

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 472 (Third Edition)

SHORT TITLE: Child Exploitation Prevention Act.

SPONSOR(S):

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>
GENERAL FUND					
Correction	Exact amount cannot be determined (see pgs. 2 and 4 for details).				
Judicial	Exact amount cannot be determined (see pgs. 2 and 4 for details).				
Justice	Exact amount cannot be determined (see pgs. 4 and 5 for details).				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined (see pgs. 2 and 4 for details).				
POSITIONS: (cumulative)	Exact amount cannot be determined (see pgs. 2 and 4 for details).				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Justice					
EFFECTIVE DATE: December 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: Under current G.S. 14-202.3, it is a Class I felony to solicit a child under the age of sixteen by computer for the purpose of committing an unlawful sex act. Section 1 of the bill would expand the scope of that offense to include any circumstance in which a person solicits an individual over the age of sixteen while believing that individual to be underage. The bill additionally specifies that consent is not a defense to a charge for this offense.

The second edition of the bill additionally amends G.S. 14-208.6(5) to include child solicitation by computer in the list of offenses defined as sexually violent. Offenders convicted of the offense would therefore be required to register under the Sex Offender and Public Protection Registration Program. A violation of the registration requirements is a Class F felony.

The third edition of the bill elevates the penalty for Child Solicitation by Computer to a Class H felony and adds new Section 3 amending G.S. 114-15 to authorize the State Bureau of Investigation to investigate the solicitation, commission, or attempted commission by computer of offenses against morality (G.S. 14-190) involving minors.

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 does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Section 1: Broadening the Scope of Child Solicitation by Computer

By expanding the scope of the offense, this bill would be expected to increase the numbers of charges and convictions for Solicitation of a Child by Computer, some of which would be altogether new to the system, and others elevated from Class 1 misdemeanors. Raising the penalty for the offense from Class I to Class H would have additional impact. Class H felons, on average, serve longer sentences and are more likely to receive active sentences compared to Class I felons.

Under present law, an individual who solicits a law enforcement officer posing as a minor could be convicted of attempting to solicit a child by computer, a Class 1 misdemeanor. As a result of this bill, such an attempt to solicit a child by computer would be punishable as a Class H felony. If offenders can be more easily charged and convicted of Attempted Solicitation of a Child by Computer than the actual offense of Child Solicitation by Computer, substantially more felony Class H charges and convictions could result from this bill.

Data regarding the number of charges and convictions for Solicitation or Attempted Solicitation of a Child by Computer in the past is unavailable because the Administrative Office of the Courts does not maintain a specific offense code for these violations. The State Bureau of Investigation (SBI) identified a total of 30 cases under its review that involved or included Solicitation or Attempted Solicitation of a Minor by Computer during 2004. This figure does not include cases under investigation by the FBI, U.S. Customs, or U.S. Postal Inspectors in conjunction with local law enforcement, or by local law enforcement alone.

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.*

Due to the lack of data regarding the number of offenders convicted of Attempted Child Solicitation by Computer in the past, the Sentencing Commission is unable to estimate the impact that this legislation would have on prison population. The SBI has indicated that, currently, an attempt to solicit a child by computer may be used as reason for a search warrant. Evidence found in the search may result in the offender being charged with Second or Third Degree Sexual Exploitation of a Minor (Class F and I felonies, respectively). For those offenders convicted of both Attempted Solicitation of a Child by Computer and Second Degree Sexual Exploitation of a Minor, and given sentences that run concurrently, there would be no impact on prison population. For those offenders convicted of Attempted Solicitation of a Child by Computer in addition to or instead of Third Degree Sexual Exploitation of a Minor, there is the potential for impact on the prison system due to more active, longer sentences for Class H compared to Class I felonies.

Active Sentences:

This bill would be expected to impact prison bed needs by resulting in new convictions due to the expanded scope of the offense and by elevating existing convictions from Class I to Class H. In FY 2003-04, 37 percent of Class H (as opposed to 11 percent of Class I) felony convictions resulted in active sentences with an average active sentence length of 10 to 12 months (as opposed to 7 to 9 months for Class I).

- If, for example, three new Class H convictions resulted from the expanded definition of this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and two additional beds in the second year.
- If, for example, ten existing Class I convictions were elevated to Class H, two additional prison beds would be needed in the first year and three additional beds in the second year.

Based on FY 2003-04 actual operating costs, the statewide average annual operating cost for one prison bed in FY 2006-07, adjusted for inflation at a rate of three percent annually, will be \$24,740.

Non-Active Sentences:

Convictions elevated from Class I to Class H felonies are less likely to result in non-active sentences, but a greater proportion of non-active sentences carry intermediate rather than community sanctions. In FY 2003-04, 49 percent of Class I convictions resulted in community sanctions and 40 percent in intermediate sanctions, while 13 percent of Class H convictions resulted in community sanctions and 50 percent in intermediate sanctions. Probation officers in the Division of Community Corrections supervise offenders with intermediate sanctions and the community sanction of supervised probation. The estimated cost associated with an intermediate offender is \$10.94 per day for the first six months and \$1.87 per day thereafter (based on the average cost and duration of intensive probation). The estimated cost for a supervised community offender is \$1.87 per day.

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 Courts do not have data regarding the number of charges in the past for Solicitation or Attempted Solicitation of a Child by Computer, AOC is unable to estimate the number of new Class H felony charges and the numbers of Class I felony and Class 1 misdemeanor charges that might instead be charged as Class H felonies due to this bill. Based on prior-year data, the majority of new Class H felony charges resulting from this bill that are not dismissed are likely to be settled by guilty plea.

The table below outlines the average estimated cost to dispose of a single charge via trial and guilty plea, as well as the average increase in cost to dispose of a single charge elevated from a Class I felony or a Class 1 misdemeanor to a Class H felony.

Table 2: Average Estimated Per Charge Settlement Costs

Offense Class	Settled via Trial			Settled via Guilty Plea
	<i>Court & Attorney Costs</i>	<i>Indigent Defense</i>	<i>Total</i>	
<i>Class H Felony</i>	\$4,096	\$2,100	\$6,196	\$359
<i>Class 1 Misdemeanor → Class H Felony</i>	\$2,205	\$767	\$2,972	\$75
<i>Class I Felony → Class H Felony</i>	\$190	\$169	\$358	\$29

Section 2: Adding Child Solicitation by Computer to the Sex Offender Registry Program

Under the second edition of the bill, offenders convicted of Solicitation of a Child by Computer would be required to register as sex offenders per G.S. 14-208. Requiring additional offenders to register as sex offenders could lead to some increase in the number of individuals prosecuted for failing to comply with registration requirements, a Class F felony. For any increase in the number of charges and convictions for this offense, there would be an associated cost to the Courts and Department of Correction, as well as an increase in prison bed needs. However, as these offenders have not been required to register in the past and no data is available regarding the likelihood that offenders convicted of a specific offense will violate the registration requirements, the number of prison beds needed cannot be projected and the exact cost cannot be determined.

Department of Correction

In FY 2003-04 there were 108 Class F felony convictions for violations of sex offender registry requirements. On average, 47 percent of Class F offenders received active sentences and the remaining 53 percent received intermediate sentences. If, for example, there were two additional Class F convictions per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and three beds in the second year. Probation officers in the Division of Community Corrections supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter (based on the average cost and duration of intensive probation).

Judicial Branch

AOC data for CY 2004 show 384 defendants charged under current G.S. 14-208.11 for violating sex offender registration requirements. For any additional Class F felony charges under G.S. 14-208.11, there would be additional workload in superior court. Based on the costs of time in court, attorney preparation, and jury fees, AOC estimates that the average cost of processing a single Class F felony charge via trial is \$5,475. The estimated cost of indigent defense, for any trial in

which it is necessary, would be an additional \$2,704. However, based on prior-year data, the majority of charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$397 per plea.

Department of Justice

As no historical data is available on the number of convictions for Child Solicitation by Computer, the exact increase in workload and costs for the Department cannot be determined. However, the Department believes that its Sex Offender Registry database can absorb an increase of up to 100 offenders per year without additional expense.

Section 3: Authorizing SBI to Investigate Certain Offenses Committed by Computer

The third section of the bill would authorize the State Bureau of Investigation (SBI) in the Department of Justice to investigate—in addition to Child Solicitation by Computer—the commission, attempted commission, or solicitation by means of computer certain crimes under G.S. 14-190 relating to minors. The specified offenses include disseminating obscene material to minors; displaying material that is harmful to minors; exhibiting performances that are harmful to minors; first, second, and third-degree sexual exploitation of a minor; promoting prostitution of a minor; and participating in the prostitution of a minor. The Department believes that this section will help to expedite the process by which the SBI initiates child exploitation investigations. The Department does not anticipate any substantial fiscal impact as a result of this provision.

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

TECHNICAL CONSIDERATIONS: None

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