

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 493 (Fifth Edition)

SHORT TITLE: Health and Safety Regulatory Reform.

SPONSOR(S): Senator Walters

FISCAL IMPACT

(\$ in millions)

Yes
 No
 No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				
Local Impact					
Revenues:					
Expenditures:					
NET LOCAL IMPACT	Likely budget savings. See Assumptions & Methodology section for additional details.				
<p>PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety</p> <p>EFFECTIVE DATE: January 1, 2015</p> <p>TECHNICAL CONSIDERATIONS: None</p>					

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 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 for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$88 per disposition
- Indigent Defense Services: \$182 in district court
\$359 in superior court without a trial
\$847 in superior court with a trial
- Community Corrections: Minimum of \$1,606

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

SECTION 2(b). This Section creates a new Class 2 misdemeanor in G.S. 90-726.14 for any person not licensed in accordance with the provisions of this Article to practice behavior analysis or hold themselves out to the public as a person practicing behavior analysis. This Section becomes effective January 1, 2015.

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. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Since the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

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 2 (b) of the bill create new Class 2 misdemeanor offenses. Because these are new offenses, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC

provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 2 misdemeanor, the average cost to the court would be \$88 per disposition.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a new Class 2 misdemeanor will be \$182 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$359 if the case does not go to trial and \$847 if it does. 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 –Prison Section

This bill creates a new Class 2 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because offenders who receive active sentences of less than 180 days will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

SECTION 2(b).—Behavior Analyst Licensure

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2012-13, 31 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Department of Public Safety – Community Correction Section

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 and all misdemeanor classes, 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 types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$123.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

In FY 2012-13, 31 percent of Class 2 misdemeanor offenders received active sentences; one percent received intermediate sentences; and 68 percent received community punishments. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision.

The average lengths of intermediate and community punishment imposed for this offense class were 15 and 13 months, respectively. Therefore, at a minimum, one conviction resulting from Section (bill section) of this bill will require at least 13 months of supervision. The cost of 13 months of supervision is \$1,606 per offender (\$123.50 per month times 13 months).¹

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

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: John Poteat

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: June 24, 2014



Signed Copy Located in the NCGA Principal Clerk's Offices

¹ Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.