



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Legislative Incarceration Fiscal Note

Short Title: Break or Enter Pharmacy/Increase Penalty.
Bill Number: House Bill 212 (First Edition)
Sponsor(s): Reps. Sasser, C. Smith, Murphy, and Horn

SUMMARY TABLE

FISCAL IMPACT OF H.B. 212, V.1

	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>
State Impact					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	=	=	=	=	=
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Estimate Available - Refer to Fiscal Analysis section
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TECHNICAL CONSIDERATIONS: See Technical Considerations Section

Section 1 of the bill creates a new Class D felony for offenders who breaks or enters a pharmacy with the intent to commit theft of opioids. The section also creates a Class F felony for a person who receives or possesses any property stolen from the Class D offense if they know or have reasonable grounds to believe it was stolen.

FISCAL IMPACT SUMMARY

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, since there is no historical data on this new Class D offense, or similar offenses to use as a proxy for predicting the total number of offenses, the Fiscal Research Division (Fiscal Research) 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 the Class D felony:

- Administrative Office of the Courts: \$4,905 per disposition
- Indigent Defense Services: \$1,283 per disposition
- Department of Public Safety (DPS) - Prisons: \$34,432
- DPS - Community Corrections: Minimum of \$1,920 per supervised probation sentence

Similarly, there is no historical data on the new Class F offense, or similar offenses to use as a proxy for predicting the total number of offenses, and thus Fiscal Research 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 the Class F felony:

- Administrative Office of the Courts: \$1,291 per disposition
- Indigent Defense Services: \$569 per disposition
- Department of Public Safety (DPS) - Prisons: \$10,222
- DPS - Community Corrections: Minimum of \$1,440 per supervised probation sentence

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, Fiscal Research does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192, 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 D felony offense and a new Class F 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 D felony, the average cost to the

court would be \$4,905. For every additional person charged with a Class F felony, the average cost to the court would be \$1,291.

AOC does note that G.S. 14-54(a) establishes a Class H felony offense for breaking and entering with the intent to commit any felony or larceny. In calendar year 2018, there were 7,784 defendants charged with violations of G.S. 14-54(a). It is unknown how many of these charges resulted from the breaking or entering of a pharmacy with the intent to steal opioids. If, for example, 10% of these cases were charged for the Class D felony rather than the Class H felony, the costs to AOC would be \$3,264,488 (\$3,816,090 for the Class D (778 times \$4,905) minus \$551,602 for the Class H (778 times \$709 per Class H disposition) equals \$3,264,488). Since it is unknown how many of these offenses involved theft of opioids from a pharmacy, though, the actual costs remain unknown.

AOC also points out that per G.S. 14-2.4 and 14-2.5, the bill implicitly creates a new Class E felony for attempts and conspiracies to violate the new Class D felony created in the bill, as attempts and conspiracies to commit a felony are charged at a one-class reduction. For every additional person charged with a Class E felony, the average cost to the court would be \$2,290. In CY 2018, there were 873 defendants charged with attempt or conspiracy to commit a felony breaking and entering. However, because it is unknown how many of these offenses involved theft of opioids from a pharmacy, the actual costs to the courts from this new Class E felony are unknown.

The Office of Indigent Defense Services (IDS) provides 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 2017-18, the most recent year data is available, 89% of Class D felony cases were handled through IDS. The weighted average cost of a new Class D felony is \$961 per case for a private appointed counsel (PAC) attorney. In FY 2017-18, 74% of Class F felony cases were handled through IDS. The weighted average cost of a new Class F felony is \$569 per case for a 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, 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 2018.

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

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.

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). Rows four and five in the chart demonstrate the impact of the bill.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2020	June 30 2021	June 30 2022	June 30 2023	June 30 2024
1. Inmates ²	36,452	36,867	37,231	37,433	37,702
2. Prison Beds (Expanded Capacity)	38,225	38,225	38,225	38,225	38,225
3. Beds Over/(Under) Inmate Population	1,773	1,358	994	792	523
4. <i>Additional Inmates Due to this Bill³</i>	No estimate available				
5. <i>Additional Beds Required</i>					

Since the bill creates two new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill 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.

Class D

In FY 2017-18, 99% of Class D felony convictions resulted in active sentences, with an average estimated time served of 64 months. Twelve 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 impact if there was one conviction (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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

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 2019.

³ Criminal penalty bills effective December 1, 2019 should not affect prison population and bed needs until FY 2020-21 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Because, as AOC pointed out breaking or entering with intent to commit any felony or larceny is currently a Class H offense under G.S. 14-54, any person who commits such an offense related to theft of opioids from a pharmacy would be sentenced at the Class D level and costs to the prison system should reflect the increase from Class H to Class D. There were 2,236 convictions for this offense in FY 2018. However, no data are available to indicate how many involved theft of opioids from pharmacies. Impact on the prison population will occur if Class H convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (mandatory active for Class D compared to 34% for Class H) and longer average estimated time served (64 months for Class D compared to 11 months for Class H). The following table shows the estimated annual impact if, for example, there were 4 convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class H to Class D. 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 estimated growth rates in convictions.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Increasing Class H to Class D Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	3	6	10	14	18
20	13	30	50	71	91

Class F

In FY 2017-18, 51% of Class F felony convictions resulted in active sentences, with an average estimated time served of 19 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 impact if there were two 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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	3	3	3
20	11	19	22	22	22

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 \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care.

Class D

In FY 2017-18, 99% of Class D felony offenders received active sentences averaging 64 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$34,432 (\$538 monthly cost times 64 months).

For offenders who would have otherwise fallen under the Class H sentence, the difference in cost to the prison section would be \$28,514. In FY 2017-18, 34% 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 \$5,918 (\$538 monthly cost times 11 months). Therefore, the costs will be \$28,514 (\$34,432 for Class D minus \$5,918 for Class H equals \$28,514).

Class F

In FY 2017-18, 51% of Class F felony offenders received active sentences averaging 19 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$10,222 (\$538 monthly cost times 19 months).

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 face the same non-active sentences as felons.

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 \$160 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 probation.

Class D

In FY 2017-18, 99% of Class D felony offenders received active sentences. The average length of probation imposed for this offense class was 42 months. All active sentences for Class B1 through E felonies result in 12 months of post-release supervision (PRS). Therefore, at a minimum, one



conviction resulting from this bill will require at least nine months of supervision. The cost of twelve months of supervision is \$1,920 per offender (\$160 per month times 12 months).⁴ For every offender sentenced to probation, the average cost would be \$6,720 (\$160 per month times 42 months).

For offenders who would otherwise have been charged under the Class H felony offense, the minimum cost to CCS would be \$480 for 3 additional months of supervision. In FY 2017-18, 34% of Class H felony offenders received active sentences and 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for Class H felony offenders receiving a suspended sentence was 26 months. All active sentences for Class F through I felonies result in nine months of PRS. Therefore, at a minimum, one conviction at the Class H offense level would require at least nine months of supervision. The cost of nine months of supervision is \$1,440 per offender (\$160 per month times 9 months).⁵ The minimum cost for the increased penalty would be \$480 for the additional 3 months of supervision (\$1,920 for 12 months minus \$1,440 for 9 months equals \$480 for 3 months).

Class F

In FY 2017-18, 49% of Class F felony offenders received suspended sentences. The average length of probation imposed for this offense class was 31 months. All active sentences for Class F through I felonies result in nine months of PRS. Therefore, at a minimum, one conviction resulting from this bill will require at least 9 months of supervision. The cost of 9 months of supervision is \$1,440 per offender (\$160 per month times 9 months).⁶ For every offender sentenced to probation, the average cost would be \$4,960 (\$160 per month times 31 months).

TECHNICAL CONSIDERATIONS

AOC raises the concerns that as drafted, the possession or receipt offense in subsection (c) would apply to any property taken pursuant to a violation of subsection (b), not just to possession/receipt of opioids that were the intended target of the breaking or entering. For example, if the defendant broke in with the intent to steal opioids but only took a pack of gum, another person's possession or receipt of that gum, knowing or having reasonable grounds to believe the gum was stolen, would be a Class F felony. It is unclear if this is the intent, or if subsection (c) meant to refer to possession/receipt of only opioids stolen pursuant to the breaking or entering.

DATA SOURCES

Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

⁴ Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2018-19. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2019-20.

⁵ Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.

⁶ Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.



LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

CONTACT INFORMATION

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

ESTIMATE PREPARED BY

William Childs

ESTIMATE APPROVED BY

Mark Trogdon, Director of Fiscal Research
Fiscal Research Division
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Signed copy located in the NCGA Principal Clerk's Offices

