

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 63 (First Edition)

SHORT TITLE: Citizens Protection Act of 2017.

SPONSOR(S): Representatives Warren, Collins, Jordan, and Adams

FISCAL IMPACT					
(\$ in millions)					
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
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; Department of Public Safety					
EFFECTIVE DATE: December 1, 2017					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address increased penalties for existing offenses and new offenses being charged, adjudicated, and sentenced. However, given that there is limited historical data on 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:

- Administrative Office of the Courts: \$30,728 to \$129,568
- Indigent Defense Services: \$14,512 to \$50-641
- Department of Public Safety (DPS) - Prison Section: \$6,398 per felony conviction resulting in an active sentence
- DPS - Community Corrections: \$1,332 to \$4,292 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 2(a) of the bill amends G.S. 14-100.1, Possession, manufacture, or sale of certain fraudulent forms of identification. This section adds the sale of fraudulent identification to the statute, and makes the manufacture or sale of fraudulent identification a Class G felony. Manufacturing fraudulent identification was previously a Class 1 misdemeanor.

Section 2(b) of the bill amends G.S. 20-30, Violations of license, learner's permit, or special identification card provisions. This section increases the violation of G.S. 20-30(a)(2)), to counterfeit, sell, lend to, or knowingly permit the use of a driver's license, learner's permit, or special identification card, from a Class 2 misdemeanor to a Class G felony. Exceptions are made for violations committed by a person under 18 to buy tobacco underage, which remains a Class 2 misdemeanor, and for violations committed by a person under 21 to buy alcohol underage, which becomes a Class 1 misdemeanor.

Section 2(b) also amends G.S. 20-30(a)(7) to increase the offense of selling or offering for sale any reproduction of a driver's license, learner's permit, or special identification card from a Class I felony to a Class G felony.

Finally, Section 2(b) creates a new G.S. 20-30(a)(10) making it a Class 2 misdemeanor to possess more than one special identification card for a fraudulent purpose.

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.

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 2(a) increases the penalty for violation of G.S. 14-100.1, Possession, manufacture, or sale of certain fraudulent forms of identification, from a Class 1 misdemeanor to a Class G felony, except for violations involving merely possession, rather than the manufacture or sale. For every person who would have been charged with a Class 1 misdemeanor who is instead charged with a Class G felony under this legislation, AOC estimates the average increase in costs to the courts would be \$732 (\$938 for a Class G felony minus \$206 for a Class 1 misdemeanor).

In FY 2015-16, 422 offenders were charged with violations of G.S. 14-100.1. AOC cannot differentiate possession charges from manufacturing or sale charges. For the purposes of this fiscal note, we are assuming that anyone under the age of 21 had fraudulent identification to purchase alcohol or tobacco and was charged for possession rather than manufacture. Of the 422 offenders charged, 276 were between 16 and 21 at the time of the offense, leaving a pool of 146 charges. The following chart provides a range of costs that would be incurred if 10%, 50%, or 100% of those charges were for the manufacture of fraudulent identification.

Range of AOC Costs					
Estimates Based on Percentage of Charges for Manufacturing Fake IDs					
Section 2(a) G.S. 14-100.1					
Charges: 146					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
10% of charges for manufacture	\$10,982	\$11,300	\$11,637	\$11,945	\$12,171
50% of charges for manufacture	\$54,911	\$54,986	\$55,028	\$54,852	\$54,446
100% of charges for manufacture	\$109,822	\$113,007	\$116,375	\$119,459	\$121,717
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

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. In FY 2011-12, 39% of Class 1 misdemeanor defendants used IDS services for a weighted average cost of \$196. In the same year, 78% of Class G felony cases were handled through IDS with a weighted average cost of \$466. The following chart shows a range of costs that would be incurred by the proposed penalty increase using the number of charges provided by AOC and adjusted as noted in the previous paragraph.

Range of IDS Costs					
Estimates Based on Percentage of Charges for Manufacturing Fake IDs					
Section 2(a) G.S. 14-100.1					
Charges: 146					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
10% of charges for manufacture	\$7,183	\$7,391	\$7,611	\$7,813	\$7,961
50% of charges for manufacture	\$34,957	\$35,005	\$35,032	\$34,919	\$34,661
100% of charges for manufacture	\$43,110	\$44,360	\$45,682	\$46,893	\$47,779
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

Section 2(a) also expands the scope of the offense to add “to knowing sell” (previously, it was just to knowingly possess or manufacture). This change may increase the number of people charged with a

violation of this statute. For every additional person charged with a Class G felony, AOC estimates the average cost to the courts would be \$938. IDS' cost for each additional person charged would be \$466.

Section 2(b) increases the penalty for violation of G.S. 20-30(2), to counterfeit, sell, lend to, or knowingly permit the unauthorized use of a license, permit, or identification card, from a Class 2 misdemeanor to a Class G felony, unless the violation was by a person under the age of 18 for buying tobacco products, in which case the penalty remains a Class 2 misdemeanor, or the violation was by a person under the age of 21 for buying alcohol, in which case the penalty is increased to a Class 1 misdemeanor. For every person who would have been charged with a Class 2 misdemeanor who is instead charged with a Class 1 misdemeanor, the average cost to the court will be \$96 (\$206 for a Class 1 misdemeanor minus \$110 for a Class 2 misdemeanor). For every person who would have been charged with a Class 2 misdemeanor who is instead charged with a Class G felony, the average cost to the court will be \$828 (\$938 for a Class G felony minus \$110 for a Class 2 misdemeanor).

Section 2(b) also increases the penalty for violation of G.S. 20-30(7), to sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, or special identification card, from a Class I felony to a Class G felony. For every person who would have been charged with a Class I felony who is instead charged with a Class G felony, the average cost to the court will be \$483 (\$938 for a Class G felony minus \$455 for a Class I felony).

The following chart shows the number of defendants charged with each violation in FY 2015-16 and the estimated cost to the courts if those offenses had been charged at the proposed levels.

AOC Cost Differential Section 2(b) G.S. 20-30(2) and G.S. 20-30(7) Charges: 30							
Description of Offense (subdivision)	Current Class	Proposed Class	Original Cost Per Case	Proposed Cost Per Case	Difference	FY 2015-16 Charges	Total Estimated Cost
G.S. 20-30(2) - Under 18	Class 2 MD	Class 2 MD	\$110	\$110	\$0	1	\$0
G.S. 20-30(2) - Under 21	Class 2 MD	Class 1 MD	\$110	\$206	\$96	3	\$288
G.S. 20-30(2) - Over 21	Class 2 MD	Class G felony	\$110	\$938	\$828	20	\$16,560
G.S. 20-30(7)	Class I felony	Class G felony	\$455	\$938	\$483	6	\$2,898
Total Section 2(b)							\$19,746

AOC Cost Differential Adjusted for Inflation Section 2(b) G.S. 20-30(2) and G.S. 20-30(7) Charges: 30					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
Cost	\$20,291	\$20,879	\$21,501	\$22,071	\$22,488
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

The following table provides the cost differential for IDS for each of the increased penalties in Subsection 2(b).

IDS Cost Differential Section 2(b) G.S. 20-30(2) and G.S. 20-30(7) Charges: 30										
Description of Offense (subdivision)	2015-16 Charges	Current Class	Original Cost Per Case	% Using IDS	Original Cost	Proposed Class	Proposed Cost Per Case	% Using IDS	New Cost	Difference
G.S. 20-30(2) - Under 18	1	Class 2 MD	\$195	30%	\$0	Class 2 MD	\$195	30%	\$0	\$0
G.S. 20-30(2) - Under 21	3	Class 2 MD	\$195	30%	\$195	Class 1 MD	\$196	39%	\$196	\$1
G.S. 20-30(2) - Over 21	20	Class 2 MD	\$195	30%	\$1,170	Class G felony	\$466	78%	\$7,456	\$6,286
G.S. 20-30(7)	6	Class I felony	\$322	68%	\$1,288	Class G felony	\$466	78%	\$2,330	\$1,042
Total Section 2(b)									\$7,329	

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. 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.

IDS Cost Differential Adjusted for Inflation Section 2(b) G.S. 20-30(2) and G.S. 20-30(7) Charges: 30					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
Cost	\$7,531	\$7,749	\$7,980	\$8,191	\$8,346
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

Section 2(b) also creates a new Class 2 misdemeanor for possession of more than one special identification card for a fraudulent purpose. 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 2 misdemeanor, the average cost to the court would be \$110. For IDS, the weighted average cost of a Class misdemeanor is \$195 per case for a PAC attorney; approximately 30% of Class 2 misdemeanor defendants use IDS services.

Department of Public Safety –Prison Section

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 represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

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). The Sentencing Commission was unable to estimate the additional bed requirements of this bill.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

Because there are available beds, no additional bed construction will be required for this bill. However, additional spending may be required to house new prisoners or to house prisoners longer as a result of the increased penalties. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$5,482 per year, which includes the cost of food, clothing, and health care. The table below shows the per diem costs related to the additional inmates for each year of the five year projection, adjusted for inflation.

Annual Per Diem Costs for Every One Additional Inmate					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%
Annual Cost	\$5,633	\$5,796	\$5,969	\$6,127	\$6,243
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

Section 2(a) increases an existing Class 1 misdemeanor to a Class G felony. In FY 2015-16, there were 42 convictions for possession or manufacture of fraudulent identification. This section also expands the offense to include the sale of fraudulent identification. The Class G felony will not apply to convictions for

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.

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 2017.

³ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

possession; it will only apply to convictions for manufacture or sale. It is not known how many of these convictions were for manufacture versus possession. All misdemeanants serve their time in local jails, so for misdemeanor convictions receiving active sentences, there is no cost to the prison system. Therefore, any Class G felony offense convictions resulting from this bill will result in additional costs to the prison system. In FY 2015-16, 39% of Class G felony convictions resulted in active sentences averaging 14 months. The per diem cost of 14 months in prison is \$6,398.

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.

In FY 2015-16, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months. Nine 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, for example, there were 3 convictions (threshold), 20 convictions (example), or 42 convictions (see data above) that would be reclassified from Class 1 to Class G 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 estimated growth rates in convictions.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14
42	16	28	28	28	29

Section 2(b) increases an existing Class 2 misdemeanor offense to a Class G felony. The Sentencing Commission does not maintain statistical information on Class 2 or 3 misdemeanor traffic offenses, so it is not known how many convictions would be reclassified as Class G felonies under the proposed bill. All misdemeanants serve their time in local jails, so for misdemeanor convictions receiving active sentences, there is no cost to the prison system. Therefore, any Class G felony offense convictions resulting from this bill will result in additional costs to the prison system. In FY 2015-16, 39% of Class G felony convictions resulted in active sentences averaging 14 months. The per diem cost of 14 months in prison is \$6,398.

In FY 2015-16, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months. Nine 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, for example, there were 3 convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class 2 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 Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

This section also increases an existing Class I felony to a Class G felony. There were no convictions for the Class I felony offense in FY 2015-16. Impact on the prison population will occur if Class I convictions become Class G convictions under the proposed subsection because of the higher rate of active sentences (15% for Class I compared to 39% for Class G) and longer average estimated time served (7 months compared to 14 months for Class G). The following table shows the estimated annual impact if, for example, there were 9 convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class I 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 Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

Any Class G felony offense convictions resulting from this section will result in additional costs to the prison system. In FY 2015-16, 39% of Class G felony convictions resulted in active sentences averaging 14 months. The per diem cost of 14 months in prison is \$6,398.

Section 2(b) also creates a new Class 2 misdemeanor offense for possessing more than one special identification card. The Sentencing Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail.

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 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 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.

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 \$148 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 probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

Daily Supervision Cost Adjusted for Inflation Five Year Projection						
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 17-18
Inflation Rate	2.76%	2.90%	2.98%	2.65%	1.89%	2.76%
Monthly Cost	\$152.08	\$156.50	\$161.16	\$165.43	\$168.56	\$152.08

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)

It is not known how many convictions may result from this bill. The following table shows the percent of convictions receiving active sentences and supervised probation, and the cost of the supervised probation for each offense class in the proposed bill.⁴

Cost of Supervised Probation for One Offender by Offense Class							
	Active	Length	PRS (Months)	PRS Cost	Probation	Length (Months)	Prob. Cost
Class 2 Misdemeanor	34%	21 days	NA	NA	66%	14	\$2,072
Class 1 Misdemeanor	31%	40 days	NA	NA	69%	15	\$2,220
Class G Felony	39%	14 months	9	\$1,332	61%	29	\$4,292

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DATE: March 7, 2017



Signed Copy Located in the NCGA Principal Clerk's Offices

⁴ Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.