



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Legislative Incarceration Fiscal Note

Short Title: Hate Crimes Prevention Act.
Bill Number: House Bill 312 (First Edition)
Sponsor(s):

SUMMARY TABLE

FISCAL IMPACT OF H.B. 312, V.1 (\$ in millions)

	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>
State Impact					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Estimate Available - Refer to Fiscal Analysis section
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FISCAL IMPACT SUMMARY

This bill broadens the scope and punishment of hate crimes. It expands the pool of potential victims for 3 misdemeanor and a felony offense, and adds 3 three new felonies to the assault section of the criminal law chapter.

Section 2.(a)

Section2.(a) expands the scope of G.S. 14-3 (Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity) and amends to the title to “Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or as a hate crime.”

The current statute provides that if an individuals is guilty of a Class 2 or 3 misdemeanor is committed because of a victim’s race, color, religion, nationality or country of origin, the offense is increased to a Class 1. In addition, if a Class A1 or Class 1 offense is committed because of the same criteria as before it is a Class H felony.

Section 2.(b)

Amends the scope of G.S. 14-401.14 (Ethnic intimidation; teaching any technique to be used for ethnic intimidation) and changes the title to “Intimidation by hate crime; teaching any technique

to be used in the commission of a hate crime.” Violations of this statute as Class 1 misdemeanors. In FY 2017-18, there were 3 convictions under G.S. 14-401.14 (a) [assaults another person or damages or defaces property, or threatens to because of certain characteristics] and there was 1 conviction of G.S. 14-401.14 (b) [person who assembles with one or more person to teach any techniques to violate subsection (a)].

Section 2.(c)

This Section broadens G.S. 15A-1340.16 (d)(17) to expand the scope of a statutory aggravating factor. The broader scope includes ethnicity, gender, gender identity, gender expression, disability, and sexual orientation to the list of qualifying personal characteristics of victims. An aggravated sentence permits the judge to impose a sentence that is 25% longer than the longest sentence in the presumptive sentencing range.

Section 2.(d)

This section creates G.S. 14-34.11(Felonious assault as a hate crime). The new language provides a broader definition that anyone who assaults a person and inflicts serious bodily injury to the person or attempts to assault that person and inflict serious bodily injury to the person is guilty of a Class F felony. In addition, the punishment increases to a Class E felony when the offense includes the crime or attempted crime of kidnapping, first- or second-degree forcible rape, or first- or second-degree forcible sexual offense.

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, 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.

Section 2.(a)

This section expands the scope of G.S. 14-3, and creates a new Class 1 misdemeanor and Class H felony for violations. Because the Class 1 misdemeanor and Class H felony are new offenses, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$233. In addition, for every additional person charged with a Class H felony, the average cost to the court would be \$709.

The Office of Indigent Defense Services (IDS) provides 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.

In FY 2017-18, the most recent year data is available, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$202 per case for a private appointed counsel (PAC) attorney. For the most recent year data is available, 78% of Class H felony cases were handled through IDS. The weighted average cost of a new Class H felony is \$392 per case for a private appointed counsel (PAC) attorney. These 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.

Section 2.(b)

Amends the scope of G.S. 14-401.14 (Intimidation by hate crime), which is Class 1 misdemeanor. In FY 2017-18, there were a total of 4 convictions under this statute. It is not known how many additional convictions may result but the average cost to the court would be \$233. In addition, the weighted average cost of a new Class 1 misdemeanor is \$202 per case for a private appointed counsel (PAC) attorney. For the most recent year data is available, 78% of Class H felony cases were handled through IDS.

Section 2.(c)

This section expands the scope of G.S. 15A-1340.16(d)(17) by adding an aggravating factor. The aggravating factor trigger permits a judge to impose a sentence up to 25% longer. There is no estimate for many cases will be affected by this expansion.

Section 2.(d)

This section creates G.S. 14-34.11 (Felony assault as a hate crime), and treats violations as a Class F felony. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class F felony, the average cost to the court would be \$1,291.

In FY 2017-18, 74% of Class F felony cases were handled through IDS. The weighted average cost of a new Class F felony is \$569 per case for a private appointed counsel (PAC) attorney. 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.

This section also provides that violations under this section resulting in death are Class E felonies. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. For every additional person charged with a Class E felony, the average cost to the court would be \$2,290.

In FY 2017-18, 79% of Class E felony cases were handled through IDS. The weighted average cost of a new Class E felony is \$586 per case for a private appointed counsel (PAC) attorney. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices.

Finally, G.S. 14-34.11(d)(2) provides that offenses committed under this section are a Class E, if it includes violations or attempted violations of six serious offenses detailed in the summary. The fiscal impact of a new Class E is listed above.

Department of Public Safety – Prisons

Section 2.(a) and Section 2.(b)

These sections create new Class 1 misdemeanors offenses. 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.

In addition, Section 2.(b), creates a new Class H felony. In FY 2017-18, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.



Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	7	11	11	11	11

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 34% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,918 (\$538 monthly cost times 11 months).

Section 2.(d)

In FY 2017-18, 60% of Class E felony convictions resulted in active sentences, with an average estimated time served of 28 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	3	4	4	4
20	13	27	34	35	35

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 60% of Class E felony offenders received active sentences averaging 28 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$15,064 (\$538 monthly cost times 28 months).

In FY 2017-18, 51% of Class F felony convictions resulted in active sentences, with an average estimated time served of 19 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as

well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	3	3	3
20	11	19	22	22	22

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 51% of Class F felony offenders received active sentences averaging 19 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$10,222 (\$538 monthly cost times 19 months)

Department of Public Safety – Community Corrections

Sections 2.(a) and Section 2.(b)

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 \$160 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 probation.

In FY 2017-18, 34% of Class 1 misdemeanor offenders received active sentences; 66% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this class of offense was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will

require at least 15 months of supervision. The cost of 15 months of supervision is \$2,400 per offender (\$160 per month times 15 months).¹

In FY 2017-18, 34% of Class H felony offenders received active sentences and 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for Class H felony offenders receiving a suspended sentence was 26 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,440 per offender (\$160 per month times 9 months). For every offender sentenced to probation, the average cost would be \$4,160 (\$160 per month times 26 months).

Section 2.(d)

In FY 2017-18, 49% of Class F felony offenders received suspended sentences. The average length of probation imposed for this offense class was 31 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least 9 months of supervision. The cost of 9 months of supervision is \$1,440 per offender (\$160 per month times 9 months). For every offender sentenced to probation, the average cost would be \$4,960 (\$160 per month times 31 months).

In FY 2017-18, 60% of Class E felony offenders received active sentences and 40% received suspended sentences. The average length of probation imposed for suspended sentences in this offense class was 33 months. All active sentences for Class B1 through E felonies result in 12 months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,920 per offender (\$160 per month times 12 months). For every offender sentenced to probation, the average cost would be \$5,280 (\$160 per month times 33 months).

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

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

LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this

¹ Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.

document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

CONTACT INFORMATION

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