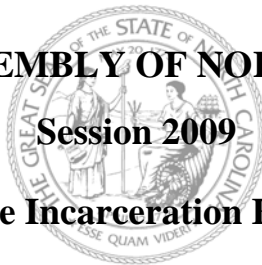


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1098 (Second Edition)

SHORT TITLE: Kill Search and Rescue Animal.

SPONSOR(S): Representatives Frye and Jones

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
EXPENDITURES					
GENERAL FUND					
Correction			Indeterminate fiscal impact		
Probation			Indeterminate fiscal impact		
Judicial			Indeterminate fiscal impact		
POSITIONS: (cumulative)			Indeterminate prison bed impact		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2009					
<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. 14-163.1 addresses the crime of willfully assaulting a law enforcement agency or assistance animal while in the performance of its official duties:

- Kill: Class H felony offense
- Cause or attempt to cause serious harm: Class I felony offense
- Cause or attempt to cause harm: Class 1 misdemeanor offense
- Taunt, tease, harass, delay, obstruct, or attempt to delay or obstruct: Class 2 misdemeanor offense

Current G.S. 15A-1340.16(d)(6a) makes it an aggravating factor to cause serious harm or death to a law enforcement agency or assistance animal while in the performance of its official duties.

This proposed bill would add “search and rescue animal” to the above statutes, thereby expanding the scope of the offenses. Effective date is December 1, 2009.

ASSUMPTIONS AND METHODOLOGY:

General

The North Carolina 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.

Department of Correction – Division of Prisons

Section 1

This bill expands the scope of G.S. 14-163.1, Assaulting a law enforcement agency animal or an assistance animal, to include “search and rescue animal” as a protected animal group. G.S. 14-163.1(a)(2a) defines search and rescue animal as an animal that is trained and may be used to assist in a search and rescue operation.

Currently, under G.S. 14-136.1(a1), it is a Class H felony for any person to willfully kill an animal he/she knows or has reason to know to be a law enforcement agency animal or an assistance animal. Because G.S. 14-136.1(a1) became effective December 1, 2007, and due to the lag-time between arrest and conviction, the Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-136.1(a1). Therefore, *the Sentencing Commission does not have any historical data regarding convictions for this offense.* This bill would amend G.S. 14-163.1(a1) to include “search and rescue animal;” it would make it a Class H felony offense for any person to willfully kill an animal he/she knows or has reason to know is a search and rescue animal. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2007-08, 36% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H felony convictions for this offense 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 four additional prison beds the second year.

Currently, under G.S. 14-136.1(c), it is a Class 1 misdemeanor for any person to willfully cause or attempt to cause harm to an animal he/she knows or has reason to know to be a law enforcement agency animal or assistance animal. AOC currently does not have a specific offense code for violations of G.S. 14-136.1(c). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. This bill would amend G.S.14-136.1(c) to add “search and rescue animal,” thus making it a Class 1 misdemeanor for any person to willfully cause or attempt to cause serious harm to an animal he/she knows or has reason to know is a search and rescue animal. *It is not known how many additional convictions may result from the proposed broadening of the current statute.* In FY 2007-08, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 misdemeanor convictions was 30 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 1 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

Currently, under G.S. 15-136.1(d), it is a Class 2 misdemeanor for any person to willfully taunt, tease, harass, delay, obstruct, or attempt to delay or obstruct an animal, who the person knows or has reason to know is a law enforcement agency animal or assistance animal. AOC currently does not have a specific offense code for violations of G.S. 14-136.1(d). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. This bill would amend G.S. 14-136.1(d) to add “search and rescue animal” to the statute, thus making it a Class 2 misdemeanor for any person to willfully taunt, tease, harass, delay, obstruct, or attempt to delay or obstruct an animal, who the person knows or has reason to know is a law enforcement or assistance animal, in the performance of its duty as a law enforcement agency animal or assistance animal. *It is not known how many additional convictions may result from the proposed broadening of the current statute.* In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 misdemeanor convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 2 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

Section 2

This section also amends G.S. 15A-1340.16, Aggravated and mitigated sentences. Currently, G.S. 15A-1340.16(d)(6a) states that in regards to sentencing, it should be considered an aggravating factor when an offense was committed against or proximately causes serious harm or death to a law enforcement agency animal or assistance animal while engaged in the performance of the animal’s official duties. This bill would amend G.S. 15A-1340.16(d)(6a) to add “search and rescue animal” to the aggravating factor.

It is not known how many sentences might be affected if this aggravating factor is broadened to include search and rescues animals. The aggravated sentence range allows the judge to impose a sentence that is up to 25% longer than the longest sentence in the presumptive sentence range. During FY 2007-08, 3% (n=365) of all felony convictions receiving an active sentence fell in the aggravated sentence range. AOC’s Automated Criminal Infractions System does not contain data on the application of aggravating or mitigating factors. Therefore, it is not known how many sentences have been aggravated based on the existing aggravating factor is G.S. 15A-1340.16(d)(6a). *It also is not known how many sentences might be aggravated if this aggravating factor is broadened to include search and rescue animals. Therefore, it is not possible to determine the impact this proposal would have on the state prison population.* The aggravating factor in the proposed bill could apply to numerous offenses and the impact of aggravated sentences varies considerably by offense class (e.g. little impact for low-level felonies with increasing impact as one moves up the grid to having a substantial impact for Class B1 felonies).

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.* Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with

electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

Judicial Branch

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.

This bill would expand the scope of existing Class H and I felony offenses and Class 1 and 2 misdemeanor offenses. It would also expand the scope of an aggravating factor. *AOC cannot project the number of new charges that would result from this bill.* For each new charge, costs would vary depending on the level of the offenses, on the mode of disposition of the case (trial, plea, etc.) and on indigency (Office of Indigent Defense – OIDS):

Potential Per Case Costs to the Court System		
	AOC	OIDS
Class H felony	\$555 - \$7,577	\$540
Class I felony	\$444 - \$6,615	\$480
Class 1 misdemeanor	\$138 - \$281	\$225
Class 2 misdemeanor	\$83 - \$161	\$225

Source: NC Administrative Office of the Courts

The low end of the AOC cost range is for a disposition by plea; the high end is for a disposition by trial. Indigent defense costs are based on the average hours billed for indigent defendants in an offense class, regardless of how the case was disposed, at \$75 per hour.

If the expansion of the aggravating factor results in additional cases charged with an aggravating factor, there will also be an impact on the courts. In general, AOC expects that increasing the penalty for an offense will result in a more vigorous defense and therefore more time and resources required for prosecution and indigent defense.

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. A typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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

TECHNICAL CONSIDERATIONS: None

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