

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

**Legislative Incarceration Fiscal Note
REVISED**

BILL NUMBER: Senate Bill 496 (First Edition)
SHORT TITLE: Protect MH/DD/SA Clients From Abuse.
SPONSOR(S): Senator D. Davis

FISCAL IMPACT (\$ in millions)					
	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available				
	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
EFFECTIVE DATE: December 1, 2015					
TECHNICAL CONSIDERATIONS: None					

Revision Note: *This note has been revised to correct the fiscal year column headers in the table above.*

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, given that there is no historical data on this offense or similar offenses to use as a proxy for predicting the total number of offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

FISCAL IMPACT SUMMARY:

This bill may have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: \$134 per charge
- Indigent Defense Services: \$188 per indigent defendant
- Department of Public Safety (DPS) - Prison Section: No cost
- DPS - Community Corrections: \$1,958 per conviction resulting in probation

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill increases an existing Class 3 misdemeanor to a Class 1 misdemeanor for second or subsequent offenses for violation of G.S. 122C-66(b), which requires employees of facilities that provide care and treatment for mental illness, developmental disabilities, or substance abuse to report a violation of G.S. 122C-66(a) (knowingly cause pain and injury to a client or take personal property from a client), or to report an accidental injury to a client.

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

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 proposed bill increases the penalty for second and subsequent violations of G.S. 122C-66(b) from a Class 3 misdemeanor to a Class 1 misdemeanor. AOC does not have any data on the number of offenders who may have second or subsequent violations of this statute. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class 3 misdemeanor who is instead charged with a Class 2 misdemeanor, the average cost to the court will be \$134 (\$165 for a Class 1 minus \$31 for a Class 3).

The Class 3 misdemeanor affected by the proposed bill was punishable only by a fine, a sentence that does not require the appointment of defense services for indigent defendants. The new Class 1 misdemeanor will be subject to active sentences (served in local jails) or probationary sentences, as determined by the court, and as such, will require the appointment of attorneys for indigent defendants. Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the

percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The weighted average cost of a Class 1 misdemeanor is \$188 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, 39% of Class 1 misdemeanor defendants used IDS services. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

Department of Public Safety –Prison Section

This bill affects a misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

Department of Public Safety – Community Correction Section

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$130.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

Monthly Supervision Cost Adjusted for Inflation Five Year Projection						
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Inflation Rate		1.85%	2.72%	2.88%	2.76%	2.44%
Monthly Cost	\$130.50	\$132.90	\$136.52	\$140.45	\$144.32	\$147.85

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

The Class 3 misdemeanor affected by the proposed bill was punishable only by a fine. The new Class 1 misdemeanor will be subject to active sentences (served in local jails) or probationary sentences, as determined by the court. In FY 2013-14, 30% of Class 1 misdemeanor offenders received active sentences; 70% received probation. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction sentenced to probation under the proposed

bill will require at least 15 months of probation. The cost of 15 months of probation is \$1,958 per offender (\$130.50 monthly cost times 15 months).¹

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

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¹ Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.