

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 707 (Second Edition)

SHORT TITLE: School Violence Prevention Act.

SPONSOR(S): Senator Tucker

FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()	
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>
EXPENDITURES:				
Correction				
Probation				
Judicial				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch				
EFFECTIVE DATE: Sections 5, 6, 7, and 8 of the act become effective December 1, 31 2011, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Sections 1, 2, 3, and 4 apply beginning with the 2011-2012 school year.				
<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:

Section 1 enacts new G.S. 115C-288(g), requiring a superintendent to immediately report a specified act to local law enforcement, when the superintendent has personal knowledge or actual notice that the act occurred on school property, as defined. The bill requires the superintendent to notify the local board of education in writing or by electronic mail about any report made to law enforcement by the end of the workday on the day of occurrence and no later than the end of the following workday.

Section 2 enacts new G.S. 115C-532.1, prohibiting probation officers and juvenile court counselors from visiting students during the school day or on school property.

Section 3 amends G.S. 115C-390, stating that no local board of education will be civilly liable to any person for acting or failing to act to stop or intervene in an altercation between students, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing. Also, the act provides that no school employee will be reprimanded or dismissed for acting or failing to act to stop or intervene in an altercation.

Section 4 enacts new G.S. 14-458.2, stating a student who is convicted of cyber-bullying a school employee must be transferred to another school within the local school administrative unit. If there is no other appropriate school, the student must be transferred to a different class or assigned to a teacher who was not involved as a victim of the cyber-bullying.

Section 5 enacts new subsection (b1) to G.S. 15A-301, prohibiting any warrant or order for arrest, criminal summons, or other criminal process from being issued by a magistrate against a school employee for an offense that occurred while the employee was performing duties of employment, without prior written approval by the district attorney. The act clarifies that the provision does not apply to traffic offenses or offenses occurring in the presence of a law enforcement officer.

Section 6 defines school employee and student, as applicable in the statute. Subsection (c) provides that it shall be a Class 2 misdemeanor for any student to use a computer or computer network to cyber-bully a school employee. The section also permits the court to place a student on probation without entering a judgment of guilt and with the student's consent, if the student pleads guilty or is found guilty of cyber-bullying. In addition, the act directs the court to discharge and dismiss the proceedings after the student fulfills the terms of probation, which will not be deemed a conviction.

Section 7 enacts new G.S. 14-266.4, making any employer or supervisor guilty of a Class 2 misdemeanor, if that person intimidates or attempts to intimidate a school employee against reporting an assault under G.S. 14-33. The act also makes an employer or supervisor who knows about an assault on a school employee and fails to report the assault guilty of a Class 2 misdemeanor.

Section 8 enacts new G.S. 14-33.3, protecting any school employee, as defined, from civil or criminal liability for acting in good faith to end a fight or altercation between students.

Sections 5, 6, 7, and 8 of the act become effective December 1, 31 2011, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Sections 1, 2, 3, and 4 apply beginning with the 2011-2012 school year.

SOURCE: BILL DIGEST S.B. 707 (04/19/0201)

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

Section 1: Currently, G.S. 115C-288(g) provides that it shall be a Class 3 misdemeanor for a school principal to fail to immediately report to the appropriate local law enforcement agency an act that has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, or possession of a firearm, weapon or controlled substance in violation of the law. The bill deletes the part of the subsection (g) which provides that it shall be a Class 3 misdemeanor to fail to report such an act to law enforcement.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 115C-288(g). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Section 6: The proposed legislation enacts G.S. 14-458.2, Cyber-bullying of school employee by student; penalty. Subsection (c) provides that it shall be a Class 2 misdemeanor for any student to use a computer or computer network to cyber-bully a school employee.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence 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.

Some conduct covered by this section may already be covered under G.S. 14-458.1, Cyber-bullying, penalty, which provides that it shall be a Class 1 misdemeanor for any person 18 years of age or older to use a computer or computer network to cyber-bully another person, and it shall be a Class 2 misdemeanor for any person under the age of 18 to do the same.

During FY 2009-10, there were no misdemeanor convictions under G.S. 14-458.1. In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence 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.

Section 7: The bill enacts G.S. 14-266.4, Intimidation of school employee by school administrator to prevent employee from reporting assault by student on employee; failure to report assault on school employee.

Subsection (a) provides that it shall be a Class 2 misdemeanor for any supervisor of a school employee through threats, menaces or in any other manner intimidate or attempt to intimidate the school employee from reporting an assault under G.S. 14-33 (Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments) to a law enforcement officer or law enforcement agency.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence 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.

Subsection (b) provides that it shall be a Class 2 misdemeanor for any supervisor of a school employee to fail to report an assault against a school employee if the supervisor knows the school employee has been the victim of an assault by a student in violation of G.S. 14-33 resulting in bodily injury.

This provision would cover some conduct which may already be charged as a Class 3 misdemeanor under G.S. 115C-288, Powers and duties of principal. G.S. 115C-288(g) provides that it shall be Class 3 misdemeanor for a school principal with personal knowledge or actual notice that an act has occurred on school property involving assault resulting in serious personal injury to fail to immediately report such an act to the superintendent or local law enforcement.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 115C-288(g). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Therefore, it is not possible to determine if any existing offenders would be charged under this new offense. Because offenders serving active sentences of 90 days or less are housed in county jails, a shift of any Class 3 misdemeanor convictions to Class 2 misdemeanor convictions would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence 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.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 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 \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 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 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.

Section 1: The bill deletes an existing Class 3 misdemeanor of failure to report to law enforcement certain school violence acts. AOC does not have a charge code for this offense; thus, it is not known how many cases would not be charged as such under the bill.

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 5: This section will cause an increase in workload for elected district attorneys, since this bill requires that they will have to review potential cases where a school employee was in the process of discharging his or her duties, prior to charges being brought. AOC is not able to estimate how much time might be spent, on average, for each of these reviews. This may also result in the review of cases that are not proper for prosecution (possibly avoiding cost and workload resources for hearings).

Section 6: The act creates a new Class 2 misdemeanor for cyber-bullying a school employee. Because this is a new charge, AOC is not able to determine how many charges may arise from the passage of this bill. Further, this section makes these offenses eligible for expunctions which will cause increased workload for these cases once they are dismissed.

Section 7: The act creates two new Class 2 misdemeanor offenses for intimidation of a school employee by administrator to prevent the employee from reporting assault by a student on an employee and to report the assault of a school employee. Because these are new charges, AOC is not able to determine how many charges may arise from the passage of this bill.

New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff; superior court personnel could be impacted due to appeals. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (three hours at \$75 per hour) per indigent defendant.

Overall, in FY 2009-10, a typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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

TECHNICAL CONSIDERATIONS: None

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