

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 776 (Fourth Edition)

SHORT TITLE: Amend Indecent Exposure Law.

SPONSOR(S):

| | | FISCAL IMPACT | | | | |
|---|---|-------------------|-------------------|---------------------------|-------------------|-------------------|
| | | Yes (X) | No () | No Estimate Available () | | |
| | | <u>FY 2005-06</u> | <u>FY 2006-07</u> | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> |
| GENERAL FUND | | | | | | |
| Correction | The Class H felony created by this bill could lead to some increase in prison population and therefore bed needs, but the exact number of beds needed and, thus, the cost cannot be determined (see pg. 2 for details). | | | | | |
| Judicial | Exact amount cannot be determined (see pg. 2 for details). | | | | | |
| LOCAL GOVERNMENTS | | | | | | |
| | Exact amount cannot be determined (see pg. 2 for details). | | | | | |
| ADDITIONAL PRISON BEDS* | Exact amount cannot be determined. For every three Class H felony convictions, one prison bed would be needed in the first year and two beds would be needed in the second year. (see pg. 2 for details). | | | | | |
| POSITIONS: (cumulative) | Exact amount cannot be determined (see pg. 2 for details). | | | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments | | | | | | |
| EFFECTIVE DATE: December 1, 2005 | | | | | | |
| <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: Under current G.S. 14-190.9(a), it is a Class 2 misdemeanor for a person to willfully expose his or her private parts in any public place in the presence of other persons of the opposite sex, to aid and abet any such act, or procure another to perform such act. This bill would amend subsection (a) to make such exposure in the presence of those of the same sex also a Class 2 misdemeanor and add new subsection (a1) to provide that it is a Class H felony for any person

18 years of age or older to willfully expose his or her private parts in any public place in the presence of any person less than 16 years of age for the purpose of arousing or gratifying sexual desire.

The third edition of the bill additionally amends G.S. 14-208.6(5) to include felonious indecent exposure in the list of offenses defined as “sexually violent.” Offenders convicted of the offense would therefore be required to register under the Sex Offender and Public Protection Registration Program. A violation of the registration requirements is a Class F felony.

The fourth edition of the bill makes only a technical change.

Source: Adapted from Administrative Office of the Courts, Research and Planning (05/06/05).

ASSUMPTIONS AND METHODOLOGY:

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

Section 1: Amend Offense of Indecent Exposure/New Felonious Indecent Exposure

As this bill would create the new offense of felonious indecent exposure and expand the scope of the current misdemeanor indecent exposure, a fiscal impact to the Department of Correction and the Courts would be expected. Class 2 misdemeanor convictions elevated to Class H felonies could increase prison bed needs and therefore prison costs. New Class 2 misdemeanor convictions would impact local jails. In addition, increased court workload and costs would be anticipated to dispose of the charges.

While there is data regarding the number of present Class 2 misdemeanor Indecent Exposure charges (516) and convictions (189), it is unknown how many of the offenses were committed by an individual age 18 or older in the presence of a person less than 16 years of age for the purpose of gratifying sexual desire and would, therefore, be elevated to Class H felonies due to this bill. The number of incidents in which unlawful same-sex exposure would occur is also unknown. As such, the number of new Class H felony and Class 2 misdemeanor charges and convictions cannot be estimated and, thus, the specific cost of the bill cannot be determined.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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.*

Because this bill would broaden the scope of an existing criminal offense and create a new offense, the Sentencing Commission has no historical data from which to project the impact on prison population.

Class 2 Misdemeanors: In FY 2003-04, there were 189 Class 2 misdemeanor convictions under current G.S. 14-190.9 for Indecent Exposure. Of these convictions, 48 resulted in active sentences (25%) and the average estimated time served was 19 days. Because active sentences of less than ninety days are served in county jails, new Class 2 misdemeanor convictions due to this bill would not impact prison population. Offenders with active sentences of less than thirty days are housed in county jails at county expense.

Class H Felonies: It is not known how many of the existing convictions for Indecent Exposure were committed by an individual age 18 or older in the presence of a person less than 16 years of age for the purpose of gratifying sexual desire and would, therefore, be elevated to Class H felonies due to this bill. In FY 2003-04, 37 percent of Class H felony convictions resulted in active sentences. If, for example, there were three new convictions for Class H felonies or three convictions elevated from Class 2 misdemeanors to Class H felonies 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. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

Non-Active Sentences: In FY 2003-04, 50 percent of Class H felony convictions resulted in intermediate sanctions and 13 percent in community sanctions; 1 percent of Class 2 misdemeanor convictions resulted in intermediate sanctions and 84 percent in community sanctions. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction. For offenders sentenced to the community sanction of supervised probation, DCC would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

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.

For calendar year 2004, AOC data indicates that 516 individuals were charged with a Class 2 misdemeanor for Indecent Exposure. Due to lack of historical data, AOC is unable to estimate the numbers of additional Class 2 misdemeanor charges, new Class H felony charges, and Class 2 misdemeanor charges that would be elevated to Class H felonies as a result of this bill.

The cost to the Courts to process a felony or misdemeanor charge varies depending upon the method of settlement and the severity of the charge. AOC estimates the following costs to process

a single Class 2 misdemeanor or Class H felony charge based on the costs of court time in district and superior court, attorney preparation time, and indigent defense. The estimated average increase in cost for any charge elevated from a Class 2 misdemeanor to Class H felony due to this bill is also shown in the last row of the table. Based on prior-year data, the majority of new charges resulting from this bill that are not dismissed are likely to be settled by guilty plea.

Table 1: Average Estimated Per Charge Settlement Costs

| Offense Class | Settled via Trial | | | Settled via Guilty Plea |
|---------------------|----------------------|------------------|---------|-------------------------|
| | Court/Attorney Costs | Indigent Defense | Total | - |
| Class H Felony | \$4,096 | \$2,100 | \$6,196 | \$359 |
| Class 2 Misdemeanor | \$1,365 | \$949 | \$2,314 | \$271 |
| Class 2 → Class H | \$2,731 | \$1,151 | \$3,882 | \$88 |

Section 2: Adding Felonious Indecent Exposure to the Sex Offender Registry Program

Under the third edition of the bill, offenders convicted of felonious indecent exposure would be required to register as sex offenders per G.S. 14-208. Requiring additional offenders to register as sex offenders could lead to some increase in the number of individuals prosecuted for failing to comply with registration requirements, a Class F felony. For any increase in the number of charges and convictions for this offense, there would be an associated cost to the Courts and Department of Correction, as well as an increase in prison bed needs. However, as these individuals have not been required to register in the past and no data is available regarding the likelihood that offenders convicted of a specific offense will violate the registration requirements, the number of prison beds needed cannot be projected and the exact cost cannot be determined.

Department of Correction

In FY 2003-04 there were 108 Class F felony convictions for violations of sex offender registry requirements. On average, 47 percent of Class F offenders received active sentences and the remaining 53 percent received intermediate sentences. If, for example, there were two additional Class F convictions per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and three beds in the second year. Probation officers in the Division of Community Corrections supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter (based on the average cost and duration of intensive probation).

Judicial Branch

AOC data for CY 2004 show 384 defendants charged under current G.S. 14-208.11 for violating sex offender registration requirements. For any additional Class F felony charges under G.S. 14-208.11, there would be additional workload in superior court. Based on the costs of time in court, attorney preparation, and jury fees, AOC estimates that the average cost of processing a single Class F felony charge via trial is \$5,475. The estimated cost of indigent defense, for any trial in which it is necessary, would be an additional \$2,704. However, based on prior-year data, the majority of charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$397 per plea.

Department of Justice

As no historical data is available on the number of convictions for felonious indecent exposure, the exact increase in workload and costs for the Department cannot be determined. However, the Department believes that its Sex Offender Registry database can absorb an increase of up to 100 offenders per year without additional expense.

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

TECHNICAL CONSIDERATIONS: None

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