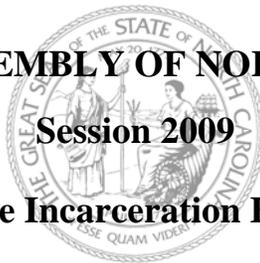


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 8 (Third Edition)

SHORT TITLE: Prohibit Cell Phones in Prison.

SPONSOR(S): Representatives Pierce and Hall

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>
<b>EXPENDITURES</b>					
<b>GENERAL FUND</b>					
Correction			Indeterminate fiscal impact		
Probation			Indeterminate fiscal impact		
Judicial			Indeterminate fiscal impact		
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> 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:**

Enacts a new N.C.G.S. 14-258.1(c) to make it a Class A1 misdemeanor for any person to knowingly give or sell (1) a mobile telephone or other wireless communications device or (2) a component of one of those devices to either an inmate in the custody of the Department of Correction or to a non-inmate for delivery to an inmate. Effective December 1, 2009, and applies to acts committed on or after that date.

**ASSUMPTIONS AND METHODOLOGY:**

**General**

This bill creates a new Class A1 misdemeanor offense by amending N.C.G.S 14-258.1. The proposed change will make it an offense for any person to knowingly give or sell a mobile telephone or other wireless communication device to an inmate in the custody of the Department of Correction, or for any person who

knowingly gives or sells any such device or component to a person who is not an inmate for delivery to an inmate. Because this proposed legislation creates a new offense, the Sentencing and Policy Advisory 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.*

In Calendar Year 2008, 16 defendants were charged under N.C.G.S. 14-158.1(a) with furnishing deadly weapons, cartridges, ammunition, controlled substances, or poison to inmates. The Department of Correction reports that it found 216 cell phones in the possession of inmates in Calendar Year 2008.

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**

Because this proposed legislation creates a new offense, the Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this bill on the prison population. Therefore, *it is not known how many additional prison beds may be needed* under the proposed legislation.

In FY 2007-08, 28% of Class A1 misdemeanor offenders received active sentences with an average estimated time served of 48 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, *convictions for this offense would not be expected to have a significant impact on the prison population.* The impact on local jail populations is not known.

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 or 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.<sup>1</sup>

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.

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<sup>1</sup> 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.

In FY 2007-08, 28% of Class A1 misdemeanor offenders received active sentences with an average estimated time served of 48 days (housed in local jails). Of those convicted of Class A1 misdemeanors in FY 2007-08, 6% received intermediate, and 66% received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 22 months and 18 months, respectively. Because this is a new charge and there is no historical data upon which to base an estimate, *potential costs to DCC 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.

In Calendar Year 2008, 16 defendants were charged under N.C.G.S. 14-158.1(a) with furnishing deadly weapons, cartridges, ammunition, controlled substances, or poison to inmates. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in district court. Any increase in juridical caseload due to this new Class A1 misdemeanor offense without accompanying resources could be expected to further delay the disposition of cases.

AOC cannot predict the number of defendants that would be charged with furnishing cell phones. The Department of Correction reports that it found 216 cell phones in the possession of inmates in Calendar Year 2008. It is not known how many separate different individuals provided these cell phones. If half of these resulted in charges against separate defendants, *the impact on the court system could be substantial.* Any impact on the courts would fall mostly on clerks, district court judges, and assistant district attorneys.

**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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Fiscal Research Division

**DATE:** March 20, 2009



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