

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 252 (First Edition)

SHORT TITLE: Increase Penalty/Controlled Substance Crimes.

SPONSOR(S): Senator J. Davis

FISCAL IMPACT					
(\$ in thousands)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Estimate Available					
State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:	to	to	to	to	to
General Fund Expenditures:	16.9 to 21.6	37.8 to 47.4	37.8 to 47.4	37.8 to 47.4	37.8 to 47.4
Special Fund Revenues:	to	to	to	to	to
Special Fund Expenditures:	to	to	to	to	to
State Positions:	to	to	to	to	to
NET STATE IMPACT	(\$16.9) to (\$21.6)	(\$37.8) to (\$47.4)	(\$37.8) to (\$47.4)	(\$37.8) to (\$47.4)	(\$37.8) to (\$47.4)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
 Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE: December 1, 2013 and applies to offenses committed on or after that date

TECHNICAL CONSIDERATIONS:
 None

FISCAL IMPACT SUMMARY:

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

- Administrative Office of the Courts: \$10,836 in the first year, \$21,672 annually after that
- Indigent Defense Services: \$1,932 - \$3,864 in increased costs in superior court without a trial
 \$6,692-\$13,384 in increased costs in superior court with a trial
- Prison Section: \$4,099 in the first year, \$12,297 annually after that
- Community Corrections: \$0-\$980 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Subdivision (a)(14) of G.S. 90-108, Prohibited acts; penalties, currently makes it unlawful for a person who is an employee of a registrant or practitioner and who is authorized to possess controlled substances or has access to controlled substances embezzle or intend to embezzle any controlled substance which shall have come into his possession or under his care. Violation of G.S. 90-108 is currently a Class 1 misdemeanor unless it is found that the violation was committed intentionally, in which case it is a Class I felony. This bill would punish every violator of subdivision (a)(14) as a Class G felon.

This bill is effective December 1, 2013 and applies to offenses committed on or after that date.

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 (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies 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.

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.

In FY 2011-12, 56 defendants were charged with the intentional violation of G.S. 90-108(10)(14). Of these, seven (12.5%) were convicted. This PCS would require that these defendants be charged with a Class G felony. For every additional person charged with a Class G felony offense, AOC estimates the average cost to the court would be \$387 per case (the difference between the current Class I felony offense of \$365 and the new, elevated Class G felony of \$752). Using AOC data on the number of FY 2011-12 charges for this offense, it is estimated that the courts would see a cost of \$21,672 annually due to the changes in this bill. Since the proposed legislation goes into effect December 1, 2013, there will be an increased fiscal impact to AOC for only half of the fiscal year. The costs associated with AOC will be roughly half what they are projected for in FY 2014-15. In FY 2013-14, AOC estimates that the cost would be \$10,836.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. In district court, IDS estimates that the cost of a new Class G felony offense will result in an increase of \$51 per case. In superior court, IDS estimates that the cost of a new Class G felony offense will result in an increase of \$138 per case for a PAC attorney if the case does not go to trial and \$478 if it does.

In FY 2011-12, 51.1% of felony non-trafficking offenders used IDS for defense. Assuming the offenders charged in FY 2011-12 had been prosecuted under this proposed legislation, the cost to Indigent Defense Services would have increased by the following amounts:

- \$3,864 in superior court if no cases go to trial (28 offenders times \$138 non-trial costs)
- \$13,384 if they all go to trial (28 offenders times \$478 trial costs).

Since the proposed legislation goes into effect December 1, 2013, there will be an increased fiscal impact to IDS for only half of the fiscal year. The costs associated with IDS will be roughly half what they are projected for in FY 2014-15. In FY 2013-14, IDS estimates that the additional cost would be \$1,932 in superior court if no cases go to trial and \$6,692 if they all go to trial.

Department of Public Safety –Prison Section

In FY 2011-12, there were seven convictions under G.S.90-108(a)(14), (currently a Class I felony). Impact on the prison population will occur if Class I convictions become Class G convictions under the proposed statute due to the higher rate of active sentences (42% for Class G compared to 18% for Class I) and longer average estimated time served (14 months compared to 6 months for Class I). Assuming these seven offenders had received an active Class G sentence the result is a need for an additional two beds in the first year and 3 beds in the second year.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add three inmates to the prison system by the end of FY 2014-15.

The cost to add one additional inmate to the prison system is \$11.23 per day, which includes the cost of food, clothing, and health care. Based on estimates provided by the Sentencing Commission, there would be an additional two inmates in the prison section in the first year, for a total cost of \$4,099 (\$11.23 for 183 days times 2 inmates). In every subsequent year, three inmates would be in the prison system, for a total cost of \$12,297 (\$11.23 for 365 days times 3 inmates).

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill³	0	2	3	3+	3+
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

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. For felony offense classes E through I, 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.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; 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 intermediate sanctions and supervised probations.

In FY 2011-12, there were seven felony Class I convictions under subdivision (a)(14) of G.S. 90-108. 42% of all Class G felony offenders received active sentences in FY 2011-12; 58% received intermediate sentences. Since both Class G and Class I felonies require nine months of post-release supervision, there will be no additional cost to community corrections for individuals receiving active sentences. The average lengths of intermediate punishment imposed for Class G offenses was 31 months. The average lengths of intermediate and community punishment imposed for Class I offenses were 26 and 22 months respectively. For every individual convicted of a Class G felony who receives an intermediate sentence, it will cost community corrections between \$545, the difference between the current Class I intermediate sentence cost and the new Class G offense cost (\$3,376 minus \$2,831) and \$980, the difference between the current Class I community sentence cost and the new Class G offense cost (\$3,376 minus \$2,396).

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

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

³ Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

⁴ CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

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