

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1489 (First Edition)

SHORT TITLE: Indecent Exposure/Increase Penalty.

SPONSOR(S): Representative Johnson

		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						
Correction	Exact amount cannot be determined; small increase in payments by DOC to local jails for offenders sentenced to more than thirty days.					
Judicial	Exact amount cannot be determined; no substantial impact anticipated.					
LOCAL GOVERNMENTS	Exact amount cannot be determined; will likely increase local jail populations and costs but no substantial fiscal impact is anticipated.					
ADDITIONAL PRISON BEDS*	It is likely that most offenders receiving active sentences under this bill would be housed in local jails. The exception would be Class 1 misdemeanants falling in Prior Record Level III, who are eligible for active sentences long enough to be served in state prison.					
POSITIONS: (cumulative)	Exact amount cannot be determined; no additional positions anticipated.					
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: Under current G.S. 14-190.9(a), it is a Class 2 misdemeanor for a person to willfully expose his or her private parts in any public place in the presence of other persons of the opposite sex, to aid and abet any such act, or procure another to perform such act. This bill would make such exposure in the presence of a person under the age of 13 a Class 1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

General

Current Class 2 misdemeanor Indecent Exposure offenses committed in the presence of a person less than 13 years of age would become Class 1 misdemeanors due to this bill. Elevating the penalty from a Class 2 to Class 1 misdemeanor would be expected to result in longer sentences for convicted offenders, slightly more active sentences, and an increase in payments by the Department of Correction (DOC) to local jails for housing offenders with active sentences. Additionally, costs in district court would be expected to increase due to more vigorous defense and prosecution as a result of the increased penalty for the offense.

While there is data regarding the number of present Indecent Exposure charges and convictions, it is unknown how many of the offenses were committed in the presence of a person less than 13 years of age and would, therefore, be elevated to Class 1 misdemeanors due to this bill. As such, the costs to local jails, DOC, and the Courts associated with raising the penalty for some Indecent Exposure offenses cannot be determined.

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.*

- It is not known how many of the existing convictions for Indecent Exposure were committed in the presence of a person less than 13 years of age and would, therefore, be elevated to Class 1 misdemeanors due to this bill.
- Of the 189 Class 2 misdemeanor convictions in FY 2003-04 for Indecent Exposure, 48 resulted in active sentences (25%) and the average estimated time served was 19 days. In contrast, of all Class 2 misdemeanor convictions in FY 2003-04, 15 percent resulted in active sentences with an average estimated time served of 13 days.
- During FY 2003-04, 19 percent of all Class 1 misdemeanors resulted in active sentences, with an average estimated time served of 31 days. Given that the current active sentence rate and length for Indecent Exposure exceeds the average for misdemeanor Class 2, it is likely that, for sentences enhanced to Class 1 misdemeanors by this bill, the active rate and sentence length would exceed the average for misdemeanor Class 1.
- Due to the potential for longer sentences and increases in the numbers of active sentences and sentences longer than thirty days, there would likely be increased costs to local jails

and to DOC, which reimburses counties for housing misdemeanants sentenced to between thirty and ninety days at a rate of \$18 per day per offender.

- As the active sentence rate would likely be higher for convictions elevated to Class 1 misdemeanors due to this bill, fewer non-active sentences would be expected. As such, some cost savings to the Division of Community Corrections (DCC) would be anticipated under this bill.

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.

For calendar year 2004, AOC data indicates that 516 individuals were charged with a Class 2 misdemeanor for Indecent Exposure. Due to lack of historical data, AOC is unable to estimate the numbers of Class 2 misdemeanor charges that would be elevated to Class 1 misdemeanors as a result of this bill. For any charge reclassified as a Class 1 misdemeanor, AOC anticipates that additional court time and attorney preparation time would be needed to dispose of the charge as a result of more vigorous defense and prosecution.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated increase in cost to dispose of a single charge via trial that is elevated from a Class 2 to Class 1 misdemeanor is \$891. This cost includes an estimated increase of \$507 costs of time in court and attorney costs and an additional \$384 in indigent defense. However, based on prior-year data, the majority of charges under this bill that are not dismissed are likely to be settled by guilty plea at an estimated increase in cost of \$8 per plea.

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