

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

## Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 75 (First Edition)

**SHORT TITLE:** Kilah's Law/Increase Child Abuse Penalties.

**SPONSOR(S):** Representatives Glazier, Stevens, Horn, and Arp

### FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: \$371,092 in FY 2013-14 and \$742,184 annually in subsequent years
- Indigent Defense Services: \$101,560 increased costs in superior court without a trial  
\$548,300 increased costs in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$980- \$1,325 per conviction

Please see the Assumptions and Methodology section for additional information.

### BILL SUMMARY:

Section 1 of HB 75 amends existing G.S. 14-318.4, Child abuse a felony, to increase, by one classification, the felony class of each offense listed in that section. The one exception is the serious bodily injury offense in subsection (a4) of the statute, which would remain a Class E felony. Section 2 amends G.S. 15A-1382.1, Reports of disposition; domestic violence; child abuse; sentencing; to require a special entry on the judgment form and on the automated court record when the court finds that the defendant committed an offense involving child abuse, an offense involving assault on a minor, or an offense involving an act of domestic violence against a minor, so that any inquiry into the defendant's criminal record will reflect that the offense involved child abuse. This bill becomes effective December 1, 2013. Section 1 applies to offenses committed on or after that date; Section 2 applies to judgments entered on or after that date.

### 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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created 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. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been 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 may be needed as a result of revocations.

### Judicial Branch

The Administrative Office of the Courts 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.

In fiscal year 2011-12, 161 defendants were charged with intentionally inflicting any serious physical injury on a child. The AOC estimates the average cost to the court for each case would be \$3,465.

AOC further reports that in FY 2011-12, three defendants were charged with committing, permitting, or encouraging any act of child prostitution. Of these, none were convicted. The AOC estimates the average cost to the court for each case would be \$3,465.

AOC reports that 32 defendants were charged with committing or allowing the commission of any sexual act with a child in FY 2011-12. Of these, five were convicted. AOC estimates the average cost to the court for each case would be \$3,465.

AOC reports that in FY 2011-12, approximately 84 defendants were charged with intentionally inflicting any serious bodily injury on a child resulting in permanent or protracted loss or impairment. Of these, 12 were convicted. AOC estimates the average cost to the court for each case would be \$8,730.

AOC reports that in calendar year FY 2011-12, 12 defendants were charged with a willful act or grossly negligent omission of a child resulting in serious physical injury. Of these, six were convicted. AOC estimates the average cost to the court for each case would be \$752. The following table illustrates the effect of the new bill on AOC costs for the first full year of implementation:

| <b>Table 1: Potential Impact of Kilah’s Law, Section 1</b> |   |                                       |                                  |  |                                   |                                |
|--|---|---------------------------------------|----------------------------------|--|-----------------------------------|--------------------------------|
| <b>General statute</b>                                     | <b>Offense description</b>  | <b>Existing charge class (felony)</b> | <b>New charge class (felony)</b> | <b>Number of defendants in FY 2012</b> | <b>Monetary increase per case</b> | <b>Total monetary increase</b> |
| 14-318.4(a)  | Intentionally inflict serious injury  | E                                     | D                                | 161                                    | \$1,847                           | \$297,367                      |
| 14-318.4(a1)   | Commit, permit, or encourage any act of prostitution  | E                                     | D                                | 3                                      | \$1,847                           | \$5,541                        |
| 14-318.4(a2)   | Commit or allow the commission of any sexual act  | E                                     | D                                | 32                                     | \$1,847                           | \$59,104                       |
| 14-318.4(a3)   | Intentionally inflict any serious bodily injury resulting in permanent or protracted loss or impairment | C                                     | B2                               | 84                                     | \$4,490                           | \$377,160                      |

|                               |  |   |   |    |       |                  |
|-------------------------------|--|---|---|----|-------|------------------|
| 14-318.4(a5)                  | Willful act or grossly negligent omission resulting in serious physical injury | H | G | 12 | \$251 | \$3,012          |
| <b>Total Annual Estimate:</b> |  |   |   |    |       | <b>\$742,184</b> |

AOC estimates that Section 2 of this bill will require updating the offense classification of the five offenses specified in this Bill, costing \$79,950.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. Since the majority of these cases will go to Superior Court, the District Court costs were not calculated. In superior court, IDS estimates that the increased cost of a PAC attorney per case for a D level Class Offense would be \$281 if the case does not go to trial and \$1,287 if it does.

IDS further estimates that the increased cost of a PAC attorney per case in Superior Court for a new B2 level Class Offense would be \$554 if the case does not go to trial and \$3560 if it does.

IDS further estimates that the increased cost of a PAC attorney per case in Superior Court for a new G level Class Offense would be \$88 if the case does not go to trial and \$344 if it does. The following table illustrates the effect of the new bill on IDS per case costs:

| General Statute | Current Felony Class | Proposed Felony Class | Per Case Cost Increase for PDs | Per Case Cost Increase for Contractors | Per Case Cost Increase for PAC*  |
|-----------------|----------------------|-----------------------|--------------------------------|--|----------------------------------|
| 14-318(a)       | E                    | D                     | Not quantifiable               | \$707.22                               | \$281 non-trial<br>\$1,287 trial |
| 14-318.4(a1)    | E                    | D                     | Not quantifiable               | \$707.22                               | \$281 non-trial<br>\$1,287 trial |
| 14-318(a2)      | E                    | D                     | Not quantifiable               | \$707.22                               | \$281 non-trial<br>\$1,287 trial |
| 14-318(a3)      | C                    | B2                    | Not quantifiable               | \$0                                    | \$554 non-trial<br>\$3,560 trial |
| 14-318(a5)      | H                    | G                     | Not quantifiable               | \$0                                    | \$88 non-trial<br>\$344 trial    |

Assuming the offenders charged in 2012 had been prosecuted under this proposed legislation, the cost to the judicial system would have increased by the following amounts. The increased cost of a PAC attorney for all additional D level Class Offenses would be \$55,076 if no cases go to trial (196 offenders times \$281 non-trial costs) and \$252,252 if they all go to trial (196 offenders times \$1,287 non-trial costs).

The increased cost of a PAC attorney for all additional B2 level Class Offenses would be \$45,428 (82 offenders times \$554 non-trial costs) if no cases go to trial and \$252,252 if they all go to trial (82 offenders times \$3,560 non-trial costs).

The increased cost of a PAC attorney for all additional G level Class Offenses would be \$1,056 (12 offenders times \$88 non-trial costs) if no cases go to trial and \$4,128 if they all go to trial (12 offenders times \$344 non-trial costs).

**Department of Public Safety –Prison Section**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add more than 32 inmates to the prison system by the end of FY 2014-15.

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                         |                         |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
|   | <b>June 30<br/>2013</b> | <b>June 30<br/>2014</b> | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> |
| 1. Inmates <sup>2</sup>   | 36,838                  | 36,967                  | 37,107                  | 36,861                  | 36,748                  |
| 2. Prison Beds (Expanded Capacity)                                  | 40,718                  | 40,970                  | 40,970                  | 40,970                  | 40,970                  |
| 3. Beds Over/(Under) Inmate Population                              | (3,880)                 | (4,003)                 | (3,863)                 | (4,109)                 | (4,222)                 |
| <b>4. Additional Inmates Due to this Bill<sup>3</sup></b>           | <b>17</b>               | <b>32</b>               | <b>32+*</b>             | <b>32+*</b>             | <b>32+*</b>             |
| <b>5. Additional Beds Required</b>                                  |                         |                         |                         |                         |                         |

\* The Sentencing and Policy Advisory Commission provides two year threshold projections. Projections beyond the two year horizon are estimates.

In addition, impact on the prison population will occur if Class C convictions become Class B2 convictions under the proposed statute because of the longer average estimated time served (183 months compared to 81 months for Class C). No additional prison beds would be needed in the short term due to the long sentence lengths. Long-term impact on the prison population would begin in year six due to the longer sentence lengths for Class B2 felony convictions, and would continue as individuals convicted of this offense accumulate in the prison population over the years.

**Department of Public Safety – Community Correction Section**

<sup>1</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, 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.<sup>2</sup> General supervision of intermediate and community offenders by a probation officer costs \$3.63 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.

In FY 2011-12, 100% of Class D felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is \$1325 per offender (\$3.63 per day times 365 days).<sup>3</sup>

In FY 2011-12, 100% of Class B2 felony offenders received active sentences. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is \$1325 per offender (\$3.63 per day times 365 days).<sup>4</sup>

In FY 2011-12, 42% of Class G felony offenders received active sentences; 58% received intermediate sentences; and none received community punishments. All active sentences result in 9 months of post-release supervision (PRS). The average length of intermediate punishment imposed for this offense class was 31 months. Therefore, at a minimum, one conviction resulting from Subsection (a5) of this bill will require at least nine months of PRS. The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup>

**SOURCES OF DATA:** Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

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<sup>2</sup> CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

<sup>3</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

<sup>4</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

<sup>5</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

**TECHNICAL CONSIDERATIONS:** None

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