

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 589 (First Edition)
SHORT TITLE: Habitual Felons/Clarify Previous Convictions.
SPONSOR(S): Senators J. Jackson, Bingham, and Tucker

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 When the bill becomes law.

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address an expansion of an existing offense being enforced, adjudicated, and having penalties applied to those convicted under the broadened statute. However, given that there is no data on how many people will be included in the expanded group of offenders, 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: no significant fiscal impact anticipated
- Indigent Defense Services: \$ 315 - \$900 per disposition
- Department of Public Safety (DPS) - Prison Section: unable to determine additional cost
- DPS - Community Corrections: Minimum of \$1,174 per offender placed under supervision

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill amends G.S.14-7.1 to expand the definition of felony offenses for the purposes of qualification for an habitual felon status offense.

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.

Since the bill expands the classification of habitual felon, 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 additional habitual felony convictions may result from expanding the classification of crimes that would count as prior felony convictions for the purpose of establishing habitual felon status.

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.

This bill expands the scope of what may be considered an habitual felon offense. An habitual felon is an offender with at least three prior felony convictions. Under the proposed expansion, the pool of offenders who would be eligible for habitual felon status would increase, which may result in an increase in the prosecution and conviction of habitual felons. The AOC database does not contain information about the specific offenses that are used to calculate the number of prior record points. As a result, it is not known how many additional habitual felony convictions may result from expanding the classification of crimes that would count as prior felony convictions for the purpose of establishing habitual felon status. AOC does not anticipate significant cost to the court system.

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. For principal felony offenses committed on or after December 1, 2011, an habitual felon is sentenced at a felony class that is four classes higher than the principal felony for which the person was convicted, but under no circumstances higher than a Class C. The table below shows the percentage of cases of each felony class that are handled by IDS and their weighted average cost, from Class I to Class C. 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.

Percent Handled by IDS	Offense Class	Weighted Average Cost
82%	Felony Class C	\$900.32
89%	Felony Class D	\$789.00
79%	Felony Class E	\$511.64
74%	Felony Class F	\$497.11
78%	Felony Class G	\$462.15
78%	Felony Class H	\$353.08
68%	Felony Class I	\$315.11

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).

Since the bill expands and clarifies an existing offense category, the Sentencing Commission cannot estimate how many new offenders might fall into this larger category. It is not known how many beds may be required as a result of this bill; however, increasing penalties from lower-level to higher level felonies as a result of a habitual charge greatly increases the likelihood that an offender will serve an active prison sentence. Almost all offenders who are convicted of an habitual felony offense serve active sentences regardless of the class of felony.

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					

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.

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, there were 844 habitual felon convictions under G.S. 14-7.1. However, it is not possible to determine how much additional time each of these offenders served over the felony conviction they would have received without habitual status.

Of those habitual convictions receiving an active sentence, 37% were sentenced as Class C felons, 33% were sentenced as Class D felons, and 30% were sentenced as Class E felons. Under Structured Sentencing, all Class C and Class D offenders are required to serve an active sentence.

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, 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.

In FY 2013-14, 98% of habitual felony offenders received active sentences. All active sentences for felonies result in nine (for F-I Class felonies) or twelve months (for B1-E felonies) of post-release supervision (PRS). Therefore, at a minimum, one habitual felony conviction resulting from bill will require at least nine months of supervision; additional costs would be incurred if the habitual felony charge moves an offender from F-I class (and nine months of supervision) to B1-E class (and twelve months of supervision). The cost of nine months of supervision is \$1,174 per offender (\$130.50 per month times nine months).⁴ The cost of twelve months of post-release supervision is \$1,566 (\$130.50 per month times twelve months).

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.

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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