

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1466 (Second Edition)

SHORT TITLE: Exploitation/Elderly or Disabled Adult.

SPONSOR(S): Representative Hackney

		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>								
GENERAL FUND														
Correction	Exact amount cannot be determined. The felony offenses created by this bill would be expected to lead to a <u>small</u> increase in prison population and, therefore, prison beds, but the exact number of beds needed and, thus, the cost cannot be determined (see pg. 2 for details).													
Judicial	Exact amount cannot be determined; no substantial impact anticipated.													
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined (see pg. 2 for details).	<table border="0"> <tr> <td style="border-right: 1px solid black; padding-right: 5px;">For every 10 Class I convictions: 1 bed in yr. 1; 3 beds in yr. 2</td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding-right: 5px;">For every 3 Class H convictions: 1 bed in yr. 1; 2 beds in yr. 2</td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding-right: 5px;">For every 2 Class G convictions: 1 bed in yr. 1; 2 beds in yr. 2</td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding-right: 5px;">For every 2 Class F convictions: 1 bed in yr. 1; 3 beds in yr. 2</td> <td></td> </tr> </table>					For every 10 Class I convictions: 1 bed in yr. 1; 3 beds in yr. 2		For every 3 Class H convictions: 1 bed in yr. 1; 2 beds in yr. 2		For every 2 Class G convictions: 1 bed in yr. 1; 2 beds in yr. 2		For every 2 Class F convictions: 1 bed in yr. 1; 3 beds in yr. 2	
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POSITIONS: (cumulative)	Exact number cannot be determined; no substantial impact anticipated.													
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch														
EFFECTIVE DATE: December 1, 2005														
<p><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></p>														

BILL SUMMARY: This bill would repeal G.S. 14-32.3(c), which provides for a criminal offense for financially exploiting an elderly or disabled adult, and enact new G.S. 14-112.2 in its place to clarify and expand the offense.

- Under present G.S. 14-32.3(c), any caretaker who willfully and intentionally deprives an elder or disabled adult who resides in a domestic setting of property through false representation, abuse of trust, or coercion would be guilty of a Class H felony if the property is of a value greater than \$1,000 and a Class 1 misdemeanor if the property is of a value equal to or less than \$1,000.
- New G.S. 14-122.2(b) would create a similar offense, expanded to 1) be applicable to the use, or attempted use, of property, funds, or assets with the intent to deprive, temporarily or permanently, the elder or disabled adult of the use, benefit, or possession of such funds, assets, or property; and 2) apply to anyone who stands in a position of trust or confidence or who has a business relationship with an elderly or disabled adult. Violations would be punishable as follows:
 - a) Class F felony if the funds, assets, or property are valued at \$100,000 or more.
 - b) Class G felony if the funds, assets, or property are valued from \$20,000 to \$100,000.
 - c) Class H felony if the funds, assets, or property are valued at less than \$20,000.
- New G.S. 14-122.2(c) would add an additional offense for any person to use, or attempt to use, an elder or disabled adult's property, funds, or assets when the person should know that the elder or disabled adult lacks the capacity to consent to such use. Violations would be punishable as follows:
 - a) Class G felony if the funds, assets, or property are valued at \$100,000 or more.
 - b) Class H felony if the funds, assets, or property are valued from \$20,000 to \$100,000.
 - c) Class I felony if the funds, assets, or property are valued at less than \$20,000.

ASSUMPTIONS AND METHODOLOGY:

General

Because this bill would expand the scope of the offense of exploitation of an elder or disabled adult by creating two new similar offenses that are applicable to additional individuals and conduct, it would be expected to result in additional charges and convictions and would consequently incur a fiscal impact. Furthermore, the bill provides for increased penalties for offenders that could be charged or convicted under existing statutes. As these offenses would apply to additional individuals and behavior, we have no historical data from which to estimate the exact number of additional charges and convictions that would result. However, the number of similar offenses in FY 2003-04 under current statutes was relatively small.

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 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.*

In FY 2003-04, there were three felony Class H and two misdemeanor Class 1 convictions under current G.S. 14-32.3(c) for exploitation of an elder or disabled adult. Because this bill would make this offense applicable to more individuals and behavior, the Sentencing Commission has no historical data from which to estimate how the legislation would impact prison population. The table below outlines for each offense class the FY 2003-04 active sentence rate, average active sentence length, and the number of convictions annually that would necessitate one additional prison bed in the first year. Because the number of convictions that would occur under this bill is unknown, the specific prison bed impact cannot be determined. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

Table 1: Threshold Prison Bed Impact

Felony Offense Class	Active Rate	Average Active Sentence Length (min – max)	Threshold Prison Bed Impact
Class I	11%	7 – 9 months	If, for example, there were ten Class I felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year.
Class H	37%	10 – 12 months	If, for example, there were three Class H felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year.
Class G	44%	15 – 19 months	If, for example, there were two Class G felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year.
Class F	47%	19 – 24 months	If, for example, there were two Class F felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year.

Non-Active Sentences

Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

Table 2: FY 2003-04 Non-Active Sentence Rates

	Class I	Class H	Class G	Class F
<i>Intermediate Sentence Rate</i>	40%	50%	56%	53%
<i>Community Sentence Rate</i>	49%	13%	-	-

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.

For calendar year 2004, AOC data indicates that 13 defendants were charged with a Class H felony and 3 defendants were charged with a Class 1 misdemeanor for exploitation of an elder or disabled adult. As this bill would make this offense applicable to additional individuals and conduct, no data is available to estimate the number of additional charges that might result from this bill. For any new felony charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior court workload. AOC estimates the cost per charge based on offense class as shown in Table 3 below.

Table 3: Average Estimated Per Charge Settlement Costs

Offense Class	Settled via Trial			Settled via Guilty Plea
	<i>Court/Attorney Costs</i>	<i>Indigent Defense</i>	<i>Total</i>	
<i>Class I Felony</i>	\$3,904	\$1,931	\$5,835	\$330
<i>Class H Felony</i>	\$4,096	\$2,100	\$6,196	\$359
<i>Class G Felony</i>	\$5,092	\$2,529	\$7,621	\$379
<i>Class F Felony</i>	\$5,475	\$2,704	\$8,179	\$397

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

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices