

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 770 (Third Edition)

SHORT TITLE: NC Farm Act of 2016.

SPONSOR(S):

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 new chargeable offenses being enforced, adjudicated, and having penalties applied to those convicted of the new offenses. However, given that there is no historical data on these new offenses 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 any one of these crimes:

- Administrative Office of the Courts: \$105 to \$197 per disposition
- Indigent Defense Services: \$181 to \$188 per indigent defendant
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: \$1,960 to \$2,100 per conviction resulting in supervision.

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of the bill amends Article 4H (Bedding) of Chapter 106 of the General Statutes by adding five new statutes giving the Department of Agriculture and Consumer Services (DACS) new authority to enforce its bedding sanitation program. The new article grants DACS the authority to detain or embargo bedding products suspected of being adulterated or misbranded, and allows DACS to petition for the products to be condemned. In addition, new G.S. 106-65.105D, Violation a misdemeanor, creates six new misdemeanor offenses for violations under Article 4H:

- Subsection (a) creates a Class 2 misdemeanor for violating the provisions of Article 4H or any rules, regulations, or standards promulgated under it.
- Subsection (b) creates a Class 2 misdemeanor for providing false or misleading information in relation to a license application or renewal, inspection, or investigation authorized by Article 4H.
- Subsection (c) creates a Class 2 misdemeanor for altering or removing a tag indicating that an item has been detained or embargoed pursuant to G.S. 106.105A9a) without first receiving permission from the court or a duly authorized agent under Article 4H.
- Subsection (d) creates a Class 2 misdemeanor for removing or disposing of any item detained or embargoed pursuant to G.S. 106.105A9a) without first receiving permission from the court or a duly authorized agent under Article 4H.
- Subsection (e) creates a Class 2 misdemeanor for resisting, opposing, impeding, intimidating, or interfering with any duly authorized agent while engaged in or on account of the performance of the agent's official duties under Article 4H. If a person commits any of those acts with a deadly weapon the offense is elevated to a Class 1 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 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.

Section 1 of the bill creates a new Class 1 misdemeanor offense and five new Class 2 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, the average cost to the court would be \$197. For every additional person charged with a Class 2 misdemeanor, the average cost to the court would be \$105.

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, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$188 per case for a private appointed counsel (PAC) attorney. IDS handled 30% of Class 2 misdemeanor cases. The weighted average cost of a new Class 2 misdemeanor is \$181 per case for a private appointed counsel (PAC) attorney. These estimates assume the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

Department of Public Safety – Prisons

This bill creates a new Class 1 misdemeanor offense and five new Class 2 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 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, including intermediate or community sanctions, are supervised by the Community Corrections (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders 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, intermediate sanctions and supervised probation.

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).¹

In FY 2014-15, 33% of Class 2 misdemeanor offenders received active sentences; 67% 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 14 months. Therefore, at a minimum, one conviction resulting from this bill will require at least 14 months of supervision. The cost of 14 months of supervision is \$1,960 per offender (\$140 per month times 14 months).

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: May 31, 2016



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¹ 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.