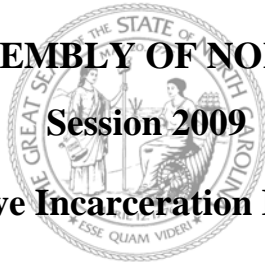


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 307 (Second Edition)

SHORT TITLE: Regulate Ownership & Use of Certain Reptiles

SPONSOR(S): Senator Jones

FISCAL IMPACT					
	Yes (X)	No ( )	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
<b>EXPENDITURES</b>					
<b>GENERAL FUND</b>					
Correction			Indeterminate fiscal impact		
Probation			Indeterminate fiscal impact		
Judicial			Indeterminate fiscal impact		
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> December 1, 2009					
<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:**

This bill would amend Article 55 of Chapter 14 so that it would regulate venomous reptiles, large constricting snakes and crocodylians other than the American alligator (as opposed to just reptiles of a venomous or poisonous nature as under current law). It would address the handling, ownership, possession, use, trafficking, transportation and escape of these reptiles. It would also address investigations and arrests for violations and the seizure of these reptiles.

The bill would add transportation to the regulated activities and specify protocols and standards for secure enclosures and transport containers. The bill would add a requirement that, in the event of an escape, the owner or possessor of the reptile immediately notify local law enforcement. Violations would be Class 2 misdemeanors.

The bill would change the scope of G.S. 14-418:

- a) Remove the current prohibition on intentionally handling a venomous reptile. Instead, prohibit the handling of a venomous reptile, large constricting snake, or crocodilian in a manner than intentionally or negligently exposes another person to unsafe contact with the reptile.
- b) Add “negligently” to the prohibition on suggesting/inducing/aiding another person to handle or expose himself to a regulated reptile (also adds “in an unsafe manner”).
- c) Permit safe and reasonable handling of reptiles for the purposes of animal husbandry, exhibition, training, transport, and education.

The bill would also change the standard for immediate investigations and seizure of reptiles by a law enforcement officer or animal control officer from “reasonable grounds” to “probable cause” in G.S. 14-419.

Under current law, violations of Article 55 are Class 2 misdemeanors. The bill would add (i) a Class 1 misdemeanor where a violation of the Article results in a life threatening injury to, or the death of, someone other than the owner or the owner’s immediate family, employee, or the agent and (ii) a Class 1 misdemeanor where a person intentionally release into the wild a nonnative enormous reptile, a large constricting snake, or a crocodilian. (There are exemptions for unavoidable incidents such as acts of God or theft.) Violations resulting in life threatening injury to death by intentional release would be deemed to constitute wanton conduct and subject the violator to punitive damages in any civil case filed as a result.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The North Carolina 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.

Sentencing Commission staff outlined six sections and subsections of the bill and explained the proposed changes as they relate to current law (see below). Based on available data, *the Sentencing Commission is not able to predict the number of additional convictions that may result from the bill.* Proposed G.S. 14-422 contains a Class 1 misdemeanor offense. In FY 2007-08, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30 days. The other sections in this bill contain Class 2 misdemeanor offenses. In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31<sup>st</sup> day at a rate of \$18 per day. Because the average active sentences for Class 1 and Class 2 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

### **G.S.14-416**

Currently, under G.S. 14-416, Handling of poisonous reptiles declared public nuisance and criminal offense, a person is guilty of a Class 2 misdemeanor if that person intentionally exposes human beings to contact with reptiles of a venomous nature. This section would broaden the scope of G.S. 14-416, making it a Class 2 misdemeanor for any person to intentionally or negligently expose any other human being to unsafe contact with venomous reptiles, with large constricting snakes, or with crocodilians.

In FY 2007-08, there were no convictions under G.S. 14-416. *It is not known how many additional convictions may result from the proposed broadening of the current statute.*

#### G.S. 14-417

G.S. 14-417, Regulation of ownership or use of poisonous reptiles, currently makes it a Class 2 misdemeanor for any person to own, possess, use or traffic in any reptile of a poisonous nature whose venom is not removed, unless such reptile is, at all times, kept securely in a box, cage or other safe container in which there are no openings of sufficient size to permit escape of such reptile, or through which such reptile can bite or inject its venom into any human being. This section would expand the scope of the offense by making it a Class 2 misdemeanor for any person to own, possess, use, transport, or traffic any venomous reptile that is not housed in a sturdy and secure enclosure, as defined by G.S. 14-417(b).

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-417. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. *It is not known how many additional convictions may result from the proposed broadening of the current statute.*

This bill also creates a new offense, G.S. 14-417(c), requiring that in the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement, and that failure to do so would be a Class 2 misdemeanor.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.*

#### G.S. 14-417.1

New section, G.S. 14-417.1, Regulation of ownership or use of large constricting snakes, subsection (a) would make it a Class 2 misdemeanor for any person to own, possess, use, transport or traffic in any large constricting snakes, as defined by the statute, that are not housed in a sturdy and secure enclosure, as defined by and conforming to the guidelines set out in the G.S. 14-417.1(b). G.S. 14-417.1(c) would also require that, in the event of an escape of a large constricting snake, the owner or possessor shall immediately notify local law enforcement; failure to do so would be a Class 2 misdemeanor.

Since the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.*

#### G.S. 14-417.2

New section, G.S. 14-417.2, Regulation of ownership of crocodilians, would regulate all crocodilians, except the American alligator. G.S. 14-417.2(a) would make it a Class 2 misdemeanor for any person to own, possess, use, transport, or traffic in any crocodilian that is not housed in a sturdy and secure enclosure, as defined by and conforming to the guidelines set out in G.S. 14-417.2(b). G.S. 14-417.2(c) would require that, in the event of the escape of a crocodilian, the owner or possessor shall immediately notify local law enforcement, and that failure to do so would be a Class 2 misdemeanor.

Since the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.*

#### G.S. 14-418

Currently, G.S. 14-418, Prohibited handling of reptiles or suggesting or inducing others to handle, makes it a Class 2 misdemeanor for any person to intentionally handle any reptile of a poisonous nature, whose venom is not removed, by taking or holding such reptile in bare hands or by placing or holding such reptile

against any exposed part of the human anatomy, or by placing their own or another's hand or any other part of the human anatomy in or near any box, cage, or other container wherein such reptile is known or suspected to be. Further, it is unlawful for any person to intentionally suggest, entice, invite, challenge, intimidate, exhort or otherwise induce or aid any person to handle or expose himself to any such poisonous reptile in any manner defined in this Article. This bill would separate G.S. 14-418 into three sections and would expand the scope of G.S. 14-418(a) to make it a Class 2 misdemeanor for any person to handle any reptile in a manner that intentionally or negligently exposes another individual to unsafe contact with such reptile.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-418. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. *It is not known how many additional convictions may result from the proposed broadening of the current statute.*

G.S. 14-418(b) would make it a Class 2 misdemeanor for any person to intentionally or negligently suggest, entice, invite, challenge, intimidate, exhort or otherwise induce or aid any person to handle or expose himself in an unsafe manner to any reptile regulated under this Article.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.*

This bill would also provide in G.S. 14-418(c) that safe and responsible handling of reptiles for purposes of animal husbandry, training, transport, and education is permitted.

#### G.S. 14-422

This section adds G.S. 14-422(b), which would make it a Class 1 misdemeanor if a person, other than the owner of a venomous reptile, large constricting snake, or crocodilian, the owners' agent, employee, or a member of the owner's immediate family, suffers a life threatening injury or is killed as a result of a violation of this Article. G.S. 14-422(b) would not apply to violations that result from incidents that could not have been prevented or avoided by the owner's exercise of due care or foresight, or in the case of thefts of the reptile from the owner. G.S. 14-422(b) would apply to all of the above discussed provisions. Further, this section adds G.S. 14-422(c), which would make any person intentionally releasing into the wild, a nonnative venomous reptile, a large constricting snake, or a crocodilian guilty of a Class 1 misdemeanor.

Since the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under G.S. 14-422(b) and (c).*

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

The Sentencing and Policy Advisory Commission does not have any data upon which to estimate the impact of this bill on the prison population. Therefore, *it is not known how many additional prison beds may be needed* under the proposed legislation. In addition, the majority of convictions likely to be granted active sentences under this bill will be incarcerated for a length of 90 days or less and thus will be housed in county jails. The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31<sup>st</sup> day at a rate of \$18 per day. Because the average active sentences for Class 1 and Class 2 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

It is important to note that 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 and beyond*. Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

### **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>1</sup>

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 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 result in sentences of intermediate or community punishment, *potential costs to DCC cannot be determined*.

### **Judicial Branch**

The Administrative Office of the Courts (AOC) 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.

For 2008, AOC data reveal no charges or convictions under G.S. 14-422 (handling dangerous reptiles), a Class 2 misdemeanor. Therefore, *AOC does not estimate any reduction in charges from the deletion of the ban on some venomous reptile-handling activities*. This bill would expand the scope of Article 55 to include more reptiles and activities as described above, creating the potential for new Class 2 misdemeanor charges. The bill would also elevate a subset of violations from Class 2 misdemeanors to Class 1 misdemeanors (life threatening injury or death resulting) and create a new Class 1 misdemeanor (intentional release).

*AOC cannot determine the number of new charges that would result from this bill*. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. The cost to dispose of each new charge would range from \$91 (Class 2 plea) to \$279 (Class 1 trial). Indigent defense time for misdemeanor cases averages three hours per indigent defendant, or \$225 (\$75 per hour). Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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<sup>1</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.

*AOC also cannot project the number of civil cases that might arise under this bill. Daily costs for civil cases range from \$955 (non-jury District Court trial) to \$2,001 (Superior Court jury trial longer than 5 days); costs are for in-court personnel only.*

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

**TECHNICAL CONSIDERATIONS:**

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**DATE:** April 14, 2009



**Signed Copy Located in the NCGA Principal Clerk's Offices**