

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 287 (Second Edition)

SHORT TITLE: Amend Insurance Laws.-AB

SPONSOR(S):

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	Likely budget cost. See Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
EFFECTIVE DATE: December 1, 2015					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

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 fiscal impacts are estimated:

Costs

- Administrative Office of the Courts: \$3,739 per disposition
- Indigent Defense Services: \$547 to \$900 per disposition
- Department of Public Safety (DPS) - Prison Section: \$23,868 to \$27,378 per conviction
- DPS - Community Corrections: \$391 to \$1,566 per convicted offender for post-release supervision

Savings

- DPS - Community Corrections: (\$3,654) for supervised probation per convicted offender

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill amends existing G.S. 58-50-40, Willful failure to pay group insurance premiums; willful termination of a group health plan; notice to persons insures; restitution; examinations of insurance transactions. The bill increases the penalty for violation of the statute if the total value of losses suffered as a result of an insurance fiduciary's violation of the statute is \$100,000 or more. Currently, violation of the statute is a Class H felony regardless of the monetary value of the loss. Under the proposed language, losses less than \$100,000 would remain a Class H felony. Losses of \$100,000 or greater would become a Class C felony.

ASSUMPTIONS AND METHODOLOGY:

Charges and Convictions

Although the bill is amending an existing criminal penalty in G.S. 58-50-40(c), the Administrative Office of the Courts (AOC) does not have a charge code for the offense, indicating that it is infrequently charged. In addition, AOC does not maintain indexed data on the dollar amounts involved in cases, so it will not be possible to determine how many existing charges would be elevated to the Class C felony proposed by the bill.

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.

The Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

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.

The bill increases the penalty for violation of G.S. 58-50-40 from a Class H felony to a Class C felony if the monetary losses resulting from the violation are \$100,000 or greater. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class H felony who is instead charged with a Class C felony, the average cost to the court will be \$3,739 (\$4,240 for a Class C minus \$501 for a Class H).

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. In FY 2011-12, 78% of Class H felony cases were handled through IDS. The weighted average cost of a Class H felony is \$353 per case for a private appointed counsel (PAC) attorney. For the same year, 82% of Class C felony cases were handled through IDS at a weighted average cost of \$900 per case. For every Class C felony case handled by IDS that would have been a Class H felony, the increase in cost ranges from \$547 (\$900 for a Class C minus \$353 for a Class H) to \$900, since a higher percentage of Class C felony defendants use IDS services than Class H felony defendants. 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).

The Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many beds may be required as a result of this bill.

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 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, 100% of Class C felony offenders received active sentences averaging 78 months. In comparison, 35% of Class H felony offenders received active sentences averaging ten months. The difference in cost to the prison system for every one offender convicted of a Class C felony who would have been convicted of a Class H felony ranges from \$23,868 (\$351 monthly cost times 78 months equals \$27,378; \$351 monthly cost times ten months equals \$3,510; \$27,378 minus \$3,510 equals \$23,868) to \$27,378, since a higher percentage of Class C felony convictions lead to active sentences.

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 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 \$130.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines,

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.

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 probations.

Class C felony offenders serve twelve months of PRS while Class H felony offenders serve nine months of PRS. Therefore, the additional cost of this bill for PRS for convicted offenders sentenced to active sentences will range from \$391 (\$1,566 for twelve months PRS minus \$1,175 for nine months PRS) to \$1,566, since a higher percentage of Class C felony offenders receive active sentences.

In FY 2013-14, 100% of Class C felony offenders received active sentences. In the same year, 35% of Class H felony offenders received active sentences; 65% received probation. The average length of probation imposed for a Class H felony was 28 months. The cost of 28 months of supervision is \$3,654 per offender (\$130.50 per month times 28 months).⁴ Since all Class C felony offenders serve active sentences, there will be a savings of \$3,654 per offender convicted of a Class C felony under the proposed bill that would have been charged with a Class H felony under the current law.

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

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

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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.