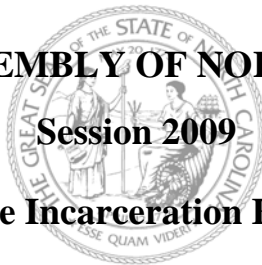


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 836 (First Edition)
SHORT TITLE: Removal of Electronic Monitoring Device.
SPONSOR(S): Representative Tillis

FISCAL IMPACT table with columns for Yes, No, and No Estimate Available across fiscal years 2009-10 to 2013-14. Includes rows for GENERAL FUND (Correction, Probation, Judicial), ADDITIONAL PRISON BEDS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

This bill enacts G.S. 14-134.3, Interference with electronic monitoring device, making it a Class E felony offense to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device...

## **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**

*Because the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population.* In FY 2007-08, 51% of Class E felony convictions resulted in active sentences, with an average estimated time served of 30 months. If, for example, there were two Class E felony convictions for these proposed offenses per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

The Department of Correction (DOC) provides electronic monitoring services for probationers, parolees, and post-release supervisees, as well as for juveniles under the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention. DOC also provides monitoring services for 12 county jail pre-trial release programs. Other counties and bail bondsmen also utilize electronic monitoring, but do not contract with DOC to provide the service. DOC estimates that there were a total of 1,000 offenders monitored electronically in FY 2007-08. It is not known how many of these offenders tampered with their own devices, or how many had assistance tampering with their device.

The new offense of Interference with electronic monitoring device is similar to the existing Class E felony of Tampering with a satellite based sex-offender monitoring device under G.S. 14-208.44(b). However, the elements of the two offenses differ. The new offense applies to anyone who is wearing an electronic monitoring device as a condition of bond, pretrial release, probation, or parole, whereas the existing offense is limited to sex offenders. In FY 2007-08, there were no convictions for Tampering with a satellite based sex-offender monitoring device. Because G.S. 14-208.44(b) became effective December 1, 2006, and due to the lag-time between arrest and conviction, the Sentencing Commission does not have any historical data regarding convictions for this offense.

According to DOC, 181 registered sex offenders currently are monitored by GPS. While there is a Class E felony offense in the current law for tampering with a GPS device, that offense is narrower than this proposal. Under this bill, there could potentially be new charges for sex offenders who request or solicit an unauthorized person to tamper with their GPS monitoring device.

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.<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.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *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.

Under G.S. 14-208.44(b) it is a Class E felony to tamper with, destroy, or remove a GPS monitoring device worn by a registered sex offender. AOC data reveal seven defendants charged with this offense in 2008.

The Department of Correction (DOC) estimates that there were a total of 1,000 offenders monitored electronically in FY 2007-08. It is not known how many of these offenders tampered with their own devices (which would be one charge per event), or how many had assistance tampering with their device (which could result in multiple charges per event).

AOC has provided estimates of potential costs to the court system, shown in Table 1, for 25 charges, 50 charges, and 75 charges, which translates to tamper rates of 2.5%, 5%, and 7%.

**Table 1**  
**Potential Costs to the Court System**  
**2.5%, 5%, and 7.5% Scenarios**

	Potential Costs to the Court System		
	<b>25 Charges (2.5%)</b>	<b>50 Charges (5%)</b>	<b>75 Charges (7.5%)</b>
Courts	\$44,130	\$88,260	\$120,840
Indigent Defense	\$14,445	\$29,693	\$44,940
<b>Total</b>	<b>\$58,575</b>	<b>\$117,953</b>	<b>\$165,744</b>

Source: Administrative Office of the Courts

Costs shown above assume a trial rate of 3% and an indigency rate of 75%, based on 2008 data. The time to dispose of cases other than by plea or trial is approximated by the plea time.

<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.

There are 181 registered sex offenders currently monitored by GPS. While there is a Class E felony offense in current law for tampering with a GPS device, that offense is narrower than this proposal. Under this bill, there could also be new charges for sex offenders who request or solicit an unauthorized person to tamper with their GPS monitoring device.

Finally, there are potential future costs associated with Class E felony convictions due to probation revocations in later years. AOC cannot estimate the number or cost of these revocation hearings.

In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior 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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**DATE:** April 27, 2009



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