

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

BILL NUMBER: HB 1276 4th Edition

SHORT TITLE: Close Incest Loophole to Protect Minors.

SPONSOR(S):

FISCAL IMPACT

Yes ()	No ()	No Estimate Available (X)		
<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>

REVENUES

EXPENDITURES

Department of Correction – No estimate available, but no substantial impact expected
Judicial Branch – No estimate available, but no substantial impact expected

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Judicial Branch, Department of Correction, Department of Juvenile Justice and Delinquency Prevention

EFFECTIVE DATE: This act is effective December 1, 2002, and applies to offenses committed on or after that date.

BILL SUMMARY:

Current G.S. 14-178 (incest between certain near relatives) makes cases of carnal intercourse between a grandparent and grandchild, parent and child or stepchild or legally adopted child, or brother and sister of the half or whole blood a Class F felony. Current G.S. 14-179 (incest between uncle and niece and nephew and aunt) makes all cases of carnal intercourse between uncle and niece, and nephew and aunt a Class 1 misdemeanor. The current incest laws apply to the family members contained in the statutes without regard to the ages of the parties involved.

The original House Bill 1276 amended GS 14-178 and GS 14-179 by adding new subsection (c) and subsection (b) respectively, to restrict the application of these sections to parties that are 16 years or older. It further added that such conduct committed against a minor is unlawful and prosecutable under other provisions of applicable law. The intent would be for these acts to be prosecuted under the 1st degree rape or statutory rape statutes, depending on the factual circumstances.

With the 4th edition, defendants could be charged with Class B1 or Class C felony level offenses for incest under various circumstances:

- If one party is under the age of 13 and the other party is at least 12 years old and at least four years older, the older party shall be guilty of a Class B1 felony.
- If one party is 13, 14, or 15 years old and the other party is at least six years older, the older party shall be guilty of a Class B1 felony.
- If one party is 13, 14, or 15 years old and the other party is more than four but less than six years older, the older party shall be guilty of a Class C felony

The 4th edition of this bill repeals G.S. 14-179, which currently makes incest between uncle and niece, or aunt and nephew, a Class 1 misdemeanor. The 4th edition amends G.S. 14-178 to make all cases of incest Class F felonies unless otherwise specified. Thus the incest cases that currently fall under G.S. 14-179 and are punished as Class 1 misdemeanors would, under the proposed legislation, be punished as Class F felonies. The 4th edition also exempts children under age 16 of liability if the other person is at least four years older.

ASSUMPTIONS AND METHODOLOGY:

Under the 4th edition, incest offenses that would be charged as Class F felony or Class 1 misdemeanor under current law would instead be charged as Class B1, Class C, or Class F felony level offenses. Some juveniles would not be liable.

Judicial Branch, Administrative Office of the Courts (AOC)

Under current G.S. 14-178 and G. S. 14-179, incest between certain relatives is prosecutable as either a Class F felony or a Class 1 misdemeanor respectively. AOC data for calendar year 2000 show that 58 defendants were charged under G.S. 14-178 and 2 defendants were charged under G.S. 14-179. However, data are not available on the ages of defendants and victims, or the number of defendants that commit such acts against minors that could be elevated to Class B1 and Class C felony offenses under the bill.

With the proposed bill, cases that are currently disposed of as Class 1 misdemeanor charges under G.S. 14-179 would now be disposed of as Class B1, C, or F felonies. Moreover, under the bill additional charges could result since defendants could be charged with *both* statutory rape (or other offenses involving sex acts committed against minors) and incest resulting in *two* B1 convictions. However, AOC assumes that this bill would affect a relatively small number of cases; therefore Fiscal Research and AOC would not expect a substantial impact on the court system.

It should be noted that as a result of the significant penalty upgrade and the potential for additional charges, convicted defendants would be more likely to serve longer sentences and, in some cases, be ineligible for community sanctions. Moreover, trials and pleas would demand more court time and preparation time as a result of the stiffer penalty under the bill.

Department of Correction

During FY 2000-01 there were 15 convictions for felony incest (Class F felony) and no convictions for misdemeanor incest (Class 1 misdemeanor). The previous year (1999-00), there were four convictions for felony incest and two convictions for misdemeanor incest. The age of the parties involved is unknown. If these cases did involve minors, the convicted offender would face a stiffer penalty and more likely a longer active sentence under the proposed legislation. Without knowing which cases involved minors or whether defendants are now being charged under incest rather than other laws, it is not possible to determine the impact of this bill on the prison population.

The conduct covered in the proposed amendments is currently covered under existing law, regardless of familial relationship, and offenders can be prosecuted under these statutes in addition to the incest statutes this legislation proposes to amend. In 2000-01, there were 50 convictions for Class B1 felonies and four convictions for Class C felonies under statutes that cover sexual intercourse with minors. Some of these convictions may have been offenders who could have been convicted of felony or misdemeanor incest (Class F felony or Class 1 misdemeanor). The following scenarios are possible:

Possible Scenario	Impact
Scenario 1: All eligible offenders are already prosecuted under existing rape and statutory rape statutes (Class B1 or C felony), rather than incest statutes.	No increase in offenders convicted of Class B1 or C felonies. Class 1 misdemeanor convictions would become Class F felony convictions (very few convictions). <i>Impact probably less than 1 prison bed</i>
Scenario 2: Some, but not all, eligible offenders are prosecuted under existing rape and statutory rape statutes (Class B1 or C felony); some are prosecuted under incest statutes (Class F felony, Class 1 misdemeanor).	Some increase in offenders convicted of Class B1 or C felonies. Class 1 misdemeanor convictions would become Class B1, C, or F felony convictions (most likely Class F; very few convictions).
Scenario 3: No eligible offenders are already prosecuted under existing rape and statutory rape statutes (Class B1 or C felony), rather than incest statutes.	Greater increase (less than 15 convictions) in Class B1 or C convictions. Class 1 misdemeanor convictions would become Class B1, C, or F felony convictions (most likely Class F; very few convictions).

It is unknown how many offenders would be affected by the proposed amendments. However, since there are no available prison beds in the fiscal note horizon, even 1 additional bed would have a fiscal impact. **If the amendments were to result in more convictions of Class B1 and C felonies, the Sentencing Commission would project a significant impact on the prison population, particularly in later years, due to longer sentences.** If all 15 convictions of Class F felonies were instead convicted of Class B1 or C felonies, there would be the need for 7 additional prison beds in the first year, 19 in the second year, and greater numbers in later years. If 5 of the 15 Class F convictions were raised to Class B1 or C, there would be the need for 2 additional prison beds in the first year, 2 in the second year, 12 in the third year, and greater numbers in later years.

There were no misdemeanor incest convictions in FY 2000-01. However, for each conviction of a Class B1 or C felony rather than a Class 1 misdemeanor, there would be the need for 2 additional prison beds in the first year, and 4 additional beds in the second year, due to active sentences. For each conviction of a Class F felony rather than a Class 1 misdemeanor, there would be the need for 1 additional prison bed in the first year, and 2 additional beds in the second year, due to active sentences.

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

TECHNICAL CONSIDERATIONS: None

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