

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

BILL NUMBER: SB 912 2nd Edition

SHORT TITLE: Sexual Battery

SPONSOR(S): Senator Clodfelter

	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		Bill creates a new offense; unable to determine exact amount.			
Nonrecurring					
Judicial					
Recurring			Unable to determine exact amount.		
Nonrecurring					
TOTAL					
EXPENDITURES:			Unable to determine exact amount.		
ADDITIONAL PRISON BEDS*		It is likely that most misdemeanants sentenced to an active sentence under this bill would be housed in local jails at a cost of \$18/day. The exception is A1 offenders falling in Prior Record Level III who may receive active sentences that might be served in the state prison system.			
POSITIONS: (cumulative)		Unable to determine exact amount; additional positions not anticipated.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction (DOC); Judicial Branch				
EFFECTIVE DATE:	December 1, 2003				
	<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: SB 912 creates a new offense of sexual battery. The bill amends Article 7 of Chapter 14 of the general statutes to provide that a defendant is guilty of sexual battery if they intentionally subject another person to sexual contact by force and against their will or subjects a person who is mentally disabled, mentally incapacitated, or physically helpless (which is known or should have been known by the offender) to sexual contact. The offense of sexual battery is punishable by a Class A1 misdemeanor. The bill formally defines “sexual contact” and “touching”.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory 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.

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.

Because SB 912 creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill. In FY 2001-2002, 20 percent of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served was 55.1 days. It is likely that misdemeanants sentenced under this bill would be housed in local jails but paid for by the State at a cost of \$18/day. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days). Because only A1 offenders falling in Prior Record Level III receive active sentences that might be served in the state prison system, convictions for this proposed offense would not be expected to have a significant impact on the prison population.

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 is aware of no data from which to estimate the number of new charges that would arise from this bill. To some extent, the AOC believes, it is possible for some defendants who commit these offenses to be charged with a Class 2 misdemeanor for assault or battery under G.S. 14-33(a). AOC data indicate that 4,529 defendants were charged under G.S. 14-33(a) for assault and battery and 21,661 defendants were charged with simple assault. However, the AOC is unable to estimate whether any of these charges, if any, involved acts proscribed in this bill. For such offenses, this bill would increase the punishment from a Class 2 misdemeanor to a Class A1 misdemeanor. The AOC anticipates additional cases in addition to the enhancement in penalty.

For A1 offenses that are brought to trial, the estimated court cost per trial is \$2,594. For A1 offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$214.

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: Nicole Kreiser and Jim Mills

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

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