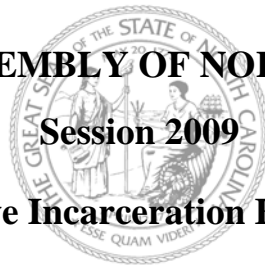


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 80 (Fourth Edition)

SHORT TITLE: Ban Electronic Sweepstakes.

SPONSOR(S): Representative 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>
<b>GENERAL FUND</b>					
<b>Correction</b>		<b>Exact amount cannot be determined*</b>			
<b>Probation</b>		<b>Exact amount cannot be determined*</b>			
<b>Judicial</b>		<b>Exact amount cannot be determined*</b>			
<b>POSITIONS:</b> (cumulative)					
<i>*See Assumptions and Methodology</i>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> This act becomes effective December 1, 2010, and applies to offenses committed on or after that 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:**

This act amends GS 14-306.4 to make it unlawful for any person to operate, or place into operation, an electronic machine or device to either (1) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize or (2) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or a prize reveal (was, to make it unlawful for any person to own, lease, or have possession of and operate an electronic machine or device; or to allow for operation of an electronic machine or device; or to own, lease, or have possession of and place into operation an electronic machine or device to conduct a sweepstakes or to engage in any process or activity associated with a sweepstakes, unless specifically authorized by an exception).

The proposed legislation also amends the definition of electronic machine or device to mean a mechanically, electrically, or electronically operated machine or device that is owned, leased, or otherwise possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen or other mechanism. This act also adds criteria to the list applied to electronic machines or devices regulated under the section. The proposed legislation adds the definition of entertaining display as visual information, capable of being seen by a sweepstakes entrant that takes the form of actual game play, or simulated game play, and includes a list of non-exclusive examples. In addition, the proposed legislation adds that a prize under the section can also be a credit.

The proposed legislation deletes the exceptions to the electronic machine or device ban, as provided in the previous version, and removes the intention language, allowing a person to enter or to conduct a sweepstakes. Also, the bill removes declarations that the section would not make illegal any lawfully conducted lottery game, raffle, or bingo game, and removes provision directing that any machine, device, or property used in violation of the section be seized and disposed of. The proposed legislation adds a new section amending GS 14-298 (seizure of illegal gaming items) to provide for seizure of any electronic machine or device using an entertaining display in violation of proposed GS 14-306.4.

The bill also adds a new section to provide that nothing in the act will make lawful any machine or device that is unlawful under another provision of law. The proposed legislation provides that prosecutions for offenses committed before the act's effective date are not abated or affected, and any statutes that would be applicable but for this act remain applicable to those prosecutions. Finally, the proposed legislation makes other clarifying and conforming changes. This act is becomes effective December 1, 2010, and applies to offenses committed on or after that date.  
*Source: Bill Digest H.B. 80 (02/05/0200).*

## **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**

#### **Section 1:**

14-306.4. Electronic sweepstakes machines and devices sweepstakes prohibited; penalties. Subdivision (b) makes it unlawful for any person to operate, allow to be operated or place into operation an electronic machine or device to (1) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize, or (2) promote a

sweepstakes conducted through use of an entertaining display, including the entry process or the reveal of a prize. Under both subsection (f) of the proposed G.S. 14-306.4 and under current law in G.S. 14-309(a), a person's first offense is a Class 1 misdemeanor, second offense is a Class H felony, and third or subsequent offense is a Class G felony. Each violation of either subdivision is a separate offense under subsection (e) of the proposed statute.

Subsection G.S. 14-306.4(a) defines "sweepstakes" as a game, advertising, scheme, plan, or promotion in which, with or without consideration, a person may enter to win or be eligible to receive a prize, the determination of which is based on chance. "Electronic machine or device" includes any mechanically, electrically or electronically operated machine or device that is owned, leased, or possessed by a sweepstakes operator or promoter, or any partner, affiliate, subsidiary or contractor thereof, and that uses energy and is capable of displaying information on a screen or mechanism. It expressly includes both server-based and non-server-based machines or devices, as well as slot machines and computer games. "Entertaining display" is defined as visual information capable of being seen by a sweepstakes entrant that takes the form of actual or simulated game play. "Prize" includes anything of value which may be transferred to a person (whether or not it is actually transferred), or placed on an account or other record as evidence of the intent to transfer the prize.

Because 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.

Because of the expansive definitions noted above, the new offense created by G.S. 14-306.4(b) would overlap with many existing offenses involving electronic gaming tables, slot machines, punchboards, video gaming machines, and server-based electronic game promotion terminals

under the following statutes, but would exclude any existing offenses that involve the mere manufacture, possession, sale, or keeping of an electronic machine or device that is not operated to conduct or promote a sweepstakes involving an entertaining display.

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 <sup>st</sup> offense)	Class 1	0
14-304	Manufacture/sell slot machine (2 <sup>nd</sup> offense)	Class H	0
14-304	Manufacture/sell slot machine (3 <sup>rd</sup> or subsequent offense)	Class G	0
14-305	Slot machine agreement (1 <sup>st</sup> offense)	Class 1	0
14-305	Slot machine agreement (2 <sup>nd</sup> offense)	Class H	0
14-305	Slot machine agreement (3 <sup>rd</sup> or subsequent offense)	Class G	0
14-306.1A(a)	Operate video gaming machine (1 <sup>st</sup> offense)	Class 1	9
14-306.1A(a)	Operate video gaming machine (2 <sup>nd</sup> offense)	Class H	0
14-306.1A(a)	Operate video gaming machine (3 <sup>rd</sup> /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 <sup>st</sup> offense)	Class 1	No Code
14-306.3	Certain game promotions unlawful (2 <sup>nd</sup> offense)	Class H	No Code
14-306.3	Certain game promotions unlawful (3 <sup>rd</sup> /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 (5 convictions in FY 2008-09), insofar as the lottery or gambling in question involves the use of an electronic machine or device as well as an entertaining display.

It is not known how many of the convictions noted above involve the same conduct as that covered by the proposed 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(c) exempts activity lawfully conducted on Indian lands in accordance with an approved Tribal-State Gaming Compact under G.S. 147-12(14) and G.S. 71A-8.

### Section 3:

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 rendered operable through payment by tokens, credit, debit, or prepaid cards “or any other method that requires payment to activate play, whether directly into the slot machine or device or resulting in remote activation[.]” 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. 14-306) 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” would apply to the new offense created by G.S. 14-306.4(b), *see* Section 1, and 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.

<b>General Statute</b>	<b>Offense Description</b>	<b>Current Class</b>	<b>FY 2008/09 Convictions</b>
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 <sup>st</sup> offense)	Class 1	0
14-304	Manufacture/sell slot machine (2 <sup>nd</sup> offense)	Class H	0
14-304	Manufacture/sell slot machine (3 <sup>rd</sup> or subsequent offense)	Class G	0
14-305	Slot machine agreement (1 <sup>st</sup> offense)	Class 1	0
14-305	Slot machine agreement (2 <sup>nd</sup> offense)	Class H	0
14-305	Slot machine agreement (3 <sup>rd</sup> or subsequent offense)	Class G	0
14-306.1A(a)	Operate video gaming machine (1 <sup>st</sup> offense)	Class 1	9
14-306.1A(a)	Operate video gaming machine (2 <sup>nd</sup> offense)	Class H	0
14-306.1A(a)	Operate video gaming machine (3 <sup>rd</sup> /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 <sup>st</sup> offense)	Class 1	No Code
14-306.3	Certain game promotions unlawful (2 <sup>nd</sup> offense)	Class H	No Code
14-306.3	Certain game promotions unlawful (3 <sup>rd</sup> /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.

**Section 4:**

Section 4 amends the definition of “video gaming machine” in subsection (b) of G.S. 14-306.1A, Types of machines and devices prohibited by law; penalties. The current definition provides an inclusive list of eight electrical, mechanical, or computer games “by way of illustration” which qualify as video gaming machines. The amendment makes explicit that the list is illustrative “and not exclusi[ve]” and would add as a ninth example “[a]ny other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes.” Section 4 further amends subsection (b) to clarify that a video gaming machine includes those accepting payment via “prepaid card” (in addition to the current list of “credit card, debit card, or any other method”), and for which activation requires payment “whether directly into the video gaming machine or result in remote activation[.]” Although most of the amendments do not appear to affect the already expansive definition in subsection (b), the reference to remote activation may extend the statute’s reach.

Under G.S. 14-306.1A(a) it is unlawful to operate, allow to be operated, place into operation, or keep in one’s possession for the purpose of operation any video gaming machine as defined in subsection (b) (unless exempted as part of a federally recognized Indian tribe acting in accordance with an approved Class III Tribal-State Compact). Violations of G.S. 14-306.1A(a) are punished as follows:

Offense Description	Current Class	FY 2008/09 Convictions
Operate video gaming machine (1 <sup>st</sup> offense)	Class 1	9
Operate video gaming machine (2 <sup>nd</sup> offense)	Class H	0
Operate video gaming machine (3 <sup>rd</sup> or subsequent offense)	Class G	0
Operate video gaming machines (5+ machines)	Class G	0

There were 9 convictions under G.S. 14-306.1A(a) during FY 2008/09. It is not known how many additional convictions may result from the proposed broadening of the current 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.

#### **Section 5:**

Section 5 states that no provision of the bill shall be construed to make lawful any machine or device that is unlawful under current law, or to abate or affect any prosecution for offenses committed prior to its effective date.

#### **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.

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 on following page). 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	0	1	2	3	4	5	6	7	8	9
<b>Offenses From July 2007 Forward</b>											
14-306.1A(a)	Operate Video Gaming Machine Offenses								40	63	40
<b>Offenses Prior to July 2007</b>											
14-306.1(a)	Video Game Violations	46	74	61	63	60	56	65	39		
<b>Total</b>		<b>46</b>	<b>74</b>	<b>61</b>	<b>63</b>	<b>60</b>	<b>56</b>	<b>65</b>	<b>79</b>	<b>63</b>	<b>40</b>

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

**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 <sup>st</sup> Offense	Increase Class 2 to Class 1	\$126	\$56	-
2 <sup>nd</sup> Offense	Increase Class 2 to Class H	\$7,625	\$624	\$315
3 <sup>rd</sup> Offense	Increase Class 2 to Class G	\$8,919	\$1,059	\$458

\*Average cost per indigent defendant



<b>General Statute</b>	<b>Offense Description</b>	<b>Current Class</b>	<b>Class <u>if</u> electronic sweepstakes</b>	<b>FY 2008-09 Defendants Charged</b>
14-290	Operating a lottery	Class 2	Class 1 misd./Class H fel./Class G fel.	16
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
14-295	Keeping gaming tables, punchboards, slot machines	Class 2	1/ H/ G (see above)	No offense code
14-297	Allow gaming tables, punchboards, slot machines	Class 2	1/ H/ G (see above)	9
14-301	Operation of slot machines	Class 2	1/ H/ G (see above)	13
14-302	Operation of punchboards, other gambling devices	Class 2	1/ H/ G (see above)	20

**Changes from Pervious Versions:**

1. Edition 4 makes a few changes to the offense of the proposed G.S. 14-306.4(b), including addition of the feature of an “entertaining display” to the devices for which operation would be prohibited. The offense(s) created is therefore operating or placing into operation an electronic machine or device [defined term] to either:
  - (a) conduct a sweepstakes [defined term] through the use of an entertaining display [defined term]; or
  - (b) promote a sweepstakes [defined term] that is conducted through the use of an entertaining display [defined term].

Because of the breadth of the definition of “sweepstakes,” which appears to include any chance-based game by which a person may win anything of value (broader than the traditional definition of “sweepstakes”), the proposed G.S. 14-306.4 would appear to cover some of the same conduct as some current Class 2 misdemeanors, as listed above, and some current offenses that are punished at the same level as the proposed offense. The latter category includes G.S. 14-304 (manufacture, sale, etc., of slot machines and devices), G.S. 14-305 (agreements re: slots machines), and G.S. 14-304.3 (unlawful game promotions).

2. The analysis for edition 3 provided that G.S. 14-306.4, as proposed, may cover some conduct currently prosecuted under G.S. 14-291 and -291.1. Because of the new element of “entertaining display” on an “electronic machine or device,” it is not clear that the ticket-based offenses of those statutes would be covered by 14-306.4 in Edition 4.

3. Edition 4 removes the exemptions of G.S. 14-306.4(c), as it was proposed in edition 3. The removal of the exemptions would appear to have no impact on the scope of the proposed offense under G.S. 14-306.4, because the offense in edition 4 is now limited in a way that excludes the previously exempt conduct and devices.
4. Edition 4 would amend G.S. 14-298 (seizure of illegal gaming items) to cover machines or devices using an “entertaining display” within the meaning of G.S. 14-306.4, making such devices subject to seizure. Disposition of seized gaming items requires a hearing and an order of the court. AOC cannot project the length or number of hearings that would result.
5. Edition 4 amends G.S. 14-306(a), expanding the definition of “slot machine or device” for the purposes of G.S. 14-296 through 14-309. The current -306(a) is limited to devices into which something (money, card, token, etc.) is inserted into the actual gaming machine. Edition 4 expands the definition to cover any device that requires “payment” (not “insertion”) to play, and further specifies that a device is a “slot machine or device” whether the payment is made into the actual device or “resulting in remote activation.” This would expand the definition to include devices that allow pre-payment into an account and then login to the machine via a user ID associated with that account. This appears to expand the scope of the offenses in G.S. 14-296 through 14-309 (and apparently 14-295).
6. Edition 4 amends G.S. 14-306.1A(b) to include in its list of prohibited “video gaming machines” the following: “(9) Any other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes.”
7. The amendment to G.S. 14-306.1A(b) appears to subsume the entire offense of the proposed G.S. 14-306.4. As amended, G.S. 14-306.1A would make it unlawful under subsection (a) to:
  - (1) operate or place in operation [which covers element (1) of -306.4(b)] or allow to be operated or possess for the purpose of operating;
  - (2) any “video gaming machine,” defined in subsection (b) as any “slot machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical or computer games,” and which must be a “video” machine.

Element (2) would appear to cover the remaining elements of -306.4(b), because (i) the machine must be a “video” machine, satisfying both the “electronic machine or device” and “entertaining display” elements of -306.4, and (ii) the definition of “video gaming machine” would now include devices that reveal sweepstakes prizes.

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.

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

**TECHNICAL CONSIDERATIONS:**

The Administrative Office of the Courts (AOC) provided the following technical considerations:

1. The definition of “electronic machine or device” is limited to devices “owned, leased or otherwise possessed by a sweepstakes operator” or the operator’s associates. It therefore would be necessary to establish the existence of the sweepstakes, the identity of its operator, and the property interest of that operator in a device before the device would meet the definition of an “electronic machine or device” under G.S. 14-306.4.
2. The definition of “entertaining display” includes any “visual information, capable of being seen by a sweepstakes entrant.” Therefore purely auditory feedback, such as games played by phone or with no visual component, would not be covered by the new offense.
3. Subsection (f) of the proposed G.S. 14-306.4 makes a first offense a Class 1 misdemeanor, the second offense a Class H felony, and the third or subsequent offense a Class G felony. This subsection appears to replicate part of G.S. 14-309(a). In addition, the inclusion of the penalty progression in -306.4 may be construed to limit the progression solely to offenses under that single statute, such that only prior offenses under -306.4 (not the other offenses from 14-304 to -309) would allow increased penalties for subsequent offenses under -306.4. However, Edition 4 also appears to amend G.S. 14-306.1A to subsume the offense of the proposed 14-306.4.

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**DATE:** July 6, 2010



**Signed Copy Located in the NCGA Principal Clerk's Offices**