

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 486 (Third Edition)

SHORT TITLE: Rachel's Law.

SPONSOR(S): Senator Allran

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	Exact amount cannot be determined. Each conviction will cost \$24,740 in the first year and \$50,964 in the second year. Costs will begin in 06-07.				
Judicial	Exact amount cannot be determined (see pg. 2 for details).				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined. Each conviction will require one prison bed in the first year and two beds in the second year.				
POSITIONS: (cumulative)	Exact amount cannot be determined (see pg. 2 for details).				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
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: Current G.S. 14-34.1 makes it a Class E felony to discharge a specified barreled weapon or firearm into occupied property. This bill would amend the statute to provide that if the property is (1) a dwelling or (2) a conveyance traveling on a public road, highway, vehicular area, railroad track, waterway, or in any airspace, then the offense would be a Class B2 felony if serious injury to any person results, and would otherwise be a Class C felony.

The third edition would reduce the offense classes of the proposed offenses by one class (to Class C and D, respectively) and would augment the legal standard of injury for the Class C offense to serious *bodily* injury.

Source: Adapted from Bill Digest S.B. 486 (03/14/2005).

ASSUMPTIONS AND METHODOLOGY:

Summary

Prison Bed and Fiscal Impact

Under current G.S. 14-31.1, the offenses created by this bill would be prosecuted as Class E felonies for discharging certain barreled weapons or firearms into occupied property. While there is data on the number of present charges and convictions for this offense, it is not known how many of the offenses involved an occupied dwelling or vehicle in operation or resulted in serious bodily injury and would, therefore, be elevated to Class D or C felonies due to this bill.

Any conviction elevated from felony Class E to Class D or C due to this bill would carry a longer sentence and carry a mandatory active sentence (whereas Class E convictions in Prior Record Levels I and II may result in intermediate sanctions). These enhanced penalties are expected to increase prison bed needs and therefore prison costs. In addition, increased court workload and costs are anticipated due to a more vigorous defense and prosecution.

Because no estimate of the number of offenses that would be elevated to Class D or C felonies is available, the specific cost associated with the bill cannot be determined. As the third edition of the bill reduces the punishment levels for the proposed offenses by one offense class, the prison bed impact and costs to the Courts and Department of Correction would be less than the second edition of the bill.

Supplemental Survey Data

Following the publication of the second edition fiscal note, the Administrative Office of the Courts provided additional data obtained from a survey of district attorneys on the frequency with which current offenses under G.S. 14-31.1 involve the elements of the proposed new offenses and would, therefore, be prosecuted under this bill as Class D or C felonies. The district attorneys that were surveyed estimated that, of the current offenses charged under G.S. 14-31.1:

- 63 percent involved an occupied dwelling or vehicle in operation
- 16 percent involved an occupied dwelling or vehicle in operation and resulted in serious injury

These figures suggest that a substantial proportion of charges under G.S. 14-31.1 could be elevated to at least a Class D felony under this bill. However, Fiscal Research has not projected the cost of this bill based on these estimates, as the figures do not reflect actual data collected on cases prosecuted under G.S. 14-31.1. Furthermore, the prison bed impact and resulting cost to the Department of Correction cannot be projected based on the survey data, as there is no indication of whether the distribution of offenses resulting in conviction would be similar to the estimated distribution of the offenses charged.

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.

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 creates two new criminal offenses (a Class D and Class C felony), the Sentencing Commission has no data from which to project the number of convictions that might result. Except in the event of extraordinary mitigation, all felony Class D and Class C offenders must receive active sentences. Due to the length of sentences imposed, the number of prison beds required for these offenders will build over time, as new offenders enter the system prior to the release of existing offenders. As a result, convictions under this bill would have a long-term prison impact. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

Felony Class D: During FY 2003-04, there were 89 convictions under current G.S. 14-34.1 for discharging certain barreled weapons or a firearm into occupied property, a Class E felony. It is unknown how many of these convictions involved a dwelling or vehicle in operation and would thus be elevated to Class D felonies under this legislation. If, for example, there were one conviction for this offense 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 time served for a Class D felony in FY 2003-04 was 78 months.

Felony Class C: It is also not known how many of the 89 convictions under G.S. 14-34.1 were for an offense inflicting serious bodily injury and would be elevated to Class C felonies under this bill. If, for example, there were one conviction for this offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year. The average time served for a Class C felony in FY 2003-04 was 95 months.

Non-Active Sentences: Some individuals convicted of Class E felonies under current G.S. 14-34.1 may receive intermediate sanctions and be supervised by the Division of Community Corrections (DCC). Because felony Class D and C offenders cannot receive intermediate sanctions, there would be short-term cost savings to DCC for any offenders who receive active rather than intermediate sanctions due to this bill. However, in the long term DCC would incur the cost of post-release supervision for Class C and D offenders upon their release from prison.

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.

AOC data for calendar year 2004 show 688 defendants charged with Class E felonies under current G.S. 14-34.1 for discharging a weapon into occupied property. AOC does not have data on how many of these violations involved shooting into an occupied dwelling or vehicle in operation. Under this bill these offenses would be charged as Class D felonies or Class C felonies if serious bodily injury resulted.

For any felony charge with an elevated offense classification due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior court workload. As shown in Table 1 on the following page, the estimated increase in cost to dispose of a single charge that is elevated from felony Class E to Class D is \$969 per trial and \$39 per guilty plea.

Table 1: Estimated Per Charge Increase in Felony Class E to D Settlement Costs

Felony Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	-
Class E	\$5,847	\$2,912	\$8,759	\$414
Class D	\$6,439	\$3,289	\$9,728	\$453
<i>Increased Cost</i>	\$592	\$377	\$969	\$39

As shown in Table 2 below, the estimated increase in cost to dispose of a single charge that is elevated from felony Class E to Class C is \$3,513 per trial and \$84 per guilty plea.

Table 2: Estimated Per Charge Increase in Felony Class E to C Settlement Costs

Felony Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	-
Class E	\$5,847	\$2,912	\$8,759	\$414
Class C	\$7,179	\$3,653	\$10,832	\$498
<i>Increased Cost</i>	\$2,531	\$982	\$3,513	\$84

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

TECHNICAL CONSIDERATIONS: None

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