

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1245 2nd Edition

SHORT TITLE: 3rd Degree Sex Offense

SPONSOR(S): Rep. Clary et al.

FISCAL IMPACT

Yes (X) No () No Estimate Available (X)

FY 1999-00 FY 2000-01 FY 2001-02 FY 2002-03 FY 2003-04

Judicial Branch

Potential fiscal impact from new offense. No estimate available.

Department of Correction

No direct fiscal impact due to this bill for the Department of Correction because DOC can absorb the additional inmates within current prison bed capacity. However, there are several caveats to this conclusion:

- 1) there is an indirect cost to add additional inmates to the prison system since otherwise funds could be used for other purposes; see page 4 of this note for calculation of that cost:
- 2) based on current population and bed projections, there is no cost until year 6 but it would require funding to start construction by year 3 or 4:
- 3) if the Governor's budget recommendation to close 2,324 beds is accepted, there would be changes in the current population and bed projections that would result in the need for additional beds by year 4.

POSITIONS: None

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Judicial Branch, Department of Correction.

EFFECTIVE DATE: December 1, 1999

BILL SUMMARY:

3RD DEGREE SEX OFFENSE. TO CREATE THE CRIME OF THIRD DEGREE SEX OFFENSE. Adds new GS 14-27.5A making it third degree sexual offense to forcibly take or attempt an immoral, improper or indecent liberty with a person of either sex who is 16 or more years old for the purpose of gratifying a sexual desire, or to forcibly commit or attempt to commit any lewd or lascivious act upon or with the body or any body part of body of person of either sex who is 16 or more years old. Violation is Class F felony. Effective Dec. 1, 1999 and applies to offenses created on or after that date.

Source: Institute of Government, Daily Bulletin, April 15, 1999.

Substitute April 27, 1999.

3RD DEGREE SEX OFFENSE. AN ACT TO CREATE THE CRIME OF THIRD-DEGREE SEXUAL OFFENSE AND TO REQUIRE SEX OFFENDER REGISTRATION FOR CONVICTION OF THAT OFFENSE. Adds a section 2 that adds third-degree sexual offense to G.S. 14-208.6(5). Persons convicted of this offense would be required to register in the sex offender registration.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

Since this is a new offense, the Fiscal Research Division is unable to obtain reliable numbers for estimating the number of additional charges and convictions due to this bill. However, since HB 1245 creates a new offense and raises certain misdemeanor sex offenses to the Class F felony, it is likely that HB 1245 will increase court workload and costs, particularly in cases where the offense would have been a misdemeanor and would be a felony under this bill. Defendants are less likely to plea bargain and more likely to go to trial for felonies. There may also be an impact on the indigent defense costs.

While this is a new offense, if one assumed there would be as many convictions for the new offense as there are currently for second degree rape and sex offenses combined (144) in the AOC Fiscal 1997-98 database, there would clearly be additional court time and cost. Failure to register as a sex offender also results in a new Class F felony and could have limited court impact.

Department of Correction

If the number of convictions for third degree sex offenses are comparable to the convictions for the second degree rape and sex offenses combined (144), there could be 158 additional full time equivalent inmates during the first full year and 168 the second year from new convictions and probation revocations. This impact can be absorbed within the DOC's current prison bed capacity. However, there are several caveats to this conclusion as summarized on page 1 of this note. They are fully described below.

The following chart shows, for the end of each fiscal year, prison beds estimated to be available, the projected inmate population, the deficit or surplus of available beds compared to population, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (In the following chart, rows 4 and 5 are specific to this bill.)

| | June 30 <u>2000</u> | June 30 <u>2001</u> | June 30 <u>2002</u> | June 30 <u>2003</u> | June 30 <u>2004</u> |
|--|------------------------|------------------------|------------------------|------------------------|------------------------|
| 1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹ | 31,467 | 31,472 | 31,936 | 32,750 | 33,685 |
| 2. Projected No. of Prison Beds (DOC Expanded Capacity) ² | 34,493 | 34,717 | 34,717 | 34,717 | 34,717 |
| 3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act | +3,026 | +3,245 | +2,781 | +1,967 | +1,032 |
| 4. No. of Projected Additional Inmates Due to this Bill | 8 | 158 | 168 | 172 | 175 |
| 5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> | 0 | 0 | 0 | 0 | 0 |

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 175 inmates to the prison system by the end of FY 2003-04. Due to the gap between the time a felony offense is committed and the offender is sentenced, the effective date for prison impact is estimated to be June 1, 2000. Thus, impact for Fiscal 2000 is only estimated for the month of June.

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The population projections used for incarceration fiscal notes are based on January, 1999 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rates forecast 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.

² Projected number of prison beds based on Department of Correction estimates of available prison bed Expanded Operating Capacity (EOC) for beds completed or funded and under construction as of 2/19/99. The EOC is the number of beds above 100% capacity (Standard Operating Capacity). The EOC is authorized by previous court consent decrees or departmental policy. These bed capacity figures do not include any State prison beds that are contracted through local jails or any beds that would be lost to the system if any proposals to close small prisons are approved by the General Assembly during the 1999 Session.

There is no direct fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. However, even though costs can be absorbed due to available bed capacity, there is a daily cost for each inmate added to the system that will have to be expended in lieu of using available funds for other purposes or reverting these funds. The average cost per day for one inmate was the following in 1997-98:

DAILY INMATE COST

| Custody Level | <u>Minimum</u> | <u>Medium</u> | <u>Close</u> | <u>Statewide Average</u> |
|-------------------------------|----------------|---------------|--------------|--------------------------|
| Daily Cost Per Inmate (97-98) | \$51.27 | \$67.44 | \$78.64 | \$62.41 |

These costs include security, inmate costs (food medical etc.) and administrative overhead costs for the Department and the Division of Prisons.

NOTE: This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly. Other criminal penalty bill enhancements being considered by the General Assembly reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

FISCAL IMPACT BEYOND FIVE YEARS -- Fiscal Notes look at the impact of a bill through the year 2004. 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>2004-5</u> | <u>2005-6</u> | <u>2006-7</u> | <u>2007-8</u> |
|--------------------------|---------------|---------------|---------------|---------------|
| Inmates Due to This Bill | 179 | 183 | 187 | 190 |
| Available Beds | 117 | -757 | -1,708 | -2,557 |
| New Beds Needed | 62 | 940 | 1,895 | 2,747 |

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

TECHNICAL CONSIDERATIONS: None

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