



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Legislative Incarceration Fiscal Note

Short Title: Emergency Worker Protection Act.
Bill Number: Senate Bill 20 (First Edition)
Sponsor(s): Senators Britt, Ballard, and McInnis

SUMMARY TABLE

FISCAL IMPACT OF S.B.20, 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> | <u>714,572</u> | <u>714,572</u> | <u>714,572</u> | <u>714,572</u> | <u>714,572</u> |
| General Fund Impact | (714,572) | (714,572) | (714,572) | (714,572) | (714,572) |
| NET STATE IMPACT | (\$714,572) | (\$714,572) | (\$714,572) | (\$714,572) | (\$714,572) |

FISCAL IMPACT SUMMARY

This bill would increase 11 felonies by one class level and create a new Class D felony and a new Class A1 misdemeanor. The following table shows the offenses along with the charges and convictions for each in calendar year 2018.

| Offense | Existing Class | New Class | Total Number of Charges, CY 2018 | Total Number of Convictions, CY 2018 |
|---|----------------|----------------|----------------------------------|--------------------------------------|
| Section 1 | | | | |
| Assault with firearm (G.S. 14-34.5(a), (a1), (b)) | Class E felony | Class D felony | 67 | 9 |
| Section 2 | | | | |
| Assault with a deadly weapon or serious injury (G.S. 14.34.6(b)) | Class H felony | Class G felony | 5 | 0 |
| Assault with a firearm (G.S. 14.34.6(c)) | Class F felony | Class E felony | 1 | 0 |
| Section 3 | | | | |
| Assault with serious injury (G.S. 14.34.7(a), (a1), (b)) | Class F felony | Class E felony | 97 | 23 |

| | | | | |
|---|----------------|----------------|-----|----|
| Assault with physical injury (G.S. 14-34.7(c)) | Class I felony | Class H felony | 442 | 78 |
| Section 4 | | | | |
| Assault with physical injury (G.S. 14-288.9(c)) | Class I felony | Class H felony | 1 | 0 |
| Assault with a dangerous weapon or substance (G.S. 14-288.9(c)) | Class F felony | Class E felony | 2 | 0 |

The following table shows that, using CY 2018 data for charges and convictions and assuming the same number going forward, the minimum cost of this bill per year would be \$714,572 across all JPS agencies for the increased felonies in Sections 1, 2, 3, and 4. There is a full explanation of the numbers used in this estimate in the body of the incarceration note below.

| Increased Penalty | Sections of the bill | Cost per CY 2018 Data | | | | |
|--------------------|----------------------|-----------------------------------|--------------------------------|--|--|--|
| | | AOC | IDS | Active Sentence | | Suspended Sentence |
| | | | | DPS-Prisons | DPS-Community Corrections | DPS-Community Corrections |
| Class I to Class H | 3, 4 | \$85,499 (443 cases x \$193) | \$20,414 (346 cases x \$59) | \$58,104 (27 active sentences x \$2,152) | - (no increased costs) | \$25,440 (53 suspended sentences x \$480) |
| Class H to Class G | 2 | \$1,780 (5 cases x \$356) | \$424 (4 cases x \$106) | - (0 active sentences) | - (no increased costs) | - (0 suspended sentences) |
| Class F to Class E | 2, 3, 4 | \$99,900 (100 cases x \$999) | \$1,343 (79 cases x \$17) | \$62,946 (13 active sentences x \$4,842) | \$6,240 (13 active sentences x \$480) | \$2,240 (7 suspended sentences x \$320) |
| Class E to Class D | 1 | \$153,430 (67 cases x \$2,290) | \$22,500 (60 cases x \$375) | \$174,312 (9 active sentences x \$19,368) | - (no increased costs) | - (0 suspended sentences) |

Section 5 creates a new Class D felony. This section of 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 offense, or similar offenses to use as a proxy for predicting the total number of 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 this crime:

- 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 \$6,720 per supervised probation sentence

Section 6 creates a new Class A1 misdemeanor. This section of 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 offense, or similar offenses to use as a proxy for predicting the

total number of 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 this crime:

- Administrative Office of the Courts: \$404 per disposition
- Indigent Defense Services: \$201 per disposition
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: \$2,560 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, the Fiscal Research Division 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 (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 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.



New Class A1 Misdemeanor

Section 6 of the bill creates a new Class A1 misdemeanor 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 A1 misdemeanor, the average cost to the court would be \$404.

In FY 2017-18, the most recent year data is available, 52% of Class A1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class A1 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney. 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.

Increase from Class I to Class H Felonies

Sections 3 and 4 of the bill increase a Class I felony to a Class H felony offense. AOC reports that in calendar year 2018, there were 442 defendants charged with a violation under G.S. 14-34.7(c) and 1 defendant charged with a violation under G.S. 14-288.9(c). 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 \$709, while for every additional person charged with a Class I felony, the average cost to the court would be \$516. Therefore, the average difference in costs to the courts for each charge under this change is \$193 (\$709 per case for Class H minus \$516 per case for Class I felonies equals \$193.) Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to the court systems from these changes would be \$85,499 (\$193 cost increase times 443 defendants equals \$85,499).

In FY 2017-18, 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. In FY 2017-18, the most recent year data is available, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$333 per case for a PAC attorney. The increased cost to IDS from the changes in these sections would be \$59 (\$392 per case for Class H minus \$333 per case for Class I felonies equals \$59). Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to IDS from these changes would be \$20,414 (\$59 cost increase times 346 defendants [443 defendants times 78% for Class H equals 346 defendants] equals \$20,414).

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.

Increase from Class H to Class G Felony

Section 2 of the bill increases a Class H felony to a Class G felony offense. AOC reports that in calendar year 2018, there were 5 defendants charged with a violation under G.S. 14.34.6(b). For every additional person charged with a Class G felony, the average cost to the court would be \$1,065, while for every additional person charged with a Class H felony, the average cost to the court would be \$709. Therefore, the average difference in costs to the courts for each charge under this change is \$356 (\$1,065 per case for Class G minus \$709 per case for Class H felonies equals \$356.) Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to the court

systems from these changes would be \$1,780 (\$356 cost increase times 5 defendants equals \$1,780).

In FY 2017-18, the most recent year data is available, 78% of Class G felony cases were handled through IDS. The weighted average cost of a new Class G felony is \$498 per case for a PAC attorney. In FY 2017-18, 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 PAC attorney. The increased cost to IDS from the changes in these sections would be \$106 (\$498 per case for Class G minus \$392 per case for Class H felonies equals \$106). Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to IDS from these changes would be \$424 (\$106 cost increase times 4 defendants [5 defendants times 78% for Class G equals 4 defendants] equals \$424).

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.

Increase from Class F to Class E Felonies

Sections 2, 3, and 4 of the bill increase a Class F felony to a Class E felony offense. AOC reports that in calendar year 2018, 1 defendant was charged with a violation under G.S. 14.34.6(c), 97 defendants were charged with a violation under G.S. 14.34.7(a), (a1), and (b), and 2 defendants were charged under G.S. 14-288.9(c). For every additional person charged with a Class E felony, the average cost to the court would be \$2,290, while for every additional person charged with a Class F felony, the average cost to the court would be \$1,291. Therefore, the average difference in costs to the courts for each charge under this change is \$999 (\$2,290 per case for Class E minus \$1,291 per case for Class F felonies equals \$999.) Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to the court systems from these changes would be \$99,900 (\$999 cost increase times 100 defendants equals \$99,900).

In FY 2017-18, the most recent year data is available, 79% of Class E felony cases were handled through IDS. The weighted average cost of a new Class E felony is \$586 per case for a 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. The increased cost to IDS from the changes in these sections would be \$17 (\$586 per case for Class E minus \$569 per case for Class F felonies equals \$17). Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to IDS from these changes would be \$1,343 (\$17 cost increase times 79 defendants [100 defendants times 79% for Class E equals 79 defendants] equals \$1,343).

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.

Increase from Class E to Class D Felony

Section 1 of the bill increases a Class E felony to a Class D felony offense. AOC reports that in calendar year 2018, 67 defendants were charged with a violation under G.S. 14-34.5(a), (a1), or (b). For every additional person charged with a Class D felony, the average cost to the court would be \$4,905, while for every additional person charged with a Class E felony, the average cost to the court would be \$2,290. Therefore, the average difference in costs to the courts for each charge under this

change is \$2,615 (\$4,905 per case for Class D minus \$2,290 per case for Class E felonies equals \$2,290.) Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to the court systems from these changes would be \$153,430 (\$2,290 cost increase times 67 defendants equals \$153,430).

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 PAC attorney. In FY 2017-18, the most recent year data is available, 79% of Class E felony cases were handled through IDS. The weighted average cost of a new Class E felony is \$586 per case for a PAC attorney. The increased cost to IDS from the changes in these sections would be \$375 (\$961 per case for Class D minus \$586 per case for Class E felonies equals \$375). Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to IDS from these changes would be \$22,500 (\$375 cost increase times 60 defendants [67 defendants times 89% for Class D equals 60 defendants] equals \$22,500).

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.

New Class D Felony

Section 5 of the bill creates a new Class D 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.

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. 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.

Department of Public Safety – Prisons

New Class A1 Misdemeanor

This bill creates a new Class A1 misdemeanor offense. 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.

Felony Increases and New Class D Felony

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

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.



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 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).

| 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. Additional Inmates Due to this Bill³ | No estimate available | | | | |
| 5. Additional Beds Required | | | | | |

Increase from Class I to Class H Felonies

In FY 2018, there were 50 convictions under G.S. 14-34.7(c)(1), 28 convictions under G.S. 14-34.7(c)(2), no convictions under G.S. 14-34.7(c)(3), and 2 convictions under G.S. 14-34.7 (subsection unknown), all of which would be modified in Section 3 of this bill. In FY 2018, there were no convictions for the Class I felony offense under G.S. 14-288.9(c), which would be modified in Section 4 of this bill. Due to the small number of convictions, a more detailed impact projection using the prison projection model would not be reliable. Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed bill because of the higher rate of active sentences (34% for Class H compared to 15% for Class I) and longer average estimated time served (11 months for Class H compared to 7 months for Class I). The following table shows the estimated annual impact if, for example, there were 10 convictions (threshold) and 20 convictions (example) per year that would be reclassified from Class I to Class H, as well as other estimates based on the data above. 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.

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.

| Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Increase of Class I to Class H Felony | | | | | |
|---|---------------|---------------|---------------|---------------|---------------|
| Convictions | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| (Threshold) 10 | 2 | 3 | 3 | 3 | 3 |
| 20 | 5 | 6 | 6 | 6 | 6 |
| G.S. 14-34.7(c)(1): 50 | 11 | 14 | 14 | 15 | 15 |
| G.S. 14-34.7(c)(2): 28 | 6 | 9 | 9 | 9 | 9 |
| G.S. 14-34.7: 2 | 1 | 2 | 2 | 2 | 2 |

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.

In FY 2017-18, 15% of Class I felony offenders received active sentences averaging 7 months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,766 (\$538 monthly cost times 7 months). 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 increased cost to the prison section as a result of these changes in the bill would be \$2,152 (\$5,918 for Class H minus \$3,766 for Class I equals \$2,152).

Increase from Class H to Class G Felony

In FY 2018, there were no convictions under G.S. 14-34.6(b), which would be modified by Section 2 of the bill. Impact on the prison population will occur if Class H convictions become Class G convictions under the proposed bill because of the higher rate of active sentences (40% for Class G compared to 34% for Class H) and longer average estimated time served (15 months for Class G compared to 11 months for Class H). The following table shows the estimated annual impact if, for example, there were 4 convictions (threshold) and 20 convictions (example) per year that would be reclassified from Class H to Class G. 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 Increase of Class H to Class G Felony | | | | | |
|---|---------------|---------------|---------------|---------------|---------------|
| Convictions | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| (Threshold) 4 | 1 | 2 | 2 | 2 | 2 |
| 20 | 2 | 4 | 4 | 4 | 4 |

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.

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). In FY 2017-18, 40% of Class G felony offenders received active sentences averaging 15 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$8,070 (\$538 monthly cost times 15 months). Therefore, the increased cost to the prison section as a result of these changes in the bill would be \$2,152 (\$8,070 for Class G minus \$5,918 for Class H equals \$2,152).

Increase from Class F to Class E Felonies

In FY 2018, there were no convictions under G.S. 14-34.6(c), which would be modified by Section 2 of this bill. In FY 2018, there were 11 convictions under G.S. 14-34.7(a), no convictions under G.S. 14-34.7(a1), 10 convictions under G.S. 14-34.7(b), and 2 convictions under G.S. 14-34.7 (subsection unknown), all of which would be modified by Section 3 of this bill. In FY 2018, there were no convictions under G.S. 14-288.9(c), which would be modified by Section 4 of this bill. Due to the small number of convictions, a more detailed impact projection using the prison projection model would not be reliable. Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed bill because of the higher rate of active sentences (60% for Class E compared to 51% for Class F) and longer average estimated time served (28 months for Class E compared to 19 months for Class F). The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) and 20 convictions (example) per year that would be reclassified from Class F to Class E. 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. In addition, there will be some impact on post-release supervision caseloads since Class E requires an additional three months of supervision.

| Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Increase of Class F to Class E Felony | | | | | |
|---|---------------|---------------|---------------|---------------|---------------|
| Convictions | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| (Threshold) 2 | 0 | 1 | 1 | 1 | 1 |
| 20 | 2 | 8 | 12 | 13 | 13 |
| G.S. 14-34.7(a): 11 | 1 | 5 | 7 | 7 | 8 |
| G.S. 14-34.7(b): 10 | 1 | 4 | 6 | 7 | 7 |
| G.S. 14-34.7: 2 | 0 | 1 | 1 | 1 | 1 |

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.

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). In FY 2017-18, 60% of Class E felony offenders received active sentences averaging 28 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$15,064 (\$538 monthly cost times 28 months). Therefore, the increased cost to the prison section as a result of these changes in the bill would be \$4,842 (\$15,064 for Class E minus \$10,222 for Class F equals \$4,842).

Increases from Class E to Class D Felony

In FY 2018, there were 6 convictions under G.S. 14-34.5(a) and no convictions under G.S. 14-34.5(a1) or (b), all of which would be modified by Section 1 of this bill. In addition, there were 3 convictions under G.S. 14-34.5 (subsection unknown). Due to the small number of convictions, a more detailed impact projection using the prison projection model would not be reliable. Impact on the prison population will occur if Class E convictions become Class D convictions under the proposed bill because of the higher rate of active sentences (mandatory active for Class D compared to 60% for Class E) and longer average estimated time served (64 months for Class D compared to 28 months for Class E). 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. The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) and 20 convictions (example) per year that would be reclassified from Class E to Class D, as well as other estimates based on the data above. 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 E to Class D Felony | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|
| Convictions | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| (Threshold) 2 | 1 | 1 | 2 | 4 | 6 |
| 20 | 7 | 14 | 27 | 47 | 67 |
| G.S. 13-34.5(a): 6 | 2 | 4 | 8 | 13 | 19 |
| G.S. 13-34.5: 3 | 1 | 1 | 3 | 6 | 9 |

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.

In FY 2017-18, 60% of Class E felony offenders received active sentences averaging 28 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$15,064 (\$538 monthly cost times 28 months). 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 (\$530 monthly cost times 64 months). Therefore, the increased cost to the prison section as a result of these changes in the bill would be \$19,368 (\$34,432 for Class D minus \$15,064 for Class E equals \$19,368).

New Class D Felony

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 |
| (Threshold) 1 | 1 | 2 | 3 | 4 | 5 |
| 20 | 20 | 41 | 61 | 82 | 102 |

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.

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 (\$530 monthly cost times 64 months).

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.

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.

New Class A1 Misdemeanor

In FY 2017-18, 37% of Class A1 misdemeanor offenders received active sentences; 63% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 16 months. Therefore, at a minimum, one Class A1 misdemeanor conviction resulting in probation will require at least 16 months of supervision. The cost of 16 months of supervision is \$2,560 per offender (\$160 per month times 16 months).⁴

Increased Class I to Class H Felonies

All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore there would be no cost increase for CCS from these changes in the bill for offenders receiving active sentences.

In FY 2017-18, 85% of Class I felony offenders received suspended sentences. The average length of probation imposed for this offense class was 23 months. In FY 2017-18, 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for this offense class was 26 months. For every offender sentenced to probation, the average cost for a Class I felony would be \$3,680 (\$160 per month times 23 months), while the average cost of a Class H felony would be \$4,160 (\$160 per month times 26 months). The average cost increase to CCS for suspended sentences as a result of the increase from Class I to Class H in Sections 3 and 4 of this bill would be \$480 (\$4,160 for Class H minus \$3,680 for Class I equals \$480).

Increase from Class H to Class G Felony

All active sentences for Class F through I felonies result in nine months of PRS. Therefore there would be no cost increase for CCS from these changes in the bill for offenders receiving active sentences.

In FY 2017-18, 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for this offense class was 26 months. In FY 2017-18, 60% of Class G felony offenders received suspended sentences. The average length of probation imposed for this offense class was 29 months. For every offender sentenced to probation, the average cost of a Class H felony would be \$4,160 (\$160 per month times 26 months), while the average cost of a Class G felony would be \$4,640 (\$160 per month times 29 months). The average cost increase to CCS for suspended sentences as a result of the increase from Class H to Class G in Section 2 of this bill would be \$480 (\$4,640 for Class G minus \$4,160 for Class H equals \$480).

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 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.

Increase from Class F to Class E Felonies

In FY 2017-18, 51% of Class F felony offenders received active sentences and 60% of Class E felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of PRS. However, all active sentences for Class B1 through E felonies result in 12 months of PRS. Therefore, at a minimum, one conviction resulting from the increase from Class F to Class E felonies in Sections 2 and 3 of this bill will require at least 3 more months of PRS. The cost of 9 months of PRS is \$1,440 per offender (\$160 per month times 9 months). The cost of 12 months of PRS is \$1,920 per offender (\$160 per month times 12 months). Therefore, the increased cost to CCS for post-release supervision related to these changes in the bill would be \$480 per offender.

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. In FY 2017-18, 40% of Class E felony offenders received suspended sentences. The average length of probation imposed for suspended sentences in this offense class was 33 months, an increase of 2 months. For every offender sentenced to probation under these changes in the bill, the average increased cost to CCS would be \$320 (\$160 per month times 2 months).

Increases from Class E to Class D Felony

In FY 2017-18, 60% of Class E felony offenders received active sentences. All active sentences for Class B1 through E felonies result in 12 months of PRS. Therefore the increased penalty from Class E to Class D would have no effect on the cost of PRS.

In FY 2017-18, 40% of Class E felony offenders received suspended sentences. The average length of probation imposed for suspended sentences in this offense class was 33 months. However, in FY 2017-18, 1% of Class D felony offenders received suspended sentences. The average length of probation imposed for this offense class was 42 months. Therefore, for every offender receiving a suspended sentence, the average cost would be for the additional 9 months of supervision, \$1,440 (\$160 per month times 9 months).

New Class D Felony

In FY 2017-18, 99% of Class D felony offenders received active sentences. The average length of probation imposed for suspended sentences in this offense class was 42 months. All active sentences for Class B1 through E felonies result in 12 months of PRS. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of PRS. The cost of twelve months of PRS is \$1,920 per offender (\$160 per month times 12 months). For every offender sentenced to probation, the average cost would be \$6,720 (\$160 per month times 42 months).

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

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



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

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