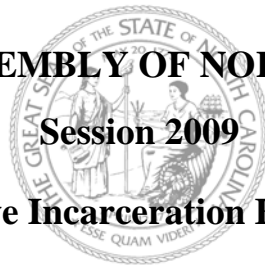


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1503 (First Edition)
SHORT TITLE: Ethen's Law/Injury to Pregnant Woman.
SPONSOR(S): Representatives Starnes, Lucas, Folwell, and McElraft

FISCAL IMPACT table with columns for Yes (X), No (), and No Estimate Available (X) across fiscal years FY 2009-10 to FY 2013-14. Includes rows for EXPENDITURES (GENERAL FUND: Correction, Probation, Judicial), ADDITIONAL PRISON BEDS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

This bill amends the existing one-class enhancement in G.S. 14-18.2 to create a separate offense that would be one class higher if the offender injured a pregnant woman in the commission of an offense if the injury occurs after the woman's twentieth week of pregnancy. It also amends an existing aggravating factor. This bill is substantively identical to Senate Bill 13. Effective December 1, 2009.

ASSUMPTIONS AND METHODOLOGY:

General

The North Carolina 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

Section 1

G.S. 14-18.2(b), Injury to pregnant woman; separate offense; punishment, currently increases the offense class of the underlying felony offense by one class if a person, while in the commission of a felony, causes injury to a pregnant woman, knowing the woman to be pregnant, and the injury results in a miscarriage or stillbirth by the woman. This Section would make it a separate offense that would be one class higher than the underlying felony offense if the injury occurs after the woman's twentieth week of pregnancy. If the offense is a Class A or B1 felony, the new offense would be a Class A felony. (The amendment does not require that the offenses run consecutively.) If the injury occurs up to and including the woman's twentieth week of pregnancy, it would remain a one-class enhancement. In FY 2007-08, there were no convictions that received this sentence enhancement.

This Section also adds felony offenses that result in the death of the pregnant woman. In FY 2007-08, there were 527 convictions for felony homicide offenses, however, it is not known how many of the homicide victims were pregnant women or included a miscarriage or stillbirth.

There would be no impact if the injury occurs up to and including the woman's twentieth week of pregnancy, since it would remain a one-class enhancement. For injuries that occur after the woman's twentieth week of pregnancy, *it is not possible to determine the number of convictions or the offense class for the convictions to which this bill could apply.* The percentage of offenders receiving active sentences and the minimum sentence imposed vary greatly depending on felony offense class and prior record level. As a result, *impact for this proposal cannot be determined.* Since the punishment for the current sentence enhancement and the proposed separate offense are the same (one class higher than the underlying offense), the proposed separate offense would be served consecutive to the sentence for the underlying offense.

Subsection (c) currently increases the offense class by one class if a person, while in the commission of a misdemeanor that is an act of domestic violence as defined in G.S. Chapter 50B, causes injury to a pregnant woman, knowing the woman to be pregnant, and the injury results in a miscarriage or stillbirth by the woman. This Section would make it a separate offense that would be one class higher than the underlying misdemeanor offense. If the offense was a Class A1 misdemeanor, the defendant is guilty of a Class I felony. (The amendment does not require that the offenses run consecutively.) This amendment does not include the twenty-week element. In FY 2007-08, there were no convictions that received this sentence enhancement.

It is not possible to determine the number of convictions or the offense class for the convictions to which this bill could apply. The percentage of offenders receiving active sentences and the sentence imposed vary depending on misdemeanor offense class and prior conviction level. In FY 2007-08, 22% of misdemeanor convictions resulted in active sentences, with an average time served of 24 days. Since the punishment for the current sentence enhancement and the proposed separate offense are the same (one class higher than the underlying offense), the proposed separate offense would only have impact on the prison population when the sentence for the proposed separate offense would be served consecutive to the sentence for the underlying offense and the sentence length exceeds 90 days. However, convictions for misdemeanor

offenses typically do not have a substantial impact on the prison population. Convictions for the proposed separate offense may have an impact on local jail populations, but the impact cannot be determined.

Section 2

This Section amends G.S. 15A-1340.16(d)(11) to add “pregnant” to the list of victim vulnerability characteristics. *It is not known how many sentences might be aggravated if this aggravating factor is broadened to include pregnant women.* The aggravated sentence range allows the judge to impose a sentence that is up to 25% longer than the longest sentence in the presumptive sentence range. During FY 2007-08, 3% (n=365) of all felony convictions receiving active sentence fell into the aggravated sentence range. The Administrative Office of the Courts’ computerized Criminal Information System does not contain data on the application of aggravating or mitigating factors. The aggravating factor in the proposed bill could apply to numerous offenses and the impact of aggravated sentences varies considerably by offense class (e.g. little impact for low-level felonies with increasing impact as one moves up the grid to having a substantial impact for Class B1 felonies). Therefore, *it is not possible to determine the impact on the state prison system.*

It is important to note that 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 and beyond.* Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

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.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 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.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

Judicial Branch

The Administrative Office of the Courts (AOC) 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.

¹ 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.

Section 1

AOC data for Calendar Year 2008 show two defendants were charged under current G.S. 14-18.2(b). Under the proposed bill, there would be additional felony charges in the case, as opposed to the one felony charge punishable one class higher than the underlying felony when the injury occurs after the woman's twentieth week of pregnancy. *This additional serious charge could add substantial time and cost to the litigation of these cases.*

In Calendar Year 2008, a total of 1,076 defendants were charged with murder or manslaughter under G.S. 14-17 and 14-18. AOC cannot determine how many of these charges involved a pregnant woman and *has no data from which to estimate the number of additional charges that would arise from this provision.* The additional charges, potentially capital murder, would result in a substantial increase in the workload of Superior Court judges, district attorneys, court reporters, and deputy clerks. There would also be an increase in expenditures for indigent defense, jury fees, and for appeals and post-conviction proceedings.

With respect to the commission of a domestic violence misdemeanor against a pregnant woman, this bill also modifies current G.S. 14-18.2(c) by providing that the person is guilty of a separate misdemeanor that is one class higher than the underlying misdemeanor.

AOC data for Calendar Year 2008 show two defendants charged with current G.S. 14-18.2(c). Under this bill, there would be an additional misdemeanor charge in the case, as opposed to the one misdemeanor charge punishable one class higher than the underlying misdemeanor. *This additional charge could add some time and cost to the litigation of these cases.*

Section 2

This proposed bill expands the list of aggravating factors under current G.S. 15A-1340.16(d)(11) by including pregnant women in the class of protected victims. AOC cannot determine how many felony offenses were committed against pregnant women, or the number of defendants who would be subject to an increased penalty. AOC expects a potential increase in punishment, however, to be accompanied by more vigorous defense and prosecution, resulting in increased court time and costs to dispose of these cases. *AOC would expect an increase in the workload of Superior Court judges, district attorneys, clerks, and indigent defense counsel.*

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Danielle Seale, Denise Thomas

APPROVED BY:

Marilyn Chism, Director
Fiscal Research Division

DATE: April 22, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices