

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: HB 846 (Revised 1st Edition¹)
SHORT TITLE: Illegal Child Care Facilities
SPONSOR(S): Representative Alexander

| | FISCAL IMPACT | | | | |
|---|--------------------------|--------------------------|----------------------------------|--------------------------|--------------------------|
| | Yes (X) | No () | No Estimate Available () | | |
| | <u>FY 2003-04</u> | <u>FY 2004-05</u> | <u>FY 2005-06</u> | <u>FY 2006-07</u> | <u>FY 2007-08</u> |
| GENERAL FUND | | | | | |
| Correction | | | | | |
| Recurring | | | | | |
| Nonrecurring | | | | | |
| Judicial | | | | | |
| Recurring | | | | | |
| Nonrecurring | | | | | |
| TOTAL | | | | | |
| EXPENDITURES: | | | | | |
| ADDITIONAL PRISON BEDS* | | | | | |
| POSITIONS: (cumulative) | | | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch | | | | | |
| EFFECTIVE DATE: Effective when it becomes law. | | | | | |
| <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> | | | | | |

¹ Adds language stating that the Fiscal Research Division (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

BILL SUMMARY²: HB 846 increases the punishment for the illegal operation of a child care facility from a misdemeanor to a felony. Current G.S. 110-103 provides that it is a Class 1 misdemeanor (Class 3 misdemeanor for an operator of a family child care home) to offer or provide child care without complying with the provisions of Article 7 of Chapter 110 governing child care facilities, including (1) advertising without disclosing the child care facility's identifying number that is on the license or letter of compliance (G.S. 110-98); (2) failing to display a current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any rating which may appear on the license (G.S. 110-99); and (3) failing to distribute to the parents, guardian, or full-time custodian of each child receiving child care at the facility a document containing the provisions of Article 7 as summarized by the Secretary of the Department of Health and Human Services (G.S. 110-102).

HB 846 would make violations of the above statutes a felony for an operator of *any* type of child care facility to violate the provisions of Article 7. It is a Class I felony to (1) operate a child care facility as defined in G.S. 110-86(3) in knowing and willful violation of Article 7; or (2) operate a child care facility as defined in G.S. 110-86(3) and knowingly and willfully provide child care for more than 2 children for more than 4 hours per day on 2 or more consecutive days. A second or subsequent conviction of either provision is punishable as a Class H felony.

It is a Class H felony if violation of either of the above provisions (1) results in the creation of an unreasonable risk of harm to a child attending the facility; or (2) results in serious injury to a child attending the facility.

New subsection (f) provides that this bill does not apply to any person who, within 24 hours of notification of an Article 7 violation, complies with all applicable laws and rules and where there is no evidence that a child has been harmed as a result of the violation.

ASSUMPTIONS AND METHODOLOGY:

Data from the Department of Health and Human Services, Division of Child Development, reveal that there were 273 reports of illegal child care operations in 2002. Of those, 84 were found to be operating illegally. Once determined illegal, the caregivers must reduce the number of unrelated children they care for to two children, which is allowed under state law, or become a legal certified child care home through the star-rated licensure program.

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

² AOC Research and Planning Division

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

Since HB 241 subsections (a) and (b)³ create two new Class I felony offenses, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be sentenced for this proposed offense. If, for example, there were ten Class I convictions under this proposed subsection 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.

While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days.) In contrast, Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 9 percent of Class I felony offenders were sentenced to active sentences, 36 percent were sentenced to intermediate sanctions, and 55 percent were sentenced to community punishment. On average, offenders served between eight and nine months. Convictions that increase Class 1 and 3 misdemeanors to Class I felonies will result in more frequent, longer active sentences served in state prisons rather than local jails.

Since subsections (c), (d), and (e) of the bill creates a new Class H felony offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be sentenced for this proposed offense. If, for example, there were three Class H convictions under this proposed subsection 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. Class H felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 34 percent of Class H felony offenders were sentenced to active sentences, 50 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders served between ten and twelve months. The number of second or subsequent convictions of G.S. 110-86(3) or G.S. 110-103 that may result from this bill is unknown. It is also unknown the number of convictions that may result from

³ As currently written subsection (b) makes it a Class I felony for a person to operate a child care facility and knowingly and willingly provide child care for more than two children for more than four hours per day on two or more consecutive days. For this analysis, it is assumed that the crime in subsection (b) is to operate in violation of the Article.

violations of HB 241 that will result in the creation of an unreasonable risk of harm to a child attending the facility; or will result in serious injury to a child attending the facility.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The AOC has no data regarding the number of charges filed under the existing misdemeanor provisions, or other data from which to estimate the number of charges that could arise from this bill. The term “serious injury” is not defined, and a broad construction could lead to many Class H felony charges. “Serious injury” under current G.S. 14-33 (Class A1 misdemeanor assault) includes serious physical injury as well as damage other than bodily injury, such as economic damage. “Serious bodily injury” is defined in current G.S. 14-32.4 (Class F felony assault) as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, permanent or protracted condition that causes extreme pain, permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. For offenses that are brought to trial as Class I felonies, the estimated court cost per trial is \$4,637. For Class I felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$255. For offenses that are brought to trial as Class H felonies, the estimated court cost per trial is \$5,012. For Class H felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$283.

SOURCES OF DATA: Department of Health and Human Services - Division of Child Development, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: The bill date is effective when it becomes law. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The NC Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and thus assume that the legislation will not impact the prison system until the beginning of 2004-05. If the bill becomes effective prior to December 1, there will be an impact on prison system in the 2003-04 fiscal year.

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Nicole Kreiser and Lisa Hollowell

APPROVED BY: James D. Johnson, Director Fiscal Research Division

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