

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

## Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 776 (Second Edition)

**SHORT TITLE:** Amend Indecent Exposure Law.

**SPONSOR(S):** Senator Snow

<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 (see pg. 2 for details). For every three Class H felony convictions, one prison bed would be needed in the first year and two beds would be needed in the second.				
<b>Judicial</b>					
	Exact amount cannot be determined (see pg. 2 for details).				
<b>LOCAL GOVERNMENTS</b>					
	Exact amount cannot be determined (see pg. 2 for details).				
<b>ADDITIONAL PRISON BEDS*</b>					
	Exact amount cannot be determined (see pg. 2 for details).				
<b>POSITIONS: (cumulative)</b>					
	Exact amount cannot be determined (see pg. 2 for details).				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch; Local Governments				
<b>EFFECTIVE DATE:</b>	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:** Under current G.S. 14-190.9(a), it is a Class 2 misdemeanor for a person to willfully expose his or her private parts in any public place in the presence of other persons of the opposite sex, to aid and abet any such act, or procure another to perform such act. This bill would amend subsection (a) to make such exposure in the presence of those of the same sex also a Class 2 misdemeanor and add new subsection (a1) to provide that it is a Class H felony for any person 18 years of age or older to willfully expose his or her private parts in any public place in the presence of any person less than 16 years of age for the purpose of arousing or gratifying sexual desire. *Source: Administrative Office of the Courts, Research and Planning (05/06/05).*

## ASSUMPTIONS AND METHODOLOGY:

### General

Current Class 2 misdemeanor Indecent Exposure offenses in which the perpetrator was 18 years of age or older and committed the act in the presence of a person less than 16 years of age for the purpose of arousing or gratifying sexual desire would become Class H felonies due to this bill. Additionally, exposing one's private parts in the presence of a person of the same sex would be a criminal offense under this bill and new Class 2 misdemeanor and Class H felony charges and convictions would be expected as such.

New Class 2 misdemeanor and Class H felony charges and convictions, as well as Class 2 misdemeanors elevated to Class H felonies, would result in costs to the Department of Correction and the Judiciary. However, these costs cannot be determined. While there is data regarding the number of present Indecent Exposure charges and convictions, it is unknown how many of the offenses were committed by an individual age 18 or older in the presence of a person less than 16 years of age for the purpose of gratifying sexual desire and would, therefore, be elevated to Class H felonies due to this bill. As such, the number of new Class H felony and Class 2 misdemeanor charges and convictions cannot be estimated and thus the cost of the bill cannot be determined.

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 this bill would broaden the scope of an existing criminal offense and create a new offense, the Sentencing Commission has no historical data from which to project the impact on prison population.

*Class 2 Misdemeanors:* In FY 2003-04, there were 189 Class 2 misdemeanor convictions under current G.S. 14-190.9 for Indecent Exposure. Of these convictions, 48 resulted in active sentences (25%) and the average estimated time served was 19 days. Because active sentences of less than ninety days are served in county jails, new Class 2 misdemeanor convictions due to this bill would not impact prison population. Offenders with active sentences of less than thirty days are housed in county jails at county expense.

*Class H Felonies:* It is not known how many of the existing convictions for Indecent Exposure were committed by an individual age 18 or older in the presence of a person less than 16 years of age for

the purpose of gratifying sexual desire and would, therefore, be elevated to Class H felonies due to this bill. In FY 2003-04, 37 percent of Class H felony convictions resulted in active sentences. If, for example, there were three new convictions for Class H felonies or three convictions elevated from Class 2 misdemeanors to Class H felonies 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. 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, 50 percent of Class H felony convictions resulted in intermediate sanctions and 13 percent in community sanctions; 1 percent of Class 2 misdemeanor convictions resulted in intermediate sanctions and 84 percent in community sanctions. Probation officers in the Division of Community Correction (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. For offenders sentenced to the community sanction of supervised probation, DCC would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

**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 516 individuals were charged with a Class 2 misdemeanor for Indecent Exposure. Due to lack of historical data, AOC is unable to estimate the numbers of additional Class 2 misdemeanor charges, new Class H felony charges, and Class 2 misdemeanor charges that would be elevated to Class H felonies as a result of this bill.

The cost to the Courts to process a felony or misdemeanor charge varies depending upon the method of settlement and the severity of the charge. AOC estimates the following costs to process a single Class 2 misdemeanor or Class H felony charge based on the costs of court time in district and superior court, attorney preparation time, and indigent defense. The estimated average increase in cost for any charge elevated from a Class 2 misdemeanor to Class H felony due to this bill is also shown in the last row of the table. Based on prior-year data, the majority of new charges resulting from this bill that are not dismissed are likely to be settled by guilty plea.

**Table 1: Per Charge Settlement Costs**

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	-
Class H Felony	\$4,096	\$2,100	\$6,196	\$359
Class 2 Misdemeanor	\$1,365	\$949	\$2,314	\$271
Class 2 → Class H	\$2,731	\$1,151	\$3,882	\$88

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

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Aaron Paul and Jim Mills

**APPROVED BY:** James D. Johnson, Director  
Fiscal Research Division



**DATE:** May 10, 2005

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