

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1011 (Second Edition)

SHORT TITLE: Inmate Biting Felony.

SPONSOR(S): Representative Gillespie

| | | FISCAL IMPACT | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|---------------------------|-------------------|-------------------|
| | | Yes (X) | No () | No Estimate Available () | | |
| | | <u>FY 2005-06</u> | <u>FY 2006-07</u> | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> |
| GENERAL FUND | | | | | | |
| Correction | Exact amount cannot be determined (see pg. 2 for details). For every two additional Class F felony convictions, one prison bed would be needed in the first year and three beds would be needed in the second year. | | | | | |
| Judicial | Exact amount cannot be determined (see pg. 2 for details). | | | | | |
| ADDITIONAL PRISON BEDS* | Exact amount cannot be determined (see pg. 2 for details). | | | | | |
| POSITIONS: (cumulative) | Exact amount cannot be determined (see pg. 2 for details). | | | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch | | | | | | |
| EFFECTIVE DATE: December 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: This bill amends G.S. 14-258.4 to include biting a State or local government employee, causing a break in the skin and bleeding, as malicious conduct by a prisoner (a Class F felony). Malicious conduct under G.S. 14-258.4 applies to anyone in the custody of the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, any law enforcement officer, or a local confinement facility, and currently includes throwing, emitting, or using as a projectile, bodily fluids or excrement directed at State or local government employees.

ASSUMPTIONS AND METHODOLOGY:

General

Additional Class F felony charges and convictions would be expected to result from expanding the offense of malicious conduct by a prisoner to include biting. As the offense has not covered such conduct in the past, we have no historical data from which to estimate the exact number of additional charges and convictions and the associated cost to the Department of Correction and the Judiciary that would result.

It is possible that some assaults under current G.S. 14-33(c)(4), which provides that is a Class A1 misdemeanor to assault a government employee or official while in the official discharge of his or her duties, could be elevated to Class F felonies due to this bill. Additionally, DOC data from FY 2003-04 indicate that there were 567 inmate assaults on staff. It is unknown how many of these infractions involved biting and would become Class F felonies under this bill.

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.*

In FY 2003-04, there were 100 convictions for malicious conduct by a prisoner under current G.S. 14-258.4, which prohibits using bodily fluids as a projectile against State or local government employees. Because biting has not been encompassed by this offense in the past, the Sentencing Commission has no historical data from which to estimate how the legislation would impact prison population. It is unclear whether offenders that would be convicted for biting a State or local government employee under this bill could be convicted presently under G.S. 14-33(c)(4) for assault on a government official or employee, a Class A1 misdemeanor. In FY 2003-04 there were 1,551 convictions under G.S. 14-33(c)(4), but it is not known whether any of these assaults involved biting and were perpetrated by an individual under the custody of DOC, DJJDP, a law enforcement officer, or a local confinement facility.

Active Sentences: In FY 2003-04, 47 percent of Class F felony convictions resulted in active sentences. If, for example, there were two additional Class F 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: In FY 2003-04, 53 percent of Class F convictions resulted in intermediate sanctions and the average length of supervision was 32 months. Probation officers in the Division of Community Corrections (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.

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 2004, AOC data indicates that 468 defendants were charged with a Class F felony for malicious conduct by a prisoner. No data is available to estimate the number of additional charges that might result from the inclusion of biting as conduct covered by this offense. It is also possible that some of the charges under current G.S. 14-33(c)(4) for assaulting a government employee or official could be elevated from Class A1 misdemeanors to Class F felonies due to this bill. In 2004 there were 3,462 defendants charged under G.S. 14-33(c)(4), however, it is not known whether any of these cases involved biting and were committed by individuals under the custody of DOC, DJJDP, a law enforcement officer, or a local jail.

For any new Class F felony charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior court workload. AOC estimates the average cost of disposing one Class F felony charge via trial at \$8,142 and via guilty plea at \$395. This trial cost includes an estimated \$5,438 in jury fees, costs of time in court, and attorney costs and an additional \$2,704 in indigent defense.

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

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices