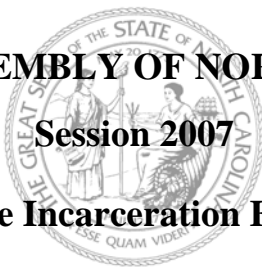


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** Senate Bill 132 (First Edition)  
**SHORT TITLE:** Protect Children From Sexual Predators Act.  
**SPONSOR(S):** Senator Dalton

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring</b>		\$693,537	\$1,758,568	\$1,899,253	\$2,051,194
<b>Nonrecurring</b>	\$3,674,160				
<b>Judicial</b>					
<b>Recurring</b>	<u>\$50,061</u>	<u>\$85,825</u>	<u>\$90,116</u>	<u>\$94,622</u>	<u>\$99,353</u>
<b>Nonrecurring</b>					
<b>TOTAL</b>					
<b>EXPENDITURES:</b>	\$3,724,221	\$779,362	\$1,848,684	\$1,993,875	\$2,150,547
<b>ADDITIONAL PRISON BEDS:</b>					
(cumulative)*	NA	23	54	54	54
<b>POSITIONS:</b>					
(cumulative)		9	22	22	22
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> December 1, 2007					
*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.					

**BILL SUMMARY:**

February 13, 2007

S 132. PROTECT CHILDREN FROM SEXUAL PREDATORS ACT. Filed 2/13/07.

TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR; TO PROVIDE THAT IT SHALL BE ILLEGAL FOR THE OWNER OR OPERATOR OF A social networking WEBSITE to allow a minor using a protected computer to create or maintain a profile web page on a social networking web site WITHOUT the permission of the minor's parent or guardian and without providing such parent or guardian access to such profile web page and to provide for penalties; to provide that a film processor, PHOTO finisher, or computer technician who, in the course of work, encounters an image of a minor ENGAGING in sexual activity must report the name of the customer requesting the work to the appropriate authorities; to increase the penalty for certain offenses of solicitation of child by computer to commit an unlawful sex act; to make it a felony to lie to a sworn SBI agent conducting an official investigation; to provide that an investigative grand jury may investigate certain alleged crimes in addition to those relating to controlled substances and to amend the procedure for convening an investigative grand jury.

Amends GS 14-190.13(S) to expand the definition of sexual activity to include lascivious exhibition of a person's pubic area. Amends GS 14-190.16 (d) to increase the penalty for first degree sexual exploitation of a minor from a Class D to a Class C felony. Amends GS 14-190.17 (d) to increase the penalty for second degree sexual exploitation of a minor from a Class F to a Class D felony. Amends GS 14-190.17A (d) to increase the penalty for third degree sexual exploitation of a minor from a Class I to Class E felony.

Enacts new GS 14-190.25, requiring film, digital image, video processor, photo finisher, and computer technicians to report images of minors engaging in sexual activity. Provides a person acting in compliance with the statute immunity from any civil or criminal liability. States that knowingly violating the section is punishable by a fine of \$250. Makes the definitions in GS 14-190.13 apply to the new section.

Amends GS 14-202.3(c) to make solicitation of a child by computer for an unlawful sex act a Class E felony (was, Class H) if the defendant or the person for whom the defendant was arranging the meeting physically appears at the meeting location. Amends GS 14-225 to make it a Class H felony to provide false information during an official inquiry by a sworn agent of the State Bureau of Investigation.

Enacts new GS 14-318.5 requiring parental permission for minors using a protected computer to become a member of or to create and maintain a profile web page on a social networking website. Requires that the social networking website provide the parent or guardian with access to the profile web page at all times. A first violation is a Class 3 misdemeanor; second and subsequent violations are Class 1 misdemeanors.

Enacts new GS 15A-632 (a) to authorize the convening of a grand jury to investigate allegations of the commission of numerous listed crimes, and new subsection (b) to require that beginning December 1, 2007, and every two years thereafter, the Chief Justice must appoint a permanent panel of three superior court judges to decide all petitions to convene an investigative grand jury during the two-year period. Current law requires the appointment of a new three-judge panel upon receipt of each grand jury petition. Repeals GS 15A-622(h) and 15A-623(h) and incorporates these provisions into GS 15A-632(c) and (d), respectively, but deletes the

requirements that grand jury petitions be approved by three members of the NC Conference of District Attorneys and that the Attorney General and the Clerk of the NC Supreme Court concur in the petition. Makes technical corrections and conforming changes. Effective for offenses committed on or after December 1, 2007 *Source: Bill Digest S.B. 132 (02/13/2000).*

**ASSUMPTIONS AND METHODOLOGY:**

**General**

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

**Department of Correction – Division of Prisons**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 6, 2006. Official Department of Correction capacity projections also assume the General Assembly will fund 500 additional prison beds, generated by partial double-celling of the future Tabor City facility (inmate admission FY 2008-09). However, Fiscal Research does not include these 500 beds in capacity estimates (row two), since these beds have not been authorized for funding.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of (bill number). As shown, the Sentencing Commission estimates that this specific legislation will add (total) inmates to the prison system by the end of FY 2011-12.

	<b>June 30 <u>2008</u></b>	<b>June 30 <u>2009</u></b>	<b>June 30 <u>2010</u></b>	<b>June 30 <u>2011</u></b>	<b>June 30 <u>2012</u></b>
1. Projected No. of Inmates Under Current Structured Sentencing Act <sup>2</sup>	39,621	40,236	41,021	41,848	42,718
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	38,505	39,353	39,353	39,353	39,353
3. Projected No. of Beds Over/Under Inmate Population	-1,116	-883	-1,668	-2,495	-3,365
<b>4. Projected No. of Additional Inmates <u>Due to this Bill</u> <sup>3</sup></b>	N/A	23	54	54	54
<b>5. No. of Additional Beds Needed <u>Each Fiscal Year Due to this Bill</u> NA</b>		<b>23</b>	<b>54</b>	<b>54</b>	<b>54</b>

<sup>1</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in December 2006.

<sup>3</sup> Criminal penalty bills effective December 1, 2007 should not affect prison population and bed needs until FY 2008-09, due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

**POSITIONS:** It is anticipated that by FY 2011-12, approximately 22 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2011-12. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to (bill number); and, the estimated number of new beds required each year through FY 2015-16.

	<b>June 30 <u>2013</u></b>	<b>June 30 <u>2014</u></b>	<b>June 30 <u>2015</u></b>	<b>June 30 <u>2016</u></b>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,234	-5,117	-5,996	-6,866
2. <i>Projected No. of Additional Inmates Resulting From <u>(Bill Number)</u></i>				
3. <i>Estimated No. of New Beds Required Under <u>(Bill Number)</u></i>			<i>Cannot be determined</i>	

**CONSTRUCTION:** Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;<sup>4</sup> or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”<sup>5</sup> Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

**Estimated Construction Cost per Custody Level, FY 2006-07**

<b><u>Custody Level</u></b>	<b><u>Minimum</u></b>	<b><u>Medium</u></b>	<b><u>Close</u></b>
Cost Per Bed: EOC “Stand Alone”	\$56,000	\$63,000	\$109,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$71,000

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” Table* (p.1) in 2007/08. An annual inflation rate of eight percent (8.0%) is applied to these base costs.<sup>6</sup> As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

<sup>4</sup> New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

<sup>5</sup> Close and medium custody “add-on” facilities 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 built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

<sup>6</sup> Office of State Construction, March 24, 2006.

*Accordingly, given a minimum increase of 54 inmates by 2012 and construction of a “stand alone” medium custody facility, the cost is approximately \$3,674,160 in 07/08 (54 beds times \$63,000 plus 8% inflation per year). Provision of beds through “add-on” could reduce cost to \$2,274,480 (54 beds times \$39,000 plus 8% inflation per year).*

**OPERATING:** Operating costs are based on actual FY 2005-06 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 (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate* in the “Fiscal Impact” table (p.1).

**Daily Inmate Operating Cost per Custody Level, FY 2005-06**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$54.81	\$70.83	\$79.72	\$66.87

*Given the increased felony classes in SB 132, rather than use the daily average cost, it was assumed more of these offenders would be assigned to medium custody for the longest portion of their sentence. Cost estimate used was \$70.83 per day or \$25,853 per year plus 3% annual inflation). Costs are based on year beds are needed starting with FY 08/09 (See Fiscal Impact Table (Table 1) on Page 1 of this note.*

**METHODOLOGY FOR DETERMINING PRISON BED IMPACT FOR SB 132**

For various reasons—small number of convictions, creating new crimes, and lack of information on the nature of certain offenses – the Sentencing Commission was unable to use the Sentencing Simulation Model to project the prison bed impact due to SB 132. However, given the variety of increased or new penalties that are likely to increase sentences to active time and increase the prison population, Fiscal Research asked the Commission staff to estimate the minimum impact of Sections 1 through 8 of SB 132.

These estimates are shown in Table 2 and in the narrative that follows the chart. Estimates could not be made *beyond 2009/10 so no growth factor for prison population or beds is included. However, additional population increases beyond 2009/10 are likely.*

**TABLE 2 Offenses in SB 132 and Prison Bed Impact**

<b><u>Changes in Criminal Penalties or Scope of Current Law.</u></b>	<b><u>08/09 Bed impact</u></b>	<b><u>09/10 Bed impact</u></b>	<b><u>10/11 Bed Impact</u></b>	<b><u>11/12 Bed impact</u></b>
<b><u>Sect 1 – expand definition &amp; scope of current criminal offenses</u></b>				
1 <sup>st</sup> degree sex exploitation	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>
2 <sup>nd</sup> degree	<b>1</b>	<b>3</b>	<b>3</b>	<b>3</b>
3 <sup>rd</sup> degree	<b>1</b>	<b>4</b>	<b>4</b>	<b>4</b>
Promote prostitution of Minor (Class D Felony)	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>
Participate in Prostitution of Minor (Class E Felony)	<b>1</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b><u>Section 2 – Increase Penalty for 1st degree sex exploit. from Class D to C Felony</u></b>	<b>No impact till Year 6 or 7</b>			
<b><u>Section 3 – Increase Penalty for 2nd degree sex exploit. Class F to D Felony</u></b>	<b>7</b>	<b>14</b>	<b>14</b>	<b>14</b>
<b><u>Section 4 – Increase Penalty for 3rd degree sex exploit. Class I to E Felony</u></b>	<b>9</b>	<b>21</b>	<b>21</b>	<b>21</b>
<b><u>Section 6 Increase Penalty to Solicit Child by Computer under certain conditions to Class E Felony</u></b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b><u>Section 7 New Class H Felony to File false SBI Report</u></b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>
<b><u>Section 8 New offense “Social Network Sites”</u></b>	<b>Class 3 misdemeanor, or Class 1 for 2<sup>nd</sup> or subsequent offense –small impact on county jails</b>			
<b><u>TOTAL</u></b>	<b>23</b>	<b>54</b>	<b>54</b>	<b>54</b>

**Section 1 (Section 1 and the narrative for Sections 2 through 8 are primarily taken from analysis by the Sentencing Commission)**

The proposed bill amends G.S. 14-190.13(5), expanding the definition of “sexual activity” to include the “lascivious exhibition of the genitals or pubic area of any person” as a sexual act that constitutes sexual activity. The provision would expand the scope of G.S. 14-190.16 through G.S. 14-190.19. It would not expand G.S. 14-190.14 and -190.15 because the act is already included in the offense.

*The addition to the definition of “sexual activity” expands the conduct prohibited and therefore the potential pool of offenders under the following statutes:*

### **Section 1 (Continued)**

1) G.S. 14-190.16, First Degree Sexual Exploitation of a Minor (currently a Class D offense). There were 3 convictions for First Degree Sexual Exploitation of a Minor in FY 2005/06. Of these 3 convictions, all received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2005/06 the average estimated time served for an offender convicted of a Class D offense was 75 months. If, for example, there was one additional conviction for this offense per year, the proposed bill would result in the need for one additional prison bed the first year and two additional prison beds the second year

2) G.S. 14-190.17, Second Degree Sexual Exploitation of a Minor (currently a Class F offense). There were 14 convictions for Second Degree Sexual Exploitation of a Minor in FY 2005/06. Of these 14 convictions, 57% (n=8) received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill 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

3) G.S. 14-190.17A, Third Degree Sexual Exploitation of a Minor (currently a Class I offense). There were 21 convictions for this offense in FY 2005/06. Of these 21 convictions, none received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year

4) G.S. 14-190.18, Promoting Prostitution of a Minor (currently a Class D offense). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Further, it is not known how many additional convictions may result from expanding the definition of “sexual activity.”

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2005/06 the average estimated time served for an offender convicted of a Class D offense was 75 months. If, for example, there was one conviction for this offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the mandatory active sentences and

long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

5) G.S. 14-190.19, Participating in Prostitution of a Minor (currently a Class F offense). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.19. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Further, it is not known how many additional convictions may result from expanding the definition of “sexual activity.”

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill 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.

## **Section 2**

Under the proposed bill G.S. 14-190.16, First Degree Sexual Exploitation of a Minor, would be reclassified from a Class D felony to a Class C felony. There were three convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population would occur if Class D First Degree Sexual Exploitation of a Minor convictions become Class C convictions under the proposed bill because of the longer average estimated time served (95 months for a Class C compared to 75 months for a Class D). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. If, for example, there were three convictions for this offense per year, this bill would result in the need for three additional prison beds the sixth year and six additional prison beds the seventh year. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

## **Section 3**

Under the proposed bill G.S. 14-190.17, Second Degree Sexual Exploitation of a Minor, would be reclassified from a Class F felony to a Class D felony. There were 14 convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population will occur if Class F Second Degree Sexual Exploitation of a Minor. Less serious convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 47% for Class F) and longer average estimated time served (75 months for Class D compared to 19 months for Class F). If, for example, there were 14 Class F felony convictions that were reclassified as Class D felony convictions, this would result in the need for seven additional prison beds the first year and 14 additional prison beds the second year. In addition, there will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class F to a Class D.



#### **Section 4**

Under the proposed bill G.S. 14-190.17A, Third Degree Sexual Exploitation of a Minor, would be reclassified from a Class I felony to a Class E felony. There were 21 convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population will occur if Class I Third Degree Sexual Exploitation of a Minor convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (49% for Class E compared to 15% for Class I) and longer average estimated time served (31 months for Class E compared to 7 months for Class I). If, for example, there were 21 Class I felony convictions that were reclassified as Class E felony convictions, this would result in the need for nine additional prison beds the first year and 21 additional prison beds the second year. In addition, there will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class I to a Class E.

#### **Section 6**

The proposed bill reclassifies G.S. 14-202.3, Solicitation of Child by Computer to Commit an Unlawful Sex Act, from a Class H felony to a Class E felony under certain circumstances. There were no convictions for which this offense was the most serious offense of conviction in fiscal years 2002/03, 2003/04, 2004/05, or 2005/06; thus, a detailed impact projection could not be computed using the Structured Sentencing Simulation Model.

Impact on the prison population will occur if Class H Solicitation of Child by Computer to Commit an Unlawful Sex Act convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (49% for Class E compared to 34% for Class H) and longer average estimated time served (31 months for Class E compared to 11 months for Class H). If, for example, there were 3 Class H felony convictions that were reclassified as Class E felony convictions, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.

#### **Section 7**

Section 7 of the proposed bill creates a **new offense** under G.S. 14-225, making it a Class H felony, in response to an official inquiry by a sworn SBI agent, to willfully falsify or conceal by any trick, scheme or device a material fact; make any false, fictitious, or fraudulent statement or representation; or use any false writing or document, knowing it to contain any materially false, fictitious, or fraudulent statement or entry.

Persons eligible for conviction of the proposed offense currently may be convicted of the existing offense of giving a false report to a law enforcement agency or officer under G.S. 14-225, a Class 2 misdemeanor, or of the common law offense of obstructing justice. In FY 2005/06, there were 349 convictions under G.S. 14-225, and there were 88 convictions for obstructing justice, currently punishable as a Class 1 misdemeanor. The proposed offense is limited to false information given only to sworn agents of the SBI, but is broader than the existing offense in that it does not require that false information be given for the purpose of hindering the agent's investigation. It is not known how many of the convictions under the current offenses would meet the elements of the proposed offense, how many of these convictions were limited to the SBI, or how many new convictions would result from the broader coverage.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill 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.

### **Section 8**

Section 8 of the proposed bill creates a **new offense** under G.S. 14-318.5 for any owner or operator of a “social networking web site” (as defined by the proposed bill) to allow a minor using a computer within the geographic boundaries of North Carolina to become a member of or create a profile on such web site without the permission of the minor’s parent or guardian or without providing the parent or guardian access to the profile at all times.

A first offense under this statute by the owner or operator is a Class 3 misdemeanor. A second or subsequent offense is a Class 1 misdemeanor.

It is assumed for purposes of this analysis that the Class 1 punishment would apply only to a second or subsequent offense committed *after* an offender’s first conviction under this statute. However, because the proposed bill prescribes increased punishment for the second “offense,” the statute could be interpreted to permit the increased punishment for the second occurrence of conduct that violates the statute, even if the offender has not yet been charged and convicted for the first occurrence. If the statute were given that interpretation, it is likely that any entity in violation of the statute would be eligible for conviction of the Class 1 misdemeanor almost immediately, because the owner or operator of a social networking web site that fails to perform the steps necessary to confirm a user’s status as a minor and to obtain parental permission would likely commit multiple incidents of the proposed offense in a short time frame as multiple profiles are created.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill for a first offense or a subsequent offense. The proposed offense may be committed by either a corporate entity or an individual; however, any potential prison impact is based on the conviction of individuals. Corporate offenders may be punished by a fine, only.

In FY 2005/06, 23% of Class 3 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 3 convictions was 3 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed

offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.<sup>7</sup>

*Given the wide variety of serious offenses modified by SB 132, the type of supervision and length of stay under supervision could increase significantly but a reliable fiscal impact figure cannot be determined.* 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 ranges from \$7.71 to \$14.97, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.97 for the initial six-month intensive duration, and \$1.96 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

*Further, since many of these offenses are B1--E offenses, the number of offenders on Post Release Supervision will also increase but the number of offenders and the cost cannot be reliably determined.*

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the 05/06 collection rate was 66%.

### **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

*Given the seriousness of these offenses, the increase in criminal penalties, and the expansion in scope for the offenses in SB 132, court time for court personnel and for indigent defense attorneys is likely to increase.. AOC's analysis of cost impact, adjusted by Fiscal Research, is shown in Table 3*

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<sup>7</sup> DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

**TABLE 3 Offenses in SB 132 and Court Impact**

<u>Changes in Criminal Penalties or Scope of Current Law.</u>	<u>Charges 05/06</u>	<u>07/08 Costs (7 months)</u>	<u>08/09</u>	<u>09/10</u>
<b>Sect 1 – expand definition &amp; scope of current criminal offenses</b>				
1 <sup>st</sup> degree sex exploitation	<b>26</b>	<b>Fiscal impact but cant be determined for Sect 1 scope changes</b>		
2 <sup>nd</sup> degree	<b>69</b>	<b>See above</b>		
3 <sup>rd</sup> degree	<b>76</b>	<b>See above</b>		
Promote prostitution of Minor (Class D felony)	<b>No offense codes</b>	<b>See Above</b>		
Participate in Prostitution of Minor (Class E felony)	<b>No offense codes</b>	<b>See above</b>		
<b>Section 2 – Increase Penalty Class First degree sex exploit. Class D to C felony</b>	<b>26</b>	<b>\$1,181</b>	<b>\$2,025</b>	<b>\$2,126</b>
<b>Section 3 – Increase Penalty Class 2nd degree sex exploit. Class F to D felony</b>	<b>69</b>	<b>\$17,965</b>	<b>\$30,800</b>	<b>\$32,340</b>
<b>Section 4 – Increase Penalty Class 3rd degree sex exploit. Class I to F felony</b>	<b>76</b>	<b>\$16,332</b>	<b>\$28,000</b>	<b>\$29,400</b>
<b>Section 6 Solicit Child by Computer –Class H to E felony</b>	<b>62</b>	<b>\$14,582</b>	<b>\$25,000</b>	<b>\$26,250</b>
<b>Section 7 New offense to File false SBI report</b>	<b>Costs cannot be determined</b>			
<b>Section 8 New offense “Social Network Sites”</b>				
<b>TOTAL</b>	<b>NA</b>	<b>\$50,061</b>	<b>\$85,825</b>	<b>\$90,116</b>

Costs in Table 3 assume seven months of court time/costs in 2007/08 due to December 1 effective date; full year costs starting in 2008/09. 5% inflation is added each year. The five year costs are shown in the Fiscal Impact Table on Page 1

AOC has developed standardized costs for handling court cases – court time for judicial officials and indigent defense counsel for both jury trials and plea arrangements – based on the criminal penalty for both felonies and misdemeanors. **Table 4 below shows the differences in the cost of handling cases based on offense class. For SB 132, several offenses are increased one felony class, thus automatically increasing court costs**

**Table 4 AOC Costs by Offense Class**

<b>Offense Class</b>	<b>Costs Per Trial</b>	<b>Costs Per Plea</b>
Class 2 Misdemeanor	\$2,770	\$230
Class 1 Misdemeanor	\$3,702	\$243
Class A1 Misdemeanor	\$4,215	\$245
Class I Felony	\$6,980	\$398
Class H Felony	\$7,345	\$325
Class G Felony	\$9,310	\$520
Class F Felony	\$9,902	\$539
Class E Felony	\$10,551	\$560
Class D Felony	\$11,786	\$606
Class C Felony	\$13,049	\$657

**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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