

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 227 (Second Edition)
SHORT TITLE: Disturbing/Dismembering Human Remains.
SPONSOR(S): Representatives Gillespie, Hilton, Hollo, and Jones

Table with 5 columns: FISCAL IMPACT, Yes (X), No (), No Estimate Available (), FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2015-16. Rows include EXPENDITURES (Correction, Probation, Judicial) and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

The proposed legislation amends G.S. 14-401.22 to add a subsection (c) which makes it unlawful to (i) disturb, vandalize, or desecrate human remains, by any means or (ii) commits or attempts to commit upon human remains any act of sexual penetration.

Subsection (d) provides a person that knowingly and willfully commits the offense of dismembering human remains by any means is guilty of a Class H felony. Subsection (f) defines human remains as any dead human body in any condition of decay or significant part of a dead body.

Subsection (e) directs that any person violating subsection (d), dismembering human remains, that knows or has reason to know the remains are of a person that did not die of natural causes, shall be guilty of a Class D felony.

The act becomes effective December 1, 2011, and applies 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

The bill amends G.S. 14-401.22, Concealment of death, disturbing human remains; dismembering human remains, enacting new offenses as follows:

G.S. 14-401.22(c): Makes it a Class I felony to do either of the following:

- (1) Disturb, vandalize or desecrate human remains, by any means including any physical alteration or manipulation of the human remains; or
- (2) Commit or attempt to commit upon any human remains any act of sexual penetration.

Currently, it is a Class H felony to knowingly and willfully disturb, destroy, remove, vandalize, or desecrate human remains that have been interred in a cemetery. G.S. 14-149(a1). There were no Class H convictions under G.S. 14-149(a1) during FY 2009-10. The Class I felony applies to both interred and un-interred human remains. However, it is assumed that prosecutors will continue to charge crimes against interred human remains under the existing Class H felony in G.S. 14-149(a1), rather than the new Class I felony in G.S. 14-401.22(c), (f).

Since the bill creates a new offense, it is not known how many offenders might be convicted and sentenced under the proposed statute. In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed 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 three additional prison beds the second year.

G.S. 14-401.22(d): Makes it is a Class H felony to attempt to conceal evidence of another person's death by knowingly and willfully dismembering or destroying human remains. This offense would cover certain acts currently punishable as a Class I felony under G.S. 14-401.22(a), which prohibits secretly burying or disposing of a dead human body with the intent to conceal the person's death, and as a Class A1 misdemeanor under G.S. 14-401.22(b), which prohibits aiding and abetting concealment of a person's death.

In FY 2009-10, there were four Class I felony convictions under G.S. 14-401.22(a) and no Class A1 misdemeanor convictions under G.S. 14-401.22(b). Since the bill creates a new offense, it is not known how many of these offenders or how many additional offenders would be convicted under the proposed Class H felony.

In FY 2009-10, 36 percent of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed 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.

G.S. 14-401.22(e): Makes it a Class D felony to attempt to conceal evidence of another person's death by knowingly and willfully dismembering or destroying human remains by any means, knowing or having reason to know the person did not die of natural causes. This offense would cover certain acts currently punishable as a Class I felony under G.S. 14-401.22(a), which prohibits secretly burying or disposing of a dead human body with the intent to conceal the person's death, and as a Class A1 misdemeanor under G.S. 14-401.22(b), which prohibits aiding and abetting the concealment of a person's death. It would also reach conduct currently covered by common law obstruction of justice, a Class 1 misdemeanor.

In FY 2009-10, there were four Class I felony convictions under G.S. 14-401.22(a) and no Class A1 misdemeanor convictions under G.S. 14-401.22(b). In addition, there were 141 Class 1 misdemeanor convictions for obstruction of justice. Since the bill creates a new offense, it is not known how many of these 145 offenders or how many additional offenders would be convicted under the proposed Class D felony.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2009-10, the average estimated time served for an offender convicted of a Class D offense was 63 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

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 (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.

The proposed legislation creates a new Class I felony of violating new 14-401.22(c), a new Class H felony of violating new 14-401.22(d), and a new Class D felony of violating new 14-401.22(e). Because these are new offenses, AOC has no data upon which to estimate the number of charges that may occur from the passage of the bill.

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. The cost for the average workload of a higher level (Class A through E) felony case (Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant) is \$1,558.

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.

In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class F felony case was \$885 per indigent defendant, and \$1,245 for a Class C felony.

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

TECHNICAL CONSIDERATIONS: None

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