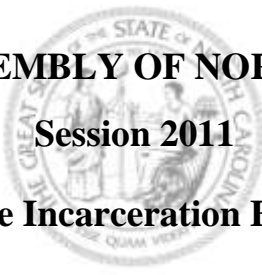


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 910 (Third Edition)

SHORT TITLE: Sale of a Child/Felony Offense.

SPONSOR(S): Senator Atwater

	FISCAL IMPACT				
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
GENERAL FUND					
Prison			* No Estimate Available		
Probation			* No Estimate Available		
Judicial			* No Estimate Available		
TOTAL EXPENDITURES:			* No Estimate Available		
ADDITIONAL PRISON BEDS:					
(cumulative)*	0	0	0	0	0
FTE POSITIONS:					
(cumulative)			* No Estimate Available		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Safety; Judicial Branch.					
EFFECTIVE DATE: Sections 5 and 6 become effective when they become law. The remainder becomes effective December 1, 2012.					
*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.					

BILL SUMMARY:

This bill creates a new Class F felony offense under G.S. 14-43 for a person to participate in the acceptance, solicitation, offer, payment, or transfer of any compensation in connection with the acquisition or transfer of legal or physical custody or adoption of a minor child. In addition, the proposed bill adds this offense to the list of offenses for which an offender must register with the Sex Offender Registration Program. The statute excludes transfers ordered by the court or authorized pursuant to G.S. 48-10-103, Lawful payments related to adoption.

ASSUMPTIONS AND METHODOLOGY:

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.

Because this is a new offense, AOC does not have any historical data upon which to estimate the number of charges that may arise from the passage of this bill. Accordingly, AOC is unable to estimate the increased cost to the Judicial Branch. The language of the bill requires that this offense be charged in addition to, not in lieu of, any other existing offense, therefore any new charges will not provide an offset to existing charges, thus there will be no reduction in workload to the court system.

All pleas and trials for Class F felonies are handled in superior court. Overall, the monetary value of the average workload of a Class F felony case is \$912. The language of this bill does not require that only adults be charged with this offense. For a case involving a defendant who is a minor at the time the offense was committed, there are often additional costs incurred in disposing of that case. AOC is not able to estimate the number of charges that would involve a minor defendant. This estimate includes costs for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness/Legal Assistant – as well as operating and infrastructure costs.

There may also be cost associated with jury trials. Jury costs are based on an estimated jury pool of 30 for the first day and, for subsequent days, the 12-person jury plus two alternates. Jury compensation, set in G.S. 7A-312, is \$12 for the first day, \$20 for days two to five, and \$40 for additional days. For criminal cases, jury costs come to \$360 for the first day, \$280 for days two to five, and \$560 for the days over five.

This bill contains provision that requires that the child victim of this offense is considered to be dependent, neglected and abused. This may result in an increase in juvenile filings and hearings required for determination and placement. Due to the nature of the crime, these filings are likely to occur at the time the defendant is charged with Unlawful sale, surrender or purchase of a child, not

at the time of conviction. AOC is not able to estimate the number of additional juvenile filings that may be due to this bill and does not have data upon which to estimate the cost per case or cost per hearing, for these types of filings.

The offense, Unlawful sale, surrender or purchase of a child, could also trigger the offense of Unlawful payments related to adoption, a Class 1 misdemeanor for the first offense and a Class H felony for subsequent offenses. Because the Unlawful sale, surrender or purchase of a child is a new offense, AOC does not have any historical data upon which to estimate the number of related charges that may arise from the passage of this bill. Likewise, AOC is unable to estimate any potential increased cost to the Judicial Branch due to these additional charges. There is no offense code for Unlawful payments related to adoption, which may be some indication that this offense is rarely charged.

This bill adds this new offense to the list of offenses for which an offender must register with the Sex Offender Registration Program. By adding this offense to the list of those that require registration, the pool of convicted individuals susceptible to committing criminal offenses related to violations of the registration requirements is broadened. Although it is possible that there may be some additional violation-related charges due to this bill, it is not anticipated that the inclusion of this crime in the list of offenses requiring registration will have a significant impact on the court workload.

Department of Public Safety – Prison Section

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), makes changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also creates a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are subject to nine months of post-release supervision (PRS). B1-E felony PRS is increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that would be needed as a result of revocations that may occur during the new PRS period.

Based on the most recent population projections and estimated bed capacity, there are 1,791 surplus prison beds available through 2017. Taken in isolation, the impact of the proposed legislation is not expected to exceed current prison bed vacancies. To the extent that further legislation increases prison populations beyond the projected vacancies, additional beds would be needed.

Sentencing Commission estimates that 53 percent of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (the length of revocation period may vary).

Some of the prohibited conduct may currently be covered by G.S. 48-10-102, Unlawful payments related to adoption. Violation is a Class 1 misdemeanor for the first offense and a Class H felony for the second or subsequent offense. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 48-10-102. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Some of the prohibited conduct may also be covered by G.S. 14-43.11, Human trafficking (of a minor). Violation is a Class C felony. There was one Class C conviction under G.S. 14-43.11 during FY 2010-11. It is not known whether the one Class C conviction under G.S. 14-43.11 involved conduct covered by the proposed Class F offense. However, since the proposed conduct may also be covered by a more serious offense, it may be prosecuted as the more serious offense.

Section 3 adds unlawful sale, surrender, or purchase of a child (created in Section 1 of this bill) to the list of sexually violent offenses. An offender who is convicted of a sexually violent offense is required to register with the Sex Offender and Public Protection Registration Program. Failing to meet the requirements of the Program can result in a number of criminal offenses:

Violation of the following registration requirements is punishable as a Class F felony:

- The sex offender must register and keep that registration current.
- The sex offender must not work or volunteer at any place where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors.
- A person who conducts any activity at his or her residence and knows that another person who resides at that same location is required to register as a sexual offender cannot accept a minor or minors into his or her care or custody from another.

It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010-11 data and changes under the Justice Reinvestment Act, it is estimated that 53 percent of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F convictions per year as a result of broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary).

Violation of the following registration requirements is punishable as a Class H felony:

- It is unlawful for any person who has reason to believe that an offender is in violation of registration requirements to withhold information, provide false information, harbor or conceal the offender with the intent to assist the offender in eluding arrest,
- The sex offender must not knowingly be at any of the locations listed in the statute.

It is not known how many additional convictions might occur as a result of the proposed broadening of these existing statutes. Based on FY 2010-11 data and changes under the Justice Reinvestment Act, it is estimated that 36 percent of Class H convictions will result in active sentences, with an average estimated time served of 10 months. If, for example, there were three additional Class H convictions per year as a result of the proposed legislation, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class H felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary).

Violation of the following registration requirement is punishable as a Class G felony:

- The sex offender must not reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located.

It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010-11 data and changes under the Justice Reinvestment Act, it is estimated that 41 percent of Class G convictions will result in active sentences, with an average estimated time served of 15 months. If, for example, there were two additional Class G convictions per year as a result of broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class G felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary).

Violation of the following registration requirement is punishable as a Class 1 misdemeanor:

- The sex offender must maintain a current photograph with the sheriff. If it appears to the sheriff that the photograph is no longer accurate, the sex offender must allow the sheriff to take another photograph. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-208.9A(c). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. In FY 2010-11, 25 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less).

Therefore, additional convictions due to broadening the existing statute would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Department of Public Safety – Community Correction Section

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). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.¹ General supervision of intermediate and community offenders by a probation officer costs \$3.57 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations. The Sentencing Commission is unable to provide an estimate of the fiscal impact on Community Corrections.

The primary offense created by the bill is punishable as a Class F felony. In FY 2010-11 46 percent of Class F offenders received intermediate sentences with average sentence lengths of 34 months. No estimates are available for the number of potential offenders under the new law; however, the additional cost to CCS of one additional intermediate sentence is \$3,688. In addition, as discussed above, the proposed bill includes various criminal charges for violation of requirements under the Sex Offender Registration Program. The table below shows the cost for one additional offender, per offense class for FY 2010-11.

Offense Class	Percent Community/Intermediate	Average Length of Time	Estimated Cost to CCS*
Class 1 Misdemeanor	Community: 72 percent	15 months	\$1,628.81
	Intermediate: 3 percent	19 months	\$2,063.16
Class G Felony	Community: 0 percent	n/a	n/a
	Intermediate: 58 percent	32 months	\$3,479.14
Class H Felony	Community: 13 percent	27 months	\$2,931.86
	Intermediate: 49 percent	30 months	\$3,257.63

* Cost estimates based on the daily cost and length of sentence.

¹ DCC incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

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

TECHNICAL CONSIDERATIONS: None

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