

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 445 (First Edition)

SHORT TITLE: Burt's Law.

SPONSOR(S): Senators Krawiec, Newton, and Wells

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:					
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

EFFECTIVE DATE December 1, 2015

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, given that 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: \$101-\$266 per disposition
- Indigent Defense Services: \$16-\$204 per disposition
- DPS - Community Corrections: minimum of \$261-\$2,219 per offender placed on probation

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Subsection (a) of G.S. 122C-66 establishes a Class 1 misdemeanor if an employee of or volunteer at a facility knowingly causes pain or injury to a client (other than as part of a generally accepted medical or

therapeutic procedure) or to borrow or take personal property from a client. Violation of either offense under current statute is a Class 1 misdemeanor. This bill separates two offenses: the offense of an employee or volunteer knowingly causing pain or injury to a client remains in subsection (a) but is reclassified as a Class A1 misdemeanor; the offense of an employee or volunteer borrowing or taking personal property from a client is moved to a new subsection (a1) but remains a Class 1 misdemeanor.

Subsection (b) expands a mandatory reporting requirement to include volunteers as well as employees at a facility and changes violation of this reporting requirement from a Class 3 misdemeanor punishable only by a fine to a Class 1 misdemeanor.

The new subsection (b1) in this statute states that an employee of or volunteer at a facility who witnesses a client becoming a victim of a violation of Article 7A (Rape and other Sex Offenses) or Article 26 (Offenses Against Public Morality and Decency) of Chapter 14 of the General Statutes must report allegations within 24 hours after witnessing the violation to the Department of Social Services and to the District Attorney of the district in which the facility is located. Violation of this reporting requirement is a Class A1 misdemeanor.

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. 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.

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 (a) of the bill increases the penalty for violation of G.S. 122C-66(a) from a Class 1 misdemeanor to a Class A1 misdemeanor. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class 1 misdemeanor who is instead charged with a Class A1 misdemeanor, the average cost to the court will be \$101 (\$266 for a Class A1 minus \$165

for a Class 1). No defendants were charged with the existing Class 1 misdemeanor offense under G.S. 122C-66(a) in CY 2014.

Section (b) increases the penalty for violation of G.S.122C(b) from a Class 3 misdemeanor punishable only by a fine to a Class 1 misdemeanor. For every person who would have been charged with a Class 3 misdemeanor who will now be charged with a Class 1 misdemeanor, the average cost to the court will be \$134 (\$165 for a new Class 1 minus \$31 for an existing Class 3). There is no existing offense code for the Class 3 misdemeanor, indicating that this is an infrequently charged offense.

Section (b1) creates a new Class A1 misdemeanor offense for failure to report a violation of Article 7A (Rape and other Sex Offenses) or Article 26 (Offenses Against Public Morality and Decency) of Chapter 14 of the General Statutes. AOC has no data upon which to estimate how many people may be charged with this new offense. For every one person who is charged with this offense, the average cost to the courts will be \$266.

IDS has provided 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. The increased weighted average cost of the more stringent penalty in Section (a) will be \$16 per case (\$204 for a Class A1 misdemeanor minus \$188 for a Class 1 misdemeanor) for a private appointed counsel (PAC) attorney. For every person who is charged with a Class 1 misdemeanor under Section (b), the weighted average cost is \$188. Finally, for every person charged with the new Class A1 misdemeanor in Section (b1), the weighted average cost of counsel is \$204. 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 – Prison Section

This bill increases the penalty for violation of G.S.122C-66(a) from a Class 1 misdemeanor to a Class A1 misdemeanor; increases the penalty for violation of G.S.122C-66(b) from a Class 3 misdemeanor punishable only by a fine to a Class 1 misdemeanor; and creates a new Class A1 misdemeanor. 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. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

Department of Public Safety – Community Correction Section

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.

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.

Section (a) of this bill reclassifies an existing Class 1 misdemeanor as a Class A1 misdemeanor offense. In FY 2013-14, 35% of Class A1 misdemeanor offenders received active sentences; 65% received probation. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 17 months. For the same time period, 30% of Class 1 offenders received active sentences; 70% received probation. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one offender sentenced to probation under Section(a) of this bill will require at least two additional months of probation. The cost of two additional months of probation is \$261 per offender (\$130.50 per month times two months).¹ The total cost of 17 months of probation is \$2,219 per offender (\$130.50 per month times 17 months).

Section (b) of this bill increases a penalty from a fine-only, Class 3 misdemeanor to a Class 1 misdemeanor. In FY 2013-14, 31% of Class 3 misdemeanor offenders received active sentences; 69% received probation. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 12 months. For the same period, 30% of Class 1 offenders received active sentences; 70% received probation. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one offender sentenced under the more stringent penalty in this statute will require at least three additional months of probation. The cost of three additional months of probation is \$392 (\$130.50 per month times three months). The total cost of 15 months of probation is \$1,958 per offender (\$130.50 per month times 15 months).

Section (b1) of this bill creates a new Class A1 misdemeanor offense. In FY 2013-14, 35% of Class A1 misdemeanor offenders received active sentences; 65% received probation. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 17 months. Therefore, at a minimum, one conviction resulting from Section (b1) of this bill will require at least 17 months of supervision. The cost of 17 months of supervision is \$2,219 per offender (\$130.50 per month times 17 months).²

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, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

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Mark Trogdon
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DATE: April 16, 2015



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