

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1276 (Second Edition)
SHORT TITLE: Close Incest Loophole to Protect Minors
SPONSOR(S): Representative Nesbitt

FISCAL IMPACT

| Yes () | No () | No Estimate Available (X) | | |
|--------------------------|--------------------------|----------------------------------|--------------------------|--------------------------|
| <u>FY 2001-02</u> | <u>FY 2002-03</u> | <u>FY 2003-04</u> | <u>FY 2004-05</u> | <u>FY 2005-06</u> |

REVENUES

EXPENDITURES

Department of Correction – No estimate available, but no substantial impact expected
Judicial Branch –No estimate available, but no substantial impact expected

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Judicial Branch and Dept. of Correction

EFFECTIVE DATE: This act is effective December 1, 2001, and applies to offenses committed on or after that date.

BILL SUMMARY:

Current G.S. 14-178 (incest between certain near relatives) makes cases of carnal intercourse between a grandparent and grandchild, parent and child or stepchild or legally adopted child, or brother and sister of the half or whole blood a Class F felony. Current G.S. 14-179 (incest between uncle and niece and nephew and aunt) makes all cases of carnal intercourse between uncle and niece, and nephew and aunt a Class 1 misdemeanor. This bill amends GS 14-178 and GS 14-179 by adding new subsection (c) and subsection (b) respectively, to restrict the application of these sections to parties that are 16 years or older. It further adds that such conduct committed against a minor is unlawful and prosecutable under other provisions of applicable law.

ASSUMPTIONS AND METHODOLOGY:

Under HB 1276, incest offenses that would be charged as Class F felony or Class 1 Misdemeanor under current law would instead be charged as Class B1, B2, C, D, or E felonies as sex offenses involving minors.

Department of Correction

During FY 1999/2000 there were four convictions for felony incest (Class F felony) and two convictions for misdemeanor incest (Class 1 misdemeanor). It is unknown whether both parties were 16 years old or older. If these cases did involve minors, the offenders would face more serious penalties and more likely/longer active sentences. Not knowing which cases involved minors or whether defendants are now being charged under incest rather than other laws, it is not possible to determine the impact of this bill on the prison population but it would clearly not be large. However, since there are no available prison beds in the fiscal note horizon, even 1 additional bed would have a fiscal impact.

Judicial Branch

Under current provisions of law, offenses involving sex acts committed against minors are typically felony level offenses that are as or more severe in punishment level, and not limited by familial relation or age. For example, AOC notes that current G.S. 14-202.1 makes it a Class F felony for any person to take indecent liberties with children. There may be some cases involving minors, currently disposed of as Class 1 misdemeanor charges under G.S. 14-179, which might be disposed of as felonies under the proposed bill. As a result of this penalty enhancement, convicted defendants would be more likely to serve longer sentences and be ineligible for community sanctions. Moreover, trials and pleas would demand more court time and preparation time as a result of the stiffer penalty under the bill.

AOC data for calendar year 2000 show that 58 defendants were charged under G.S. 14-178 and 2 defendants were charged under G.S. 14-179. However, data are not available on the number of defendants that commit such acts against minors. AOC assumes that this bill would affect a relatively small number of cases, such that they would not expect a substantial impact on the courts.

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

TECHNICAL CONSIDERATIONS: None
FISCAL RESEARCH DIVISION: 733-4910

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