

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 364 (First Edition)

**SHORT TITLE:** Tolling of Misdemeanor Statutes.

**SPONSOR(S):** Representative R. Turner

**FISCAL IMPACT**

(\$ in millions)

Yes     
  No     
  No Estimate Available

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**

Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

**EFFECTIVE DATE:** December 1, 2017

**TECHNICAL CONSIDERATIONS:**

None

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address extended statute of limitations on some misdemeanor cases. However, given that there is no historical data on this new offense or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every additional person charged and convicted of a misdemeanor:

- Administrative Office of the Courts: \$39 to \$357 per disposition
- Indigent Defense Services: \$200 to \$201 per disposition
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: \$1,776 to \$2,516 per supervised probation sentence

Please see the Assumptions and Methodology section for additional information.

**BILL SUMMARY:**

This bill amends existing G.S. 15-1, Statute of limitations for misdemeanors, by requiring that misdemeanor offenses be charged within two years after the commission of the crime. Previously the law required the

offense be “presented or found by the grand jury”. The bill also adds that time during which a misdemeanor case is dismissed with leave to refile will not be counted towards the statute of limitations (i.e. the statute of limitations shall be “tolled” during that time).

## **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 active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses.

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.

Changes to the statute of limitations included in this bill may increase the number of misdemeanor cases that are refiled. However, there is no way to estimate the number of cases that may apply. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost to AOC for each level of misdemeanor.

<b>AOC Cost Per Misdemeanor</b>	
<b>Misdemeanor</b>	<b>Cost</b>
Class A1	\$357
Class 1	\$206
Class 2	\$110
Class 3	\$39

The Office of 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 following table shows the usage rate and the cost to IDS for each misdemeanor class.

<b>IDS Cost Per Misdemeanor</b>		
<b>Misdemeanor</b>	<b>% Using IDS</b>	<b>Cost</b>
Class A1	52%	\$201
Class 1	39%	\$202
Class 2	30%	\$201
Class 3	21%	\$200

These estimates assume the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

**Department of Public Safety – Prisons**

This bill may expand the number of misdemeanor cases that are refiled. 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.

**Department of Public Safety – Community Corrections**

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, including intermediate or community sanctions, are supervised by the Community Corrections (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$148 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, intermediate sanctions and supervised probation.

The following table shows the percent of active sentences versus probation sentences, the average sentence length (ASL), and the cost of probation for each level of misdemeanor.

CCS Cost Per Misdemeanor					
Misdemeanor	% Active	Active ASL (Days)	% Probation	Probation ASL (Months)	Cost of Probation
Class A1	35%	68	65%	17	\$2,516
Class 1	31%	40	69%	15	\$2,220
Class 2	34%	21	66%	14	\$2,072
Class 3	24%	9	76%	12	\$1,776

**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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