

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 223 (First Edition)
SHORT TITLE: Habitual Felons/Clarify Previous Convictions.
SPONSOR(S): Senators J. Jackson, Britt, and Newton

FISCAL IMPACT

(\$ in millions)

Yes No No Estimate Available

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
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, 2017

TECHNICAL CONSIDERATIONS:

None

The proposed bill may have a fiscal impact because of the expansion of the definition of felony offenses for the purposes of qualification for habitual felon status. However, since it is not known how many new offenders may qualify under the expanded definition, 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: \$967 - \$4,349 per case
- Indigent Defense Services: Savings of \$62 to cost of \$569 per indigent case
- Department of Public Safety (DPS) - Prisons: \$9,140 to \$32,904 per active sentence
- DPS - Community Corrections: \$0 to \$444 per active sentence

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill amends G.S. 14-7.1 to expand the classification of crimes that would count as a felony for the purpose of predicate offenses to achieve habitual offender status. The bill expands the definition of felony offense to include an offense that is a felony under the laws of another state and to which a plea of guilty or conviction was entered, regardless of the sentence actually imposed. The bill also expands the definition to include an offense that is a crime under the laws of another state that does not classify any crimes as felonies, but that may be punishable by imprisonment for more than a year in state prison, and to which a plea of guilty or conviction was entered, regardless of the sentence actually imposed. Finally, the bill expands the definition of a felony offense to include an offense that is a felony under federal law.

A habitual felon is an offender with at least three prior felony convictions (each conviction having occurred before he or she committed the next offense) who has currently been convicted of a felony offense and who has been found by a jury to be a habitual felon. (G.S. 14-7.1 to 14-7.6). For principal felony offenses committed on or after December 1, 2011, a 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 Class C.

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 (AOC) 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 expands the pool of offenders who may qualify for habitual felon status under G.S. 14-7.1. It is not known how many new charges will be elevated to habitual felon status based on the expanded scope included in the bill. AOC estimates that the impact on caseloads will be negligible. AOC provides estimates of the average cost to the court for a charge by offense class. For principal felony offenses

committed on or after December 1, 2011, a 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 Class C. The following chart shows the difference in cost per case between the original offense class and the corresponding habitual felon offense class.

AOC Cost Differential for Habitual Felon Status FY 2016-17				
Original Offense Class	Cost	Habitual Felon Offense Class	Cost	Difference
Class D	\$4,320	Class C	\$5,287	\$967
Class E	\$2,017	Class C	\$5,287	\$3,270
Class F	\$1,137	Class C	\$5,287	\$4,150
Class G	\$938	Class C	\$5,287	\$4,349
Class H	\$625	Class D	\$4,320	\$3,695
Class I	\$455	Class E	\$2,017	\$1,562

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 chart shows the difference in the percentage of cases handled and the cost per case by offense class between the original offense class and the corresponding habitual felon offense class. 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.

IDS Cost Differential for Habitual Felon Status FY 2016-17						
Original Offense Class	Percent of Cases Handled by IDS	Cost	Habitual Felon Offense Class	Percent of Cases Handled by IDS	Cost	Cost Difference
Class D	89%	\$961	Class C	82%	\$899	(\$62)
Class E	79%	\$586	Class C	82%	\$899	\$313
Class F	74%	\$569	Class C	82%	\$899	\$330
Class G	78%	\$498	Class C	82%	\$899	\$401
Class H	78%	\$392	Class D	89%	\$961	\$569
Class I	68%	\$333	Class E	79%	\$586	\$253

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 2016.

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

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.

number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	36,906	37,116	36,814	36,821	37,010
2. Prison Beds (Expanded Capacity)	37,617	37,617	37,617	37,617	37,617
3. Beds Over/(Under) Inmate Population	711	501	803	796	607
4. Additional Inmates Due to this Bill³					
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 \$15.02, or \$457 per month. The table below shows the monthly rate for each year of the five year projection, adjusted for inflation.

Monthly Incarceration Cost Adjusted for Inflation Five Year Projection						
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Inflation Rate		2.76%	2.90%	2.98%	2.65%	1.89%
Monthly Cost	\$457	\$470	\$483	\$498	\$511	\$520
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (January 2017)</i>						

The bill expands the classification of crimes that would count as a felony for the purpose of predicate offenses to achieve habitual felon status. A habitual felon is sentenced at a felony class that is four classes higher than the principal felony for which the person was convicted, but not higher than a Class C felony.

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. While the AOC database contains information on the number of prior record points, it 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 felon convictions may result from expanding the classification of crimes that would count as prior felony convictions for the purpose of establishing habitual felon status. In FY 2015-16, there were 910 habitual felon convictions under G.S. 14-7.1. Nearly 96% (872) received an active sentence with an average estimated time served of 61 months. Of those habitual felon convictions

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 2017.

³ 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.

receiving an active sentence, 32% were sentenced as Class C felons, 33% were sentenced as Class D felons, and 35% were sentenced as Class E felons.

The Sentencing Commission provides a threshold analysis 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. The five-year estimates take into account the combinations of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

Original Class D offense: Under Structured Sentencing, all Class C and Class D offenders are required to receive an active sentence. Impact on the prison population is not expected to occur in the first five years if an offender convicted of a Class D felony would instead be sentenced as a Class C habitual felon under the proposed statute because the average estimated time served for an offender sentenced as a Class C habitual felon or as a Class D felon is greater than 60 months. Impact on the prison population is expected to occur during the sixth year if an offender convicted of a Class D felony would instead be sentenced as a Class C habitual felon under the proposed statute. Impact would result from the longer average estimated time served (86 months for Class C habitual offenders compared to 66 months for Class D).

Original Class E offense: Impact on the prison population will occur if an offender convicted of a Class E felony would instead be sentenced as a Class C habitual felon under the proposed statute. Impact would result from the higher rate of active sentences (100% for Class C habitual offenders compared to 63% for Class E) and longer average estimated time served (86 months for Class C habitual offenders compared to 27 months for Class E). The following table shows the estimated annual impact if, for example, there were two additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Original Offense Increased to Class C Habitual Felon					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	3	5	7
20	7	13	27	48	67

Original Class F offense: Impact on the prison population will occur if an offender convicted of a Class F felony would instead be sentenced as a Class C habitual felon under the proposed statute. Impact would result from the higher rate of active sentences (100% for Class C habitual offenders compared to 50% for Class F) and longer average estimated time served (86 months for Class C habitual offenders compared to 17 months for Class F). The following table shows the estimated annual impact if, for example, there were two additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Original Offense Increased to Class C Habitual Felon					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	4	6	8
20	10	23	42	63	83

Original Class G offense: Impact on the prison population will occur if an offender convicted of a Class G felony would instead be sentenced as a Class C habitual felon under the proposed statute. Impact would

result from the higher rate of active sentences (100% for Class C habitual offenders compared to 39% for Class G) and longer average estimated time served (86 months for Class C habitual offenders compared to 14 months for Class G). The following table shows the estimated annual impact if, for example, there were three additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Original Offense Increased to Class C Habitual Felon					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	2	4	7	10	13
20	12	27	47	68	88

Original Class H offense: Impact on the prison population will occur if an offender convicted of a Class H felony would instead be sentenced as a Class D habitual felon under the proposed statute. Impact would result from the higher rate of active sentences (100% for Class D habitual offenders compared to 35% for Class H) and longer average estimated time served (72 months for Class D habitual offenders compared to 11 months for Class H). The following table shows the estimated annual impact if, for example, there were four additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Original Offense Increased to Class D Habitual Felon					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	3	6	10	14	18
20	13	31	51	72	92

Original Class I offense: Impact on the prison population will occur if an offender convicted of a Class I felony would instead be sentenced as a Class E habitual felon under the proposed statute. Impact would result from the higher rate of active sentences (89% for Class E habitual offenders compared to 15% for Class I) and longer average estimated time served (28 months for Class E habitual offenders compared to 7 months for Class I). The following table shows the estimated annual impact if, for example, there were nine additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Original Offense Increased to Class E Habitual Felon					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
9 (Threshold)	5	11	14	14	14
20	11	24	30	30	31

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. The following table shows the average sentence length for the original offense class and the average sentence length for the new offense class, the difference in total sentence length, and the total cost associated with the difference in sentence length.

Original Offense Class	Average Active Sentence Length (Months)	Habitual Felon Offense Class	Average Active Sentence Length (Months)	Difference in Average Sentence Length (Months)	Cost for Additional Months Served (\$457 per month)
Class D	66	Class C	86	20	\$9,140
Class E	27	Class C	86	59	\$26,963
Class F	17	Class C	86	69	\$31,533
Class G	14	Class C	86	72	\$32,904
Class H	11	Class D	72	61	\$27,877
Class I	7	Class E	28	21	\$9,597

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 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 (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.

All Class B1 to Class E felony offenders serve twelve months of post-release supervision (PRS) following their incarceration. Therefore, no additional PRS will be required if habitual felon status is applied to Class E or Class D offenses, making them Class C offenses. Class F through I felony offenders are required to serve nine months of PRS. If habitual felon status is applied to Class F through I felony offenders, an additional three months of PRS will be required. The cost of three months of PRS is \$444. (\$148 per month time three 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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