

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: HB 408 3rd Edition
SHORT TITLE: Amend Secret Peeping Law
SPONSOR(S): Representative Hackney

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
Correction	Unable to determine exact amount; possible impact on local jails and state prisons.				
Judicial	Unable to determine exact amount; dependent on the degree to which prosecutors charge defendants with new offenses listed in the bill and number of repeat offenders.				
TOTAL EXPENDITURES:	Unable to determine exact amount.				
ADDITIONAL PRISON BEDS*	Unable to determine exact amount.				
POSITIONS: (cumulative)	Unable to determine exact amount.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Jails.					
EFFECTIVE DATE: December 1, 2003					
<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: HB 408 amends G.S. 14-202, which currently provides for a Class 1 misdemeanor for a person secretly peeping into a room occupied by a female. Section 1 of the bill would modify the current language of G.S. 14-202 to significantly expand the scope of the secret peeping law to: (1) expand the scope of current secret peeping law to include male as well as female persons; (2) create a new offense of secretly peeping while possessing a photographic device (Class A1 Misdemeanor); (3) create a new offense of creating a photographic image while peeping (Class I felony); (4) create a new offense of creating a photographic image under clothing (Class I felony); (5) create a new offense of installing a photographic device for purposes of arousing sexual desire (Class I); (6) create a new offense of possessing a photographic image obtained in violation of these laws (Class I); (7) create a new offenses of disseminating images obtained in violation of this section (Class H felony); (8) to provide that second or subsequent felonies are to be punished 2 class higher; (9) allow for civil cause of action by victims of unauthorized capture of photographic image; (10) allow courts to decide if offender must satisfy requirements of the sex offender registry program; and (11) allow a judge to impose psychological evaluation and treatment on first offenders and requires it for second or subsequent offenses. Section 1 of the bill does not affect the legal activities of those who are licensed pursuant to Chapter 74C, Private Protective Services, or Chapter 74D, Alarm Systems, of the General Statutes, who are legally engaged in the discharge of their official duties within their respective professions, and who are not engaging in activities for an improper purpose as described in the section. Section 2 of the bill makes a conforming amendment to the sex offender registration statutes.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

During FY 2001-2002, there were 53 convictions for secret peeping. Eleven of these convictions received an active sentence, two received an intermediate punishment, and 40 received a community punishment. It is not known how many additional convictions may result from the proposed expansion of the existing offense to include male victims. In FY 2001-2002, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served was 35.2 days. While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails but paid for by the State at a cost of \$18/day. The expansion of the statute to include male victims may result in additional offenders housed in local jails but paid for by the state. Because offenders serving active sentences of 90 days or less are housed in county jails, additional Class 1 misdemeanors are not expected to have a significant impact on the prison population.

HB 402 also introduces six new offenses related to the possessing, using or installing photographic devices or possessing or disseminating of photographic images. Of these new offenses, one is a Class A1 misdemeanor, four are Class I felonies, and one is a Class H felony. Because these are new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population.

In FY 2001-2002, 20 percent of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served was 55.1 days. It is likely that misdemeanants sentenced under this bill would be housed in local jails but paid for by the State at a cost of \$18/day. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days). Because only A1 offenders falling in Prior Record Level III receive active sentences that might be served in the state prison system, convictions for this proposed offense would not be expected to have a significant impact on the prison population.

Because the proposed bill creates several new Class I offenses, the Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill. For example, if there were 10 Class I convictions for any of the four Class I felony offenses listed in HB 408, 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. Furthermore, if there were three Class H convictions for disseminating or allowing images to be disseminated 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. In 2001-2002, the statewide average operating cost for one inmate was \$62.43/day or \$22,787/year.

In addition, because offenders of a second or subsequent felony conviction under G.S. 14-102 would be punished one offense class higher than the underlying offense, there could be an additional impact on the prison system. For example, if there were 10 convictions that moved from a Class A1 misdemeanor to a Class I felony, 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. While some Class I misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. In contrast, Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 9 percent of Class I felony offenders were sentenced to active sentences, 37 percent were sentenced to intermediate sanctions, and 54 percent were sentenced to community punishment. On average, offenders served between seven and nine months. Convictions that increase Class A1 misdemeanors to Class I felonies will result in more frequent, longer active sentences served in state prisons rather than local jails.

Furthermore, if there were 10 Class I felonies that were reclassified as Class H felonies, this would result in the need for two additional prison beds the first year and three additional prison beds the second year. In 2001-2002, an average of 33 percent of Class H felony offenders were sentenced to active prison sentences, 51 percent were sentenced to intermediate sentences, and 16 percent were sentenced to community punishment. On average, offenders served between

9 and 12 months. Because it is likely that offenders may have more than one conviction for violations of G.S. 14-102, there could be an impact on the prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

For calendar year 2002, AOC data reveal that 168 defendants were charged with secret peeping under current G.S. 14-202. Because the bill creates a new offense, no data is available from which to estimate the number of additional charges that would occur as a result of this bill. AOC anticipates that the expansion of the bill to include males and the several offenses for the creation, use, possession, and dissemination of photographic devices or images could lead to an increase in new felony and misdemeanor charges. An increase in cost is dependent on the degree to which prosecutors charge defendants with new offenses listed in the bill as well as the number of repeat offenders. For offenses that are brought to trial as a Class A1 misdemeanor, the estimated court cost per trial is \$2,594. For Class A1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$214. For offenses that are brought to trial as Class I felonies, the estimated court cost is \$4,637. For Class I felonies not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$255. Finally, for offenses brought to trial as Class H felonies, the estimated court cost is \$5,012. For Class H felonies not brought to trial, and where a guilty plea is entered, the estimated cost per guilty plea is \$283.

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

TECHNICAL CONSIDERATIONS: None.

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