

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: —HB 926—3rd Edition

SHORT TITLE: Assault in the Presence of a Child/Minor/Enhance Penalty

SPONSOR(S): Representative Dickson

<u>GENERAL FUND</u>	<u>FISCAL IMPACT</u>				
	<u>Yes (X)</u>	<u>No ()</u>	<u>No Estimate Available ()</u>		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
<u>Correction</u>	<u>Unable to determine exact amount; impact could be significant. See Pages 2 and 3 – Department of Correction for Assumptions and Methodology.</u>				
<u>Recurring</u>					
<u>Nonrecurring</u>					
<u>Judicial</u>					
<u>Recurring</u>					
<u>Nonrecurring</u>	<u>Unable to determine exact amount; impact could be significant.</u>				
<u>TOTAL</u>	<u>Unable to determine exact amount.</u>				
<u>EXPENDITURES:</u>					
<u>ADDITIONAL PRISON BEDS*</u>	<u>Because the bill requires active sentences of at least 30 days for the first offense and at least 50 days for second and subsequent offenses, it is likely that most offenders would be housed in local jails but paid for by the State at a cost of \$18/day. The exception is offenders falling in Prior Record Level III who receive active sentences that might be served in the state prison system.</u>				
<u>POSITIONS:</u> <u>(cumulative)</u>	<u>Unable to determine exact amount.</u>				
<u>PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:</u> Department of Correction (DOC); Judicial Branch; Local Jails					
<u>EFFECTIVE DATE:</u> December 1, 2003					
<i><u>*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.</u></i>					

BILL SUMMARY¹: HB 926 enhances the penalty for violations under G.S. 14-33(c)(1) if a person commits the act on a person with whom there is a personal relationship in the presence of a minor. Violations of G.S. 14-33(c)(1), assault inflicting serious injury upon another person or using a deadly weapon, is a Class A1 misdemeanor. The bill provides definitions for “in the presence of a minor,” “minor,” and “personal relationship.” The bill clarifies that “in the presence of a minor” to mean that the minor could observe the assault. –The bill also clarifies that a personal relationship must exist between the minor and either the person assaulted or the person committing the assault.

Furthermore, HB 926 stipulates that offenders violating G.S. 14-33c(1) be sentenced to an active sentence for a minimum of 30 days for a first offense and be sentenced to an active sentence for a minimum of 50 days for second and subsequent offenses.

ASSUMPTIONS AND METHODOLOGY:

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 (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, 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.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

The NC Sentencing and Policy Advisory Commission reports that in 2001-2002 there were 1,676 convictions for assault with a deadly weapon and 969 convictions for assault inflicting serious injury. Under current law, 26 percent of the convictions for assault with a deadly weapon and 23 percent of the convictions for assault inflicting serious injury resulted in an active punishment. The Sentencing Commission notes that well over half of these offenders fell in prior conviction levels II and III, indicating that these offenders had some prior convictions. It is not known if these prior convictions were for these offenses. **Moreover, it is not known how many of these convictions were for offenses that were committed in the presence of a minor and in which the offender and victim had a personal relationship with each other. Therefore, it is not known how many offenders might be sentenced for the proposed offense.**

¹ AOC Research and Planning Division

If only five percent of assaults with a deadly weapon (84) and five percent of assaults inflicting serious injury (48) were in the presence of a minor, this bill would create the need to place 132 offenders in local jails. Because the bill requires the offender to be sentenced to an active sentence for a minimum of 30 days, the minimum cost for the Department of Correction to pay for the housing of these offenders in local jails would be \$71,280. - If only one percent of assaults with a deadly weapon (17) and one percent of assaults inflicting serious injury (10) were second or subsequent offenses in the presence of a minor, this bill would create the need to place 27 offenders in local jails. Because the bill requires the offender to be sentenced to an active sentence for a minimum of 50 days, the minimum cost for the Department of Correction to pay for the housing of these offenders in local jails would be \$24,300. ***The Fiscal Research Division believes these estimates are quite low and that the number of offenders sentenced under this bill could be much higher.***

It is likely that Class A1 misdemeanants sentenced under this bill would be housed in local jails but paid for by the State at a cost of \$18/day. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days).

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) 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.

AOC data for calendar year 2002 show 9,823 defendants charged with G.S.14-33(c)(1) of which 7,482 were charged with a Class A1 misdemeanor for assault with a deadly weapon and 2,341 were charged for inflicting serious injury.

Data also show 29,737 defendants charged under G.S. 14-33(c)(2) with Class A1 misdemeanor assault on a female, 761 defendants charged under G.S. 14-32.4 with Class F felony assault inflicting serious injury, 2,082 defendants charged under G.S. 14-32(b) with Class E felony assault with a deadly weapon, and 1,466 defendants charged under G.S. 14-32(a) with Class C felony assault with a deadly weapon or inflicting serious injury. The AOC states that all of these offenses are at least as serious as the enhanced offense created by the bill. Data are not available on the number of defendants charged for assault with a deadly weapon or an assault that inflicts serious injury that occur in the context of a personal relationship in the presence of a minor.

The AOC anticipates a large number of defendants charged with assault could also be charged with assault in the presence of a child under the bill. Thus, the AOC expects a significant number of additional charges but an exact number cannot be determined. Furthermore, the AOC anticipates that trials and pleas would demand more court and preparation time due to the enhanced penalty of an active sentence. For A1 misdemeanor offenses that are brought to trial, the estimated court cost per trial is \$2,594. For A1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$214.

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

TECHNICAL CONSIDERATIONS: The AOC notes that current G.S. 14-33.2 makes a person guilty of a Class H felony if the person violates any of the provisions of G.S. 14-33(c) or G.S. 14-34 and has been convicted of five or more prior misdemeanor convictions, two of which were assaults. By creating a new misdemeanor assault offense under G.S. 14-33(c), the AOC states that the bill increases the likelihood of defendants having five or more prior misdemeanor convictions and at least two misdemeanor assault convictions. Thus, a defendant could more quickly accumulate five prior misdemeanor convictions due to the fact that a defendant could be charged with assault in the presence of a child as well as other assault offenses under the bill. As a result, more defendants could be charged with Class H felonies for habitual misdemeanor assault.

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