

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 263 (First Edition)
SHORT TITLE: Unborn Victims of Violence.
SPONSOR(S): Representatives Walend, Steen, Folwell, and Samuelson

FISCAL IMPACT table with columns: Yes (X), No (), No Estimate Available (), FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12. Rows include GENERAL FUND (Correction, Judicial), ADDITIONAL PRISON BEDS, POSITIONS, and EFFECTIVE DATE.

BILL SUMMARY: H.B. 263 amends G.S. 14-17, 14-18, and 14-18.2 to provide:

Sections 1&2: That a person who commits first or second degree murder (G.S. 14-17) or manslaughter (G.S. 14-18) of a pregnant woman and causes the death of her unborn child is guilty of a separate offense for the death of the child; and,

Section 3: That a person who injures a pregnant woman during the commission of a domestic violence misdemeanor or any felony offense and causes a miscarriage or stillbirth of her unborn child is guilty of a separate offense, punishable at the same level as the underlying offense (G.S. 14-18.2).

The bill additionally specifies that the offender need not know that the victim was pregnant nor intend to cause the death of an unborn child to be guilty of these offenses.

Source: Adapted from Bill Digest H.B. 263

ASSUMPTIONS AND METHODOLOGY:

Summary

Because this bill creates new criminal offenses, the Sentencing Commission and Administrative Office of the Courts (AOC) have no historical data from which to estimate the potential impact on the State's prison population and Judicial Branch. For each proposed offense, it is not known how many prior year charges or convictions involved a pregnant woman and ultimately resulted in the death of her unborn child. As such, the prison bed impact and associated cost to the Department of Correction, as well as the cost to the Courts to dispose of future charges, cannot be determined.

For sentences under this bill that are of similar length and served concurrently there would be no impact on the prison population. However, there would be an impact (some of which would occur beyond the five-year fiscal note horizon) for any sentence served *consecutively* to that of the underlying offense. Since it is not known how these offenders would be sentenced (and how many offenders would be sentenced), the impact on the prison population and bed needs cannot be determined.

Department of Correction: Division of Prisons

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 incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill. Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the five-year fiscal note horizon and beyond.*¹

Sections 1 and 2: First & Second Degree Murder; Voluntary & Involuntary Manslaughter

Table I illustrates FY 2005-06 convictions, active sentencing rates, and potential prison bed impacts for the proposed First & Second-Degree Murder and Voluntary & Involuntary Manslaughter offenses. It is not known how many prior year convictions involved a pregnant woman; nor is it known how an offender might be sentenced under this bill. Thus, the precise impact on prison population and bed needs is indeterminate. *As noted in the table, fiscal impact will most likely occur due to lengthened concurrent sentences or consecutive sentences for voluntary and involuntary manslaughter offenses.*

Table I. Potential Prison Bed Impact				
Offense	FY 05/06 Convictions	Offense Class	Active Rate	Average Estimated Time Served
First-Degree Murder	84	Class A	100%	Death / Life Without Parole
Offenders convicted of first-degree Murder are either punished capitally, or given a life sentence without parole; therefore, a separate offense for causing the death of an unborn child would have no impact on prison population. In FY06, 77 of the 84 First Degree Murder convictions received life w/out parole.				

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in December 2006.

Second-Degree Murder	208	Class B2	100%	184 months
The separate offense would not result in any short-term prison population impact (i.e., within the five-year fiscal note horizon); however, this proposal could have a long-term impact if sentences for separate offenses were served consecutive to the principal sentence for second-degree Murder.				
Voluntary Manslaughter	80	Class D	100%	66 months
There would be an impact on the prison population if: 1) sentences for the separate offense were served consecutively; or, 2) sentences were served concurrently, but these sentences for the separate offense were longer than the underlying voluntary manslaughter sentence.				
Involuntary Manslaughter	88	Class F	55%	21 months
There would be an impact on the prison population if: 1) active punishment is imposed; 2) sentences for the separate offense were served consecutively; and/or, 3) sentences were served concurrently, but these sentences for the separate offense were longer than the underlying involuntary manslaughter sentence.				

Section 3: Injury to a Pregnant Woman

Current G.S. 14-18.2 provides that a felony or misdemeanor domestic violence offense that causes injury to a woman known to be pregnant, and which proximately results in a miscarriage or stillbirth, is punishable at one offense class higher than the principal offense. H.B. 263 eliminates this one-class sentence enhancement and also the requirement that an offender know the victim is pregnant; instead, making the offense punishable as a separate felony or misdemeanor, of the same class as the underlying offense.

Because active sentencing rates and average sentence lengths vary widely based on the offense class and prior record level for applicable offenses, the Sentencing Commission cannot determine how this provision would impact the prison population. However, in FY 2005-06, one misdemeanor conviction received the current sentence enhancement (G.S. 14-18.2), indicating that potential impact may not be significant.²

In general, the proposed separate felony offense would impact the prison population if: 1) active punishment is imposed; 2) sentences for the separate offense were served consecutive to the underlying offense; and/or, 3) sentences for the separate offense were served concurrent to the sentences for the underlying offense, but were longer than the principal sentences. Conversely, because active sentences of 90 days or less are served in county jails, there is minimal prison impact assumed for separate misdemeanor offenses.³ However, the impact on local jails is unknown.

Per Structured Sentencing, Classes 1 and A1 misdemeanor convictions may receive active sentences of up to 120 and 150 days, respectively (only for those in higher Prior Record Levels). Accordingly, prison bed needs could increase if future convictions for the proposed separate misdemeanor offense were to result in active sentences longer than 90 days. In addition, the Department of Correction could incur some additional costs for county reimbursement (\$18/day), were future misdemeanor active sentences to exceed 30 days in length.

² In FY 2005-06, no felony convictions received the penalty/sentence enhancement under current G.S. 14-18.2.

³ Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

Department of Correction: Division of Community Corrections

To the extent that future convictions for the proposed offenses were to occur, the Division of Community Corrections (DCC) could assume some additional costs for offenders placed under its jurisdiction. This impact would be driven primarily by additional intermediate punishments, and/or lengthened post-release supervision. However, it is not known how intermediate or community punishments or post-release supervision would differ for the affected offenses.

- Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution.⁴
- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

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.

Sections 1 and 2: First & Second Degree Murder; Voluntary & Involuntary Manslaughter

AOC expects that additional charges occurring under this bill for any murder or manslaughter case would involve additional and likely complex legal and factual issues and, as such, would add a significant amount of time to case preparation, jury selection, and the evidentiary and sentencing phase if brought to trial. Since the average cost to dispose of these cases is significant, particularly for capital cases, AOC expects that the additional workload could entail substantial costs if only a few cases were affected. Calendar year 2006 charge frequencies for the affected offenses are listed below.⁵ However, it is not known how many of these cases involved a pregnant woman and/or resulted in the death of an unborn child; therefore, the exact cost cannot be determined.

Class	Offense	Charges
A	First-Degree Murder	415
B2	Second-Degree Murder	100
D	Voluntary Manslaughter	25
F	Involuntary Manslaughter	100

⁴ 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.

⁵ In CY 2006, approximately 380 defendants were charged with murder under current G.S. 14-17, with no designation of first or second-degree murder, since this information is sometimes unknown at the time of charge.

Section 3: Injury to a Pregnant Woman

Current G.S. 14-18.2 provides that a felony or misdemeanor domestic violence offense that causes injury to a woman known to be pregnant, and which proximately results in a miscarriage or stillbirth, is punishable at one offense class higher than the principal offense. Accordingly, charges may currently be brought for the second offense. H.B. 263 eliminates this one-class sentence enhancement and also the requirement that an offender know the victim to be pregnant; instead, making the offense punishable as a separate felony or misdemeanor, of the same class as the underlying offense. AOC expects that, for any case in which an additional charge is alleged, some time and cost would be incurred due to enhanced litigation. However, in CY 2006, only four individuals were charged under current G.S. 14-18.2, indicating that the potential impact may not be significant.

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