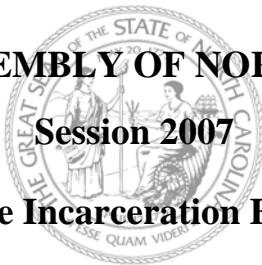


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 554 (Second Edition)
SHORT TITLE: Assault Disabled Person/Institutional Setting-AB
SPONSOR(S): Representative Insko

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction	No significant impact anticipated. Exact amount cannot be determined. See Assumptions and Methodology – p. 2-3				
Judicial	No significant impact anticipated. Exact amount cannot be determined. See Assumptions and Methodology – p. 3				
TOTAL EXPENDITURES:	Amount cannot be determined.				
ADDITIONAL PRISON BEDS: (cumulative)*	Amount cannot be determined.				
POSITIONS: (cumulative)	Amount cannot be determined.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	December 1, 2007.				
<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: Under current G.S. 14-32.2, it is a Class A1 misdemeanor to physically abuse a patient of a health care facility or resident of a residential care facility, when such conduct evinces a pattern of conduct that is “willful or culpably negligent and proximately causes bodily

injury to a patient or resident.” The second edition of H.B. 554 increases the penalty for such offense to a Class H felony. The act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

If only one future charge were to become subject to the proposed penalty enhancement, there would be some fiscal impact. However, given the low number of prior year charges and convictions for this particular offense (G.S. 14-32.2(b)(4)), this proposal is not expected to generate a significant fiscal impact.

Department of Correction – Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond. Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.*

Class A1 misdemeanants sentenced to active punishment typically serves the designated term of incarceration within a local jail.¹ In contrast, most active sentences for felony convictions are served in state prison.² In FY 2005-06, the average estimated time served for a Class H felony offense was 11 months; the average estimated time served for a Class A1 misdemeanor offense was 50 days. *Accordingly, the proposed penalty enhancement (Class H felony) will not only lengthen time served for the affected offense, but also necessitate imprisonment within a state facility.*

In FY 2005-06, there was one Class A1 misdemeanor conviction for patient abuse and neglect, under G.S. 14-32.2(b)(4). Based on this low number of convictions, Fiscal Research does not anticipate that the proposed enhancement will have a significant impact on the prison population. However, the actual numbers of future offenses, convictions, and resultant active sentences could vary.

For illustration, *if three Class H felony convictions were to occur under this proposal per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first applicable year; two additional prison beds in the second year; and one new employee in the second year.* Assuming this threshold and inmate assignment to medium custody, the construction of two prison beds within a new, stand alone facility could cost the State \$136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$84,240.³ These costs are attributed to FY 2007-08 since the construction of

¹ In FY 2005-06, 26% of Class A1 misdemeanor convictions (for all crimes and prior record levels) received active sentences, with an average estimated time served of 50 days; 34% of Class H felony convictions received active sentences, with an average estimated time served of 11 months.

² Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are 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.

³ New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$28,250 in FY 2008-09, and \$58,195 in FY 2009-10.⁴

Department of Correction – Division of Community Corrections

In FY 2005-06, 66% of Class H felony convictions resulted in non-active, intermediate or community sentences. Thus, *assuming that future convictions for the enhanced offense were to occur, the Division of Community Corrections (DCC) could assume some additional costs for offenders placed under its supervision.* It is not known exactly how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

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. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, 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

Based on preliminary data for calendar year 2006, there were 5 defendants charged with a Class A1 misdemeanor under G.S. 14-32.2. Given this low number of charges, the proposed penalty enhancement is not expected to generate a significant impact on the court system.

Under the proposed enhancement, from a Class A1 misdemeanor to a Class H felony, alleged violators of G.S. 14-32.2(b)(4) would be tried in superior court, rather than district court. This elevation to superior court would increase jury involvement, and potentially workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel. Moreover, because defendants would be subject to longer sentences, it is anticipated that more cases would result in trial, rather than guilty plea.

Assuming that five cases were to occur per year, and that a higher percentage would result in trial, the AOC estimates that this penalty enhancement could cost an additional \$495 in the first full applicable year; \$519 in the second year. These cost estimates are based on projected court-time requirements for judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings. Actual court-time costs may vary with time requirements and disposition (i.e. trial or plea).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁴ Impact on incarcerated population is assumed to begin in FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

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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