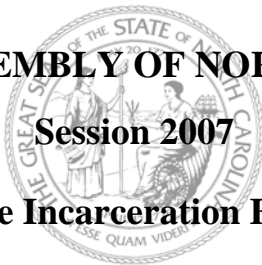


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 28 (First Edition)
SHORT TITLE: Up Penalties/Sex Offenses With Child Victim.
SPONSOR(S): Representatives Goforth, Ray, and Spear

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
	Fiscal impact is considered the minimum fiscal impact. Impact is due to the criminal penalty changes in HB 28; majority of cost shown is due to 2nd conviction for indecent liberties with children				
Correction					
Recurring	0	\$1,186,465	\$3,026,052	\$3,476,468	\$3,642,499
<u>Capital NR</u>	\$8,028,720	(118 beds)			
Judicial					
Recurring	\$117,363	\$201,206	\$211,266	\$221,829	\$232,921
Nonrecurring					
TOTAL EXPENDITURES:	\$8,146,083	\$1,387,671	\$3,237,318	\$3,698,297	\$3,875,420
ADDITIONAL PRISON BEDS:					
(cumulative)*		42	104	116	118
POSITIONS: DOC					
(cumulative)		17	42	46	47
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2007					
<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:

Section 1 of House Bill 28 does not increase criminal penalties but it does expand scope of current offenses. It amends certain child pornography laws by amending the definition of the term "sexual activity" and by expanding the scope of the criminal offense of disseminating harmful material to minors, to include prosecution of defendants who believe they are disseminating harmful material to a minor, even if the victim is not in fact a minor.

HB 28 also increases the penalties for the following crimes:

- ***First, second, and third degree sexual exploitation of a minor would each go up one felony penalty class.***
- ***Solicitation of a child by computer to commit an unlawful sex act would increase from a Class H to Class E felony.***
- ***Taking indecent liberties with children is currently a Class F. Under HB 28, a second or subsequent conviction for the same crime would be a Class E.***

The bill would become effective December 1, 2007, and apply to offenses committed on or after that date.

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

Table 1 on the following page depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 6, 2006. Official Department of Correction capacity projections also assume the General Assembly will fund 500 additional prison beds, generated by partial double-celling of the future Tabor City facility (inmate admission FY 2008-09). However, Fiscal Research does not include these 500 beds in capacity estimates (row two), since these beds have not been authorized for funding.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of HB 28. As shown, the Sentencing Commission estimates that this specific legislation will add a minimum of 118 inmates to the prison system by the end of FY 2011-12.

These estimates are conservative because the Sentencing Commission could not project prison population with the projection model for these offenses and instead relied on minimal estimates as requested by Fiscal Research in order to obtain some sense of the impact of this bill. The bill increases a number of criminal penalties for felony sex offenses leading to increased rates of active sentences

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

Table 1 Prison Population and Bed Impact of HB 28

	<u>June 30 2008</u>	<u>June 30 2009</u>	<u>June 30 2010</u>	<u>June 30 2011</u>	<u>June 30 2012</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	39,621	40,236	41,021	41,848	42,718
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	38,505	39,353	39,353	39,353	39,353
3. Projected No. of Beds Over/Under Inmate Population	-1,116	-883	-1,668	-2,495	-3,365
4. <i>Projected No. of Additional Inmates Due to this Bill</i> ³	<i>N/A</i>	<i>42</i>	<i>104</i>	<i>116</i>	<i>118</i>
5. <i>No. of Additional Beds Needed Each Fiscal Year Due to this Bill</i>	<i>N/A</i>	<i>42</i>	<i>104</i>	<i>116</i>	<i>118</i>

POSITIONS: It is anticipated that by FY 2011-12, approximately 47 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2011-12. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to (bill number); and, the estimated number of new beds required each year through FY 2015-16.

	<u>June 30 2013</u>	<u>June 30 2014</u>	<u>June 30 2015</u>	<u>June 30 2016</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,234	-5,117	-5,996	-6,866
2. <i>Projected No. of Additional Inmates Resulting From (Bill Number)</i>	<i>123</i>	<i>126</i>	<i>132</i>	<i>140</i>
3. <i>Estimated No. of New Beds Required Under (Bill Number)</i>	<i>123</i>	<i>126</i>	<i>132</i>	<i>140</i>

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;⁴ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in December 2006.

³ Criminal penalty bills effective December 1, 2007 should not affect prison population and bed needs until FY 2008-09, due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

⁴ New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

on.”⁵ Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

Estimated Construction Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$56,000	\$63,000	\$109,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$71,000

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1) in 2007/08. An annual inflation rate of eight percent (8.0%) is applied to these base costs.⁶ As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

Accordingly, given a minimum increase of 118 inmates by 2012 and construction of a “stand alone” medium custody facility, the cost is approximately \$8,028,720 in 07/08 (118 beds times \$63,000 plus 8% inflation per year). Provision of beds through “add-on” could reduce cost to \$4,970,160.

OPERATING: Operating costs are based on actual FY 2005-06 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2005-06

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$54.81	\$70.83	\$79.72	\$66.87

Given the increased felony classes in HB 28, rather than use the daily average cost, it was assumed more of these offenders would be assigned to medium custody for the longest portion of their sentence. Cost estimate used was \$70.83 per day or \$25,853 per year plus 3% annual inflation). Costs are based on year beds are needed starting with FY 08/09 (See Fiscal Impact Table (Table 1) on Page 1 of this note.

METHODOLOGY FOR DETERMINING PRISON BED IMPACT FOR HB 28

For various reasons—small number of convictions, creating new crimes, and lack of information on the nature of certain offenses – the Sentencing Commission was unable to use the Sentencing Simulation Model to project the prison bed impact due to HB 28. However, given the variety of increased or new penalties that are likely to increase sentences to active time and increase the prison population, Fiscal Research asked the Commission staff to estimate the minimum impact of Sections 1 through 7 of HB 28. These estimates are shown in Table 2 on the next page and in the

⁵ Close and medium custody “add-on” facilities 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 built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁶ Office of State Construction, March 24, 2006.

narrative that follows the chart. *Sections 1-6 could not be estimated beyond 2009/10 so no growth factor for prison population or beds is included. However, additional population increases are likely.* Estimates for Section 7, enhanced penalty for second or subsequent offense of Indecent Liberties with a Child, are also provided in a separate [Table 3](#)

TABLE 2 Offenses in HB 28 and Prison Bed Impact

<u>Sect 1 – expand definition & scope of current criminal offenses</u>	<u>08/09 Bed impact</u>	<u>09/10 Bed impact</u>	<u>10/11 Bed Impact</u>	<u>11/12 Bed impact</u>
1 st degree sex exploitation	1	2	2	2
2 nd degree	1	3	3	3
3 rd degree	1	4	4	4
Promote prostitution of Minor (Class D Felony)	1	2	2	2
Participate in Prostitution of Minor (Class E felony)	1	3	3	3
<u>Sect 2 – Disseminate harmful material (Class 1 Misd.)</u>	Possible impact on jails	Possible impact on jails	Possible impact on jails	Possible impact on jails
<u>Section 3 – Increase Penalty Class First degree sex exploit. Class D to C felony</u>	3	6	6	6
<u>Section 4 – Increase Penalty Class 2nd degree sex exploit. Class F to D felony</u>	7	14	14	14
<u>Section 5 – Increase Penalty Class 3rd degree sex exploit. Class I to F felony</u>	9	21	21	21
<u>Section 6 Solicit Child by Computer Class H to Class E felony</u>	1	2	2	2
Subtotal Sections 1-6	25	57	57	57
<u>Section 7 Indecent Liberties –Class E for 2nd offense</u>	17	47	59	61
TOTAL	42	104	116	118

Section 1 (Section 1 and the narrative for Sections 2 through 7 are primarily taken from analysis by the Sentencing Commission)

The proposed bill amends G.S. 14-190.13(5), expanding the definition of “sexual activity” to include the “lascivious exhibition of the genitals or pubic area of any person” as a sexual act that constitutes sexual activity. The provision would expand the scope of G.S. 14-190.16 through G.S. 14-190.19. It would not expand G.S. 14-190.14 and -190.15 because the act is already included in the offense.

The addition to the definition of “sexual activity” expands the conduct prohibited and therefore the potential pool of offenders under the following statutes:

1) G.S. 14-190.16, First Degree Sexual Exploitation of a Minor (currently a Class D offense). There were 3 convictions for First Degree Sexual Exploitation of a Minor in FY 2005/06. Of these 3 convictions, all received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2005/06 the average estimated time served for an offender convicted of a Class D offense was 75 months. If, for example, there was one additional conviction for this offense per year, the proposed bill would result in the need for one additional prison bed the first year and two additional prison beds the second year

2) G.S. 14-190.17, Second Degree Sexual Exploitation of a Minor (currently a Class F offense). There were 14 convictions for Second Degree Sexual Exploitation of a Minor in FY 2005/06. Of these 14 convictions, 57% (n=8) received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill per year, 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

3) G.S. 14-190.17A, Third Degree Sexual Exploitation of a Minor (currently a Class I offense). There were 21 convictions for this offense in FY 2005/06. Of these 21 convictions, none received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year (*Also see* page 3, Section 5).

4) G.S. 14-190.18, Promoting Prostitution of a Minor (currently a Class D offense). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for

violations of G.S. 14-190.18. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Further, it is not known how many additional convictions may result from expanding the definition of “sexual activity.”

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2005/06 the average estimated time served for an offender convicted of a Class D offense was 75 months. If, for example, there was 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. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

5) G.S. 14-190.19, Participating in Prostitution of a Minor (currently a Class F offense). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.19. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Further, it is not known how many additional convictions may result from expanding the definition of “sexual activity.”

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, 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.

Section 2

This provision amends G.S. 14-190.15, Disseminating harmful material to minors; exhibiting harmful performances to minors, to add committing the offense with “a person the defendant believes to be a minor.” There were three convictions for this offense in FY 2005/06. It is not known how many additional convictions may result from the proposed amendment.

G.S. 14-190.15 is a Class 1 misdemeanor. In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Section 3

Under the proposed bill G.S. 14-190.16, First Degree Sexual Exploitation of a Minor, would be reclassified from a Class D felony to a Class C felony. There were three convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population would occur if Class D First Degree Sexual Exploitation of a Minor convictions become Class C convictions under the proposed bill because of the longer average estimated time served (95 months for a Class C compared to 75 months for a Class D). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. If, for example, there were three convictions for this

offense per year, this bill would result in the need for three additional prison beds the sixth year and six additional prison beds the seventh year. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

Section 4

Under the proposed bill G.S. 14-190.17, Second Degree Sexual Exploitation of a Minor, would be reclassified from a Class F felony to a Class D felony. There were 14 convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population will occur if Class F Second Degree Sexual Exploitation of a Minor convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 47% for Class F) and longer average estimated time served (75 months for Class D compared to 19 months for Class F). If, for example, there were 14 Class F felony convictions that were reclassified as Class D felony convictions, this would result in the need for seven additional prison beds the first year and 14 additional prison beds the second year. In addition, there will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class F to a Class D.

Section 5

Under the proposed bill G.S. 14-190.17A, Third Degree Sexual Exploitation of a Minor, would be reclassified from a Class I felony to a Class E felony. There were 21 convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population will occur if Class I Third Degree Sexual Exploitation of a Minor convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (49% for Class E compared to 15% for Class I) and longer average estimated time served (31 months for Class E compared to 7 months for Class I). If, for example, there were 21 Class I felony convictions that were reclassified as Class E felony convictions, this would result in the need for nine additional prison beds the first year and 21 additional prison beds the second year. In addition, there will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class I to a Class E.

Section 6

The proposed bill reclassifies G.S. 14-202.3, Solicitation of Child by Computer to Commit an Unlawful Sex Act, from a Class H felony to a Class E felony. There were no convictions for which this offense was the most serious offense of conviction in fiscal years 2002/03, 2003/04, 2004/05, or 2005/06; thus, a detailed impact projection could not be computed using the Structured Sentencing Simulation Model.

Impact on the prison population will occur if Class H Solicitation of Child by Computer to Commit an Unlawful Sex Act convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (49% for Class E compared to 34% for Class H) and longer average estimated time served (31 months for Class E compared to 11 months for Class H).

If, for example, there were 3 Class H felony convictions that were reclassified as Class E felony convictions, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, there will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class H to a Class E.

Section 7 Indecent Liberties

Under the proposed bill, a second or subsequent violation of G.S. 14-202.1, Taking Indecent Liberties with Children, would be reclassified from a Class F felony to a Class E felony. This section of the bill has the most potential for significant increases to the prison population. Relevant statistics include:

- 629 convictions for violations of G.S. 14-202.1 in FY 2005/06.
- Of these, 324 were sentenced in Prior Record Level I, indicating they did not have a prior conviction.
- The remaining 305 were sentenced at or above Prior Record Level II, indicating at least one prior conviction. However, it is not known how many of these 305 convictions had a prior conviction for violation of G.S. 14-202.1. This is the pool for considering impact on prison beds
- In FY 2005/06, 49% of Class E convictions resulted in active sentences, with an average estimated time served of 31 months.

Scenarios: for Section 7 Indecent Liberties

The following scenarios shown in Table 2 were prepared by the Sentencing Commission based on a request by Fiscal Research staff. They assume that the specified percentage of the 305 subsequent convictions meet the additional element of the prior conviction (2nd offense) for a violation of G.S. 14-202.1.

TABLE 3

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS		
	Scenario A: 10%	Scenario B: 15%	Scenario C: 20%
2008/09	17	21	23
2009/10	47	59	56
2010/11	59	81	81
2011/12	61	88	91
2012/13	66	95	101
2013/14	69	100	103
2014/15	75	108	110
2015/16	83	117	119
2016/17	80	114	117
2017/18	81	116	120

NOTE: Fiscal Research used the base scenario – 10% - -for its fiscal impact estimates. This is a conservative approach –costs and bed impact could be higher

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.⁷

Given the wide variety of serious offenses modified by HB 28, the type of supervision and length of stay under supervision could increase significantly but a reliable fiscal impact figure cannot be determined. 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.

Further, since many of these offenses are B1--E offenses, the number of offenders on Post Release Supervision will also increase but the number of offenders and the cost cannot be reliably determined.

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.

Given the seriousness of these offenses, the increase in criminal penalties, and the expansion in scope for the offenses in HB 28, court time for court personnel and for indigent defense attorneys is likely to increase.. AOC's analysis of cost impact, adjusted by Fiscal Research, is shown in Table 4

⁷ 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.

TABLE 4 Offenses in HB 28 and Court Impact

<u>Sect 1 – expand definition & scope of current criminal offenses</u>	<u>Charges 05/06t</u>	<u>07/08 Costs (7 months)</u>	<u>08/09</u>	<u>09/10</u>
1 st degree sex exploitation	26	Fiscal impact but cant be determined for Sect 1 scope changes		
2 nd degree	69	See above		
3 rd degree	76	See above		
Promote prostitution of Minor (Class D felony)	No offense codes	See Above		
Participate in Prostitution of Minor (Class E felony)	No offense codes	See above		
<u>Sect 2 –Disseminate harmful material (Class 1 Misd.)</u>	16	Fiscal Impact but cant be determined		
<u>Section 3 – Increase Penalty Class First degree sex exploit. Class D to C felony</u>	26	\$1,181	\$2,025	\$2,126
<u>Section 4 – Increase Penalty Class 2nd degree sex exploit. Class F to D felony</u>	69	\$17,965	\$30,800	\$32,340
<u>Section 5 – Increase Penalty Class 3rd degree sex exploit. Class I to F felony</u>	76	\$16,332	\$28,000	\$29,400
<u>Section 6 Solicit Child by Computer – Class H to E felony</u>	62	\$14,582	\$25,000	\$26,250
<u>Section 7 Indecent Liberties –Class E for 2nd offense</u>	1,428*	\$67,301	\$115,381	\$121,150
<u>TOTAL</u>	NA	\$117,363	\$201,206	\$211,266

*The charges are primarily for first-time offenders for “Indecent Liberties” Little information is available regarding charges for second offenses for same crime.

Costs in Table 4 assume seven months of court time/costs in 2007/08 due to December 1 effective date; full year costs starting in 2008/09. 5% inflation is added each year. The five year costs are shown in Fiscal Impact Table on Page 1

AOC has developed standardized costs for handling court cases – court time for judicial officials and indigent defense counsel for both jury trials and plea arrangements – based on the criminal penalty for both felonies and misdemeanors. **The figures in Table 4 use the charges from 2005/06 as the baseline number of cases and assume increased court time for handling these cases because of higher level criminal penalties.** The methodology for calculating increased costs is shown by using Section 5 of the bill as an example in Table 5 below

Table 5: Section 5 Increase Third Degree Sex Exploitation from Class I to Class E

Estimated Court Time and Indigent Defense Costs							
<i>Trial</i>	<i>Court Time, DA Preparation and Jury Costs</i>					<i>Indigent Defense Costs</i>	
<u>Offense Class</u>	<u>#Cases</u>	<u>Court Time</u>	<u>DA Prep</u>	<u>Jury</u>	<u>Court Costs</u>	<u>Cases</u>	<u>Defense Cost</u>
Class I	2	\$2919	\$1491	\$1280	\$8820	1	\$1932
Class E	3	\$4433	2286	\$2760	\$20157	2	\$5818
<i>Plea</i>	<i>Court Time, DA Preparation and Jury Costs</i>					<i>Indigent Defense Costs</i>	
<u>Offense Class</u>	<u>#Cases</u>	<u>Court Time</u>	<u>DA Prep</u>	<u>Jury</u>	<u>Court Costs</u>	<u>Cases</u>	<u>Defense Cost</u>
Class I	26	\$108	\$99	--	\$5382	14	\$1232
Class E	34	\$192	\$199	--	\$13294	26	\$4472

Section 7 –Indecent Liberties

The Judicial costs shown in Table 4 for Section 7 are based on the following assumptions

- Court time for disposing of additional cases for 2nd or subsequent offense and,
- More vigorous defense and increased court time for defendants charge with first offense in order to avoid possibility of the enhanced punishment for a 2nd conviction.

For the latter, AOC assumed an additional 30 minutes per case for first offense for all cases. Fiscal Research does not agree this will apply in all cases and has assumed 50 % of the cases would be affected .Therefore, the cost shown in Table 4 for Section 7 is a 50% reduction below AOC estimate

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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DATE: May 1, 2007



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