

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 762 (First Edition)

SHORT TITLE: Assault on Law Enforcement & EM Worker/Felony.

SPONSOR(S): Senator Brock

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:					
Correction			<i>*See Assumptions and Methodology*</i>		
Probation			<i>*See Assumptions and Methodology*</i>		
Judicial			<i>*See Assumptions and Methodology*</i>		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<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:

The proposed legislation enacts new G.S. 14-33.3 to make it a Class I felony to assault a law enforcement officer discharging their official duties. The act also amends G.S. 14-34.6 to make it a Class I felony (was, Class A1 misdemeanor) to assault an emergency medical technician, medical responder, emergency department nurse or physician, or a firefighter while carrying out their official duties. The act makes it a Class H felony (was, Class I felony) if the individual inflicts serious bodily injury or uses a deadly weapon other than a firearm. In addition, the act amends G.S. 14-288.9 to make it a Class I felony (was, Class 1 misdemeanor) to assault emergency personnel. The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

SOURCE: BILL DIGEST S.B. 762 (04/20/0201)

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

Section 1: The proposed legislation creates a new Class I felony. G.S. 14-33.3, Simple assault on law enforcement officer, provides that it shall be a Class I felony for any person, while in the course of committing any assault, assault and battery, or affray, to assault a law enforcement officer while the officer is discharging or attempting to discharge his official duties. This conduct may be covered by existing offenses. Offenders who commit assault, assault and battery, or affray on law enforcement officers may currently be charged under two subsections of G.S. 14-33, Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments. G.S. 14-33(c)(4) provides that it shall be a Class A1 misdemeanor for any person who commits any assault, assault and battery or affray if, in the course of committing such, he assaults an officer or employee of the State or any political subdivision of the State while the officer or employee is discharging or attempting to discharge his official duties, and G.S. 14-33(c)(8) provides for the same penalty for assault on company or campus police officer.

Because the proposed bill 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 convicted and sentenced under the proposed bill.

The following table provides the frequency of convictions during FY 2009-10 for the existing offenses described above. It is not known how many of the 1,482 misdemeanor convictions may instead be convicted as Class I felonies under the proposed bill. Impact on the prison population would occur if any of these misdemeanor convictions would become Class I felony convictions under this proposed amendment. If, for example, there were ten convictions per year that would become Class I felonies under this proposed bill, 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.

G.S. Number	Offense Description	Offense Class	FY 2009/10 Convictions
G.S. 14-33(c)(4)	Assault Gov't Official/Employee	Class A1 misdemeanor	1,467
G.S. 14-33(c)(8)	Assault CO/Campus Police Officer	Class A1 misdemeanor	15
Total			1,482

Section 2: The act amends G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician, by reclassifying several existing offenses.

G.S. 14-34.6(a) is amended to reclassify the existing Class A1 misdemeanor as a Class I felony. The amendment provides that it shall be a Class I felony for any person to commit an assault or affray on an emergency medical technician, a medical responder, an emergency department nurse or doctor, or a firefighter while that person is discharging or attempting to discharge his official duties. Currently, it is a Class A1 misdemeanor to commit such an offense. In FY 2009-10, there were 33 convictions under G.S. 14-34.6(a).

The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009-10, 17 percent of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Using threshold data, if the 33 convictions for this offense were reclassified from a Class A1 misdemeanor to a Class I felony, this would result in the need for three additional prison beds the first year and eleven additional prison beds the second year.

G.S. 14-34.6(b) is amended by reclassifying the existing Class I felony as a Class H felony. The amendment provides that, unless the conduct is covered by some other provision of law providing for greater punishment, it shall be a Class H felony for any person to violate G.S. 14-34.6(a) if, in violation of that section he inflicts serious bodily injury or uses a deadly weapon other than a firearm. Currently, it is a Class I felony to commit such an offense. In FY 2009-10, there were no convictions under G.S. 14-34.6(b).

Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed statute because of the higher rate of active sentences (36 percent for Class H compared to 17 percent for Class I) and longer average estimated time served (11 months compared to 7 months for Class I). If, for example, there were ten Class I felony convictions that were reclassified as Class H felony convictions, this would result in the need for two additional prison beds the first year and four additional prison beds the second year.

Section 3: The act amends G.S. 14-288.9, Assault on emergency personnel; punishments, by reclassifying an existing Class 1 misdemeanor as a Class I felony. G.S. 14-288.9(c) is amended to provide that any person who commits an assault upon emergency personnel in the area of a declared state of emergency or within the immediate vicinity of an occurring or imminent riot is guilty of a Class I felony. Currently, it is a Class 1 misdemeanor to commit such an offense. In FY 2009-10, there were three convictions under 14-288.9(c).

The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009-10, 17 percent of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Using threshold data, if the three Class 1 misdemeanor convictions were reclassified from a Class 1 misdemeanor to Class I felony, this would result in the need for one additional prison bed the first year and one additional prison bed the second year.

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.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 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 \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 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.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

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.

Section 1: The proposed legislation creates a new Class I felony offense for simple assault on a law enforcement officer. This conduct may already be covered under 14-33(c)(4), Assault government official/employee and 14-33(c)(8), Assault CO/campus police officer, which are Class A1 misdemeanors. In calendar year 2010, there were 3,193 defendants charged with these offenses. Because the new offense would potentially be a subset but not exclusive of the existing charges, AOC is not able to estimate how many new Class I felony charges may arise from this bill.

Section 2: The act increases the classification of 14-34.6(a), Assault emergency personnel, from a Class A1 misdemeanor to a Class I felony. In calendar year 2010, there were 99 defendants

¹ 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.

charged with this offense. This section also increases 14-34.6(b), the same crime but when serious bodily injury is inflicted or the defendant uses a deadly weapon other than a firearm, from a Class I felony to a Class H felony. In calendar year 2010 there were four defendants charged with this offense.

Section 3: The act increases the classification of 14-228.9(c), Assault on emergency personnel, from a Class 1 misdemeanor to a Class I felony. In calendar year 2010 there were 12 defendants charged with this offense.

The elevation of these offenses would result in a more vigorous defense and prosecution and more in-court and preparation time for trials and pleas. The creation of new Class H felony offenses would also result in increased court workload. While some judicial districts handle pleas for Class H and I felonies in district court, all trials and many pleas would be shifted from district court to superior court or occur as new workload in superior court. Thus, even one new or elevated offense impacted by this legislation will result in a cost to the court system.

Overall, the monetary value of the average workload of a lower level (Class I through F) felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$945. As the Class I felonies in this bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for those offenses increased from Class 1 misdemeanors or Class A1 misdemeanors to Class H and Class I felonies, the average fiscal impact of each case would be the full \$945. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class H felony case was \$540 per indigent defendant, as compared to an average of \$225 for indigent misdemeanants.

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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

TECHNICAL CONSIDERATIONS: None

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