

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 642 (Sixth Edition)

SHORT TITLE: Justice Reinvestment Act.

SPONSOR(S): Representatives Guice, Faircloth, Bordsen, and Parmon

| FISCAL IMPACT                                     |   |                   |                           |                                     |
|---|---|-------------------|---------------------------|-------------------------------------|
|   | Yes (X)   | No ( )            | No Estimate Available ( ) |                                     |
|   | <u>FY 2011-12</u>                                       | <u>FY 2012-13</u> | <u>FY 2013-14</u>         | <u>FY 2014-15</u> <u>FY 2015-16</u> |
| REVENUES  |   |                   |                           |                                     |
| EXPENDITURES                                      | <i>Exact amount cannot be determined.</i>               |                   |                           |                                     |
| POSITIONS (cumulative):                           |   |                   |                           |                                     |
| PRINCIPAL DEPARTMENT(S) &<br>PROGRAM(S) AFFECTED: | Judicial Branch; Department of Correction; local jails. |                   |                           |                                     |
| EFFECTIVE DATE:                                   | Varies by section                                       |                   |                           |                                     |

**FISCAL SUMMARY:** The Justice Reinvestment Act, HB 642, makes significant changes in the sentencing laws and correctional policies of the State. The intent of the Justice Reinvestment concept is to reduce spending on incarceration and to redirect the savings into community-based treatment alternatives that are proven to reduce criminality. **Since most of the changes in the bill represent new policies for which there is no historical data, exact estimates are impossible without making significant assumptions.**

**BILL SUMMARY:** This bill summary includes a general overview of the legal and policy changes in each section of this Proposed Committee Substitute for House Bill 642. Each section also includes an explanation of the potential costs and savings associated with that part of the bill.

**Part I Strengthen Probation Supervision**

This Part generally broadens the authority of the Probation Officer to supervise offenders based on their risk of reoffending and their crime-producing needs. It changes the definitions of Community and Intermediate punishments under Structured Sentencing to allow the court to order

a group of conditions in addition to the Regular and Special Conditions of Probation. These include electronic house arrest, split sentence, community service, substance abuse treatment, and short-term jail sentences not exceeding six days per month.

By adding these conditions to the set of options available to the court for both Community and Intermediate punishments, the Part also makes them available to the supervising officers through Delegated Authority. Under the Delegated Authority statute, the probation officer can, unless expressly blocked by the judge, require a probationer to comply with a variety of additional conditions without returning to court for a modification. Thus, under this bill, probation officers would have a much more expansive array of options with which to respond to offender behavior.

The most significant element of this expansion is the addition of jail confinement to the options available under Delegated Authority. Currently, there is no provision for a probation officer to put an offender in jail without an arrest warrant. Under this bill, the offender is given an opportunity to waive a hearing and submit to short periods of jail confinement, not more than six days per month, rather than appear before a judge and face a complete revocation. Research on such programs in other states, specifically Georgia and Hawaii, indicate that such swift and certain response to misbehavior is highly effective in reducing recidivism. **Because this expansion of authority is new, it cannot be determined how often officers will use short-term jail incarceration, but it could have the effect of reducing violation hearings in court.**

The bill also requires the Department of Correction to assess each offender placed on probation, using a validated instrument, to determine the offender's risk of reoffending and *criminogenic* (crime-producing) needs. It is the intent of the legislation that each offender's supervision level should be determined by objective risk assessment, rather than sentencing level. The bill modifies the caseload goals articulated by the General Assembly to establish a goal that offenders assessed at moderate to high risk of re-arrest should be supervised in caseloads not exceeding 60 offenders per officer. **The Division of Community Corrections estimates a need for roughly 100 additional probation officers to preserve this caseload goal. At a total average position cost of \$62,975, this would account for \$6,297,500 in additional costs for community supervision.**

This Part of the bill is intended to reduce admissions to prison from probation revocation. Over half of all admissions to prison result from revocations, so any reduction to the number of probation revocations would have an impact on prison population. Of course, this also means that there would be a reduction in probation exits by way of revocation, so the Division of Community Corrections expects an increase in overall probation population. To achieve the caseload goals, sufficient resources must be present in the community to support the probation officer's expanded authority. The modified caseload goals and the requirement for universal risk assessment may also require additional probation officers. The addition of jail days to the list of responses available to the officer may mean more entries to jail. This utilization of jail days may put more offenders in jail for short periods, but conversely, it may mean that fewer offenders having been arrested will spend time in jail awaiting a violation hearing.

**If the probation revocation rate declines by five per cent as a result of this section of the bill, the State could expect a reduction of 318 prison beds in five years. The Department of Correction has a goal of reducing revocations by 20%; at this reduction rate, this portion of the bill would save 1,500 prison beds in five years. At an average annual operating rate of \$27,717, this portion of the bill could be expected to save \$41,575,500 in prison costs in the fifth year, offset by the \$6,297,500 in probation resources mentioned above.**

## **Part II Post-Release Supervision Changes**

Section II of the bill requires post-release supervision for all felon offenders who serve an active sentence in prison. Currently, post-release supervision is only available for Class B1-E felons, who comprise less than half the exits from prison. This change can be expected to increase admissions to post-release supervision by over 14,000 offenders a year. More specifically, this Section sets a period of twelve months of supervision for Class B1-E felons and nine months for Class F-I felons. In Section 2(d), the bill specifies that offenders who fail to comply with their conditions may be revoked for only three months unless they commit a new crime or they abscond.

This Part of the bill will require additional probation officers to supervise the substantial increase in entries to post-release supervision. Also, based on this increased supervised population, there is a significant increase in potential revocations to prison. **This portion of the bill could require as many as 183 additional probation officers in the field in five years and, depending upon the rate of revocation for offenders on post-release supervision, could require between 653 and 885 additional prison beds in five years. This portion of the bill would generate a total cost of \$32,764,545.**

## **Part III Status Offense of Habitual Breaking and Entering**

This Section changes the existing definition of Habitual Felon and creates a new status offense for Habitual Breaking and Entering. Currently, an offender may be charged as a Habitual Felon when, with three prior felony convictions, he is charged with another felony. If he is convicted as a Habitual Felon, he is sentenced as a Class C felon, carrying a mandatory active sentence of at least five years.

Under this bill, the definition of the general Habitual Felon status remains the same, but the sentencing level is predicated on the triggering (fourth or subsequent) offense. The sentencing level would be set four classes higher than the triggering offense, but capped at Class C.

This section also creates a separate habitual felon statute for repeat breaking and entering. Offenders achieve habitual breaking and entering status upon committing a breaking and entering offense with one prior conviction of any other offense in the same family, including burglary. Offenders convicted of this status offense would be sentenced as Class E felons. As there are over 3,000 admissions to prison annually for crimes of this type, the impact on prison beds could be substantial. **Assuming that judges impose an active sentence in all Habitual Felon**

**convictions, this section would create a need for 1,088 additional prison beds in five years. This section of the bill would generate a prison cost increase of \$30,156,096.**

#### **Part IV Limit Time/Certain Violations of Probation**

Part IV caps the time an offender could serve on a revocation of probation for strictly technical violations at 90 days. Neither commission of a new crime nor absconding from probation is considered a technical violation and thus can result in activation of the full sentence. These 90-day revocations would result in reductions in prison beds occupied by revoked probationers since they would not serve as long on a revocation as they currently do. However, since the offender would come out of prison with time remaining on the probation sentence, it is possible that the offender could serve more than one 90-day revocation term, thus increasing actual admissions. **Assuming no change in revocation rates, this Part would reduce the need for prison beds by 2,445 in five years. With such a reduction in the prison population, this section would save \$67,768,065.**

#### **Part V Diversion Program/Felony Drug Possession**

Part V contains two separate policy changes. First, the bill expands the population eligible for a deferred prosecution program for first-time drug possession offenders. Currently, only defendants charged with misdemeanor drug possession or felony possession of less than an ounce of cocaine may have their charges suspended by the judge and be placed on probation for a period of supervision and treatment. This bill adds all first-time felony drug possession defendants to the eligible population and requires the court to defer prosecution for all eligible defendants. **The impact of this section cannot be projected because there is no statewide information about current utilization of the deferred prosecution program**

Second, this Part of the bill creates a new program within the Department of Correction, called Advanced Supervised Release (ASR), to allow offenders with D-H class convictions to reduce their sentence, at the discretion of the court, by completing rehabilitative programming. In practice, a judge would select a rehabilitative program for the offender and set the ASR release date, the lowest mitigated sentence length for that conviction. If the offender successfully completes the rehabilitative program, he will be released at the shortened sentence length. **Because this section is a complete departure from existing sentencing policy, its impact cannot be determined.**

#### **Part VI Refocus Criminal Justice Partnership Program**

The State-County Criminal Justice Partnership Program was created in concert with the Structured Sentencing Act in 1993 to provide for supplemental community corrections programs through a formula-based grant process. House Bill 642 repeals the Partnership Act and establishes a new supplemental community corrections program called Treatment for Effective Community Supervision (TECS). Unlike the old CJP program, TECS would not have a funding formula for

each county based on population and probation caseload. Instead, the Department of Correction would use TECS funds to establish contracts with program providers at the county level who would be paid on a fee-for-service basis. The section also creates an advisory board to assist the Department in making funding decisions. **This section has no fiscal impact.**

### **Part VII Misdemeanants to Serve Sentences in Jail**

This section modifies the current statute that assigns responsibility for housing misdemeanor offenders between State and county. Currently, offenders sentenced to less than 90 days active time serve their sentence in the custody of the county sheriff and those with 90 days or more serve their sentence in the state prison system. This bill would raise the threshold to 180 days. Further, this section specifies that, in order to be placed in the custody of the Department of Correction, the offender must have over 180 days remaining to serve, net of any credit for time served.

This has the effect of reducing admissions to prison substantially, but also requiring more confinement resources in the counties. The Sentencing Commission estimates a savings of between 1,000 and 1,200 prison beds immediately by shifting misdemeanants into the county systems. **By transferring this number of offenders out of the State system, this portion of the bill would save \$33,260,400.**

House Bill 200, the appropriations act, closes four prisons and a diagnostic center assuming the transfer of misdemeanants; the bill has passed the House and is currently in the Senate Appropriations Committee.

In response to this issue, the Proposed Committee Substitute establishes a special non-reverting fund, the Statewide Misdemeanor Confinement Fund, to be held by the Department of Correction and administered by the Sheriff's Association to reimburse counties for housing misdemeanants and to coordinate a transfer program to track available capacity and move misdemeanants. **This section of the Proposed Committee Substitute does not provide a funding stream for the non-reverting fund; House Bill 200 includes Section 31.26, Contingent Court Cost Increases for Counties. This section provides for a series of court cost increases dedicated counties that are conditional upon the passage of House Bill 642. These two bills must be coordinated as the legislative process moves forward to assure adequate resources for counties to hold the increased sentenced population.** This PCS provides safeguards to counties that the placement of misdemeanants will be suspended if there are inadequate funds to reimburse them for housing expenses.

### **ASSUMPTIONS AND METHODOLOGY:**

This bill has been analyzed by the NC Sentencing and Policy Advisory Commission using their prison population simulator, and by the Department of Correction to identify necessary probation resources. The bill's intent and effect is expected to be an overall reduction in need for prison

beds and an associated increase in need for probation resources to manage the offender population better in the community.

While the Commission’s analysis does not take into consideration interaction effects of the bill, the following table shows a summary of the 2015-16 costs and savings by section.

| <b>Part</b>  | <b>Prison Beds at<br/>\$27,717/year</b> | <b>Probation Officers at<br/>\$62,975</b> | <b>Cost/Savings</b>      |
|--------------|---|---|--------------------------|
| Part I       | -1,500                                  | 100                                       | (\$35,278,000.00)        |
| Part II      | 885                                     | 183                                       | \$ 36,053,970.00         |
| Part III     | 1,088                                   |   | \$ 30,156,096.00         |
| Part IV      | -2,445                                  |   | (\$67,768,065.00)        |
| Part VII     | -1,200                                  |   | (\$33,260,400.00)        |
| <b>Total</b> | <b>-3,172</b>                           | <b>283</b>                                | <b>(\$70,096,399.00)</b> |

**SOURCES OF DATA:** NC Sentencing and Policy Advisory Commission; NC Department of Correction

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