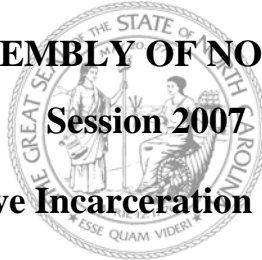


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** Senate Bill 34 (Second Edition)

**SHORT TITLE:** Kill Police Animal.

**SPONSOR(S):** Senator Swindell

		<b>FISCAL IMPACT</b>				
		<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
		<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>
<b>GENERAL FUND</b>						
<b>Correction</b>	There is no historical data for existing offenses under G.S. 14-163.1, suggesting that few violations have occurred. Fiscal Research does not anticipate a significant impact due to this proposal. * See Assumptions and Methodology, pp. 2-4					
<b>Judicial</b>	There is no historical data for existing offenses under G.S. 14-163.1, suggesting that few violations have occurred. Fiscal Research does not anticipate a significant impact due to this proposal. * See Assumptions and Methodology, pp. 2-4					
<b>TOTAL EXPENDITURES:</b>	<b>Amount cannot be determined.</b>					
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>	<b>Amount cannot be determined.</b>					
<b>POSITIONS: (cumulative)</b>	<b>Amount cannot be determined.</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.						
<b>EFFECTIVE DATE:</b> December 1, 2007						
*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.						

**BILL SUMMARY:** The first edition of S.B. 34 makes it a Class H felony to willfully kill or attempt to kill a law enforcement or assistance animal, and creates an aggravating circumstance for other criminal offenses if a law enforcement or assistance animal is seriously harmed or killed while the animal is performing official duties. Identical to H.B. 74.

\* House committee substitute amends Section One of S.B. 34, removing the attempted killing of a police animal from the proposed offense. Makes technical changes to the bill's title.

*Source: Bill Digest S.B. 34(02/05/0200).*

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

Section One of this bill would add a new subsection to G.S. 14-163.1, making it a Class H felony to willfully kill a law enforcement or assistance animal. In effect, this new offense increases the penalty for otherwise Class I felony offenses - current G.S. 14-163.1(b) provides that any person who willfully causes or attempts to cause serious harm to a law enforcement/assistance animal is guilty of a Class I felony.

At this time, the Administrative Office of the Courts does not have a specific offense code for any offense under G.S. 14-163.1. The absence of an offense code is some indication that such offenses are infrequently charged and/or infrequently result in conviction. Furthermore, the AOC estimates that relatively few charges would result.

Section Two of this bill adds a new subsection to G.S. 15A-1340.16(d), making it an aggravating factor for felony sentencing if any offense is committed against or proximately causes harm or death to a law enforcement agency or assistance animal while engaged in the performance of its official duties. Although the application of this aggravating factor could substantially enhance the sentence an offender would otherwise receive, the absence of historical charge or conviction data precludes an impact estimate.

Any new charge or conviction for the proposed offense, or subject to the proposed aggravating factor, is expected to generate some fiscal impact. However, because the absence of offense code often indicates that an offense is infrequently charged and/or infrequently results in conviction, Fiscal Research does not anticipate a substantial impact due to this proposal.

### **Department of Correction – Division of Prisons**

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 does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Consequently, any new felony conviction resulting in an active sentence will require an additional prison bed.

There is no historical data from which to project the number of convictions that might result for the proposed offense. Thus, the potential impact on the State prison population is unknown. In

FY 2005-06, 34% of Class H felony convictions were given active sentences, with an average estimated time served of 11 months. For illustrative purposes, if three Class H convictions were to occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; two additional beds in the second year; and one new employee in the second year.*

Assuming these thresholds and inmate assignment to medium custody, the construction of two additional prison beds within a new, stand alone facility could cost the State \$136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$84,240.<sup>1</sup> These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$58,195 for FY 2008-09.<sup>2</sup>

Due to the present absence of offense code, the Sentencing and Policy Advisory Commission cannot estimate the number of offenders who might receive aggravated sentences. Under structured sentencing, the aggravated sentence range permits a judge to impose a sentence up to 25% longer than the longest sentence in the presumptive sentence range. During FY 2005/06, 3% (n=285) of all felony convictions receiving an active sentence fell in the aggravated sentence range. The aggravating factor in the proposed bill could apply to a wide range of offenses; therefore, any impact from the proposed aggravating factor would vary considerably by offense class (*e.g.*, little impact for low-level felonies with increasing impact as one moves up the grid to having a substantial impact for Class B1 felonies).

### **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.<sup>3</sup>

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. *Thus, assuming that future convictions for the proposed offense were to occur, the Division of Community Corrections would assume some additional costs for offenders placed under its jurisdiction.* It is

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<sup>1</sup> New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). “Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (*i.e.* single cells for close custody, and dorms for medium and minimum custody levels).

<sup>2</sup> Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

<sup>3</sup> 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.

not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 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 \$7.71 to \$14.97, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.97 for the initial six-month intensive duration, and \$1.96 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.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

### **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.

According to the AOC, the present absence of offense code suggests that few charges occur for similar, existing offenses. Accordingly, the proposed offense is not expected to produce a substantial fiscal impact for the court system. However, to the extent that new charges for the offense were to occur, additional costs would be incurred for case disposal. More vigorous defense and prosecution, and therefore greater workload and court-time demands, are expected for any new cases subject to the proposed aggravating factor.

Presently, the AOC estimates a cost of \$7,345 per trial for a Class H felony charge; \$325 per guilty plea. These cost estimates account for indigent defense.<sup>4</sup> Actual costs may vary with time requirements and disposition.

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

**TECHNICAL CONSIDERATIONS:** None

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<sup>4</sup> Cost estimates are based on projected court-time requirements for judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings.

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**DATE:** May 30, 2007

