

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 249 (First Edition)

**SHORT TITLE:** Economic Terrorism.

**SPONSOR(S):** Representative Torbett

**FISCAL IMPACT**

(\$ in millions)

Yes     
  No     
  No Estimate Available

|                           | FY 2017-18   | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
|---------------------------|--|------------|------------|------------|------------|
| <b>State Impact</b>       |  |            |            |            |            |
| General Fund Revenues:    |  |            |            |            |            |
| General Fund Expenditures |  |            |            |            |            |
| State Positions:          |  |            |            |            |            |
| <b>NET STATE IMPACT</b>   | <b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b> |            |            |            |            |

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**

Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

**EFFECTIVE DATE:** December 1, 2017

**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:

- Administrative Office of the Courts: \$96 to \$625 per disposition
- Indigent Defense Services: \$0 to \$392 per indigent defendant
- Department of Public Safety (DPS) - Prisons: \$5,027 per active felony sentence
- DPS - Community Corrections: \$0 to \$3,996 per conviction

Please see the Assumptions and Methodology section for additional information.

**BILL SUMMARY:**

The bill creates a new Class H felony and two new misdemeanors (currently charged at lower misdemeanor levels).

Section 1 of the bill creates a new Class H felony offense in G.S. 14-10.1, Terrorism. Subsection (b1) makes it a Class H felony for a person to willfully and maliciously or with reckless disregard commit a criminal offense that impedes or disrupts the regular course of business, the disruption results in damages of more than \$1,000, and the offense is committed with the intent to intimidate the civilian population or influence the government.

Section 4 of the bill amends G.S. 14-159.13, Second degree trespass, by making it a Class 1 misdemeanor to remain at the place of a riot or unlawful assembly after having been warned to disperse. Currently, this conduct would be covered under subsection (a) of this statute, a Class 3 misdemeanor. This conduct may also be covered under G.S. 14-288.5, Failure to disperse when commanded, a Class 2 misdemeanor. In FY 2015-16, there were 17,606 charges for violation of G.S. 14-159.13, Second degree trespass, and 83 charges for violation of G.S. 14-288.5, Failure to disperse. It is not known how many of those charges would fall into the new Class 1 misdemeanor category.

Section 6 of the bill amends G.S. 20-174.1, Standing, sitting or lying upon the highways or streets prohibited, by adding a misdemeanor offense. Subsection (c) makes it a Class AI misdemeanor for a person to violate subsection (a) of this statute by participation in a riot or other unlawful assembly. Currently, this conduct would be covered under subsection (a) of this statute, a Class 2 misdemeanor. This conduct may also be covered under G.S. 14-288.2, Riot, a Class 1 misdemeanor. In FY 2015-16, there were 504 charges for violation of G.S. 20-174.1, Standing on a highway, and 28 charges under G.S. 14-288.2, Riot. It is not known how many of those charges would fall into the new Class AI misdemeanor category.

## **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.

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 H 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 H felony, the average cost to the court would be \$625.

Sections 4 and 6 of the bill create new misdemeanor offenses. However, the behavior covered by the new misdemeanor offenses could currently be charged under existing criminal statutes. It is not known how many current charges would fall into the new categories. The table below shows the cost to AOC for the existing and new penalty levels and the cost to the court if a defendant is charged at the higher offense level.

| AOC Cost Difference for Misdemeanor Offenses |              |                         |                       |                            |                   |                        |                 |
|--|--------------|-------------------------|-----------------------|----------------------------|-------------------|------------------------|-----------------|
| Section                                      | New Statute  | Currently Charged Under | Current Offense Level | Current Offense Level Cost | New Offense Level | New Offense Level Cost | Cost Difference |
| 4  | 14-159.13(c) | 14-159.13(a)            | Class 3 MD            | \$39                       | Class 1 MD        | \$206                  | \$167           |
| 4  | 14-159.13(c) | 14-288.5                | Class 2 MD            | \$110                      | Class 1 MD        | \$206                  | \$96            |
| 6  | 20-174.1(c)  | 20-174.1(a)             | Class 2 MD            | \$110                      | Class A1 MD       | \$357                  | \$247           |
| 6  | 20-174.1(c)  | 14-288.2                | Class 1 MD            | \$206                      | Class A1 MD       | \$357                  | \$151           |

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, 78% of Class H felony cases were handled through IDS. The weighted average cost of a new Class H felony is \$392 per case for a private appointed counsel (PAC) attorney.

The table below shows the percentage and cost at the current misdemeanor levels and the new misdemeanor levels and the cost difference for the penalties addressed in Sections 4 and 6 of the bill.

| IDS Cost Difference for Misdemeanor Offenses |                       |             |          |                   |             |          |                 |
|--|-----------------------|-------------|----------|-------------------|-------------|----------|-----------------|
| Section                                      | Current Offense Level | % Using IDS | IDS Cost | New Offense Level | % Using IDS | IDS Cost | Cost Difference |
| 4  | Class 3 MD            | 21%         | \$200    | Class 1 MD        | 39%         | \$202    | \$2             |
| 4  | Class 2 MD            | 30%         | \$201    | Class 1 MD        | 39%         | \$202    | \$1             |
| 6  | Class 2 MD            | 30%         | \$201    | Class A1 MD       | 52%         | \$201    | \$0             |
| 6  | Class 1 MD            | 39%         | \$202    | Class A1 MD       | 52%         | \$201    | (\$1)           |

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**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> 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).

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                              |                         |                         |                         |                         |
|---|------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
|   | <b>June 30<br/>2018</b>      | <b>June 30<br/>2019</b> | <b>June 30<br/>2020</b> | <b>June 30<br/>2021</b> | <b>June 30<br/>2022</b> |
| 1. Inmates <sup>2</sup>   | 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                     |
| <b>4. Additional Inmates Due to this Bill<sup>3</sup></b>           | <b>No estimate available</b> |                         |                         |                         |                         |
| <b>5. Additional Beds Required</b>                                  |                              |                         |                         |                         |                         |

Section 1 of the bill creates a new felony offense. The Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<sup>1</sup> 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.

<sup>2</sup> 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 2017.

<sup>3</sup> Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

| <b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions<br/>Class H Felony</b> |               |               |               |               |               |
|--|---------------|---------------|---------------|---------------|---------------|
| <b>Convictions</b>   | <b>Year 1</b> | <b>Year 2</b> | <b>Year 3</b> | <b>Year 4</b> | <b>Year 5</b> |
| 4 (Threshold)  | 1             | 2             | 2             | 2             | 2             |
| 20   | 7             | 10            | 10            | 10            | 10            |

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 \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months).

Sections 4 and 6 of the bill create new misdemeanor offenses. The Sentencing Commission expects no impact on the prison population for these offenses 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.

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 \$148 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.

Section 1 of the bill creates a new Class H felony. In FY 2015-16, 35% of Class H felony 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 27 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 \$1,332 per offender (\$148 per month times nine months).<sup>4</sup> For every offender sentenced to probation, the average cost would be \$3,996 (\$148 per month times 27 months).

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Sections 4 and 6 of the bill create two new misdemeanor offenses. The table below compares the current offense level with the new offense level for these offenses.

| CCS Comparison of Misdemeanor Offense Levels |                       |                          |                                  |                   |                          |                                  |                            |
|--|-----------------------|--------------------------|----------------------------------|-------------------|--------------------------|----------------------------------|----------------------------|
| Section                                      | Current Offense Level | % Sentenced to Probation | Average Sentence Length (Months) | New Offense Level | % Sentenced to Probation | Average Sentence Length (Months) | Difference in ASL (Months) |
| 4  | Class 3 MD            | 76%                      | 12                               | Class 1 MD        | 69%                      | 15                               | 3                          |
| 4  | Class 2 MD            | 66%                      | 14                               | Class 1 MD        | 69%                      | 15                               | 1                          |
| 6  | Class 2 MD            | 66%                      | 14                               | Class A1 MD       | 65%                      | 17                               | 3                          |
| 6  | Class 1 MD            | 69%                      | 15                               | Class A1 MD       | 65%                      | 17                               | 2                          |

In FY 2015-16, there were 4,669 convictions under G.S. 14-159.13(a) (Class 3 misdemeanor) and two convictions under G.S. 14-288.5 (Class 2 misdemeanor). For the same time period, there were no Class 2 misdemeanor convictions for violations of G.S. 20-174.1(a) and 32 Class 1 misdemeanor convictions for violations of G.S. 14-288.5. Because more defendants are sentenced to probation for Class 3 and Class 2 misdemeanors than are sentenced to probation for Class 1 and Class A1 misdemeanors, it's possible that the higher offense class for these crimes may result in lowered expenditures for probation. However, this savings may be offset by the longer sentence length for Class 1 and Class A1 misdemeanors. It is not known how many of the current convictions would fall into the higher offense level.

**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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<sup>4</sup> Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.