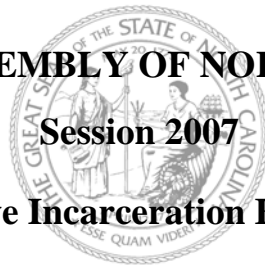


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 995 (Second Edition)
SHORT TITLE: Increase Penalty/Starvation of Animals.
SPONSOR(S): Representative McElraft

FISCAL IMPACT table with columns: Yes (X), No ( ), No Estimate Available ( ), FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12. Rows include GENERAL FUND (Correction, Judicial), TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS, POSITIONS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY: Current G.S. 14-360(a) provides that it is a Class 1 misdemeanor offense to intentionally "...injure, torment, or kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal..."

The first edition of H.B. 995 amends G.S. 14-360(b) to also provide that it is a Class I felony to kill, or cause/procure to be killed, any animal *by intentional deprivation of necessary sustenance*. It is assumed that inclusion in this subsection requires that the offense be done “*maliciously*.”

The second edition removes the proposed amendment to G.S. 14-360(b), and creates new subsection G.S. 14-360(a1). This new subsection would instead make it a Class A1 misdemeanor (formerly Class I felony) to “maliciously kill, or cause or procure to be killed, any animal by intentional deprivation of necessary sustenance.” The second edition also exempts, from existing and proposed offenses, the physical alteration of livestock or poultry for conformance with breed or show standards.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

To the extent the proscribed acts are now prosecuted under G.S. 14-360(b) as “maliciously” killing or causing/procuring the killing of any animal (Class I felony), this proposed offense would have little impact. However, if such acts are now prosecuted at the Class 1 misdemeanor level as intentional starvation, the proposed change could enhance the penalty for offenses meeting the “malicious” criterion - to the Class A1 misdemeanor level. Nonetheless, due to shared elements with current offenses, prosecutorial discretion will determine whether Class 1 misdemeanor, Class A1 misdemeanor, or Class I felony charges will result.

Current offense data for G.S. 14-360 does not distinguish how many violations have resulted in the killing of an animal *due to intentional starvation*, or at what level such violations were prosecuted. Therefore, Fiscal Research cannot estimate the number of future violations that might fulfill the elements of the proposed Class A1 misdemeanor offense. However, *the relatively low number of felony charges and convictions under G.S. 14-360(b), coupled with the applicable penalty levels, does not suggest this proposal will have a significant fiscal impact.*

### **Department of Correction – Division of Prisons**

Per structured sentencing, Class 1 misdemeanor active sentences may range from 1 to 120 days, dependent upon an offender’s prior record level (active punishment authorized for prior record levels II-III); conversely, Class A1 misdemeanor active sentences may range from 1 to 150 days, and are authorized for all prior record levels. Consequently, the effective penalty enhancement could result in increased active sentencing for affected offenses, and longer terms of incarceration. In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days; 26% of Class A1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 50 days.

Incarcerated Classes 1 and A1 misdemeanants typically serve their designated terms within local jails.<sup>1</sup> However, active sentences longer than 90 days are served in state prison. Thus, if active sentences for new convictions exceed 90 days in length; this proposal could have a slight impact

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<sup>1</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

on the state prison population.<sup>2</sup> Similarly, to the extent that resultant active sentences exceed 30 days in length, the Department of Correction could assume some additional costs for county reimbursement. However, it is not known how many convictions and/or active sentences would occur for the enhanced offense. The impact on local jail and state prison populations is indeterminate.

**Department of Correction – Division of Community Corrections**

In FY 2005-06, 80% of Class 1 and 74% of Class A1 misdemeanor convictions resulted in either intermediate or community punishments – predominately special, intensive, or general supervision probation. *Although a higher rate of active sentencing is expected for affected offenses, the increased offense severity could lead to additional intermediate sanctioning and longer terms of offender supervision – placing greater demand on Division of Community Corrections resources.* However, it is not known how sentencing practices might differ under this enhancement (e.g. how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long).

Included below is a brief summary of DCC sanction and supervisory costs:

- General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program.
- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

**Judicial Branch**

AOC data for CY 2006 show 136 defendants charged with a felony under G.S. 14-360(b), relative to 446 charged with a misdemeanor under G.S. 14-360(a). Again, it is not known how prosecution may differ in response to the proposed change (e.g. how many Class A1 felony charges might occur for the proscribed offense, in lieu of Class 1 misdemeanor charges). However, the Administrative Office of the Courts expects that any potential penalty enhancement would be accompanied by more vigorous defense and prosecution, and would thereby increase court-time requirements and the associated costs of case disposal. Table I demonstrates the estimated differences in costs per single trial and plea for an affected case.

<b>Table 1. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08</b>				
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>	<i>Change in Cost: Trial</i>	<i>Change in Cost: Plea</i>
Class 1 Misdemeanor	\$ 3,702	\$ 243	N/A	N/A
Class A1 Misdemeanor	\$ 4,215	\$ 245	\$513	\$2

<sup>2</sup> The 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. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

As shown, prosecution at the Class A1 misdemeanor level could cost an additional \$513 per trial (estimate accounts for indigent defense). Actual costs may vary with time requirements and disposition type.

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

**TECHNICAL CONSIDERATIONS:** None

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