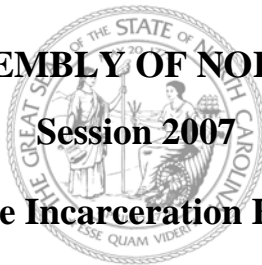


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1843 (First Edition)

SHORT TITLE: Endangerment of Juvenile

SPONSOR(S): Representatives Clary and Glazier

FISCAL IMPACT					
	Yes (xxx)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction	There will be some impact, but it can not be determined because some of the conduct covered under this proposal may be currently covered under several existing offenses.				
Recurring					
Nonrecurring					
Judicial	There will be some impact, but it can not be determined because some of the conduct covered under this proposal may be currently covered under several existing offenses.				
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS: (cumulative)*					
POSITIONS: (cumulative)					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	December 1, 2007				
<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: This proposal creates three new felony classes under G.S. 14-318.5 for endangering juveniles (a person who has not reached the person's 18th birthday and is not married, emancipated, or a member of the US armed forces). First, the bill makes it a Class G felony for a parent or any other person providing care to or supervision of a juvenile who engage in a willful act or omission in the care of the juvenile that is so gross, wanton, and culpable as to show reckless disregard for human life. Second, it makes it a Class F felony if the offense results in serious injury, and finally makes it a Class E felony if the offense results in serious bodily injury, as defined. The bill creates an exception from prosecution for a parent who abandons an infant less than seven days old pursuant to GS 14-322.3.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The Sentencing Commission observes that there is a “base pool of eligible convictions” that may be covered under several existing offenses: “due to the breadth of the proposed bill, persons eligible for conviction under the offenses created in the proposed bill may also include some portion of those currently convicted contributing to the delinquency of a minor (391 convictions in 2005-06), misdemeanor child abuse (334 convictions in 2005-06), and various traffic violations. The bill adds three new felony classes including:

Endangering a Juvenile

The proposal in this section will make it a Class G felony for a parent or any other person providing care to or supervision of a juvenile to commit a “willful act of omission in the care of the juvenile that is so gross, wanton, and culpable as to show reckless disregard for human life.” This offense *does not* require actual injury to the juvenile. According to the Sentencing Commission, “a literal reading of the offense also does not require that the risk created by the act or omission be to the juvenile; however, the qualifier that the offense is Class G unless the offense results in some injury to the juvenile suggests that creating a risk of injury to a third party would not result in criminal liability under this statute for the parent or other supervising person.”

The section adds a new offense, and therefore the Sentencing Commission does not have historical data. In 2005-06, 42% of Class G convictions received in active sentences, with an average estimated time served of 16 months. For example, if there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed for the first year and two additional prison beds in the second year.

As previously noted, for this section some conduct covered by this bill may be currently covered by existing offenses, including “assault on a child under 12 is included because that offense, like the proposed offense, does not necessarily require actual injury to the child. An assault by a parent or supervising individual that resulted in actual injury to a child under 12 could be prosecuted as assault, as misdemeanor child abuse under G.S. 14-318.2, or as felony child abuse under G.S. 14-318.5.”

In 2005-06, there were 728 convictions in the base pool and another 164 convictions for assault on a child below 12 years of age that could result in convictions. It is not known how many of these convictions could be convicted as Class G felonies under the proposal. If two misdemeanors per year would become Class G felonies, then 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 prison beds in the second year.

Also if there were three Class H felonies that would become Class G felonies, then the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and one additional prison bed in the second year.

Endangering a Juvenile (Serious Injury)

The proposal in this section would make it a Class F felony to endanger a juvenile, if the endangerment results in serious injury, which is defined as a “physical injury that causes great pain and suffering and also includes serious mental injury.” The proposal creates a new offense and the Sentencing Commission does not have any historical data to estimate an impact.

In 2005-06, 47% of Class F convictions resulted in active sentences, with an estimated time served of 20 months. If there were two Class F felony convictions, then the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and three additional prison beds in the second year.

As with the Endangering a Juvenile section, certain conduct covered under this proposal may be currently covered under several existing offenses. A conviction under this proposal can result from a willful act, but does not necessarily have to. Under current statute (G.S. 14-318.4(a3), an assault by a parent or a person providing care or supervision to a child under 16 that results in serious bodily injury is already a more serious Class C felony, and therefore would not be likely to result in convictions under the proposed offense.

In 2005-06, there were 728 convictions in the base pool of potentially eligible convictions and an additional 900 convictions for assault inflicting serious injury. It is unknown how many of the current convictions for assaults inflicting serious injury involved 16 or 17 years, and therefore it is not known how many of these convictions may instead be convicted as Class F felonies under the proposed bill.

If there were two misdemeanor convictions that would become Class F felonies under this bill, then the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and three additional prison beds in the second year.

If there were three Class H convictions that would become Class F felonies under this bill, then 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 prison beds in the second year.

Endangering a Juvenile (Serious Bodily Injury)

This section of the proposal would make it a Class E felony to endanger a juvenile, if the endangerment results in serious bodily injury. Serious bodily injury is described in the proposal as “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ or that results in prolonged hospitalization.” The Sentencing Commission does not have any historical data because proposal creates a new offense, there is not any historical data

from which to estimate the impact on the prison population. In 2005-06, 49% of Class E convictions resulted in active sentences, with an average estimated time served of 31 months. For example, if there were two Class E convictions under this proposal, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

As with the previous two sections, certain conduct covered under this proposal may be currently covered under several existing offenses. A conviction under this proposal can result from a willful act, but does not necessarily have to. Under current statute (G.S. 14-318.4(a3)), an assault by a parent or a person providing care or supervision to a child under 16 that results in serious bodily injury is already a more serious Class C felony, and therefore would not be likely to result in convictions under the proposed offense.

In 2005-06, there were 728 convictions in the base pool of potentially eligible convictions and an additional 212 convictions for assault inflicting serious bodily injury. It is unknown how many of the current convictions for assaults inflicting serious injury involved 16 or 17 years, and therefore it is not known how many of these convictions may instead be convicted as Class E felonies under the proposed bill.

If there were two misdemeanor convictions that would become Class E felonies under this bill, then the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and three additional prison beds in the second year.

If there were three Class H convictions that would become Class E felonies under this bill, then 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 prison beds in the second year.

Department of Correction – Division of Community Corrections

Under the proposal the causing serious bodily harm penalty increase could result in Class E convictions. These convictions would require a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$7.71 to \$14.97, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.97 for the initial six-month intensive duration, and \$1.96 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

Judicial Branch

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

AOC's analysis notes that "the exact conduct prohibited by this bill is difficult to discern," especially given the fact that offenders who could be charged under the proposed bill could be charged with some offenses under current law and that those charges are equally or more serious than the proposed changes. Because of the expansion of penalties, "there is basis to estimate how many charges for which offenses under current law may have involved the conduct that this bill defines as a felony."

Presently, the AOC estimates a cost of a Class G trial is \$9,310 and a plea is \$520; a Class F trial is \$9,902 and a plea is \$539; and a Class E trial is \$10,551 and a plea is \$560. AOC cost estimates account for indigent defense.

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

TECHNICAL CONSIDERATIONS: None

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