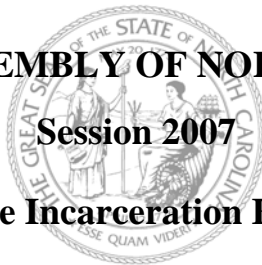


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1860 (Fourth Edition)

SHORT TITLE: Amend Child Abuse/Child Fatality Task Force.

SPONSOR(S): Senator Allran

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
GENERAL FUND					
Correction	Amount cannot be determined; see Assumptions and Methodology				
Judicial	Fiscal impact anticipated; Exact amount cannot be determined. See Assumptions and Methodology; minimum anticipated impact of \$496,000 in FY 2009/10				
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS: (cumulative)*	Amount cannot be determined; see Assumptions and Methodology				
POSITIONS: (cumulative)	Amount cannot be determined				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	December 1, 2008				
<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>					

BILL SUMMARY:

Senate Bill 1816 (Companion bill HB 2339) increases the penalty for misdemeanor child abuse and creates two new offenses under felony child abuse. Section 1 of this bill amends GS 14-318.2(a) by increasing the penalty for misdemeanor child abuse by one class, from a Class 1 to a Class A1 misdemeanor. Section 2 of

the bill amends GS 14-318.4 subsection (a4) to create two new felonies for a parent or other caretaker to willfully commit an act or omission in the care of the child that shows reckless disregard for human life. The offense is punishable as a Class E felony if the act or omission result in serious bodily injury to the child, and the offense is punishable as a Class H felony if it results in serious physical injury. Serious physical injury and serious bodily injury are defined in new GS 14-318.2(d) (2).

The 3rd edition of the bill changed offenses resulting in serious injury to a Class H felony, as opposed to Class G. The 4th edition changes wording on page 2 subsections (a4) and (a5).

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 incapacitated effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

Section 1 of Senate Bill 1816 reclassifies G.S. 14-318.2 from a Class 1 misdemeanor to a Class A1 misdemeanor. In FY 2006/07, there were 354 convictions for Class 1 misdemeanor child abuse. In FY 2006/07 26% of Class A1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 50 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 convictions for this offense that would be reclassified to Class A1 convictions under this proposed bill would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. The Department of Correction reimburses counties for inmates held in local jails with active sentences longer than 30 days at a rate of \$18 per day for every day past the thirtieth. With this penalty increase, assuming the average imposed active sentence length difference for Class A1 and Class 1 misdemeanors (20 days); DOC might expect county reimbursements to total \$127,400.

Section 2 amends G.S. 14-318.4, felony child abuse, to create two new felony offenses. In FY 2006/07, there were 11 convictions for the current Class C offense in G.S. 14-318.4. Amended G.S. 14-318.4(a4) creates a Class E felony if a parent or any other person providing care to or supervision of a child whose willful act or omission in the care of the child is so gross, wanton, and culpable as to show reckless disregard for human life and the act or omission results in serious bodily injury to the child. Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is possible that this conduct is currently charged under G.S. 14-318.2, Child abuse a Class 1 misdemeanor. In FY 2006/07, there were 354 convictions under G.S. 14-318.2. It is not known how many of those offenders might be sentenced under the proposed bill or how many additional offenders might be eligible.

In FY 2006/07, 53% of Class E convictions resulted in active sentences, with an average estimated time served of 29 months. If, for example, there were two Class E convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Amended G.S. 14-318.4(a5) creates a Class H felony if a parent or any other person providing care to or supervision of a child whose willful act or omission in the care of the child is so gross, wanton, and

culpable as to show reckless disregard for human life and the act or omission results in serious physical injury to the child. Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is possible that this conduct is currently charged under G.S. 14-318.2, Child abuse a Class 1 misdemeanor. In FY 2006/07, there were 354 convictions under G.S. 14-318.2. It is not known how many of those offenders might be sentenced under the proposed bill or how many additional offenders might be eligible.

In FY 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Department of Correction – Division of Community Corrections

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). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

With regards to Section one of the bill which increases misdemeanor conviction by one offense class, in FY 2006-07, 26% of Class A1 offenders received active; 6% received intermediate; and 68% received community punishments. For FY 2005/06, the average lengths of intermediate and community punishment served for this offense class were 19 months and 20 months, respectively. Accordingly, potential costs to DCC could total \$365,060 in FY 2009-10, the first full fiscal year of applicability.²

With regards to section 2 of the bills, in FY 2006-07, 46% of Class E and 63% of Class G convictions resulted in community and intermediate punishments. Consequently, *if additional non-active sentences occur, the Division of Community Corrections (DCC) could incur additional costs for offenders placed under its supervision.* However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

² Due to the effective date of December 1, 2008 and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2008-09. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2009-10.

Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

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.

The penalty increase for misdemeanor child abuse in Section 1 of this bill amends GS 14-318.2(a) by increasing the penalty for misdemeanor child abuse by one class, from a Class 1 to a Class A1 misdemeanor. AOC data for calendar year 2007 indicate that 1,815 defendants were charged under this statute. Presently, the AOC estimates a cost of \$4,574 per trial for a Class A1 misdemeanor and the cost per plea is an estimated \$268 for the same offense class. AOC cost estimates account for indigent defense.

AOC estimates the total additional cost of disposing these cases at this higher punishment level would be approximately \$496,000 for the first full year, including costs for one district court judge, one deputy clerk, two assistant district attorneys, and some \$90,000 for indigent defense. The additional severity translates into more strenuous prosecution and defense of these cases, and more court time and expense to dispose of these cases.

Section 2 of the bill amends GS 14-318.2(b) by creating two new felonies for a parent or other caretaker who willfully commit an act or omission in the care of the child that shows reckless disregard for human life. To the extent that these offenses are being punished as misdemeanor child abuse under current GS 14-318.2(a), Fiscal Research does not expect a large number of new charges to arise from this bill, but rather an increased penalty for existing charges. This bill would increase the punishment by four classes if serious physical injury is involved and by six classes if serious bodily injury is involved. There is no data from which to determine how many existing misdemeanor offenses would be charged as Class E or Class H felonies under the bill. The increased punishment would be accompanied by more vigorous defense and prosecution, resulting in increased court time and costs to dispose of these cases. The differences in costs associated with increased penalties are illustrated in the table below:

	Cost Per Trial	Cost Per Plea		Cost Per Trial	Cost Per Plea
Class H Felony	7,934	353	Class E Felony	11,394	607
Class 1 Misdemeanor	4,016	265	Class 1 Misdemeanor	4,016	265
Difference in Cost	\$3,918	\$88	Difference in Cost	\$7,378	\$342

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

TECHNICAL CONSIDERATIONS: None

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