

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1174 < 1st Edition >
SHORT TITLE: Increase Penalty/Drug Sales @ Parks
SPONSOR(S): Representative Miller

FISCAL IMPACT

Yes (X)	No ()	No Estimate Available (X)		
<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>

REVENUES

EXPENDITURES

Department of Correction – Likely Impact; No estimate available
Judicial Branch – Likely Impact; No estimate available

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Judicial Branch and Dept. of Correction

EFFECTIVE DATE: This act is effective December 1, 2001, and applies to offenses committed on or after that date.

BILL SUMMARY:

Adds new GS 90-95(e)(10), making it a Class E felony for any person 21 years of age or older to commit an offense under GS 90-95(a)(1) (manufacture, sale, delivery, or possession of controlled substance) on property that is a playground in a public park or within 300 feet of the boundary of real property that is a playground in a public park, but excludes transfer of less than 5 grams of marijuana for no remuneration.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

Since this bill creates a new offense, it is not known how many offenders might be convicted of this offense. In FY 1999/00, there were a total of 14 convictions for manufacturing, selling or delivering, or possessing with intent to manufacture, sell or deliver a controlled substance on or within 300 feet of property used for an elementary or secondary school (G.S. 90-95(e)(8)), which is a similar Class E offense. Because this bill proscribes a

higher penalty for offenses that are otherwise punishable as Class G, H or I felonies, the fiscal impact is the different between the Class E felony and the lower class felonies. Class E felons in prior record levels III or higher must receive an active sentence while Class H and I felons may have non-active sentences for all prior record levels except H-VI. An offender in record level II could face an active sentence of 29 months as Class E but only 8 months as Class H.

In FY 1999/2000, 46% of Class E felons received an active sentence, with an average estimated time served of 28 months. If, for example, there were one conviction for this offense each year, which would otherwise have been charged as a lower level felony with no active time, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. If, for example, there were five convictions for this offense each year, this would result in the need for three additional prison beds the first year and six additional prison beds the second year.

FRD believes it is not unlikely there would be at least 1 such conviction. Because there are no surplus prison beds available for the five year Fiscal Note horizon and beyond, each active sentence would create the need for an additional prison bed and have a fiscal impact on the Department of Correction. However, we cannot estimate a specific number of beds or dollar impact.

Judicial Branch

The offenses proscribed in this bill are currently punished as Class G, H, or I felonies. Thus, some cases currently disposed of as the aforementioned felonies would instead be disposed of as Class E felonies under this bill. As a result of this upgrade, convicted defendants would be more likely to serve longer sentences and, in some case, be ineligible for community sanctions. In addition AOC notes, since Class E felonies qualify as a violent felony under G.S. 14-7.7(b), conviction of two such felonies may result in prosecution as a violent habitual felon, which carries a sentence of life imprisonment without parole.

Depending on the number of offenses under G.S. 90-95(a)(1) that would be affected by this bill, the impact could be quite substantial according to AOC. In calendar year 1999, there were 13,467 defendants charged with various offenses under G.S. 90-95(a)(1).

Unfortunately, it is unknown the number of these defendants that committed an offense on property that is a playground in a public park or within 300 feet of the boundary of real property that is a playground in a public park. (AOC indicates they will survey district attorneys and provide Fiscal Research with updated impact projections.)

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: 733-4910

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DATE: April 23, 2001



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