

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2005**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 1400 (Fourth Edition)

**SHORT TITLE:** School Bus Safety Act.

**SPONSOR(S):** Representative Folwell

		<b>FISCAL IMPACT</b>				
		<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
		<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>
<b>GENERAL FUND</b>						
<b>Correction</b>	Exact amount cannot be determined; small increase in payments by DOC to local jails for offenders with active sentences longer than thirty days (see pg. 2 for details).					
<b>Judicial</b>	\$40,123	\$48,147	\$50,554	\$53,082	\$55,736	
<b>LOCAL GOVERNMENTS</b>						
	Exact amount cannot be determined; no substantial impact anticipated.					
<b>ADDITIONAL PRISON BEDS*</b>						
	Exact amount cannot be determined; no substantial impact anticipated.					
<b>POSITIONS: (cumulative)</b>						
	Exact amount cannot be determined; no additional positions anticipated.					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Local Governments						
<b>EFFECTIVE DATE:</b> September 1, 2005						
<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:** Current G.S. 20-217(a) prohibits passing or attempting to pass a stopped school bus which is loading or unloading passengers. This bill would reclassify a violation of this provision from a Class 2 to a Class 1 misdemeanor. Additionally, the bill enacts G.S. 20-217(g), providing for a new Class I felony to pass or attempt to pass a stopped school bus and willfully strike a person causing serious bodily injury.

The third edition reorganized and rewrote G.S. 20-217 subsections (a) and (b) to clarify the statute but did not make any substantive changes.

The fourth edition changes the effective date from December 1, 2005 to September 1, 2005.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Summary**

#### *Class 2 → Class 1 Misdemeanor*

Elevating the penalty from a Class 2 to a Class 1 misdemeanor under G.S. 20-217(e) for passing a stopped school bus that is loading or unloading passengers would be expected to lead to longer sentences for convicted offenders and an increase in payments by the Department of Correction (DOC) to local jails for housing offenders with active sentences. Additionally, costs in district court would be expected to increase due to more vigorous defense and prosecution as a result of the increased penalty for the offense. Cost estimates for the Courts due to this provision are shown in the table on the first page. Due to lack of data on the number of convictions for this offense in the past, the cost to DOC to reimburse local jails for offenders with active sentences cannot be determined.

#### *New Class I Felony*

Class I felony convictions for willfully striking a person and causing severe injury while unlawfully passing a stopped school bus could result in the need for additional prison beds, which would have an associated impact on DOC. To dispose of new Class I felony charges, workload and costs in superior court would also be expected to increase. Because the offense is new, no historical data is available on the number of charges and convictions that would occur for this offense.

Division of Motor Vehicles data from FY 2003-04 indicates that 4 pedestrians were struck by other vehicles in school bus related accidents. It is unknown how many of these incidents involved a pedestrian being struck willfully, resulted in severe injury, and involved vehicles unlawfully passing a stopped school bus and could thus result in a Class I felony charge or conviction. However, given the relatively small number of incidents that could potentially result in a new charge or conviction, the impact on the Courts and Department of Correction due to this provision is not expected to be substantial.

### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

### **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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.*

Because the Sentencing Commission does not maintain data on Class 2 misdemeanor traffic offenses, the number of convictions for current violations of G.S. 20-217(a) is unknown. As such, the cost associated with convictions elevated from Class 2 to Class 1 misdemeanors due to this bill cannot be determined. Given the relatively small number of school bus related accidents in which a pedestrian was struck by another vehicle (see “General”), the number of new Class I felony convictions, and the associated cost, is not expected to be substantial.

*Class 2 → Class 1 Misdemeanor:* In FY 2003-04, 19 percent of Class 1 misdemeanants, as opposed to 15 percent of Class 2 misdemeanants, received active sentences, and the average estimated sentence length was 43 days, as opposed to 23 days for Class 2. Because active sentences of less than ninety days are served in county jails, Class 1 misdemeanor convictions resulting from this legislation are not expected to significantly impact prison population. However, convictions elevated from Class 2 to Class 1 misdemeanors would be expected to impact local jail populations, as Class 1 misdemeanors carry a longer sentence and are slightly more likely to be active, on average. DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per offender per day. Thus, elevating this offense from a Class 2 to Class 1 misdemeanor would be likely to increase payments by DOC to counties for housing offenders sentenced to active time under this bill.

*New Class I Felony:* In FY 2003-04, 11 percent of Class I felony convictions resulted in active sentences and the average minimum active sentence length was seven months with a corresponding maximum of nine months. If, for example, there were ten additional Class I convictions for this 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. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

*Non-Active Sentences:* As Class 1 misdemeanants are slightly less likely to receive non-active sentences, convictions elevated from Class 2 to Class 1 misdemeanors due to this bill would be expected to result in some cost savings to the Division of Community Corrections (DCC). Of Class I felony offenders given a non-active sentence, 45 percent received intermediate and 55 percent received a community sanction. Probation officers in DCC supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

### **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.

AOC data for calendar year 2004 show 1,054 defendants charged with Class 2 misdemeanors under G.S. 20-217 for unlawfully passing a stopped school bus. If reclassified as Class 1

misdeemeanors, AOC anticipates that additional court time and attorney preparation time would be needed to dispose of the charges as a result of more vigorous defense and prosecution. For any new Class I felony charges for willfully striking and severely injuring a person while passing a stopped school bus, superior court workload and costs would increase. The costs associated with this new Class I felony cannot be determined due to lack of historical data. However, DMV data (see “General”) suggests that the number of new charges may not be substantial.

AOC estimates that the increase in cost of processing these 1,054 charges as Class 1 rather than Class 2 misdemeanors would be \$48,147 in the first full year. This cost reflects presumed increases in trial rates, trial length, attorney preparation time, and time to handle pleas. Based on the costs of attorney preparation, and court time, the cost to dispose of these cases as Class 2 misdemeanors would be an estimated \$57,937, with an additional \$29,094 for indigent defense. As Class 1 misdemeanors, the cost would be an estimated \$91,882 for attorney and court costs and an additional \$43,296 for indigent defense. The figures in the box on the front page reflect the difference in total cost (\$48,147), inflated at a rate of five percent annually, and adjusted in FY 2005-06 to reflect only the ten months for which the bill would be effective.

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

**TECHNICAL CONSIDERATIONS:** This bill would become effective September 1, 2005. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The NC Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and, thus, assume that the legislation will not impact the prison system until the beginning of 2006-07. If the bill becomes effective prior to December 1, there could be an impact on local jails or the prison system in the 2005-06 fiscal year.

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**DATE:** July 5, 2005

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