

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 366 (Third Edition)

SHORT TITLE: NC Farm Act of 2014.

SPONSOR(S):

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.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE December 1, 2014

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address the expanded scope of existing offenses being enforced, adjudicated and having penalties applied to those convicted of the offenses. However, given there is no historical data on the expanded scope of these offenses, 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: \$31 to \$198 per disposition
- Indigent Defense Services: \$182 in district court
\$359 in superior court without a trial
\$847 in superior court with a trial
- Prison Section: No cost
- Community Corrections: Minimum of \$494 to \$1,606

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1(a) of the bill creates a new G.S. 143-215.9D, Agricultural operation investigations confidential, which requires that complaints of violations of this Article relating to an agricultural operation and the records related to any subsequent investigation shall be considered confidential records and may be released only under certain conditions. Violation of this act would be a Class 3 misdemeanor under existing G.S. 143-215.36, thus expanding the scope of that offense.

Section 7 of the bill amends G.S. 14-159.12(c)(1), First degree trespass, by adding “any facility used or operated for agricultural activities” to the list of protected properties. Violation of this statute is a Class A1 misdemeanor.

Section 8 of the bill expands the scope of a Class 2 misdemeanor offense found in G.S. 14-159.3, Trespass to land on motorized all-terrain vehicles, to require written rather than oral permission from the landowner before operating an all-terrain vehicle on their land.

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 expands the scope of existing penalties, the Sentencing Commission does not have any 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 expanded statutes.

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(a) of the bill expands the scope of an existing Class 3 misdemeanor offense. Because this is a new type of confidential information and thus a new potential offense for violation of the confidentiality, 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 3 misdemeanor, the average cost to the court would be \$31.

Section 7 adds facilities used for or operating for agricultural activities to a list of specific facilities that increase the penalty for first degree trespass from the baseline Class 2 misdemeanor to the enhanced Class A1 misdemeanor. AOC does not have data on the number of charges that are currently arising from first degree trespass in such facilities. Therefore, it is not possible to estimate how many charges may arise under the higher penalty. For every person charged under the new penalty, the cost to the court will be the difference between the average cost for the two offense classes. The cost difference between a Class 2 misdemeanor and a Class A1 misdemeanor is \$198 (\$286 cost of Class A1 misdemeanor minus \$88 cost of a Class 2 misdemeanor).

Section 8 of the bill expands the scope of an existing Class 2 misdemeanor. The cost to the courts for every person charged with a Class 2 misdemeanor is \$88.

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 additional misdemeanor offenses (regardless of class) 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 expands the scope of several misdemeanor offenses. 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.

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.

Section 1(a) of the bill expands the scope of an existing Class 3 misdemeanor. In FY 2012-13, 32 percent of Class 3 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 14 and 12 months, respectively. Therefore, at a minimum, one conviction resulting from Section 1 of this bill will require at least 12 months of

supervision. The cost of 12 months of supervision is \$1,482 per offender (\$123.50 per month times 12 months).¹

Section 7 of the bill adds facilities used for or operating for agricultural activities to a list of specific facilities that increase the penalty for first degree trespass from the baseline Class 2 misdemeanor to the enhanced Class A1 misdemeanor. Additional costs will be incurred if offenders who would have previously been charged with a Class 2 misdemeanor are now charged with a Class A1 misdemeanor, which carries a longer average sentence. In FY 2012-13, 36 percent of Class A1 misdemeanor offenders received active sentences; five percent received intermediate sentences; and 59 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 19 and 17 months, respectively. In the same year, 31 percent of Class 2 misdemeanor offenders received active sentences; one percent received intermediate sentences; and 68 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 15 and 13 months, respectively. The difference will be at least four months, for a cost of \$494 per offender (\$123.50 per month times four months).¹

Section 8 of the bill expands the scope of an existing Class 2 misdemeanor. 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 8 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

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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.