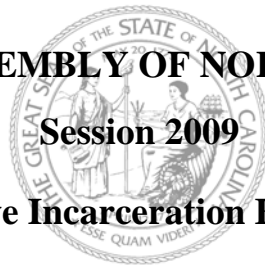


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 827 (First Edition)
SHORT TITLE: Unattended Children in Vehicles.
SPONSOR(S): Representative Underhill

Table with columns: FISCAL IMPACT, Yes (X), No (), No Estimate Available (X), FY 2009-10, FY 2010-11, FY 2011-12, FY 2012-13, FY 2013-14. Rows include EXPENDITURES, GENERAL FUND, Correction, Probation, Judicial, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

Enacts G.S. 14-318.5 making it unlawful for any parent, legal guardian, or person responsible for a child eight years old or younger to leave the child in a motor vehicle on any public street or public vehicular area without the child being supervised in the vehicle by a person who is at least 14 years old if: (1) the conditions within or in the immediate vicinity would cause a reasonable person to believe that there is a risk to the child's health or safety or (2) the engine of the motor vehicle is running, or the keys to the motor vehicle are anywhere in the passenger compartment of the vehicle, and the child is not in the immediate proximity or line of sight of the parent, legal guardian, or other person responsible for the child. For first offenses, the person must be issued a warning citation. Second or subsequent offenses are Class 2 misdemeanors. The court may, in its discretion, in lieu of imposing any other penalty, require any person convicted of this offense to attend and satisfactorily complete a specified community education program. Requires that by December 1, 2009, the Administrative Office of the Courts compile a list of appropriate community education programs and make that list available to the chief district judges. Effective December 1, 2009, and applies to offenses committed on or after that date
Source: Bill Digest H.B. 827 (03/26/0200).

ASSUMPTIONS AND METHODOLOGY:

General

The North Carolina 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.

Department of Correction – Division of Prisons

Because 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. *There would be no impact on the prison population or local jail populations for a first offense under the proposed bill. It is not known how many offenders might be convicted and sentenced as repeat offenders* (a Class 2 misdemeanor offense) under the proposed bill. In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 misdemeanor convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 1 and Class 2 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

It is possible that this conduct may currently be prosecuted under G.S. 14-316.1, Contributing to delinquency and neglect by parents and others, which is a Class 1 misdemeanor. In FY 2007-08, there were 411 convictions under G.S. 14-316.1. Because the Administrative Office of the Court's Automated Criminal/Infractions System does not contain data on the specific conduct involved or on the composition of prior criminal history, it is not known whether any of the 411 convictions were for conduct covered under the proposed offense. Because G.S. 14-316.1 is a Class 1 misdemeanor, and therefore a more serious offense class, eligible violations are not expected to be convicted under the proposed offense.

Subsection (c) allows the court, in its discretion, in lieu of imposing any other penalty, to require any person convicted of a violation of this section to attend and satisfactorily complete a community education program that includes instruction on the dangers of leaving young children unattended in motor vehicles. Persons required to attend and complete a prescribed community education program shall, upon completion, provide to the court satisfactory written evidence of satisfactory completion. This provision may also reduce any potential impact on local jail populations. As noted above, Class 2 misdemeanor convictions for the proposed offense would not be expected to have a significant impact on the prison population.

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.* Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

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 \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 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.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined*.

Judicial Branch

The Administrative Office of the Courts (AOC) 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.

Section 1

This section would create a new offense; *AOC has no data upon which to estimate the number of charges that would result*. Because warning citations will be issued for the first offenses, AOC would not anticipate an immediate impact from the Class 2 misdemeanor charge for second or subsequent offenses. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

Section 2

This section would require AOC to compile a list of community education programs that satisfy the bill's requirements. AOC does not currently have such a list, nor is one easily available through the Department of Health and Human Services. The North Carolina Parenting Education Network, a private organization, reports that there are at least 143 parenting education programs in 73 counties (survey results; 73 of 100 counties responded).

AOC staff reports that it would require one administrative secretary position full-time for six months at a cost of \$19,332 (pro-rated from an annual salary of \$38,664) to contact multiple organizations in each of the 100 counties, determine whether their programs contain the required element, and compile a list. After the initial compilation, some staff resources would be required on an ongoing basis to keep the list current. Fiscal Research questions whether AOC will need to use this type of resource (a full-time staff position for six months). Since county Social Services departments routinely refer clients to such programs, it should not require six months from a full-time staff person to simply compile a list of existing programs. In their analysis, AOC also pointed out that in order to compile the list of community education programs that satisfy the bill's requirements by the current effective date of December 1, 2009, the effective date for Section 2 may need to be later. However, Fiscal Research Division believes that if the proposed bill is

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.

enacted, there is sufficient time for AOC to compile such a list before any cases would actually come to trial.

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

TECHNICAL CONSIDERATIONS: The above cost estimate assumes that AOC will not be required to conduct in-depth, ongoing program reviews to ensure that each program meets the intent of this legislation. However, the bill language requires that the programs on AOC's list "satisfy the requirements" of new G.S. 14-318.5 (c). This could imply that AOC is in some way certifying or ensuring the quality of the programs. Such a function would be a new role for AOC and one which the agency is not necessarily equipped to fulfill. If AOC were required to ensure the quality of local programs, it would require significant additional resources to develop standards, conduct program reviews, and monitor programs.

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Signed Copy Located in the NCGA Principal Clerk's Offices