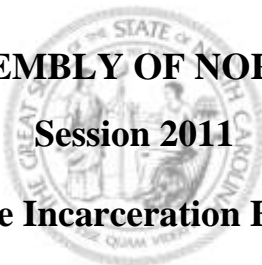


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 153 (Second Edition)

SHORT TITLE: No Public Retirement for Convicted Felons.

SPONSOR(S): Representatives Howard, Ross, T. Moore, and H. Warren

	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>
<b>EXPENDITURES:</b>					
Correction					
Probation					
Judicial					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<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 amends proposed G.S. 135-18.11(a), clarifying that, except as provided, the Board of Trustees of the Teachers' and State Employees' Retirement System will not pay retirement benefits or allowances, except for a return of member contributions plus interest, to any member convicted of a felony under federal or North Carolina law if:

- (1) The offense is committed while the member is an employee, a teacher, or an elected or appointed officer of a participating employer; and
- (2) The individual's conduct is directly related to the individual's office or employment.

The act deletes provisions of proposed G.S. 135-18.11(b) and states that a court must find that the individual's conduct was directly related to the individual's office or employment, as specified. The act also deletes the provision remitting all payments to the Civil Penalty and Forfeiture Fund.

In addition, the proposed legislation extends the provisions of the act prohibiting felons from receiving retirement benefits as follows: enacts new G.S. 128-38.5 and 128-26(x) (Local Governmental Employees' Retirement System), new G.S. 135-75.2 and 135-56(j) (Consolidated Judicial Retirement Act), and new G.S. 120-4.34 and 120-4.12(g) (Legislative Retirement System).

The act adds a new section amending G.S. 15A-1340.16(d)(9), clarifying that it is an aggravating factor if the defendant held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment. Further, the act enacts new G.S. 15A-1340.16(f), directing the court to notify the State Treasurer if the court convicts the defendant and finds the aggravating factor under (d)(9). The bill requires the indictment to include notice of the State's intent to prove the aggravating factor under (d)(9). The act directs the State Treasurer to negotiate with specified U.S. Attorneys to create a memorandum of agreement providing notice of the applicable convictions.

The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

*SOURCE: BILL DIGEST H.B. 153 (03/31/0201).*

## **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**

Currently, G.S. 15A-1340.16(d)(9) provides that for purposes of sentencing, it shall be an aggravating factor if the defendant held public office at the time of the offense and the offense related to the conduct of the office. This section expands the scope of that aggravating factor to include any public employment held at the time of the offense.

It is not known how many sentences might be aggravated if this aggravating factor is broadened to include any public employment held at the time of the offense. The aggravated sentence range allows the judge to impose a sentence that is up to 25 percent longer than the longest sentence in the presumptive sentence range. During FY 2009-10, 4 percent (n=489) of all felony convictions receiving an active sentence fell in the aggravated sentence range. The Administrative Office of

the Courts' Automated Criminal Infractions System does not contain data on the application of aggravating or mitigating factors. Therefore, it is not known how many sentences have been aggravated based on the existing aggravating factor in G.S. 15A-1340.16(d)(9). It also is not known how many sentences were imposed for public officials and public employees. Therefore, it is not possible to determine the impact this proposal would have on the state prison population. The aggravating factor in the proposed bill could apply to numerous offenses and the impact of aggravated sentences varies considerably by offense class (*e.g.*, little impact for low-level felonies with increasing impact as one moves up the grid to having a substantial impact for Class B1 felonies).

### **Judicial Branch**

The Administrative Office of the Courts (AOC) 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.

### **Aggravating Factor**

The act proposes to make the issues of (1) whether a defendant held a public or appointed office or public employment at the time of offense and (2) whether the offense is directly related to the conduct of the office or employment an aggravating factor under G.S. 15A-1340.16(d). Pursuant to G.S. 15A-1340.16(a1) the finding of an aggravated factor requires a finding by a jury beyond a reasonable doubt or admission by the defendant. A prosecutor must give at least thirty days pretrial notice of the State's intent to seek a finding of an aggravated factor. The Court may not find an aggravating factor on its own initiative and the defendant cannot admit it. Due to these requirements, it is anticipated that expanding the number of defendants impacted by an aggravating factor will increase workload for those cases. District Attorneys' offices may send notices of aggravating factors in more cases as a result of this legislation, and additional court time would be spent on testimony related to the aggravating factor in those cases. The amount of workload will vary based on the level of the underlying charges and the specifics of each case.

While findings of aggravating factors are included in the paper files, the courts' data systems do not record findings of aggravating factors. Thus, AOC cannot determine the number of defendants who may currently be impacted by the aggravating factor under G.S. 15A-1340.16(d)(9). Further, the proposed legislation would substantially increase the pool of potential offenders, by expanding the affected group to include public employees. AOC cannot determine the number of public employees who are charged with criminal offenses, the nature and level of those criminal charges, the subset of those employees for whom the DA may seek to find an aggravating factor for conduct related to the person's employment, or the subset of employees who are currently charged with other aggravating factors.

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.

**AOC Forms & Report to State Treasurer**

Aggravating factors are not included in the Automated Criminal and Infractions Database. Aggravating factors are included in the paper judgment, on Form AOC-CR-605 Felony Judgment Findings of Aggravating and Mitigating Factors. There would be one-time work by AOC personnel to amend that form to redefine the field related to aggravating factor (9).

In order to fulfill the reporting requirement in Section 13, the clerk will have to make a certified copy of each judgment that includes aggravating factor (9), and mail it to the State Treasurer. Resource impact will include deputy clerk time, supplies, and postage.

**SOURCES OF DATA:** North Carolina Sentencing and Policy Advisory Commission; Judicial Branch

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION:** (919) 733-4910

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Fiscal Research Division

**DATE:** April 4, 2011



**Signed Copy Located in the NCGA Principal Clerk's Offices**