

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 626 (Second Edition)

SHORT TITLE: Amend Prop. Damage Offenses.

SPONSOR(S): Representative Reives

FISCAL IMPACT

(\$ in millions)

Yes No 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

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for several existing offenses. However, given that there is not enough information regarding these offenses or similar offenses to use as a proxy for predicting the total number of 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:

FISCAL IMPACT SUMMARY:

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

- Administrative Office of the Courts: (\$77) to \$200 per disposition
- Indigent Defense Services: \$181 to \$315 per disposition requiring indigent defense services
- Department of Public Safety (DPS) - Prison Section: \$2,106 per felony conviction resulting in an active sentence
- DPS - Community Corrections: (\$262) to \$1,048 per conviction resulting in supervised probation

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill introduces tiered offense classes based on the dollar amount of property damage for willful and wanton injury to personal property (G.S. 14-160) and real property (G.S. 14-127). The change results in increased penalties for damage with a monetary value between \$5,000 and \$50,000 (from a Class 1 misdemeanor to a Class A misdemeanor) and for damage with a monetary value greater than \$50,000 (from a Class 1 misdemeanor to a Class I felony). Offenses against real property resulting in less than \$200 worth of damage are reduced from a Class 1 misdemeanor to a Class 2 misdemeanor.

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.

The bill changes the penalties for violation of G.S. 14-160, Willful and wanton injury to personal property; punishments and G.S. 14-127, Willful and wanton injury to real property. In CY 2014, there were 13,510 defendants charged under G.S. 14-160 and 6,581 defendants charged under G.S. 14-127. However, AOC data does not contain information about the monetary amount of the damage, so it will not be possible to estimate how many charges may arise under each of the new offense levels. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the statutory changes, the current AOC cost, the cost for the new penalty level, and the difference between the two for the new tiered offense classes.

AOC Costs per Charge					
Monetary Damage Level	Prior Offense	Cost	New Offense	Cost	Difference
Less than \$200 (Real property)	Class 1 MD	\$165	Class 2 MD	\$88	(\$77)
Between \$200 and \$5,000	Class 1 MD	\$165	Class 1 MD	\$165	\$0
Between \$5,000 and \$50,000	Class 1 MD	\$165	Class AI MD	\$286	\$121
Over \$50,000	Class 1 MD	\$165	Class I felony	\$365	\$200

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. The following table shows the weighted average cost at each offense level per case for a private appointed counsel (PAC) attorney as well as the percentage of cases for which an IDS attorney was required.

IDS Cost per Indigent Defendant			
Monetary Damage Level	New Offense	Percent Using IDS	Cost
Less than \$200 (Real)	Class 2 MD	30%	\$181
Between \$200 and \$5,000	Class 1 MD	39%	\$188
Between \$5,000 and \$50,000	Class AI MD	52%	\$204
Over \$50,000	Class I felony	68%	\$315

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). Rows four and five in the chart demonstrate the impact of the bill. The bill increases an existing Class 2 misdemeanor to a Class I felony. However, no data is available regarding the monetary value of property damaged under the existing law, so the Sentencing Commission cannot estimate how many new beds will be required as a result of the increase.

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					

Although no additional beds will be required for this bill, additional spending will be required to house new prisoners or to house prisoners longer as a result of the increased penalty. Per diem expenditures for each inmate are approximately \$11.53 (\$351 per month). The table below shows the per diem rate for each year of the five year projection, adjusted for inflation.

Daily Incarceration Cost Adjusted for Inflation Five Year Projection						
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Inflation Rate		1.85%	2.72%	2.88%	2.76%	2.44%
Per Diem Cost	\$11.53	\$11.74	\$12.06	\$12.41	\$12.75	\$13.06

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

This bill increases the penalty for violation of G.S. 14-160 and G.S. 14-127 from a Class 1 misdemeanor to a Class I felony when the property damage exceeds \$50,000. According to the Sentencing and Policy Advisory Commission, during FY 2013-14 16% of convictions for this offense class resulted in active sentences serving an average of six months. The per diem cost of a six month sentence is \$2,106 (\$351 monthly per diem cost times six months).

This bill also raises the misdemeanor level of violations of G.S. 14-160 and G.S. 14-127 from a Class 1 misdemeanor to a Class A1 misdemeanor if the monetary value of the property damage is between \$5,000 and \$50,000. 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 resulting from this change.

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.

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.

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 \$130.50 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 probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

Monthly Supervision Cost Adjusted for Inflation Five Year Projection						
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Inflation Rate		1.85%	2.72%	2.88%	2.76%	2.44%
Monthly Cost	\$130.50	\$132.90	\$136.52	\$140.45	\$144.32	\$147.85
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>						

The following table shows the percent of convictions resulting in supervised probation and the average length of that probation for each of the offense levels added to the statute. The difference in cost ranges from a savings of \$262 for the reduction from a Class 1 misdemeanor to a Class 2 misdemeanor for real property damage with a monetary value of less than \$200, to \$1,048 for the increase from a Class 1 misdemeanor to a Class I felony for property damage with a monetary value of more than \$50,000.⁴

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.

Supervised Probation Lengths and Cost by Offense Level

Monetary Damage Level	Prior Offense	%			Cost	New Offense	%		
		Receiving Probation	Months	Cost			Receiving Probation	Months	Cost
Less than \$200 (Real)	Class 1	70%	15	\$1,965	Class 2	67%	13	\$1,703	
Between \$200 and \$5,000	Class 1	70%	15	\$1,965	Class 1	70%	15	\$1,965	
Between \$5,000 and \$50,000	Class 1	70%	15	\$1,965	Class A1	65%	17	\$2,227	
Over \$50,000	Class 1	70%	15	\$1,965	Class I	84%	23	\$3,013	

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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