

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 395 (First Edition)

SHORT TITLE: Strengthen Prohibition on Cockfighting.

SPONSOR(S): Representatives Hurley, Burr, Ingle, and McGrady

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:					
Correction	Exact amount cannot be determined; no substantial impact anticipated				
Probation	Exact amount cannot be determined; no substantial impact anticipated				
Judicial	Exact amount cannot be determined				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch				
EFFECTIVE DATE:	December 1, 2011				
<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:

The proposed legislation clarifies that the prohibition against cockfighting in G.S. 14-362 applies to a rooster, gamecock, or other fighting bird. The act provides that owning, breeding, possessing, selling, or training a rooster, gamecock, or other fighting bird with the intent to use the bird in an exhibition featuring the baiting or fighting of that bird with another bird or another animal is a Class I felony. The act also provides that a person who manufactures, possesses, promotes, buys, sells, or transports gaffs or slashers, or any sharp implement designed to replace the natural spur of a rooster, gamecock, or other fighting bird, or who uses any device intended to enhance an animal's fighting ability is guilty of a Class I felony. The proposed legislation adds definitions for the following terms: (1) cockfight, (2) fighting bird, (3) gaff, and (4) slasher. The act is effective December 1, 2011, and applies to offenses committed on or after that date.

SOURCE: BILL DIGEST H.B. 395 (03/16/0201)

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The bill would expand an existing Class I felony and enact two new Class I felonies related to cockfighting.

(a) Amends subsection (a) of G.S. 14-362, Cockfighting, to expand the range of birds covered by the existing Class I felony of cockfighting. The expansion would make G.S. 14-362(a) apply to certain conduct now covered by subsection (a) of G.S. 14-362.1, Animal fights and baiting, other than cock fights, dog fights and dog baiting.

The current Class I felony in G.S. 14-362(a) covers exhibitions that feature the fighting of a “cock.” There were five convictions for cockfighting under G.S. 14-362(a) during FY 2009-10.

The proposed bill would amend G.S. 14-362(a) to include exhibitions that feature the fighting of “a rooster, gamecock, or other fighting bird.”¹ Under G.S. 14-362.1(a), it is currently a Class 2 misdemeanor to engage in the conduct barred by G.S. 14-362(a) with an animal other than a cock or a dog. (A second or subsequent violation within three years of a conviction is a Class I felony under G.S. 14-362.1(d)). The proposed bill’s addition of fighting birds other than cocks to G.S. 14-362(a) would thus reclassify acts involving these birds from the Class 2 misdemeanor in G.S. 14-362.1(a) (first offense) to the Class I felony in 14-362(a).

In FY 2009-10, there were no Class 2 misdemeanor convictions for animal fighting under G.S. 14-362.1(a).² In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, ten Class 2 misdemeanor convictions were to become Class I felony convictions under the proposed bill, 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.

(b) Adds subsection (b) to G.S. 14-362 to make it a Class I felony to own, breed, possess, sell, or train a rooster, gamecock, or other fighting bird with the intent that the bird be used in an exhibition featuring the baiting or that bird or the fighting of that bird with another bird or animal. This proposed bill would create a new offense for acts involving a cock.

¹The bill defines “fighting bird” as a bird, battlecock, cock, or rooster that is intentionally bred or trained for use in, or that is actually used in, a cockfight.

²The AOC offense code includes all misdemeanor violations of G.S. 14-362.1(a)-(c).

Since the proposed bill creates a new offense, G.S. 14-362(b), the Sentencing Commission has no historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill. In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed 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.

Under G.S. 14-362.1(b), it is currently a Class 2 misdemeanor to own, possess, or train an animal, other than a cock or a dog, with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal. Therefore, for acts that involve a fighting bird other than a cock, the proposed bill would reclassify offenses from the Class 2 misdemeanor in G.S. 362.1(b) to the new Class I felony in G.S. 14-362(b).

In FY 2009-10, there were no Class 2 misdemeanor convictions under G.S. 14-362.1.³ In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, ten Class 2 misdemeanor convictions were to become Class I felony convictions under the proposed bill, 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.

(c) Adds subsection (c) to G.S. 14-362 to make it a new Class I felony to manufacture, possess, promote, buy, sell, or transport (1) a gaff, slasher, or other sharp implement designed to be attached in place of the natural spur of a rooster, gamecock, or other fighting bird, or (2) any device intended to enhance an animal's fighting ability or for use in an exhibition of animal fighting.

Since the proposed bill creates a new offense, G.S. 14-362(c), the Sentencing Commission has no historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill. In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed 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.

Judicial Branch

The Administrative Office of the Courts 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.

The elevation of the offense from a Class 2 misdemeanor to a Class I felony would result in a more vigorous defense and prosecution and more in-court and preparation time for trials and pleas. The

³The AOC offense code includes all misdemeanor violations of G.S. 14-362.1(a)-(c).

creation of new Class I felony offenses would also result in increased court workload. While some judicial districts handle pleas for Class H and I felonies in district court, all trials and many pleas would be shifted from district court to superior court under the bill or occur as new workload in superior court. Thus, even one new offense impacted by this legislation will result in a cost to the court system.

Overall, the monetary value of the average workload of a Class I felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$862. As the Class I felonies in the bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for those offenses increased from Class 2 misdemeanors to Class I felonies, the average fiscal impact of each case would be the full \$862. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class I felony case was \$480 per indigent defendant, as compared to an average of \$225 for indigent misdemeanants.

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 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: North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction; Judicial Branch.

TECHNICAL CONSIDERATIONS: None

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