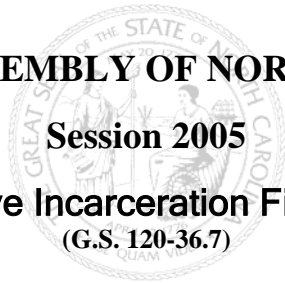


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 189 (Third Edition)

SHORT TITLE: All-Terrain Vehicle Regulation.

SPONSOR(S): Senator Purcell

FISCAL IMPACT					
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
<b>GENERAL FUND</b>					
<b>Correction</b>	Exact amount cannot be determined; no substantial impact anticipated.				
<b>Judicial</b>	Exact amount cannot be determined (see pg. 2 for details).				
<b>Juvenile Justice</b>	Exact amount cannot be determined; no substantial impact anticipated.				
<b>LOCAL GOVERNMENTS</b>					
	Exact amount cannot be determined (see pg. 2 for details).				
<b>ADDITIONAL PRISON BEDS*</b>					
	No additional prison beds anticipated.				
<b>POSITIONS: (cumulative)</b>					
	Exact amount cannot be determined; no additional positions anticipated.				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Local Governments					
<b>EFFECTIVE DATE:</b> October 1, 2005					
<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:**<sup>1</sup> This bill would amend Article 3 of Chapter 20 of the General Statutes by adding a new Part 10C regulating the sale and operation of all-terrain vehicles. The bill would:

- 1) Enact graduated age requirements for operating an ATV with specified engine capacities.
- 2) Prohibit carrying a passenger on an ATV not specifically designed to accommodate a passenger.
- 3) Require that all persons under age 16 be under continuous visual supervision by a person 18 years old or older while operating an ATV.
- 4) Prohibit the sale of an ATV for use by a person less than the minimum applicable age based on the engine capacity of the vehicle.
- 5) Require equipment standards of brakes, mufflers, and spark arresters for every ATV sold or operated in the State.
- 6) Prohibit the operation of an ATV a) without eye protection and a safety helmet; b) while under the influence of alcohol or drugs; c) in a careless or reckless manner; d) on a public street, road, highway, interstate, or limited-access highway; or e) during hours of darkness without a lighted headlamp and taillamp.
- 7) Require safety training and certification for all ATV operators.

A violation of the provisions regulating the age of the operator, the sale of certain ATVs to underage operators, or the operation of an ATV on public roads would be a Class 2 misdemeanor. A violation of any other provision under the new Part 10C would be an infraction subject to a fine of not more than \$200.

The third edition of the bill modifies the graduated age requirements for the operation and sale of ATVs with specified engine capacities (see Technical Considerations) and adds new G.S. 20-171.17 to exempt from the provisions of the bill persons engaged in farming, hunting, or trapping. Children under the age of 8 (previously age 12) would be prohibited from operating ATVs; children under the age of 12 would be prohibited from operating an ATV with an engine capacity of 70 cubic centimeter displacement or greater; and children under the age of 16 would be prohibited from operating an ATV with an engine capacity greater than 90 cubic centimeter displacement. The restrictions on the sale of ATVs based on the operator's age and specified engine capacities are modified accordingly.

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

##### **Summary**

This bill would create several new Class 2 misdemeanors related to the operation and sale of all-terrain vehicles. The legislation would principally impact court costs, as new Class 2 misdemeanor and infraction charges as well as juvenile petitions would be expected. Because Class 2 misdemeanants are housed in county jails, no additional prison beds would be anticipated due to this bill, and the fiscal impact to the Department of Correction would not be expected to be substantial. However, there would be an impact on the Division of Community Corrections for offenders given non-active sentences and local governments, which would incur the costs of incarcerating any Class 2 misdemeanants with an active sentence.

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<sup>1</sup> *Adapted from Bill Digest S.B. 189 (02/23/2005).*

The modification to the graduated age requirements provided by the third edition of the bill would permit additional individuals (those between the ages of 8 and 12) to operate certain ATVs, which could affect the numbers of individuals prosecuted for an infraction or Class 2 misdemeanor under the bill. However, as these changes would *decrease* the number of individuals who could be prosecuted for underage operation of an ATV but *increase* the number of individuals who could be prosecuted for unlawful operation of an ATV (e.g. failure to wear eye protection or a safety helmet, failure to supervise operators under the age of 16, operation in a careless or reckless manner), the net impact cannot be determined.

The exception to these regulations added in the third edition for operation of ATVs while farming, hunting, or trapping would reduce the potential number of offenders under the bill. However, as the number of individuals that would operate an ATV while farming, hunting, or trapping in a manner that would otherwise be unlawful is unknown, the magnitude of any reduction in the number of infractions and Class 2 misdemeanor charges and convictions under this bill cannot be estimated.

### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

### **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Because this bill would create new offenses, the Sentencing Commission has no historical data from which to estimate the potential number of convictions under the legislation. As Class 2 misdemeanants with active sentences are housed in county jails rather than state prison, local governments would principally incur any costs of incarceration resulting from this bill. However, most Class 2 misdemeanants are likely to receive non-active sentences, which would impact the Division of Community Corrections in the Department of Correction. As it is not known how many additional Class 2 misdemeanor convictions would occur due to this legislation, the specific impact to the Department of Correction and local governments cannot be determined.

- In FY 2003-04, 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.
- The remaining 15 percent of Class 2 misdemeanor convictions resulted in active sentences and the average active sentence lengths was 23 days.

- Offenders with active sentences of less than thirty days are housed in county jails at county expense.

Because Class 2 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation would not impact prison population.

### **Department of Juvenile Justice and Delinquency Prevention**

As several Class 2 misdemeanors created by this bill would apply to individuals under the age of 16, additional juveniles may be adjudicated delinquent for these offenses. However, delinquent adjudications for the proposed offenses would not be expected to have a significant impact on Youth Development Center (YDC) population, given that juveniles adjudicated delinquent for a minor offense (a Class 1 to 3 misdemeanor) can only be committed to a YDC if they have previously been committed to a YDC or adjudicated delinquent for four or more prior offenses.

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these 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.

Because the offenses created by this bill would be new, the Administrative Office of the Courts has no data from which to estimate the number of new charges that would arise. In addition to Class 2 misdemeanor charges, this bill would be expected to lead to new juvenile petitions and infractions to be settled by the Courts. AOC anticipates that there would be additional court and preparation time needed to process these charges, thus increasing district court workload. As the number of new charges that would result from this bill cannot be estimated, the specific cost cannot be determined.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor charge via trial is \$2,322. This cost includes an estimated \$1,373 in costs of time in court and attorney costs and an additional \$949 in indigent defense. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$272 per plea.

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

### **TECHNICAL CONSIDERATIONS:**

1) G.S. 20-171.10 subsection (c) stipulates that “[a]ll-terrain vehicles with engine capacity *up to* and including 90 cubic centimeter displacement shall be operated *only* by persons 12 years of age or older” (emphasis added). This provision precludes the authorization provided in subsection (b) for children over the age of 8 to operate an ATV with an engine capacity less than 70 cubic centimeter displacement. Although G.S. 20-171.10 ostensibly intends to authorize children

between the ages of 8 and 12 to operate ATVs, as drafted, there are no specified engine capacities that a child under the age of 12 may operate.

2) This bill would be effective October 1, 2005. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The NC Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and, thus, assume that the legislation will not impact the prison system until the beginning of 2006-07. If the bill becomes effective prior to December 1, there will be an impact on the prison system in the 2005-06 fiscal year.

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Fiscal Research Division



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