

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

**BILL NUMBER:**              —SB 868 (—      1st Edition)

**SHORT TITLE:**        Assault in the Presence of a Child

**SPONSOR(S):**         Senator Hagan

<b><u>GENERAL FUND</u></b>	<b><u>FISCAL IMPACT</u></b>				
	<b><u>Yes (X)</u></b>	<b><u>No ( )</u></b>	<b><u>No Estimate Available ( )</u></b>		
	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>
<b><u>Correction</u></b>					
<b><u>Recurring</u></b>					<u>Unable to determine exact amount.</u>
<b><u>Nonrecurring</u></b>					
<b><u>Judicial</u></b>					
<b><u>Recurring</u></b>					<u>Unable to determine exact amount.</u>
<b><u>Nonrecurring</u></b>					
<b><u>TOTAL</u></b>					<u>Unable to determine exact amount.</u>
<b><u>EXPENDITURES:</u></b>					
<b><u>ADDITIONAL PRISON BEDS*</u></b>	<u>It is likely that most A1 misdemeanants sentenced to an active sentence under this bill would be housed in local jails at a cost of \$18/day. The exception is A1 misdemeanor offenders falling in Prior Record Level III who may receive active sentences that might be served in the state prison system.</u>				
<b><u>POSITIONS: (cumulative)</u></b>	<u>Unable to determine exact amount; additional positions not anticipated.</u>				
<b><u>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</u></b>	<u>Department of Correction; Judicial Branch</u>				
<b><u>EFFECTIVE DATE:</u></b>	<u>December 1, 2003</u>				
<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 SUMMARY**<sup>1</sup>: The bill amends G.S. 14-33(c) to make it a Class A1 misdemeanor if a person commits an assault with a deadly weapon or an assault that inflicts serious injury on a person with whom he or she has had a personal relationship in the presence of a minor who is residing with or in the custody of the person assaulted, unless the conduct is covered under some other provision of law providing greater punishment. The bill provides definitions for “in the presence of a minor”, “minor”, and “personal relationship”.

### **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. **It is not known how many of these convictions were for offenses that were committed in the presence of a minor who resides with the victim of the assault and in which the offender and victim have a personal relationship with each other. Therefore, it is not known how many offenders might be sentenced for the proposed offense.**

In FY 2001-2002, 20 percent of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served was 55.1 days. It is likely that 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). **Because only A1 offenders falling in Prior Record Level III may receive active sentences that might be served in the state prison system, convictions for this proposed offense would not be expected to have a significant impact on the prison population.** The impact on local jail populations is unknown.

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<sup>1</sup> AOC Research and Planning Division

## **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 new 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. 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. **BILL SUMMARY:**

**ASSUMPTIONS AND METHODOLOGY:**  
**Department of Correction**

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. 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.* That means the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add \_\_\_ inmates to the prison system by the end of FY 2007-08.

	<b>June 30</b> <b>2004</b>	<b>June 30</b> <b>2005</b>	<b>June 30</b> <b>2006</b>	<b>June 30</b> <b>2007</b>	<b>June 30</b> <b>2008</b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>2</sup>	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>3</sup>	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	1,290	2,058	3,010	3,958	4,828
4. No. of Projected Additional Inmates Due to this Bill <sup>4</sup>					
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill <sup>3</sup>					

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes 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.

<sup>3</sup> Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. ***These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.***

<sup>4</sup> Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

**POSITIONS:** It is anticipated that approximately \_\_\_ positions would be needed to supervise the additional inmates housed under this bill by 2007-08. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal Notes look at the impact of a bill through the year FY 2008. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Inmates Due to —This Bill				
Available Beds (over/under)	-5,616	-6,339	-7,039	-7,684
New Beds Needed				

**DISTRIBUTION OF BEDS:** After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

- \_\_\_\_\_ Close Custody \_\_\_\_\_
- \_\_\_\_\_ Medium Custody \_\_\_\_\_
- \_\_\_\_\_ Minimum Custody \_\_\_\_\_

**CONSTRUCTION:** Construction costs for new prison beds, as listed in the following chart, are based on estimated 2002-03 costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2002-0203	\$38,595	\$73,494	\$85,444

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on Page 1 of this note. These costs assume that funds to construct prison beds should be budgeted in advance. Based on previous prison construction projects we are assuming it will typically require three years for planning, design and construction of new beds.

**OPERATING:** Operating costs are based on actual 2001-02 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate will be added each year to the base costs for FY 2002 shown below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1.

**Daily Inmate Operating Cost 2001-02**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2001-02)	\$50.04	\$65.17	\$80.19	\$62.43

~~Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2004 and 2005, this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2005-06 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.~~

~~In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.~~

**~~ASSUMPTIONS AND METHODOLOGY:~~**

**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.~~

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

**~~TECHNICAL CONSIDERATIONS:~~**

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