

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 992 (Fourth Edition)

SHORT TITLE: Amend Industrial Hemp Program.

SPONSOR(S): Representatives Brody, Dixon, Langdon, and Steinburg

FISCAL IMPACT

(\$ in millions)

Yes
 No
 No Estimate Available

	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
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, 2016

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 costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$165 - \$365 per disposition
- Indigent Defense Services: \$187 - 315 per disposition
- Department of Public Safety (DPS) - Prisons: \$2,653 for each active sentence
- DPS - Community Corrections: Minimum of \$1,200

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill amends the regulations of the Industrial Hemp Program. This note addresses only the criminal infractions created in the bill. Section 5 creates new G.S. 106-568.57, Criminal penalties. Subsection (a) makes it a Class I felony offense for any person to manufacture, distribute, dispense, deliver, purchase, aid,

abet, attempt or conspire to manufacture, distribute, dispense, deliver, or purchase marijuana on property used for industrial hemp production, or in a manner intended to disguise the marijuana due to its proximity to industrial hemp. This subsection specifies that this penalty may be imposed in addition to any other penalties provided by law.

Subsection (b) creates a Class 1 misdemeanor for any person providing the Industrial Hemp Commission with false or misleading information in relation to a license application or renewal, inspection, or investigation authorized by Article 50E (“Industrial Hemp”) of Chapter 106 of the General Statutes.

Subsection (c) makes it a Class 1 misdemeanor for any person to tamper with or adulterate an industrial hemp crop lawfully planted pursuant to Article 50E of Chapter 106 of the General Statutes.

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 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. 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.

Subsection (a) of the bill creates a new Class I felony offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class I felony the average cost to the court would be \$365.

Subsections (b) and (c) of the bill create new Class 1 misdemeanor offenses. Because these are new offenses, AOC does not have historical data upon which to estimate the number of charges that might

occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 1 misdemeanor offense the average cost to the court would be \$165.

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, the most recent year data is available, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$315 per case for a private appointed counsel (PAC) attorney. 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.

In FY 2011-12, the most recent year data is available, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$187 per case for a private appointed counsel (PAC) attorney. 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 – Prisons

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 2015.

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).

Since the bill creates a new felony offense, 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 2017	June 30 2018	June 30 2019	June 30 2020	June 30 2021
1. Inmates ²	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
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 \$12.46 per day, or \$379 per month, which includes the cost of food, clothing, and health care. In FY 2014-15, 14% of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$2,653 (\$379 monthly cost times seven months).

This bill creates two new Class 1 misdemeanor offenses. 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.

Department of Public Safety – Community Corrections

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 F 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.

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 2016.

³ Criminal penalty bills effective December 1, 2016 should not affect prison population and bed needs until FY 2017-18 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

All types of post-release supervision are supervised by the Community Corrections (CCS); CCS also oversees community service. Supervision by a probation officer costs \$140 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.

Subsection (a) of this bill creates a new Class I felony offense. In FY 2014-15, 14% of Class I offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 24 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,260 per offender (\$140 per month times nine months).⁴ For every offender sentenced to probation, the average cost would be \$3,360 (\$140 per month times 24 months).

Subsections (b) and (c) of this bill create two new Class 1 misdemeanor offenses. In FY 2014-15, 32% of Class 1 misdemeanor offenders received active sentences; 68% received probation. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one conviction resulting from this bill will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,100 per offender (\$140 per month times 15 months).⁵

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: Lisa Fox (Fiscal Research)

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

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⁴ Due to the effective date of December 1, 2016 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2016-17. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2017-18.

⁵ Due to the effective date of December 1, 2016 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2016-17. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2017-18.