

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 274 (First Edition)

SHORT TITLE: Increase Penalties for Debt Adjusting.

SPONSOR(S): Representatives Stevens and Davis

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 because of the application of a more stringent penalty for an offense and because of a new chargeable offense being enforced, adjudicated, and having penalties applied to those convicted of the new offense. However, since there is no historical data on these offenses, 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 these crimes:

- Administrative Office of the Courts: \$96 to \$625 per defendant
- Indigent Defense Services: \$1 to \$392 per indigent defendant
- Department of Public Safety (DPS) - Prisons: \$5,027 per active felony sentence
- DPS - Community Corrections: \$148 to \$3,996 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill amends existing G.S. 14-242 (Engaging, etc., in business of debt adjusting a misdemeanor) to increase the current offense of engaging in, offering to, or attempting to engage in, the business or practice of debt adjusting from a Class 2 misdemeanor to a Class 1 misdemeanor. It also creates a new Class H felony offense if (i) the business or practice involves an aggregate payment of money or property by one or more debtors valued at \$5,000 or more, or (ii) the business or practice involves five or more debtors.

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 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.

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 (AOC) 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.

The bill increases the penalty for violation of G.S. 14-244, Engaging, etc., in business of debt adjusting illegal, from a Class 2 misdemeanor to a Class 1 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 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).

The bill also creates a new Class H felony. The cost to AOC for a Class H felony is \$625.

The Office of Indigent Defense Services (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 weighted average cost of a Class 2 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, the most recent year data is available, 30% of Class 2 misdemeanor defendants used IDS services. In the same time period, 39% of

Class 1 misdemeanor defendants used IDS services. The weighted average cost of a Class 1 misdemeanor is \$202 per case for a PAC attorney. Therefore, the cost of this criminal penalty increase to IDS will be \$1 (\$202 Class 1 misdemeanor expense minus \$201 existing Class 2 misdemeanor expense).

In FY 2011-12, the most recent year data is available, 78% of Class H felony cases were handled through IDS. The weighted average cost of a new Class H felony is \$392 per case for a private appointed counsel (PAC) attorney.

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 – Prisons

This bill increases the penalty for violation of G.S. 14-242 from a Class 2 misdemeanor to a Class 1 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.

The bill also creates a new Class H felony. 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).

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	36,906	37,116	36,814	36,821	37,010
2. Prison Beds (Expanded Capacity)	37,617	37,617	37,617	37,617	37,617
3. Beds Over/(Under) Inmate Population	711	501	803	796	607
4. Additional Inmates Due to this Bill³					
5. Additional Beds Required					

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.

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. 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, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 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 bed impact if there were four convictions (the threshold) or 20 convictions for this proposed offense 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 growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	10

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months).

Department of Public Safety – Community Corrections

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 (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.

In FY 2015-16, 31% of Class 1 misdemeanor offenders received active sentences; 69% received probation. The average length of probation imposed for this offense class was 15 months. For the same time period, 34% of Class 2 misdemeanor offenders received active sentences; 66% received probation. The average length of probation imposed for this offense class was 14 months. Therefore, at a minimum, one conviction sentenced to probation under this bill will require at least one additional month of probation. The cost of one additional month of probation is \$148 per offender.⁴

In FY 2015-16, 35% of Class H felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 27 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).⁴ For every offender sentenced to probation, the average cost would be \$3,996 (\$148 per month times 27 months).

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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⁴ Due to the effective date of December 1, 2016 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2016-17. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2017-18.