

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

## Legislative Fiscal Note

**BILL NUMBER:** House Bill 451 (Second Edition)

**SHORT TITLE:** Adoption/Crim. Checks/Prospective Families.

**SPONSOR(S):** Representatives Weiss, Barnhart, and Glazier

	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>
<b>REVENUES:</b> (to DOJ from DHHS)	\$8,808	\$8,808	\$8,808	\$8,808	\$8,808
<b>EXPENDITURES:</b>					
<b>Dept. of Health and Human Services</b>	\$8,808	\$8,808	\$8,808	\$8,808	\$8,808
<b>Dept. of Justice</b>	\$14,067	\$14,067	\$14,067	\$14,067	\$14,067
<b>Dept. of Correction</b>	Exact amount cannot be determined; no substantial impact anticipated.				
<b>Judicial Branch</b>	Exact amount cannot be determined; no substantial impact anticipated.				
<b>POSITIONS</b> (cumulative):					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Health and Human Services; Department of Justice; Department of Correction; Judicial Branch				
<b>EFFECTIVE DATE:</b>	June 24, 2005				

**BILL SUMMARY:** This bill would amend G.S. 48-3-309 and G.S. 48-3-303 (Chapter 48 Adoptions) and G.S. 114-19.7 (Chapter 114 Department of Justice) to require mandatory pre-placement criminal checks and related forms and fingerprinting for individuals eighteen years of age or older who reside in prospective adoptive homes. The bill would also make it a Class 2 misdemeanor for any person (previously, just prospective adoptive parents) to intentionally falsify information that must be furnished to conduct criminal histories. (Source: Adapted from Administrative Office of the Courts, Research and Planning, 3/28/2005)

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

Data regarding the number of offenders convicted of intentionally falsifying information furnished in relation to a criminal history check prior to adoption is unavailable because the Administrative Office of the Courts does not maintain a specific offense code for violations under G.S. 48-3-309. The lack of an offense code is some indication that the offense is infrequently charged and rarely results in convictions. Consequently, expanding the criminal penalty for falsifying information to new individuals is not expected to result in a substantial fiscal impact.

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.

### **Department of Health and Human Services**

The Department of Health and Human Services requires fingerprinting of adoptive parents for children adopted out of county Departments of Social Services custody. The fingerprints are used to conduct background checks on the prospective parents. During State fiscal year 2002-2003, 1,233 adoption applicants were fingerprinted. The Division of Social Services, Department of Health and Human Services, estimates that the prospective applicants made up 733 households (500 couples and 233 individuals) and that potentially half of these households included one adult relative or non-relative. This would require fingerprinting for an additional 367 people. Based on an established contract, the Department of Justice charges the Division of Social Services \$24 each time an adoptive parent is fingerprinted for a background check. The requirement for 367 additional background checks with fingerprinting creates an additional cost for the Division of Social Services of \$8,808.

### **Department of Justice**

The Department of Justice (DOJ) provides state and national criminal background checks to non-criminal justice agencies and charges a fee to cover its costs. For a state and national check, DOJ charges \$38, of which \$22 is remitted to the Federal Bureau of Investigation (FBI). For adoptive and foster parents, the fee for the state background check (\$14) is waived, and the General Fund supports these background checks.

This bill would increase the number of background checks conducted by DOJ for which it is not fully reimbursed. For each background check conducted, DOJ would incur costs, on average, of \$16.33.<sup>1</sup> In FY 2003-04, there were 1,233 background checks conducted on prospective adoptive parents. If, for example, 367 additional background checks were required (see DHHS section for methodology), the internal cost to DOJ would be \$5,993, and payments from DHHS would total \$734. In addition, DOJ would collect \$8,074 to remit to the FBI.

Each employee can process an average of nearly 10,000 background checks (criminal justice and non-criminal justice) per year. DOJ currently has the capacity to perform some additional

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<sup>1</sup> In 2003, 75 percent of fee-exempt background checks were submitted via hard copy, and 25 percent were submitted electronically. This figure is a weighted average assuming the same distribution will apply to the new population.

background checks without increasing the number of positions. However, DOJ has stated that increased workload may affect turnaround time.

### **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.*

Because AOC does not maintain a specific offense code for violations under G.S. 48-3-309, no data is available on the number of convictions in the past for intentionally falsifying information necessary to conduct a criminal history check prior to adoption. Due also to lack of historical data, the number of additional convictions that might occur as a result of the new background checks required by this bill cannot be estimated.

- In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences and the average active sentence length was 23 days. Offenders with active sentences of less than thirty days are housed in county jails at county expense.
- The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Correction (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because Class 2 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation would not impact prison population.

### **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 AOC does not maintain a specific offense code for violations under G.S. 38-3-309, no data is available regarding the number of charges currently processed by the Courts for falsifying information furnished in relation to a criminal history check prior to adoption. Of the additional background checks that would occur under this bill, it is not possible to estimate the number that would result in charges for intentionally falsifying information provided to conduct the criminal history check.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor is \$2,314 per trial and \$271 per guilty plea. The trial cost includes an estimated \$1,365 in jury fees, costs of time in court, and attorney costs and an additional \$949 in indigent defense. Based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by plea.

**SOURCES OF DATA:** Office of State Budget and Management, Department of Justice, Department of Correction, Judicial Branch, North Carolina Sentencing and Policy Advisory Commission, Department of Health and Human Services

**TECHNICAL CONSIDERATIONS:** This bill would become effective June 24, 2005. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The NC Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and, thus, assume that the legislation will not impact the prison system until the beginning of 2006-07. If the bill becomes effective prior to December 1, there could be an impact on local jails or the prison system in the 2004-05 fiscal year.

**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:** Chloe Gossage, Aaron Paul, Karlynn O'Shaughnessy

**APPROVED BY:** James D. Johnson, Director  
Fiscal Research Division

**DATE:** April 5, 2005



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