

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 39 (First Edition)
SHORT TITLE: Labor/Up Amusement Device Penalties.
SPONSOR(S): Representatives Davis and Howard

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	No estimate available. Please see Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Department of Labor, Administrative Office of the Courts, Department of Public Safety, Indigent Defense Services					
EFFECTIVE DATE: December 1, 2015					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

This incarceration note does not address the civil penalty changes included in sections (a) through (h) of the bill. The fiscal impact of those changes is addressed in a separate fiscal note attached to the bill, which finds that the Department of Labor has had cause to assess a civil penalty under this Act once in the previous five fiscal years. The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated, and having penalties applied to those convicted of the new offense. 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 one person charged and convicted of this crime:

- Administrative Office of the Courts: \$88-1,530 per disposition
- Indigent Defense Services: \$180-511 per disposition
- Prison Section: (\$11.23 per inmate per day)
- Community Corrections: Minimum of \$1,476-1,606

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill proposes increases to various civil penalties in subsections (a) through (e) for violating Article 14B of G.S. 95, the Amusement Device Safety Act. Furthermore, the bill amends one of the factors the Commissioner should take in due consideration when determining the size of the civil penalty from “the size of the business” to “the annual gross volume of the business.” This bill also allows the Commissioner to file a certified copy of the order for civil penalty with the Clerk of Superior Court where the violation

occurred, where the person resides, or where the corporation maintains its principal place of business, and the Clerk will enter the judgment and notify the parties.

This bill proposes to expand the Class 2 misdemeanor penalty for violations causing death to include any violation that does not result in serious injury or death. Subsequent violations are Class 1 Misdemeanors and fines up to \$20,000. For violations that cause serious injury or death, this bill creates a Class E felony and fine up to \$50,000 under subsection (j). This bill adds a new subsection (k) that allows for the additional prosecution of willful or culpable homicide.

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.

Section 1 of the bill creates a new Class E felony offense. AOC does not have historical data upon which to estimate the number of charges that might occur because AOC currently does not have a specific offense code for violations of G.S. 95-111.13. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Similar incidents have been charged with assault with a deadly weapon inflicting serious injury, a Class E felony.

AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class E felony under the proposed changes to G.S. 95-111.13, the average cost to the court would be \$1,618. Every defendant previously violating this Act was charged with a Class 2 Misdemeanor, which has an average cost to the court of \$88. Moving these offenses to a Class E felony would cause an additional average cost to the court per disposition of \$1,530 (\$1,618 minus \$88 equals \$1,530). Section 1 of the bill also expands the Class 2 Misdemeanor. For every additional person charged with a Class 2 Misdemeanor, the average cost to the court would be \$88. Subsequent violations are a Class

1 Misdemeanor. For every additional person charged with a Class 1 Misdemeanor, the average cost to the court would be \$165.

79% of Class E felony cases are handled through the Office of Indigent Defense Services (IDS). IDS provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. The cost of a new Class E felony will be \$511.64 per case for a private appointed counsel (PAC) attorney. 39% of Class 1 Misdemeanors are handled through IDS. The cost of a new Class 1 Misdemeanor will be \$187.56 per case for a private appointed counsel (PAC). 30% of Class 2 Misdemeanors are handled through IDS. The cost of a new Class 2 Misdemeanor will be \$180.90 per case for a private appointed counsel (PAC). Each estimate is a weighted average of IDS costs including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. 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

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 2014.

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).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2016	June 30 2017	June 30 2018	June 30 2019	June 30 2020
1. Inmates ²	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

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 \$11.53 per day, or \$351 per month, which includes the cost of food, clothing, and health care. In FY 2013-14, 63 percent of Class E felony offenders received active sentences averaging 27 months. For every one Class E felony

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.

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 2015.

³ Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

offender receiving an active sentence, the cost to the prison section will be \$9,477 (\$351 monthly cost times 27 months equals \$9,477).

This bill expands the Class 2 misdemeanor offense and creates a new Class 1 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 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. Additionally, for felony offense classes E through I and all misdemeanor classes, 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 Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$123 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 probations.

In FY 2013-14, 63% of Class E felony offenders received active sentences; 37% received probation. All active sentences result in 12 months of post-release supervision (PRS). The average length of probation imposed for this offense class was 34 months. Therefore, at a minimum, one conviction resulting from Section 1 of this bill will require at least 12 and up to 34 months of supervision. The cost of 12 months of supervision is \$1,476 per offender (\$123 per month times 12 months). The cost of 34 months of supervision is \$4,182 (\$123 per month times 34 months).⁴

In FY 2013-14, 27 percent of Class 1 misdemeanor offenders received active sentences; two percent received intermediate sentences; and 71 percent received community punishments. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. Therefore, at a minimum, one conviction resulting from Section 1 of this bill will

⁴ 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.

require at least 15 months of supervision. The cost of 15 months of supervision is \$1,853 per offender (\$123.50 per month times 15 months).⁵

In FY 2012-13, 31 percent of Class 2 misdemeanor offenders received active sentences; one percent received intermediate sentences; and 68 percent received community punishments. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 15 and 13 months, respectively. Therefore, at a minimum, one conviction resulting from Section 1 of this bill will require at least 13 months of supervision. The cost of 13 months of supervision is \$1,606 per offender (\$123.50 per month times 13 months).⁶

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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DATE: March 26, 2015



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⁵ 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.

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