

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 149 (First Edition)

**SHORT TITLE:** Caylee's Law/Report Missing Children.

**SPONSOR(S):** Representatives Hastings, Jordan, Schaffer, and J. Bell

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Administrative Office of the Courts, Department of Public Safety, Indigent Defense Services					
<b>EFFECTIVE DATE</b> December 1, 2013					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$136 - \$1,618 per disposition
- Indigent Defense Services: Per case cost increase of \$14 - \$221 in district court  
Per case cost increase of \$50 - \$396 in superior court without a trial  
Per case cost increase of \$134 - \$1,046 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$327 - \$3,703

Please see the Assumptions and Methodology section for additional information.

**BILL SUMMARY:**

House Bill 149 would create a series of new offenses involving the failure to report a missing child and would also expand the scope of several already existing offenses. Section 2 of the bill amends Article 39 of Chapter 14 of the General Statutes by adding a new section, G.S. 14-318.5(b), which makes failure to report the disappearance of a child to law enforcement a Class I felony for any person providing care to a child. Section 2 also creates a Class 1 misdemeanor offense for failure on the part of any person who suspects the disappearance of a child and who suspects the child may be in danger to report those suspicions to law enforcement.

G.S. 14-318.4 defines “grossly negligent omission” in providing care to or supervision of a child, and makes such omission a Class E felony if the omission results in serious bodily injury to the child or a Class H felony if the omission results in serious physical injury to the child. Section 3 of the bill expands the definition of “grossly negligent omission” to include the failure to report a missing child to law enforcement.

G.S. 14-401.22 makes the failure to report to law enforcement the death of person, secret burial or disposal of a dead human body a Class I felony if it is done with the intent to conceal the death of a person. Section 5 increases the penalty to a Class H felony if the offense involves the death of a person less than 16 years of age.

G.S. 14-225 makes it a Class 2 misdemeanor to make false reports to law enforcement. Section 6 amends this General Statute by making the offense a Class H felony if the false report involved the disappearance of a child or child victim of a Class A, B1, B2, or C felony offense.

Section 7 adds criminal punishments for failure to comply with G.S. 7B-301(b), requiring any person or institution who suspects that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment to report it to the authorities, and requiring a director of social services who receives a report of sexual abuse of a child in a child care facility to notify the State Bureau of Investigation of the report. The bill makes both offenses Class 1 misdemeanors. The following table illustrates changes the bill makes to existing statutes.

<b>General Statute</b>	<b>Offense description</b>	<b>Current Class</b>	<b>Proposed Class</b>
14-318.5(b)	Failure of caregiver to report the disappearance of a child to law enforcement	New Offense	Class I Felony
14-318.5(c)	Failure of any person who suspects the disappearance of a child and who suspects the child may be in danger to report those suspicions to law enforcement	New Offense	Class 1 MD
14-401.22	Failure to report to law enforcement the death of person, secret burial or disposal of a dead human body if it involves a child	Class I Felony	Class H Felony
14-225(b)	Making false reports to law enforcement that involves the disappearance of a child or child victim of a Class A, B1, B2, or C felony offense	Class 2 MD	Class H Felony
7B-301(b)	Failure to report to authorities a suspicion that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment must report it to the authorities	New Offense	Class 1 MD
7B-301(c)	Failure by a director of social services to notify the State Bureau of Investigation of a report of sexual abuse of a child in a child care facility	New Offense	Class 1 MD

## **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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Since the bill creates four new offenses, increases the scope of two existing offenses, and elevates two offenses under certain circumstances, 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 new statute.

### **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.

This bill creates four new criminal offenses, elevates two offenses, and expands the scope of two existing offenses. AOC does not have data upon which to estimate the number of charges that may occur due to the changes proposed in this bill. Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. For every person charged with these offenses, AOC estimates the average cost to the court would be \$165.

Section 2 also creates a new Class I felony offense. While pleas for Class I felonies are sometimes handled in district court, many pleas and all trials for Class I felonies are handled in superior court. For every person charged with a Class I felony, AOC estimates the average cost to the court would be \$365. Because this is a new offense, AOC has no way to estimate the number of charges that may result from this section of the bill.

Section 3 expands the scope of an existing Class H felony. In fiscal year 2011-12, approximately 12 defendants were charged with gross negligent omission in the care of a child that showed a reckless disregard for human life. Of these, 6 (50%) were convicted. It is not known how many additional charges or convictions may result from the proposed broadening of the current statute. For every person charged with this offense, AOC estimates the average cost to the court would be \$501.

Section 3 also expands the scope of an existing Class E felony offense. In fiscal year 2011-12, approximately 23 defendants were charged with negligent child abuse resulting in serious bodily injury. Of these 12 (52%) were convicted. It is not known how many additional charges or convictions may result from the proposed broadening of the current statute. For every person charged with this offense, AOC estimates the average cost to the court would be \$1,618.

Section 5 increases an existing Class I felony to a Class H felony if a child is involved. While pleas for both felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. The difference in cost to AOC between a Class I felony and a Class H felony is \$136 (Class H per case cost of \$501 minus Class I per case cost of \$365 equals \$136). In FY 2011-12 six defendants were charged with a violation of G.S. 14-401.22. Of those, two were convicted. AOC cannot estimate how many charges may result from the elevated charge because it is not known how many of the existing offenses involved the death of a child.

Section 6 elevates an existing offense for making a false, misleading, or unfounded report to law enforcement, currently a Class 2 misdemeanor under G.S. 14-225, to a Class H felony if a child is involved. In fiscal year 2011-12, approximately 1,246 defendants were charged with this offense. Of these, 301 (24%) were convicted. It is not known whether any of the 301 convictions under G.S. 14-225 involved conduct covered by the proposed Class H offense and could become Class H convictions under the proposed section. For every person charged with this elevated Class H felony, AOC estimates the average cost to the court would be \$277, which is the difference between the current Class 2 misdemeanor and the new Class H felony (\$501 minus \$88).

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. There were four new offenses created by this legislation; each of these new offenses would create new costs for IDS. IDS estimates that a new Class I felony would cost \$221 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney for a Class I felony would be \$396 per case if the case does not go to trial and \$1,046 if it does.

Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. IDS estimates that these new Class 1 misdemeanors would cost \$166 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney for these Class 1 misdemeanors would be \$321 per case if the case does not go to trial and \$847 if it does.

This bill also elevates the penalties for two offenses, which will lead to increased per case costs for IDS. IDS estimates that the cost of elevating a Class I felony offense to a Class H felony offense will result in an increase of \$14 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost of a PAC attorney for this Class H felony would be \$50 per case if the case does not go to trial and \$134 if it does.

IDS estimates that the cost of elevating a Class 2 misdemeanor to a Class H felony will result in an increase of \$69 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost of a PAC attorney for a Class H felony would be \$125 per case if the case does not go to trial and \$333 if it does.

This bill would also create additional grounds for existing offenses involving the failure to report a missing child. In general, creating additional grounds for an existing offense may increase the number of cases in which IDS has to provide appointed counsel. However, there is no way to quantify that impact.

### **Department of Public Safety –Prison Section**

Since the bill creates four new offenses, increases the scope of two existing offenses, and elevates two offenses under certain circumstances, 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 new statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

<b>Population Projections and Bed Capacity</b>					
<b>Five Year Impact</b>					
	<b>June 30 2013</b>	<b>June 30 2014</b>	<b>June 30 2015</b>	<b>June 30 2016</b>	<b>June 30 2017</b>
1. Inmates <sup>2</sup>	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

#### **Department of Public Safety – Community Correction Section**

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, 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). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service.<sup>4</sup> General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

<sup>1</sup> 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 Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>2</sup> 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 February 2013.

<sup>3</sup> Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

<sup>4</sup> CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is \$1,960 (540 days times \$3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is \$1,634 (450 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced to community supervision under the proposed bill.

Section 2 also creates a new Class I felony offense. In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup> The average lengths of intermediate and community punishment imposed for this offense class were 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is \$2,831 (780 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is \$2,396 (660 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

Section 3 expands the scope of an existing Class E felony offense. In FY 2011-12, 57% of Class E felony offenders received active sentences; 43% received intermediate sentences. All active sentences result in twelve months of post-release supervision (PRS). The cost of twelve months of PRS is \$1,325 per offender (\$3.63 per day times 365 days).<sup>6</sup> The average lengths of intermediate punishment imposed for this offense class was 34 months. The average cost to community corrections for any individual convicted of a Class E felony and who receives an intermediate sentence is \$3,703 (1,020 days times \$3.63 per day). It is not known how many additional convictions may result from the proposed broadening of the current statute.

Section 3 also expands the scope of an existing Class H felony. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>7</sup> The average lengths of intermediate and community punishment imposed for this offense class were 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is \$3,158 (870 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is \$2,831 (780 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

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<sup>5</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

<sup>6</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

<sup>7</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

Section 5 elevates an existing Class I felony to a Class H felony if a child is involved. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. Since both Class H and Class I felonies require nine months of post-release supervision, there will be no additional cost to community corrections for individuals receiving active sentences. For every individual convicted of a Class H felony and who receives an intermediate sentence, it will cost community corrections an addition \$327, which is the difference between the current Class I felony and the new Class H felony (\$3,158 minus \$2,831). For every individual convicted of a Class H felony and who receives a supervised community sentence, it will cost community corrections an addition \$435, which is the difference between the current Class I felony and the new Class H felony (\$2,831 minus \$2,396).

Section 6 elevates an existing Class 2 misdemeanor to a Class H felony if a child is involved. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. Only felonies require post-release supervision (PRS) for active sentences. All active Class H felony sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>8</sup> For every individual convicted of a Class H felony who receives an intermediate sentence, it will cost community corrections an addition \$1,416, which is the difference between the current Class 2 misdemeanor and the new Class H felony (\$3,158 minus \$1,742). For every individual convicted of a Class H felony who receives a supervised community sentence, it will cost community corrections an addition \$1,415, which is the difference between the current Class 2 misdemeanor and the new Class H felony (\$2,831 minus \$1,416).

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** March 6, 2013

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

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<sup>8</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.