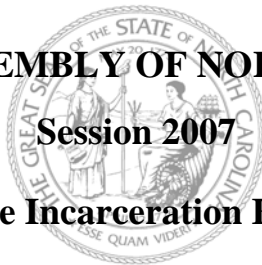


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 995 (First Edition)
SHORT TITLE: Increase Penalty/Starvation of Animals.
SPONSOR(S): Representative McElraft

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), TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS, POSITIONS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

**BILL SUMMARY:** Current G.S. 14-360(a) provides that it is a Class 1 misdemeanor offense to intentionally "...injure, torment, or kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal..." Similarly, current G.S. 14-360(b) provides that it is a Class I felony offense to "...maliciously torture, mutilate, maim, cruelly beat, disfigure, or kill...any animal..." or to cause/procure such act.

H.B. 995 amends G.S. 14-360(b) to also provide that it is a Class I felony to kill, or cause/procure to be killed, any animal *by intentional deprivation of necessary sustenance*. It is assumed that inclusion in this subsection requires that the offense be done "*maliciously*."

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

To the extent the proscribed acts are now prosecuted as "maliciously" killing or causing/procuring the killing of any animal (Class I felony), the proposed change would have little impact. However, if such acts are now prosecuted at the Class 1 misdemeanor level as intentional starvation, the proposed change could enhance the penalty for offenses meeting the "malicious" criterion - to the Class I felony level.

Offense data for G.S. 14-360 does not distinguish how many violations have resulted in the killing of an animal due to intentional starvation, or at what level such violations were prosecuted. Therefore, Fiscal Research cannot estimate the number of future violations that might fulfill the elements of the proposed Class I felony offense. However, *the relatively low number of felony charges and convictions under G.S. 14-360(b), coupled with the applicable penalty levels, does not suggest this proposal will have 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.*<sup>1</sup> Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

There were 9 Class I felony convictions under G.S. 14-360(b) during FY 2005-06, relative to 196 Class 1 misdemeanor convictions under G.S. 14-360(a). Based on this low number of felony convictions, *the proposed change is not assumed to result in a significant number of additional felony convictions.*

However, it is not known how prosecution, conviction rates, or sentencing practices will differ in response to this proposal. If certain offenses, which would otherwise be prosecuted at the Class 1 misdemeanor level, were elevated to the Class I felony level, the enhancement would: 1) potentially increase the rate of active sentencing (incarceration); 2) significantly lengthen the period of incarceration; and 3) necessitate imprisonment within a state facility, thereby increasing

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<sup>1</sup> 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. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

the demand for prison beds.<sup>2</sup> In FY 2005-06, 20% of Class 1 misdemeanor convictions received active sentences, with an average estimated time served of 31 days. In contrast, 15% of Class I felony convictions received active sentences, with an average estimated time served of approximately 7 months.<sup>3</sup>

For illustration, if twelve Class I convictions were to occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; four additional beds in the second year; and 2 new employees in the second year.* Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State \$272,160 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$168,480.<sup>4</sup> These costs are attributed to FY 2007-08 since the construction of 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 \$116,390 by FY 2009-10.<sup>5</sup>

### **Department of Correction – Division of Community Corrections**

In FY 2005-06, 85% of Class I felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation.<sup>6</sup> Thus, *assuming that future felony convictions occur, the Division of Community Corrections could assume some additional costs for offenders placed under its jurisdiction.* It is not known how many offenders might be sentenced to intermediate or community punishments, to which type, or for how long. However, Fiscal Research anticipates that the majority of potential DCC costs will be incurred due to increased intermediate sanctioning.

- 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.
- 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.

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<sup>2</sup> 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.

<sup>3</sup> These FY 2005-06 statistics per offense class are total conviction averages across all prior record levels and sentencing ranges (mitigated, presumptive, and aggravated). The type of sentence imposed (active, intermediate, or community) and length of sentence imposed could vary for affected offenses.

<sup>4</sup> 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). “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).

<sup>5</sup> Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

<sup>6</sup> 80% of Class 1 misdemeanor convictions resulted in non-active sentences in FY 2005-06.

## **Judicial Branch**

AOC data for CY 2006 show 136 defendants charged with a felony under G.S. 14-360(b), relative to 446 charged with a misdemeanor under G.S. 14-360(a). Again, it is not known how prosecution may differ in response to the proposed change (e.g. how many Class I felony charges might occur for the proscribed offense, in lieu of Class 1 misdemeanor charges). However, the Administrative Office of the Courts expects that any potential penalty enhancement would be accompanied by more vigorous defense and prosecution, and would thereby increase court-time requirements and the associated costs of case disposal. Specifically, the AOC estimates that affected cases would be elevated to superior court, increasing jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel. Table I demonstrates the estimated differences in costs per single trial and plea for an affected case.

<b>Table 1. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08</b>				
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>	<i>Change in Cost: Trial</i>	<i>Change in Cost: Plea</i>
Class 1 Misdemeanor	\$ 3,702	\$ 243	N/A	N/A
Class I Felony	\$ 6,980	\$ 298	\$ 3,278	\$55

As shown, prosecution at the Class I felony level could cost an additional \$3,278 per trial, and \$55 per plea. These cost estimates account for indigent defense. Actual costs may vary with time requirements and disposition.

**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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**DATE:** May 10, 2007

**Signed Copy Located in the NCGA Principal Clerk's Offices**