

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1463 (First Edition)

SHORT TITLE: Assault/Rape of Child by Parent or Guardian.

SPONSOR(S): Representative Sutton

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND	Costs, beds, and positions are dependent upon the number and offense class of convictions enhanced by this bill (see Tables 3 and 4 on pg. 4 for details).¹				
Correction (recurring)	-	\$.3M - \$1.5M	\$1.1M - \$5.5M	Annual operating costs could equal or exceed a range of \$1.1 to \$5.5 million by FY 2007-08 and beyond.	
Judicial (recurring)	\$.2M - \$.7M	\$.3M - \$1.3M	Annual costs could equal or exceed a range of \$.3 to \$1.3 million by FY 2006-07 and beyond.		
LOCAL GOVERNMENTS	Exact amount cannot be determined.				
ADDITIONAL PRISON BEDS*	0	14 - 62	45 - 217	Prison bed needs could equal or exceed a range of 45 to 217 by FY 2007-08 and beyond.	
POSITIONS: (cumulative)	0	6 - 25	18 - 87	Positions could equal or exceed a range of 18 to 87 by FY 2007-08 and beyond.	
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments					
EFFECTIVE DATE: December 1, 2005					
<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: This bill would add new sections to Article 81B to increase the penalty by one offense class for certain assaults committed against a victim less than sixteen years of age by the child’s parent, legal custodian, guardian, or other person standing in loco parentis. The enhancements under the bill would not apply if the age of the victim or the relationship of the defendant to the victim is needed to prove an element of the offense. The facts that would justify the enhancement must be alleged in an indictment and, absent a guilty plea, be found beyond a reasonable doubt by a jury.
Source: Administrative Office of the Courts, Research and Planning 03/31/05.

¹ Fiscal impact reflects a partial estimated cost if a range of one to five percent of charges and convictions for the eligible offenses were elevated an offense class under this bill. There would be additional beds and costs beyond the five-year fiscal note horizon. If more than five percent of charges and sentences were enhanced, the fiscal impact could be significantly greater.

ASSUMPTIONS AND METHODOLOGY:

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 does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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.*

This bill would enhance the sentence by one offense class for an individual convicted of felony or misdemeanor assault or a sex offense under selected statutes provided that a) the victim was 15 years of age or less at the time of the offense, and b) the offender was the victim's legal custodian, parent, guardian, or other person standing in loco parentis.

As shown in Tables 1 and 2 below, in FY 2003-04 there were 18,838 convictions for felony or misdemeanor assault and 221 convictions for sexual offenses that would be eligible for a one-class penalty enhancement due to this bill. These figures exclude offenses where age or a parental relationship is an element of the offense, as they would not be subject to the penalty enhancement.

Table 1: FY 2003-04 Felony and Misdemeanor Assault Convictions

Offense Class	General Statute	Convictions
C, E	§ 14-32 <i>Assault with a deadly weapon with intent to kill or inflicting serious injury.</i>	587
F, H	§ 14-32.4 <i>Assault inflicting serious bodily injury, strangulation.</i>	194
A1, 1, 2	§ 14-33 <i>Misdemeanor assaults, batteries, and affrays.</i>	17,670
A1	§ 14-34 <i>Assaulting by pointing gun.</i>	298
E	§ 14-34.1 <i>Discharging certain barreled weapons/firearm into occupied property.</i>	89
Total		18,838

Table 2: FY 2003-04 Felony Sex Offense Convictions Under Selected Statutes

Offense Class	General Statute	Convictions
B1, B2	§ 14-27.2 <i>First-degree rape.</i>	22
C, D	§ 14-27.3 <i>Second-degree rape.</i>	102
B1, B2	§ 14-27.4 <i>First-degree sexual offense.</i>	40
C, D	§ 14-27.5 <i>Second-degree sexual offense.</i>	57
Total		221

Because the age of the victim and the nature of the relationship between the offender and victim in these cases are unknown, we are unable to estimate how many of these 1,091 felony and 17,968 misdemeanor convictions would be eligible for the sentence enhancement under the proposed bill. For every conviction elevated one class, the proportion of active sentences and the average active sentence

length would increase. The impact due to this bill on prison population and local jail populations could be substantial if a large number of convictions become subject to the one-class enhancement.

Felony Offenses: The average number of additional months served for each felony conviction elevated one class due to this bill would vary depending upon the original felony class of the offense and prior record level of the offender. All felony Class A and B1 offenders and, except in the event of extraordinary mitigation, all felony Class B2 through D offenders must receive active sentences. Due to the length of sentences imposed, the number of prison beds required for these offenders will build over time, as new offenders enter the system prior to the release of existing offenders. As a result, convictions elevated to felony classes D through A due to this bill would have an impact beyond the five-year fiscal note horizon.

Misdemeanor Offenses: Raising the offense class of a misdemeanor would principally impact incarceration rates of local jails, rather than the state prison population, due to the relatively short sentence lengths of these offenses. However, reclassifying Class A1 misdemeanor convictions as Class I felonies would impact prison population. Convictions elevated from misdemeanor Class 2 to Class 1 would likely result in longer jail sentences and greater costs to DOC to reimburse counties for housing those offenders.

Non-Active Sentences: Convictions for Class I through E felonies and all misdemeanor classes may result in non-active sentences administered by the Division of Community Corrections (DCC). For any sentence enhanced one felony or misdemeanor class due to this bill, the offender is less likely to receive a non-active sanction. For any offender who receives an active rather than supervised non-active punishment because of this bill, there would be short-term cost savings to DCC. However, in the long term DCC would incur the cost of post-release supervision for Class B1 through E offenders upon their release from prison.

OPERATING: Operating costs are based on actual 2003-04 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent annual inflation rate will be added each year to the base costs for FY 2003-04 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

Daily Inmate Operating Cost 2003-04

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2003-04)	\$49.34	\$65.59	\$82.46	\$62.03

Table 3 on the next page illustrates a partial prison bed impact if one percent of convictions were subject to the enhancement under this bill and if five percent of convictions were subject to the enhancement under this bill. The fiscal impact, within the five-year fiscal note horizon, would be concentrated on convictions elevated in two offense classes: felony Class E to D and misdemeanor Class A1 to felony Class I. As custody levels would vary depending upon the offense class of the conviction, bed costs are calculated using the statewide average of \$62.03 per inmate per day.

Table 3: FY 06-07, 07-08 Additional Prison Beds and Costs Under 1% / 5% Scenarios²

Offense Class	FY 03-04 Convictions	FY 06-07 Impact				FY 07-08 Impact			
		New Beds		Bed Costs		New Beds		Bed Costs	
		1%	5%	1%	5%	1%	5%	1%	5%
B1 (→ A) ³	33	-	-	Increase bed needs and costs beyond five-year fiscal note horizon.					
B2 (→ B1)	29	-	-	Increase bed needs and costs beyond five-year fiscal note horizon.					
C (→ B2)	211	-	-	Increase bed needs and costs beyond five-year fiscal note horizon.					
D (→ C)	39	-	-	Increase bed needs and costs beyond five-year fiscal note horizon.					
E (→ D)	582	3	11	\$74,220	\$272,140	7	30	\$178,390	\$764,529
F (→ E)	195	-	-	Some additional prison beds and fiscal impact at 1% / 5% levels.					
H (→ G)	2	-	-	Some additional prison beds and fiscal impact at 1% / 5% levels.					
A1 (→ I)	12,356	11	51	\$272,140	\$1,261,740	38	187	\$968,338	\$4,765,244
1 (→ A1)	147	-	-	Impact principally on local jails.					
2 (→ 1)	5,452	-	-	Impact principally on local jails.					
3 (→ 2)	13	-	-	Small impact to local jails.					
Total	19,059	14	62	\$346,360	\$1,533,880	45	217	\$1,146,728	\$5,529,773

Felony Class E → D Convictions elevated from felony Class E to Class D would have an immediate impact due to the increase in active sentence rate from 51 to 100 percent. As shown in Table 4 below, additional prison beds would be needed beyond FY 2007-08 at a one and five percent threshold for convictions elevated from felony Class E to Class D.

Table 4: Additional Beds for Convictions Elevated to Class D

Fiscal Year	Estimated Additional Prison Beds	
	1%	5%
2008-09	11	50
2009-10	17	74
2010-11	21	91
2011-12	22	98
2012-13	24	106
2013-14	24	111
2014-15	24	115

Misdemeanor Class A1 → Felony Class I Convictions elevated from misdemeanor Class A1 to felony Class I would have an immediate impact on prison population due to the substantial number of offenders convicted of Class A1 misdemeanors for the selected offenses. As misdemeanants, these offenders would be primarily housed in county jails if given an active sentence, but as felony Class I offenders these individuals would be housed in state prison. In FY 2003-04 eleven percent of Class I felony convictions resulted in active sentences and the average minimum active sentence length imposed was seven months.

² While the Sentencing and Policy Advisory Commission provided these scenarios, it cannot project the actual number of prison beds created by this bill.

³ Assumes offenders would receive life sentences if elevated from Class B1 to Class A.

The chart below compares the projected inmate population if five percent of convictions were elevated by this bill to available prison bed capacity system-wide and shows any population increases caused by a specific bill. 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.* That means the number of beds needed (row five) is always equal to the projected additional inmates due to a bill (row four).

Rows four and five in the chart show the impact of this specific bill assuming five percent of convictions are enhanced. As shown in bold in the chart below, the Sentencing Commission estimates that this specific legislation will add at least 217 inmates to the prison system by the end of FY 2009-10 if five percent of the eligible convictions are elevated one offense class.

	June 30 <u>2006</u>	June 30 <u>2007</u>	June 30 <u>2008</u>	June 30 <u>2009</u>	June 30 <u>2010</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ⁴	38,106	39,021	39,864	40,750	41,668
2. Projected No. of Prison Beds (DOC Expanded Capacity) ⁵	37,015	37,911	38,807	38,807	38,807
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,091	-1,110	-1,057	1,943	-2,861
4. No. of Projected Additional Inmates Due to this Bill⁶	-	62	217	217+	217+
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³	-	62	217	217+	217+

POSITIONS: It is anticipated that at least 87 positions would be needed to supervise the additional inmates housed under this bill by 2009-10. This position total includes security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last five prisons opened by DOC and two prisons under construction. Two of the prisons were medium custody and five were close custody.

⁴ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

⁵ Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 2004. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

⁶ Criminal penalty bills effective December 1, 2005 will not affect prison population and bed needs until FY 2006-07 due to the lag time between when an offense is committed and an offender is sentenced.

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.

AOC data for calendar year 2004 show over 70,000 defendants charged with felony or misdemeanor assaults under G.S. 14-32, 14-32.4, 14-33, 14-34, and 14-34.1 and over 1300 defendants charged with sex offenses under G.S. 14-27.2, G.S. 14-27.3, G.S. 14-27.4, or G.S. 14-27.5.⁷ No estimate is available regarding the number of these charges that would be elevated one misdemeanor or felony class as a result of this bill because the age of the victim and the relationship between the victim and defendant are unknown.

Because the defendant would face a more severe penalty, AOC expects that court workload would increase (as a result of more vigorous defense and prosecution) for any charge elevated by one offense class due to this bill. To illustrate the potential magnitude of these costs, the following table outlines additional position and indigent defense costs if a range of one to five percent of the eligible 71,300 charges required *two additional hours of court time* due to this bill. Indigent defense costs are calculated assuming that half of the affected defendants would be indigent. AOC provided a cost estimate based on the five percent scenario as shown below, and Fiscal Research created this range by including a one percent scenario.

Table 5: Estimated Court Impact Under 1% / 5% Scenarios

	Estimated Court Impact	
	1%	5%
Charges With Increased Workload	713	3,565
Additional Judges, Assistant District Attorneys, and Deputy Clerks	1	4
Total Positions Cost	\$255,607	\$1,022,428
Indigent Defense Cost (\$65 per hour)	\$46,345	\$231,725
Total Cost	\$301,952	\$1,254,153

The figures in the box on the first page reflect this cost range adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective and inflated at a rate of 5 percent for FY 2006-07.

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

TECHNICAL CONSIDERATIONS:

1) *Convictions Elevated to Class A:* It is unclear whether felony Class B1 convictions would become Class A convictions due to this bill. Felony Class A carries a penalty of incarceration for life without parole or death. For the purposes of this analysis, it is assumed that these offenders would not be eligible for the death penalty. Therefore, moving them from Class B1 with an average

⁷ These figures exclude offenses where the victim's age or the relationship to the defendant is needed to prove an element of the offense, as the penalty for those offenses would not be enhanced by this bill.

active sentence length of 255 months to Class A with a life sentence would result in a long-term prison impact.

2) *New Sections*: To be ordered sequentially, new §15A-1340.60E and §15A-1340.60F should be §15A-1340.16E and §15A-1340.16F, respectively.

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Signed Copy Located in the NCGA Principal Clerk's Offices