

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 426 (First Edition)

SHORT TITLE: Chamberlin's Law.

SPONSOR(S): Representatives Adams, Jeffus, Harrison, and McElraft

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:					
Correction					
Probation					
Judicial					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<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>					

FISCAL SUMMARY:

Department of Correction (DOC): The proposed legislation increases the potential number of offenders that would be guilty of Class 1 misdemeanors and Class H felonies. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 misdemeanor convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions that occur as a result of the proposed legislation would not be expected to have a significant impact on the prison population.

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 additional Class H

convictions per year as a result of the proposed broadening of the current statute, 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.

Judicial Branch: The Administrative Office of the Courts (AOC) reported that a fiscal impact would result from the potential increase in misdemeanor charges. AOC was not able to determine the exact amount of fiscal impact.

BILL SUMMARY:

The proposed legislation amends G.S. 14-360(a) to reduce the state of mind required for misdemeanor animal cruelty charge from intentionally to recklessly, and amends G.S. 14-360(a1) to reduce the state of mind required for felony animal cruelty charge related to intentional deprivation of necessary sustenance from maliciously to recklessly. The act also amends G.S. 14-360(b) to change the state of mind required for other felony-level animal cruelty charges from maliciously to maliciously or intentionally.

The proposed legislation adds new G.S. 14-360(b1) authorizing a court to impose additional penalties when a person pleads guilty or nolo contendere or is found guilty of felony animal cruelty pursuant to G.S. 14-360(b). The additional penalties include prohibiting the person from having custody of animals and ordering the person to receive a psychiatric or psychological evaluation and/or treatment.

In addition, the act adds new G.S. 14-362.4, which makes it a Class 1 misdemeanor to fail to provide a dog with adequate shelter. *Adequate shelter* is defined to mean, at a minimum, an artificial shelter with a waterproof roof and specifically excludes barrels.

The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

SOURCE: BILL DIGEST H.B. 426 (03/22/0201)

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.

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.

Section 1:

Subsection (a) is amended to change the state of mind required to commit the offense from “intentionally” to “recklessly.” This change could result in additional persons being included under the subsection who were previously excluded. A violation of subsection (a) is a Class 1 misdemeanor.

Subsection (a1) is amended to change the state of mind required to commit the offense from “maliciously” to “recklessly.” This change could result in additional persons being included under the subsection who were previously excluded. A violation of subsection (a1) is a Class H felony (raised from A1 December 1, 2010).

DOC Impact: There were 181 misdemeanor convictions under G.S. 14-360 for cruelty to animals during FY 2009-10. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 misdemeanor convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions that occur as a result of the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Because the offense under subsection (a1) was raised from misdemeanor Class A1 to felony Class H after the end of FY 2009-10 (on June 30, 2010), the Sentencing Commission has no data for convictions under the new classification. There were three Class A1 convictions under G.S. 14-360 during FY 2009-10. It is not known how many additional convictions may result from the proposed broadening of the current statute.

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 additional Class H convictions per year as a result of the proposed broadening of the current statute, 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.

Judicial Impact: The modifications in subsection (a) and (a1) lower necessary intent for these crimes against animals. Therefore, the proposed legislation increases the potential number of offenders that would be guilty of the Class 1 misdemeanor under (a) and increases the number of Class H felonies under (a1). The number of charges under these subsections would increase.

Subsection (b) is amended to add “intentionally” to the states of mind required to commit the offense. This change could result in additional persons being included under the subsection who were previously excluded. A violation of subsection (b) is a Class H felony (raised from Class I December 1, 2010).

DOC Impact: Because this offense was raised from felony Class I to Class H after the end of FY 2009-10 (on June 30, 2010), the Sentencing Commission has no data for convictions under the new classification. There were 12 Class I felony convictions under G.S. 14-360 for cruelty to

animals during FY 2009-10. It is not known how many additional convictions may result from the proposed broadening of the current statute.

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 additional Class H convictions for this proposed as a result of the proposed broadening of the current statute, 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.

Judicial Impact: For calendar year 2010, AOC data reveal 523 defendants charged with the Class 1 misdemeanor under G.S. 14-360 and 139 defendants charged with the Class H felony. AOC cannot project the number of additional defendants who would be charged due to this bill. For the Class 1 misdemeanor offense, the impact of additional charges would be in district court. Overall, the monetary value of the average workload of a misdemeanor case for those positions typically involved in misdemeanor cases – District Court Judge, Assistant District Attorney, Deputy Clerk, and Victim Witness Legal Assistant – is \$130. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 per indigent defendant.

While some judicial districts handle pleas for Class H and I felonies in district court, all trials and many pleas would occur as new workload in superior court. 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. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class H felony case was \$540 per indigent defendant.

Subsection (b1) is added to the statute to authorize the court to impose additional prohibitions and restrictions on a person who is convicted of violating subsection (b). Subsection (b1) makes it a Class 1 misdemeanor for an offender to violate any of these additional prohibitions or restrictions imposed by the sentencing court.

DOC Impact: Since the proposed subsection (b1) creates a new offense, the Sentencing Commission has no historical data from which to estimate the impact of this subsection on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed subsection. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence 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.

Judicial Impact: For the Class 1 misdemeanor offense, the impact of additional charges would be in district court. Overall, the monetary value of the average workload of a misdemeanor case for those positions typically involved in misdemeanor cases – District Court Judge, Assistant District Attorney, Deputy Clerk, and Victim Witness Legal Assistant – is \$130. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a

misdemeanor case was \$225 per indigent defendant. If the order to receive counseling is imposed as a condition of probation, and if this condition is violated, there would be additional impact on the courts due to an increase in probation violation hearings.

Section 2:

This section creates G.S. 14-362.4, Failing to provide adequate shelter to dogs. This statute makes it a Class 1 misdemeanor for a person who owns or has custody of a dog to intentionally fail to provide the dog with adequate shelter (as defined by statute).

DOC Impact: Since the proposed section creates a new offense, the Sentencing Commission has no historical data from which to estimate the impact of this proposed bill. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence 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.

Judicial Impact: For the Class 1 misdemeanor offense, the impact of additional charges would be in district court. Overall, the monetary value of the average workload of a misdemeanor case for those positions typically involved in misdemeanor cases – District Court Judge, Assistant District Attorney, Deputy Clerk, and Victim Witness Legal Assistant – is \$130. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 per indigent defendant.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone; John Poteat

APPROVED BY: Mark Trogon, for Lynn Muchmore, Director
Fiscal Research Division



DATE: April 12, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices