

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 734

SPONSOR: Criminal Justice Committee and Senator Brown-Waite

SUBJECT: State Correctional Facilities

DATE: April 10, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrow</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Mannelli</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 734 would designate any indoor structure as a “prohibited area” to use tobacco products in prisons. Inmates, employees, and visitors would be prohibited from using tobacco products in a prohibited area. An inmate would commit a disciplinary infraction if he or she used tobacco products in a prohibited area and may lose gain-time as a result. The department would be provided rule-making authority to: implement the provisions of the CS, broaden the definition of prohibited areas, discipline inmates and employees for violations, and prohibit visitors from future visits for violations.

The act takes effect upon becoming law; however, the provisions of the CS must be fully implemented by January 1, 2000.

This CS creates section 944.115 of the Florida Statutes.

## II. Present Situation:

### Litigation Generated by Smoking in Prisons

There have been lawsuits filed nationwide by non-smoking inmates alleging that adverse or hazardous prison conditions are caused by the close proximity of inmates who smoke. To alleviate this problem for non-smoking inmates in Florida, the department has at each major institution at least one non-smoking dormitory. In 1993, the Florida Department of Corrections designated at least one non-smoking dormitory in each prison in response to the U. S. Supreme Court case of *Helling v. McKinney*, No. 91-1958 (decided June 18, 1993) which involved a Nevada state prisoner. The *McKinney* case expanded the “deliberate indifference” test that was used by the Court in *Estelle v. Gamble*, 429 U.S. 97 (1976). In *McKinney*, the Court used the “objective-subjective” test for an inmate to prove a violation of the Eighth Amendment right against cruel and unusual punishment. To be successful in a legal action, an inmate would need to prove:

- (a) That he or she is being exposed to unreasonably high levels of environmental tobacco smoke;
- (b) That scientific and statistical evidence support the assertion that the potential harm from exposure to environmental tobacco smoke is serious, and that it is likely that injury to health will result in the future as a result of the exposure;
- (c) That the risk of exposure is not one that today's society chooses to tolerate; and
- (d) That prison authorities' current attitudes and conduct ignore the possible dangers posed by exposure to environmental tobacco smoke.

In *Helling v. McKinney*, *supra*, the inmate, McKinney, was successful in his claim that his involuntary exposure to the environmental tobacco smoke (commonly referred to as "second-hand smoke") of his cellmate and other inmates' posed an unreasonable risk to McKinney's health, which subjected him to cruel and unusual punishment in violation of the Eighth Amendment.

Despite the designation of "non-smoking" dormitories in prisons, non-smoking inmates have filed lawsuits claiming cruel and unusual punishment for being subjected to second-hand smoke. Non-smoking inmates have claimed that smoking still takes place in non-smoking dormitories despite the "smoke-free" designation of such dorms.

For example, in the case of *Moncer, et al v. Newton, et al*, Case No. GC-G-96-1687 (Fla. 10th DCA) (filed June 26, 1996), the plaintiffs, who were inmates of Polk C.I., complained of being subjected to environmental tobacco smoke (ETS) which aggravated their health conditions, including asthma, emphysema, chronic spontaneous pneumothorax (lung collapses), pulmonary fibrosis, heart disease, and severe allergies. The plaintiffs alleged that despite living in a non-smoking inmate housing unit, the dormitories were not "smoke-free." Furthermore, the plaintiffs alleged that they were subjected to ETS in other places in the prison where they believed it should be free of ETS, such as the library and classrooms. Although the plaintiffs stated that the department's and the institution's policies prohibited smoking in these places as well, ETS still permeated those locations because inmates were smoking in bathrooms or outside doorways. The plaintiffs complained of ETS exposure in the department's transport vans calling the vehicles "veritable mobile ETS gas chambers." Despite utilizing the grievance procedure in the department, the plaintiffs ultimately filed a legal complaint because they believed the department did nothing to abate the ETS exposure to non-smoking inmates and inmates whose medical conditions are easily aggravated by second-hand smoke.

### **Legislative Survey Conducted of Florida Prison Superintendents**

On February 13, 1996, staff of the Senate Criminal Justice Committee surveyed the superintendents of 54 major correctional institutions in Florida. The survey asked the superintendents about their views on some correctional amenities. Among other amenities, superintendents were asked whether they believe tobacco products should be prohibited for inmates.

Of the 54 surveys sent, 46 or 85 percent responded to the survey. Fourteen respondents, or approximately 30 percent, believe tobacco products should be prohibited for all inmates. One additional respondent believes that tobacco should be prohibited for youthful offender inmates, but not adult inmates. Two respondents, or 4 percent, stated they did not care or were not sure whether tobacco should be banned for inmates. Twenty-nine respondents, or 63 percent, stated they do not believe tobacco should be prohibited for inmates.

The survey asked the respondent superintendents to explain their answers. A majority of the respondents provided more than one reason for their answers.

Ten respondents believe tobacco products should be prohibited “to reduce health care costs” or “to reduce health risks.” Four respondents cited personal safety or fire hazards as one of their reasons for prohibiting inmate use of tobacco products. Two respondents stated that inmates under 18 years of age should not be able to smoke. Other reasons cited in support of a smoking prohibition were: they “don’t want to be exposed to other’s smoke”; they have “a problem keeping smoke-free areas smoke-free”; cigarettes are “used for bartering and gambling” in institutions; lighter fluid or components of matches “can be used as propellant for ‘zip guns’”; and that it is “counterproductive as an agency charged with the care of inmates to allow them to smoke.” One respondent noted that if there were to be a ban on smoking, there should be a ban for everyone to ensure success.

For the respondents who replied that tobacco products should not be prohibited for inmates, the most common reason cited, by 15 respondents, is that such a prohibition would “increase the anxiety and stress” of inmates which would “create a hostile environment” and “create security problems.” Twelve respondents believe that, if banned, cigarettes would become a contraband problem creating more work for correctional officers and creating a “black market” for cigarettes. Five respondents believe it should not be prohibited because people are “nicotine addicted.” Four respondents replied that tobacco should not be banned because cigarette sales “produced revenue” at the canteens for the Inmate Welfare Trust Fund and that tobacco is “legal.” Three respondents believe that inmates should be left to “make their own decision” as to whether they should smoke. Other reasons the respondents provided to support continued tobacco product use by inmates include: inmates “don’t have a right to a smoke-free environment or a smoking environment”; a ban would “create problems with staff discipline/corruption”; to prohibit smoking would “subject DOC to litigation and DOC would lose”; it’s not their “job to change the lawful habits learned in the free world”; and the department would “need to restrict visitor privileges” to help control contraband to successfully ban tobacco in prisons.

Some respondents who believe tobacco should not be banned from prisons believe that tobacco use in prisons should have further restrictions. Four respondents believe that smoking should not be allowed in dormitories/beds and should be restricted to designated areas (outside). Three respondents who advocate continued inmate tobacco use believed that inmates should be encouraged to stop smoking for health reasons. Another respondent who believes inmate tobacco use should not be prohibited stated that possibly a phase-out of smoking would be best.

### **The Department's Policy on the Inmate Use of Tobacco Products**

The Florida Department of Corrections (department) and the Correctional Privatization Commission (commission) currently allow tobacco-using inmates to use tobacco products within state correctional facilities. Rule 33-20.001, *Florida Administrative Code*, provides the current policy of the department on smoking for *all* of the institutions, including youthful-offender facilities. Generally speaking, there is a restriction on smoking in all indoor areas at institutions and other facilities. However, a superintendent may designate areas where inmates are housed or where inmate activities are held as "smoking areas." Smoking is prohibited in dormitories that are designated as "non-smoking dormitories." Individual superintendents or supervisors of correctional facilities may also further restrict areas where inmates may use tobacco products in their respective facilities.

For instance, individual superintendents may restrict smoking in their institutions by not allowing smoking by inmates or visitors in visiting parks. If smoking in the visiting parks is not permitted, superintendents may also prohibit inmates and visitors from leaving the visiting park to go to an outdoor area to smoke and return to the visiting park. The department recently polled 50 of its major adult institutions (Everglades, Santa Rosa, Okeechobee, and Moore Haven C.F.S. were not included in the poll) to determine if smoking is allowed in the visiting parks. Out of 50 institutions, only five institutions allow smoking in the visiting parks. However, out of the 45 institutions that do not allow smoking in the visiting parks, 40 superintendents allow inmates and visitors to "step to an outdoor area" to smoke and return to the visiting park, according to the poll. Some institutions are split into more than one unit and the units may vary as to the institutional smoking policy. The East Unit of Central Florida Reception Center (CFRC) allows inmates and visitors to step out to smoke and return to the visiting park, but the Main Unit of CFRC does not allow it. The Main Unit of Union C.I. also allows inmates and visitors to step out to smoke and return to the visiting park, but the Death Row Unit of Union C.I. does not.

### **The Department's Tobacco Policy for Youthful Offenders**

The Department of Corrections' policy on smoking for youthful offenders appears to be fairly similar to the policy for adult facilities. According to the department, it does not have a "separate smoking policy" for youthful offenders. However, the department states that it discourages smoking for youthful offenders. Tobacco products are not sold in canteens in youthful offender facilities. The sale of tobacco products to a minor is unlawful in the state of Florida under s. 859.06, F.S., which is a second-degree misdemeanor. However, it is not unlawful for a minor to possess tobacco products.

In Florida facilities, youthful offenders must rely on outside family and friends to provide them with tobacco products. When asked, the department did not know whether there is a limit on the amount of tobacco products that may be provided by outsiders to youthful offenders.

The department stated that they are currently making strides in restricting the use of tobacco products for some youthful offenders. At Hillsborough C.I., a youthful offender facility for 14 to 18 year olds, the superintendent has banned smoking altogether for inmates. Indian River C.I., also a youthful offender facility for 14 to 18 year olds, is starting to institute a smoke-free policy. However, smoking is allowed in the other youthful-offender facilities, which typically house 19 to

24 year olds. The facilities that house the older group of youthful offenders can and do also house younger youthful offenders.

### **The Status of Smokers in Florida State Prisons**

Adult inmates may purchase cigarettes from canteens within the institutions. Sales at canteens assist in generating moneys that are deposited into the Inmate Welfare Trust Fund. Moneys in the Inmate Welfare Trust Fund may be used for statutorily-authorized purposes. Currently, such moneys may be used to employ personnel and for operating and fixed capital expenses associated with correctional education to provide literacy programs, vocational training, and academic programs, fixed capital and operating expenses to employ personnel to operate libraries, chapels, and visiting pavilions, among other uses. s. 945.215 (1) (b), F.S.

The Department of Corrections estimates that between 65 and 75 percent of the inmate population smokes cigarettes. In December of 1995, the department performed a random check at several institutions to determine the percentage of inmates who smoke. For a sampling of smoking in correctional institutions, the department estimates the following:

<u>Institution</u>	<u>Percentage of Smokers</u>
Florida State Prison (open population)	53%
Florida State Prison (Work Camp)	63%
Charlotte C.I. (open population)	70%
Union C.I. (open population)	72%
Broward C.I. (open population)	74%
Tomoka C.I. (open population)	71%
Tomoka C.I. (work camp)	66%
Indian River C.I. (youthful offenders)	25%

While inmates are in disciplinary confinement, they are not permitted to smoke. Approximately 700 inmates are in this type of 24-hour lockup confinement at any given time. This type of confinement is usually temporary and inmates may smoke when they return to the open population in the institution.

### **Most Florida County Jails Prohibit Smoking for Inmates**

A survey conducted by the Florida Sheriffs Association in August of 1994 revealed that 55 out of 67 Florida counties prohibited inmate smoking and possession of tobacco products in their jails. According to the Florida Sheriffs Association, it is believed that even more Florida counties have since banned inmate smoking and possession of tobacco products in their jails. Apparently, bans on inmate possession of tobacco products by Florida jails were in response to out-of-state litigation instituted by non-smoking inmates who were successful in their challenges against exposure to second-hand smoke.

Subsection 951.22(1), F.S., prohibits the possession or introduction of any tobacco products by inmates in any county detention facility, if it is not otherwise authorized by the sheriff or officer in charge of any jail. Local jails that have banned inmate smoking have done so by jail rule. The rules

invoked by sheriffs or jail administrators declare that cigarettes and tobacco products are contraband. As such, tobacco products are confiscated if they are possessed by a person who is being “booked” into a jail.

The large majority of the jails that have prohibited tobacco products have also prohibited indoor smoking for staff. Therefore, in most Florida jails, staff may only smoke tobacco outside.

According to the Florida Sheriffs Association, when county detention facilities instituted their ban on inmate possession of tobacco products, most did so with little or no time for transition for smoking inmates. Therefore, most jails originally had their smoking inmates go “cold turkey.” Currently, all jails that prohibit inmate possession of tobacco products have smoking defendants go “cold turkey” upon being processed into a jail. Sheriffs and jail administrators maintain that they have not had any incidence of inmate violence or riotous behavior as a result of prohibitions on inmate possession of tobacco, according to the Florida Sheriffs Association.

Sheriffs and jail administrators noted a marked increase in sales of candies and other items in their commissaries after implementing bans on inmate possession of tobacco in their jails. Sales of these kind have remained higher since inmate tobacco bans were implemented.

Persons accused of crimes may often be held in pre-trial detention for long periods of time. During this time, most inmates are not allowed to use tobacco products because of the prohibitions instituted in almost all of Florida’s jails. Many defendants also remain in jails after they have been sentenced while they await transport to a facility of the Department of Corrections. These defendants also are prohibited from using tobacco if the respective jails have banned it. Therefore, the vast majority of inmates who are considered “smokers” who are coming into the state correctional system have been smoke-free or tobacco-free for a considerable period of time before coming into the state system. As a result, if the state assumed a tobacco-free policy, most inmates coming into the state correctional system would simply be maintaining the tobacco-free status that they were subject to while they were in local detention facilities.

### **Tobacco Use Increases Health Risks**

The department, in addition to others, acknowledge that smoking exacerbates certain physical conditions such as hypertension, pulmonary disease, diabetes, among many other medical conditions. It is also acknowledged that certain types of cancer are definitively linked to smoking. The department also states that it is difficult to determine the number of inmates who are treated for illnesses that are worsened by the fact that they use tobacco.

Data received from the department’s Office of Health Services for the fiscal year 1997-98 may provide a snapshot of the types of treatments sought for health conditions that may be related to or worsened by tobacco product use. *See, Department of Corrections, Health Services Workload & Utilization Report MWUR - July 1997 - June 1998*, p. 6 (January 29, 1999) (Office of Health Services). In that fiscal year, there was an overall total of 4,708 inmates that were treated statewide for hypertension in chronic-disease clinics. One thousand, two hundred and ninety-five (1,295) inmates were treated for diabetes in chronic-disease clinics. There were 4,139 inmates statewide that were treated for asthma. There were another 3,342 inmates that were treated under the category of “general medicine” in chronic-disease clinics in FY 1997-98.

The total annual expenditures for health care by the department has been increasing over the last several years. Compared to the average Florida citizen, the rate of health care cost increase for the Department of Corrections has remained below the rate of cost increase for the average state citizen. Nevertheless, the cost of inmate medical care is very high. The following tables give an approximate fiscal year expenditure on inmate health care, per diem rate for health care, and the average annual expenditure on health care per inmate by the Department of Corrections.

**Total Annual Inmate Health Care Expenditures**

<b>Fiscal Year</b>	<b>Approximate Inmate Health Care Expenditure</b>
1992-93	\$151.5 million
1993-94	\$172 million
1994-95	\$176 million
1995-96	\$194.5 million
1996-97	\$205 million
1997-98	\$220.5 million

Source: Department of Corrections, Office of Health Services

**Per Diem Rates on Inmate Health Care by Fiscal Year**

<b>Fiscal Year</b>	<b>Per Diem on Health Care</b>
1992-93	\$8.14
1993-94	\$8.25
1994-95	\$8.36
1995-96	\$8.60
1996-97	\$9.11
1997-98	\$9.57

Source: Department of Corrections, Office of Health Services

**Increases in Inmate Health Expenditures**

<b>Fiscal Year</b>	<b>Annual Cost Per Inmate</b>
1990-91	\$2,923

<b>Fiscal Year</b>	<b>Annual Cost Per Inmate</b>
1991-92	\$3,080
1992-93	\$3,147
1993-94	\$3,163
1994-95	\$3,048
1995-96	\$3,139
1996-97	\$2,960
1997-98	\$3,493

Source: Department of Corrections, Office of Health Services, Health Services Management Report (March 1999); Office of Program Policy Analysis and Government Accountability, *Review of Inmate Health Services Within the Department of Corrections*, p. 4 (11/27/96).

The Office of Program Policy Analysis and Government Accountability (OPPAGA) appraised the Department of Corrections' Office of Health Services in a study and report entitled, *Review of Inmate Health Services Within the Department of Corrections* (Nov. 27, 1996). The Office of Program Policy Analysis and Governmental Accountability provides many strategy options that should be undertaken to assist in limiting the rate of increase in health care costs as the prison population continues to grow. One of the options involves the implementation of additional preventative health care measures, such as a smoking cessation program. In presenting this option, OPPAGA notes there are advantages and disadvantages. The advantages identified are that there would be a reduction in long term treatment costs as inmates maintain their health, the programs would act to occupy inmates, reducing idleness, and that inmates would be educated and instilled with a responsibility for their own health. The disadvantages OPPAGA noted were that additional staff would be needed to develop and implement programs, the cost of implementing such programs, limited institutional space, and the preventative program may not achieve measurable cost savings or even affect inmate behavior.

### **Tobacco Reduction or Elimination in Prisons Measured by a Nationwide Survey**

A survey was conducted in 1995 by Dean Tim Flanagan and Dr. Wesley Johnson from the College of Criminal Justice of Sam Houston State University in Huntsville, Texas. Those researchers surveyed 823 prison superintendents and wardens nationwide. Of those surveyed, 641 responses were obtained by the research team. Among other things, the respondents were asked whether their state had reduced or eliminated the use of tobacco products. Further, the respondents were asked their view on whether the use of tobacco products should be reduced or eliminated in prisons. Forty-four percent (44%) of the respondents indicated that tobacco products have been reduced or eliminated in their prisons. Fifty-seven percent (57%) of the respondents indicated that they believe tobacco product use should be reduced or eliminated in prisons.



### Other States That Have Eliminated or Limited Tobacco Use in Prisons

The Federal Bureau of Prisons, in addition to state prison systems, has begun to examine the possibility of implementing a smoke-free environment or restricting tobacco use in prisons. According to the publication, *Corrections Alert*, issued in 1995, at least 13 prison systems in the United States and at least 2 prison systems in Canada have implemented or are in the process of implementing a smoke-free policy. See, *Corrections Alert*, p. 2, vol 2, no. 18 (special insert) (Aspen Publishers, Inc.) (December 11, 1995). Another publication, *On the Line*, which is published by the American Correctional Association, has provided updated and detailed information relating to the use of tobacco products in correctional facilities across the country. See, American Correctional Association, *On the Line*, p. 1, 3 (Vol. 21, No.1) (January 1998). As of late 1997, prison systems within the United States which have implemented, or are in the process of implementing, a total smoking ban, as reported in *On the Line* are: Alabama, Connecticut, Idaho, Indiana, Minnesota, Montana, North Dakota, Oregon, Texas, and Utah. Minnesota is one of the most recent states to ban smoking statewide for inmates, which was in the summer of 1997.

State	Total Ban	No Ban	Partial Ban	Comments
Alabama	X			
Alaska			X	
Arizona			X	
Arkansas			X	
California			X	
Colorado			X	All new facilities are non-smoking.
Connecticut	X			
Delaware		X		
District of Columbia			X	
Florida			X	Smoke-free dorms are available.
Georgia			X	
Hawaii			X	
Idaho	X			
Illinois		X		Non-smoking housing is available.
Indiana	X			
Iowa			X	
Kansas			X	
Kentucky			X	
Louisiana			X	
Maine			X	
Maryland			X	

State	Total Ban	No Ban	Partial Ban	Comments
Massachusetts			X	
Michigan			X	
Minnesota	X			
Mississippi			X	
Missouri		X		Smoking in cells only; not common areas.
Montana	X			
Nebraska			X	
Nevada		X		
New Hampshire			X	
New Jersey			X	
New Mexico			X	
New York			X	
North Carolina			X	
North Dakota	X			
Ohio		X		
Oklahoma			X	
Oregon	X			
Pennsylvania			X	
Rhode Island			X	
South Carolina			X	
South Dakota			X	
Tennessee			X	
Texas	X			
Utah	X			
Vermont			X	
Virginia			X	
Washington			X	
West Virginia			X	Regional jails have full bans.
Wisconsin			X	
Wyoming			X	Some facilities are smoke-free.

Source: ACA, *On the Line*, p. 3 (Vol. 21, No. 1) (January 1998).

Prison systems which have implemented a ban on smoking have been able to incorporate the assistance of the American Heart Association, the American Lung Association, and the American Cancer Society. These associations have provided videos, reading materials, instructional materials, and funding to some states to implement their smoke-free policies. Texas received

funding and assistance from these associations. Because of their assistance, Texas did not expend *any state funds* to provide policy-transition assistance such as smoking cessation assistance.

Georgia, which had implemented a smoke-free policy, has since rescinded its smoking ban as of February 1, 1996, citing problems with contraband and “black marketing.” Georgia, however, has maintained smoking restrictions by prohibiting indoor smoking by inmates. Georgia does not sell any matches or lighters at its commissaries to discourage smoking. Inmates may now only light cigarettes at lighters that are permanently mounted outdoors.

### III. Effect of Proposed Changes:

All persons would be prohibited from using tobacco products in a state-operated or privately operated correctional facility. The CS would define a “prohibited area” as any inside area of any building, portable, or other enclosed structure of a state or private correctional facility. Although employees of the Department of Corrections or a privatized facility, visitors, and inmates would be prohibited from using tobacco products indoors, they would still be allowed to possess and use tobacco products on the premises of a state or private correctional facility as long as it is not in a prohibited area. The superintendents and wardens would be required to take reasonable steps to ensure that the prohibition of using tobacco products in a prohibited area is strictly enforced against all persons, including employees and visitors.

Any inmate in the state-level correctional system who uses any tobacco product in an indoor area would commit a disciplinary infraction and could be subject to forfeiture of gain-time or the right to earn gain-time as well as any other punishment deemed appropriate by the disciplinary authority. Other such punishments would include confinement.

The CS would provide authority to the Department of Corrections to adopt rules to implement all the provisions of the CS. The department may, by rule, not only designate all prohibited areas within an institution that would be specifically prohibited by this CS, but the department may also expand the definition of a prohibited area, such as to include vehicles. The department could promulgate rules that would impose penalties on inmates and employees for violations of the provisions of this CS. By rule, the department could also prohibit a visitor from future visitation to prisons for violating the provisions of this CS. Privatized prisons would be authorized to adopt policies and procedures to implement the provisions of this CS.

The CS provides clarity that employee housing on the grounds of a state correctional facility and maximum security inmate housing areas would be specifically excepted from the inside smoking prohibition. Therefore, employees could use tobacco products in the employee housing areas and maximum security inmates may smoke in their respective housing areas.

Pursuant to the statement of legislative intent, the Department of Corrections and the Correctional Privatization Commission would be required to make smoking cessation assistance *available* to inmates to implement the tobacco product prohibition. This requirement does not necessarily mean that the department or the commission are directly responsible for *providing* such assistance. Therefore, such assistance may be made available to inmates by outside sources.

The CS would be effective upon becoming a law. The Department of Corrections and the Correctional Privatization Commission would be required to implement the provisions of this CS as soon as possible, but the requirements of this CS must be fully implemented by January 1, 2000.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

No fiscal impact is anticipated for the private sector. Organizations in the private sector may choose to donate time and materials related to smoking cessation classes for inmates if they elected to do so.

C. Government Sector Impact:

If a ban on indoor smoking and the provision of smoking cessation classes result in a reduction of smoking-related illnesses, the State of Florida could experience a positive fiscal impact. By seeing a reduction in the number of persons who contract illnesses directly from smoking or other tobacco use, or a reduction in illnesses that are directly or indirectly aggravated from smoking or second-hand smoke exposure, there should be a long-term indeterminate reduction in health care expenditures as a result.

There may also be a positive fiscal impact on the state if there is a reduction in inmate lawsuits stemming from environmental tobacco smoke (ETS), or second-hand smoke exposure. Despite the department's efforts to separate smoking from non-smoking inmates, ETS litigation from non-smoking inmates has persisted. If outdoor smoking results in less or no second-hand smoke exposure, future litigation on this issue may decrease.

Because the use of tobacco products is not being banned whereby the sale of tobacco products in canteens would cease, it is anticipated that there would not be a significant negative fiscal impact on the revenues of the Inmate Welfare Trust Fund. To the extent that sales of tobacco products do decline, empirical data suggest that they will be offset by increases in sales of other products, e.g., candy, gum.

The department may assume a slight cost in promulgating rules that may be necessary to implement the provisions of this CS. The Department estimates that it would cost approximately \$300,000 annually if it were to assume the responsibility of providing smoking cessation assistance to inmates. However, these costs should be more than offset by reductions in inmate health costs. If the average per diem for inmate health care were to decline by only 2 cents, it would generate over \$400,000 (based on 1997-98 data).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.