective of the potential magnitude, in 2008 DOC data show 5,469 drug felons exited prison and 7,856 drug felons exited probation.

The punishment for the new Class 3 misdemeanor offense is limited to a fine, and it is likely that most cases will be resolved by plea at a cost to the courts of about \$75 each. New revocation hearings will also require court time. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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

TECHNICAL CONSIDERATIONS: None

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