

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: SB 877 2nd Edition
SHORT TITLE: Child Care Facilities/Penalties
SPONSOR(S): Senator Purcell

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
Correction					
Recurring					Unable to determine exact amount.
Nonrecurring					
Judicial					
Recurring					Unable to determine exact amount.
Nonrecurring					
TOTAL EXPENDITURES:					Unable to determine exact amount.
ADDITIONAL PRISON BEDS*					Unable to determine exact number of beds.
POSITIONS: (cumulative)					Unable to determine exact amount.
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch					
EFFECTIVE DATE: December 1, 2003					
<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 SUMMARY¹: SB 877 increases the punishment for the illegal operation of a child care facility from a misdemeanor to a felony. Current G.S. 110-103 provides that it is a Class 1

¹ AOC Research and Planning Division

misdeemeanor (Class 3 misdemeanor for an operator of a family child care home) to offer or provide child care without complying with the provisions of Article 7 of Chapter 110 governing child care facilities, including (1) advertising without disclosing the child care facility's identifying number that is on the license or letter of compliance (G.S. 110-98); (2) failing to display a current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any rating which may appear on the license (G.S. 110-99); and (3) failing to distribute to the parents, guardian, or full-time custodian of each child receiving child care at the facility a document containing the provisions of Article 7 as summarized by the Secretary of the Department of Health and Human Services (G.S. 110-102).

SB 877 amends current G.S. 110-103 by making it a Class I felony to: (1) willfully fail to display a current license in a prominent place at all times; and (2) provide child care for more than two children for more than four hours per day on two or more consecutive days.

In addition, SB 877 makes it a Class H felony to: (1) violate any provision of this Article and, as a result of the violation, cause serious injury to a child attending the facility; and (2) advertise the child care facility without disclosing its identifying number, after having been convicted of a prior offense. SB 877 does not modify the current Class 1 misdemeanor punishment for a first conviction.

Furthermore, SB 877 also expands current G.S. 110-99 by requiring a child care facility to maintain a current license. Current G.S. 110-99 requires each child care facility to display its current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any rating which may appear on the license. This provision does not apply to drop-in or short-term child care facilities (except those located in churches), defined in current G.S. 110-86(2)(d) as facilities that provide care while parents participate in activities that are not employment related and where they are on the premises, such as care provided in health spas or shopping malls. This bill adds a new subsection (a) making it unlawful for a child care facility to operate without a current license issued by the Child Care Commission pursuant to G.S. 110-88. Violation of this provision is a Class I felony per the amended G.S. 110-103.

ASSUMPTIONS AND METHODOLOGY:

Data from the Department of Health and Human Services, Division of Child Development, reveal that there were 273 reports of illegal child care operations in 2002. Of those, 84 were found to be operating illegally. Once determined illegal, the caregivers must reduce the number of unrelated children they care for to two children, which is allowed under state law, or become a legal certified child care home through the star-rated licensure program.

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts 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. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

SB 877 subsection (b) raises violations of G.S. 110-99(a) from a Class 1 misdemeanor to a Class I felony. However, because there is no AOC offense code, which is often some indication that these offenses are infrequently charged and/or infrequently result in convictions, it is not known how many offenders the bill might affect. Section (b) also makes it a Class I felony for a person to willfully violate the provisions of Article 7 while providing child care for more than two children for more than four hours per day on two or more consecutive days.

If, for example, there were ten convictions that were reclassified from Class 1 misdemeanor convictions to Class I felony convictions under this proposed subsection per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days.) In contrast, Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 9 percent of Class I felony offenders were sentenced to active sentences, 36 percent were sentenced to intermediate sanctions, and 55 percent were sentenced to community punishment. On average, offenders served between eight and nine months. Convictions that increase Class 1 and 3 misdemeanors to Class I felonies will result in more frequent, longer active sentences served in state prisons rather than local jails.

Since subsections (c) and (d) of the bill creates a new Class H felony offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be sentenced for this proposed offense. If, for example, there were three Class H convictions under this proposed subsection per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. Class H felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 34 percent of Class H felony offenders were sentenced to active sentences, 50 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders served between ten and twelve months. The number of second or subsequent convictions of G.S. 110-86(3) or G.S. 110-103 that may result from this bill is unknown. It is also unknown the number of convictions that may result from violations of HB 241 will result in serious injury to a child attending the facility.

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.

The AOC has no data regarding the number of charges filed under the existing misdemeanor provisions, or other data from which to estimate the number of charges that could arise from this bill. The term “serious injury” is not defined, and a broad construction could lead to many Class H felony charges. “Serious injury” under current G.S. 14-33 (Class A1 misdemeanor assault) includes serious physical injury as well as damage other than bodily injury, such as economic damage. “Serious bodily injury” is defined in current G.S. 14-32.4 (Class F felony assault) as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, permanent or protracted condition that causes extreme pain, permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. For offenses that are brought to trial as Class I felonies, the estimated court cost per trial is \$5,687. For Class I felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$323. For offenses that are brought to trial as Class H felonies, the estimated court cost per trial is \$6,066. For Class H felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$352.

SOURCES OF DATA: Department of Health and Human Services - Division of Child Development, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None.

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April 25, 2003



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