

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 918 (First Edition)
SHORT TITLE: Post Crime On Social Media/Enhanced Sentence.
SPONSOR(S): Representatives Pierce, John, Setzer, and Blust

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
State Impact	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0

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

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, since there is no historical data on how this new offense may be applied, or similar offenses to use as a proxy for predicting the total number of applicable cases, 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:

FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: Unknown
- Indigent Defense Services: Unknown
- Department of Public Safety (DPS) - Prisons: \$11,952 per inmate with an extended sentence
- DPS - Community Corrections: No impact

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill provides a sentence enhancement of 24 months for persons convicted of a violent felony (that is, a Class A-E felony) and who are found to have “intentionally posted a clip depicting the commission of the felony on the Internet,” with an effective date of December 1, 2017.

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.

Section 1 of the bill increases the sentence length by 24 months for any Class A through Class E felony if the convicted person intentionally posted a clip depicting commission of the felony on the Internet. AOC anticipates that cases in which this new minimum sentence length is applicable will require additional court time compared to other cases. However, AOC is unable to estimate how much additional time will be required or the number of cases to which this new policy will apply.

Similarly, 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. Because this bill would impact the mandatory sentence length in applicable cases rather than the actual class of offense, it is unclear how much additional court time may or may not be required for these cases.

Department of Public Safety – Prisons

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. While this bill may impact the number of prison beds available by extending sentences and therefore reducing bed turnover, Fiscal Research is unable to estimate how many inmates will serve an extended sentence under 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	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

Although no additional beds will be required for this bill, additional spending will be required to house prisoners longer as a result of the increased penalty. Per diem expenditures for each inmate are approximately \$15.02, or \$457 per month. The table below shows the monthly rate for each year of the five year projection, adjusted for inflation.

Monthly Incarceration Cost Adjusted for Inflation Five Year Projection						
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Inflation Rate		2.76%	2.90%	2.98%	2.65%	1.89%
Monthly Cost	\$457	\$470	\$483	\$498	\$511	\$520
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (January 2017)</i>						

This bill increases the penalty for any Class A through Class E felony in cases where the convicted person “intentionally posted a clip depicting the commission of the felony on the Internet” by 24 months. According to the Sentencing and Policy Advisory Commission, during FY 2015-16 there were 3,899 Class A through Class E convictions. In general, approximately 100% of convictions for Classes A through D and 63% of Class E offenses result in active sentences.

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.

Because it is unknown how many violent felonies may be accompanied by internet clips of the crime committed, Fiscal Research is unable to estimate the additional costs that will be incurred by the prison system as a result of this bill. However, for each of these active sentences imposed, the prison system will incur an additional 24 months of costs. In FY 2018-19, the first full effective year of the bill, this would equal \$11,952 (\$483 per month times 24 months) per inmate with an extended sentence.

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.

Because this bill would only impact the active sentence imposed, it would not have an impact on the expenses of CCS.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark White

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

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