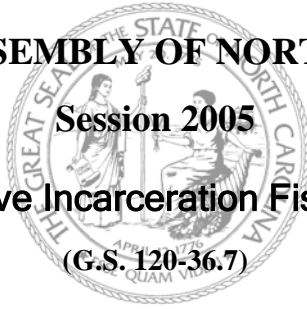


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2005**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** House Bill 458 (Third Edition)  
**SHORT TITLE:** Ban Video Poker/All But Reservations.  
**SPONSOR(S):** Representatives Hill and Pate.

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring</b>					
<b>Nonrecurring</b>					
<b>Judicial</b>					
<b>Recurring</b>					
<b>Nonrecurring</b>					
<b>TOTAL EXPENDITURES:</b>					
<b>ADDITIONAL PRISON BEDS*</b>					
<b>POSITIONS: (cumulative)</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch; Local Governments.				
<b>EFFECTIVE DATE:</b>	December 1, 2006				

**BILL SUMMARY:** H.B. 458 prohibits the possession and operation of video poker machines and certain other video gaming machines. Under this act, first violations are punishable as Class 1 misdemeanors, second violations as Class I felonies, and subsequent violations as Class H felonies. An exemption is granted for assemblers, repairers, manufacturers, and transporters of prohibited video gaming machines that either assemble, repair, manufacture, or transport them for out-of-state

use, or for lawful use by a federally recognized Indian Tribe under the Indian Gaming Regulatory Act. The bill does not make any activities of a federally recognized Indian tribe unlawful or against the public policy of North Carolina, as long as all forms of Class III gaming are conducted in accordance with an approved Class III Tribal State Gaming Compact. The act is void if a final Order is entered that prohibits the possession and operation of video gaming equipment on Indian land because such gaming is not allowed elsewhere.

**BACKGROUND:** Legislation passed by the General Assembly in 2000 allows for the lawful operation and possession of certain video gaming machines if these machines were in operation within the State on or before June 30, 2000 and were listed with the county tax assessor by January 31, 2000 for ad valorem property taxes. Currently, permitted video gaming machines that require payment to activate play must:

1. In operation, involve the use of skill or dexterity for amusement or to make scores.
2. Not issue any receipt or other form of record that can be redeemed for cash, a cash-equivalent, prizes, or award free replays.
3. In operation, limit to eight the number of credits or replays that can be played at one time, or provide coupons that allow for the exchange of prizes that do not exceed ten dollars (\$10).

#### **ASSUMPTIONS AND METHODOLOGY:**

##### **General**

H.B. 458 repeals G.S. 14-306.1 and replaces it with a new section, G.S. 14-306.1A. Consistent with G.S. 14-306.1, the provisions under G.S. 14-306.1A make it unlawful to operate, allow to be operated, place into operation, or keep in one's possession certain video gaming machines that require payment to activate play. However, this new section disallows the exemption for machines grandfathered under current law, and prohibits all video gaming machines as described by G.S. 14-306(b)(2). The act also repeals the aggravated penalty provision for operation of five or more prohibited machines, formerly a Class G felony (G.S. 14-309(b)).

By disallowing current exemptions, this act expands the number of machines to which criminal penalties are applicable, thereby increasing the potential for criminal offense and conviction. Though it assumes some impact, the Sentencing and Policy Advisory Commission cannot estimate the number of additional convictions that might occur as a result of this bill, nor the impact it may have on prison populations. In FY 2004-05, there were 3 felony and 13 misdemeanor convictions under G.S. 14-306.1.

*First Offense:* Approximately one out of every five Class 1 misdemeanor convictions resulted in an active sentence in 2004-05, with an average time served of 44 days in a local jail. For 30-90 day sentences in local jails, the Department of Correction reimburses the county \$18 per day. Assuming sentencing practice is similar for this offense, the cost to the State for every one of five convictions of this first offense would average approximately \$792 (44\*\$18).

In addition, 79 percent of Class 1 misdemeanor convictions resulted in community punishment, and 2 percent resulted in intermediate punishment during 2004-05. Both community and intermediate offenders receive general supervision from a probation officer, which costs the Department of Community Corrections \$1.93 per offender, per day. Intermediate offenders are also eligible for special sanction, such as intensive supervision probation or electronic house arrest. Intensive supervision probation, the most commonly utilized intermediate sanction, costs \$12.95 per day and is for an average of six months; electronic house arrest costs \$6.71.

*Second and Subsequent Offenses:* The Sentencing and Policy Advisory Commission cannot project the number of convictions for second or subsequent offenses that might result from this bill. However, if there were twelve additional Class I felony convictions per year, the combination of active sentences and post-release sentencing revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year. Likewise, if there were three additional Class H felony convictions per year, the combination of active sentences and post-release sentencing revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. Construction cost estimates per bed for 2005-06 range from \$56,500 to \$104,500, depending on the custody level. Assuming these thresholds and a minimum custody level, the construction of new beds could cost the State \$122,040 in the first year, and \$395,410 in the second. Daily operating costs per inmate average \$63.56, for a total yearly cost of \$23,199.

#### **NC Sheriff's Association / Alcohol Law Enforcement Division**

Additional costs are anticipated to enforce the proposed ban, though no estimates of additional violations or costs are available. However, this act also eliminates current video gaming registration and enforcement provisions, thereby offsetting some additional costs to law enforcement. The NC Sheriff's Association estimates the average cost to local sheriff offices of video gaming registration, oversight, and enforcement per machine to be at least \$433.20, for a total of \$4.3 million (\$433.20\*10,094 registered machines) statewide.

#### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of a specific bill. For such bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Though the Administrative Office of the Courts expects that most citizens will comply with the law, it anticipates some impact on the courts. For calendar year 2005, AOC records indicate that 39 defendants were charged with Class 1 misdemeanors and six were charged with Class H or I felonies under G.S. 14-306.1. However, data are not available concerning the number of defendants that might be charged or the level of offense that would be charged under this proposed bill. In addition, any impact on the courts will also depend on the manner of disposition. For a Class 1 misdemeanor, the AOC estimates court-time costs of \$3,153 per trial and \$224 per plea. For a Class I felony, estimated costs per trial and plea are \$6,028 and \$274, respectively. For a Class H felony, these court-time costs are \$6,364 and \$298.

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

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION:** (919) 733-4910

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Fiscal Research Division

**DATE:** May 24, 2006



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