

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1276 (3rd Edition)
SHORT TITLE: Close Incest Loophole to Protect Minors
SPONSOR(S): Representative Nesbitt

FISCAL IMPACT

Yes ()	No ()	No Estimate Available (X)		
<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>

REVENUES

EXPENDITURES

Department of Correction – No estimate available, but no substantial impact expected
Judicial Branch –No estimate available, but no substantial impact expected

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Judicial Branch and Dept. of Correction

EFFECTIVE DATE: This act is effective December 1, 2001, and applies to offenses committed on or after that date.

BILL SUMMARY:

Current G.S. 14-178 (incest between certain near relatives) makes cases of carnal intercourse between a grandparent and grandchild, parent and child or stepchild or legally adopted child, or brother and sister of the half or whole blood a Class F felony. Current G.S. 14-179 (incest between uncle and niece and nephew and aunt) makes all cases of carnal intercourse between uncle and niece, and nephew and aunt a Class 1 misdemeanor. The current incest laws apply to the family members contained in the statutes without regard to the ages of the parties involved.

The original House Bill 1276 amended GS 14-178 and GS 14-179 by adding new subsection (c) and subsection (b) respectively, to restrict the application of these sections to parties that are 16 years or older. It further adds that such conduct committed against a minor is unlawful and prosecutable under other provisions of applicable law. The intent would be for

these acts to be prosecuted under the 1st degree rape or statutory rape statutes, depending on the factual circumstances.

With the 3rd edition, however, defendants could be charged with Class B1 or Class C felony level offenses for incest under various circumstances:

- If one party is under the age of 13 and the other party is at least four years older, the older party shall be guilty of a Class B1 felony.
- If one party is 13, 14, or 15 years old and the other party is at least six years older, the older party shall be guilty of a Class B1 felony.
- If one party is 13, 14, or 15 years old and the other party is more than four but less than six years older, the older party shall be guilty of a Class C felony

In addition, the bill adds a new subsection to G.S. 14-178 making both parties guilty of a Class F felony if both parties are 16 years or older; or the parties are less than four years apart in age, and the act of carnal intercourse is consensual. Under the same age circumstances, a new subsection in G.S. 14-179 makes both parties guilty of a Class 1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

Under the 3rd edition, incest offenses that would be charged as Class F felony or Class 1 misdemeanor under current law would instead be charged as Class B1 or Class C felony level offenses.

Department of Correction

During FY 1999/2000 there were four convictions for felony incest (Class F felony) and two convictions for misdemeanor incest (Class 1 misdemeanor). It is unknown the age of the parties involved. If these cases did involve minors, the convicted offender would face a stiffer penalty and more likely a longer active sentence under the bill. Not knowing which cases involved minors or whether defendants are now being charged under incest rather than other laws, it is not possible to determine the impact of this bill on the prison population. However, since there are no available prison beds in the fiscal note horizon, even 1 additional bed would have a fiscal impact.

Judicial Branch, Administrative Office of the Courts (AOC)

Under current G.S. 14-178 and G. S. 14-179, incest between certain relatives is prosecutable as either a Class F felony or a Class 1 misdemeanor respectively. AOC data for calendar year 2000 show that 58 defendants were charged under G.S. 14-178 and 2 defendants were charged under G.S. 14-179. However, data are not available on the ages of defendants and victims, or the number of defendants that commit such acts against minors that could be elevated to Class B1 and Class C felony offenses under the bill.

With the proposed bill, there may be some cases involving minors, which are currently disposed of as Class 1 misdemeanor charges under G.S. 14-179, that might now be disposed of as felonies. Moreover, under the bill additional charges could result since defendants could be charged with *both* statutory rape (or other offenses involving sex acts committed against minors) and incest resulting in *two* B1 convictions. However, AOC assumes that this bill would affect a relatively small number of cases; therefore Fiscal Research and AOC would not expect a substantial impact on the court system.

It should be noted that as a result of the significant penalty upgrade and the potential for additional charges, convicted defendants would be more likely to serve longer sentences and, in some cases, be ineligible for community sanctions. Moreover, trials and pleas would demand more court time and preparation time as a result of the stiffer penalty under the bill.

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

TECHNICAL CONSIDERATIONS: None

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