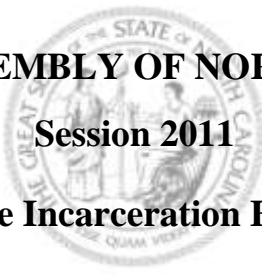


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 910 (First Edition)

SHORT TITLE: Sale of a Child/Felony Offense.

SPONSOR(S): Senator Atwater

	FISCAL IMPACT				
	Yes ()	No ()	No Estimate Available ()		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
GENERAL FUND					
Prison		<i>* See assumptions and methodology.</i>			
Recurring					
Nonrecurring					
Probation		<i>* See assumptions and methodology.</i>			
Judicial		<i>* See assumptions and methodology.</i>			
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS:					
(cumulative)*	0	0	0	0	0
FTE POSITIONS:					
(cumulative)		<i>* See assumptions and methodology.</i>			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Safety; Judicial Branch					
EFFECTIVE DATE: Sections 5 and 6 become effective July 1, 2012. Sections 1-4 become effective December 1, 2012, and apply to offenses committed on or after that date.					
<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:

This bill creates a new felony offense under G.S. 14-43 for a person to participate in the acceptance, solicitation, offer, payment, or transfer of any compensation, in money, property, or other thing of value, at any time by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child. In addition, the proposed bill adds this offense to the list of offenses for which an offender must register with the Sex Offender Registration Program. The statute excludes transfers ordered by the court or authorized pursuant to G.S. 48-10-103, Lawful payments related to adoption. Violation of the new offense is a Class D felony.

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), makes changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also creates a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are subject to nine months of post-release supervision (PRS). B1-E felony PRS is increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that would be needed as a result of revocations that may occur during the new PRS period.

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.

Because this is a new offense, AOC does not have any historical data upon which to estimate the number of charges that may arise from the passage of this bill. Accordingly, AOC is unable to estimate the increased cost to the Judicial Branch. The language of the bill requires that this offense be charged in addition to, not in lieu of, any other existing offense, therefore any new charges will not provide an offset to existing charges, thus there will be no reduction in workload to the court system.

All pleas and trials for Class D felonies are handled in superior court. Overall, the monetary value of the average workload of a Class D felony case is \$3,465. This estimate includes costs for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness/Legal Assistant – as well as operating and infrastructure costs. The language of this bill does not require that only adults be charged with this offense. For a case involving a defendant who is a minor at the time the offense was committed, there are often additional costs incurred in disposing of that case. AOC is not able to estimate the number of charges that would involve a minor defendant.

There may also be costs associated with jury trials that are not included in the above estimate. Jury costs are based on an estimated jury pool of 30 for the first day and, for subsequent days, the 12-person jury plus two alternates. Jury compensation, set in G.S. 7A-312, is \$12 for the first day, \$20 for days two to five, and \$40 for additional days. For criminal cases, jury costs come to \$360 for the first day, \$280 for the days two to five, and \$560 for the days over five.

This bill contains a provision requiring that the child victim of this offense be considered dependent, neglected and abused. This may result in an increase in juvenile filings and hearings required for determination and placement. Due to the nature of the crime, these filings are likely to occur at the time the defendant is charged with Unlawful sale, surrender or purchase of a child, not at the time of conviction. AOC is not able to estimate the number of additional juvenile filings that may be due to this bill and does not have data upon which to estimate the cost per case or cost per hearing for these types of filings.

The offense, Unlawful sale, surrender or purchase of a child, could also trigger the offense of Unlawful payments related to adoption, a Class 1 misdemeanor for the first offense and a Class H felony for subsequent offenses. Because the Unlawful sale, surrender or purchase of a child is a new offense, AOC does not have any historical data upon which to estimate the number of related charges that may arise from the passage of this bill. Likewise, AOC is unable to estimate any potential increased cost to the Judicial Branch due to these additional charges. There is no offense code for Unlawful payments related to adoption, which may be some indication that this offense is rarely charged.

This bill adds this new offense to the list of offenses for which an offender must register with the Sex Offender Registration Program. By adding this offense to the list of those that require registration, the pool of convicted individuals susceptible to committing criminal offenses related to violations of the registration requirements is broadened. Although it is possible that there may be some additional violation-related charges due to this bill, it is not anticipated that the inclusion of this crime in the list of offenses requiring registration will have a significant impact on the court workload.

Department of Public Safety – Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2011.

Based on the most recent population projections and estimated bed capacity, surplus prison beds are available for the five-year fiscal note horizon. Therefore, taken in isolation, the proposed bill is not expected to require additional prison construction or operating costs. Since 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. As shown, it is not known how many offenders might be convicted and sentenced under the proposed section.

¹ 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 percent of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	38,999	39,062	39,091	39,047	39,135
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	40,926	40,926	40,926	40,926	40,926
3. Projected No. of Beds Over/Under Inmate Population	(1,927)	(1,864)	(1,835)	(1,879)	(1,791)
4. Projected No. of Additional Inmates Due to this Bill³		*No Estimate Available			
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill		*No Estimate Available			

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2010-11 the average estimated time served for an offender convicted of a Class D offense was 70 months. If, for example, there was one conviction for this proposed offense per year, this proposed change increase the prison population by one inmate the first year and two additional inmates the second year. In addition, since sixty months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E sex offenses, there will be some impact on Post-Release Supervision caseloads and prison populations due to revocations (the length of revocation period may vary, the Post-Release Supervision and Parole Commission will have up to 60 months of imprisonment available if the offender violates post-release supervision).

Some of the prohibited conduct may currently be covered by G.S. 48-10-102, Unlawful payments related to adoption. Violation is a Class 1 misdemeanor for the first offense and a Class H felony for the second or subsequent offense. The Administrative Office of the Courts (AOC) does not have a specific offense code for violations of G.S. 48-10-102. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Some of the prohibited conduct may also be covered by G.S. 14-43.11, Human trafficking (of a minor). Violation is a Class C felony. There was one Class C conviction under G.S. 14-43.11 during FY 2010-11. It is not known whether the one Class C conviction under G.S. 14-43.11 involved conduct covered by the proposed Class D offense. However, since the proposed conduct may also be covered by a more serious offense, it may be prosecuted as the more serious offense.

Section 3 adds unlawful sale, surrender, or purchase of a child (created in Section 1 of this bill) to the list of sexually violent offenses. An offender who is convicted of a sexually violent offense is required to register with the Sex Offender and Public Protection Registration Program. Failing to meet the requirements of the Program can result in a number of criminal offenses:

² 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 February 2012.

³ Criminal penalty bills effective December 1, 2012, should not affect prison population and bed needs until FY 2013-14 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Violation of the following registration requirements is punishable as a Class F felony:

- The sex offender must register and keep that registration current.
- The sex offender must not work or volunteer at any place where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors.
- A person who conducts any activity at his or her residence and knows that another person who resides at that same location is required to register as a sexual offender cannot accept a minor or minors into his or her care or custody from another.

It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010-11 data and changes under the Justice Reinvestment Act, it is estimated that 53 percent of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F convictions per year as a result of broadening the existing statute, active sentences would increase the prison population by one inmate the first year and two inmates the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison population due to revocations (length of revocation period may vary).

Violation of the following registration requirement is punishable as a Class G felony:

- The sex offender must not reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located.

It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010-11 data and changes under the Justice Reinvestment Act, it is estimated that 41 percent of Class G convictions will result in active sentences, with an average estimated time served of 15 months. If, for example, there were two additional Class G convictions per year as a result of broadening the existing statute, active sentences would increase the prison population by one inmate the first year and one inmate the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class G felonies, there will be some impact on PRS caseloads and prison population due to revocations (length of revocation period may vary).

Violation of the following registration requirements is punishable as a Class H felony:

- It is unlawful for any person who has reason to believe that an offender is in violation of registration requirements to withhold information, provide false information, harbor or conceal the offender with the intent to assist the offender in eluding arrest.
- The sex offender must not knowingly be at any of the locations listed in the statute.

It is not known how many additional convictions might occur as a result of the proposed broadening of these existing statutes. Based on FY 2010-11 data and changes under the Justice Reinvestment Act, it is estimated that 36 percent of Class H convictions will result in active sentences, with an average estimated time served of ten months. If, for example, there were three additional Class H convictions per year as a result of the proposed legislation, active sentences increase the prison population by one inmate the first year and one inmate the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class H felonies, there will be some impact on PRS caseloads and prison population due to revocations (length of revocation period may vary).

Violation of the following registration requirement is punishable as a Class 1 misdemeanor:

- The sex offender must maintain a current photograph with the sheriff. If it appears to the sheriff that the photograph is no longer accurate, the sex offender must allow the sheriff to take another photograph.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-208.9A(c). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. In FY 2010-11, 25 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, additional convictions due to broadening the existing statute would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

DISTRIBUTION OF BEDS: Since there is no historical data for the new offense proposed by this bill, the Department of Public Safety is unable to estimate the fiscal impact on the prison bed distribution.

Department of Public Safety – Community Correction Section

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). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General supervision of intermediate and community offenders by a probation officer costs \$3.57 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

The primary offense created by the bill is punishable as a Class D felony, which, except for cases of extraordinary mitigation, requires an active sentence. Since sixty months (five years) of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E sex offenses, there will be some impact on Post-Release Supervision caseloads. For example, the cost to CCS of one additional offender under the proposed bill would be \$6,515 (\$3.57 per day x 365 days x 5 years). In addition, as discussed above, the proposed bill includes various criminal charges for violation of requirements under the Sex Offender Registration Program. The table below shows the cost for one additional offender, per offense class for FY 2010-11.

⁴ DCC incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

Offense Class	Percent Community/Intermediate	Average Length of Time	Estimated Cost to CCS*
Class 1 Misdemeanor	Community: 72 percent	15 months	\$1,628
	Intermediate: 3 percent	19 months	\$2,063
Class F Felony	Community: 0 percent	N/A	N/A
	Intermediate: 46 percent	34 months	\$3,687
Class G Felony	Community: 0 percent	N/A	N/A
	Intermediate: 58 percent	32 months	\$3,479
Class H Felony	Community: 13 percent	27 months	\$2,931
	Intermediate: 49 percent	30 months	\$3,257

* Cost estimates based on the daily cost and length of sentence.

SOURCES OF DATA: Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Public Safety, and Office of State Construction.

TECHNICAL CONSIDERATIONS: AOC offered the following technical considerations:

- As written, this bill is not limited to commission by an adult.
- The meaning of “physical custody” in the proposed G.S. 14-43.14(a) is unclear, but it appears to mean the assumption of the physical “care and supervision” of the minor, *e.g.*, G.S. 50A- 102(14), rather than mere physical control over the minor’s person for some period of time. Because mere physical control of a minor’s person would not appear to constitute “custody,” there would appear to be no overlap with existing offenses that involve the exchange of consideration for the mere temporary, physical possession of a minor, particularly G.S. 14-190.19 (participating in the prostitution of a minor). However, because there is no element of an improper purpose on the defendant’s part, the offense may encompass lawful conduct is not intended to be prohibited. When American Airlines accepts a fare for a child flying alone, the airline has committed the “acceptance... of any compensation, in money... in connection with the acquisition ... of ... physical custody ... of a minor child.”

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Luke Roniger, Kristine Leggett

APPROVED BY: Mark Trogdon, Acting Director
Fiscal Research Division

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