

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 224 (First Edition)

SHORT TITLE: Include B/E With Intent to Terrorize in HB/E .

SPONSOR(S): Senators J. Jackson, Britt, and Lee

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 each offense. However, 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: \$1,392 per charge elevated to habitual offender status
- Indigent Defense Services: \$194 per indigent defendant
- Department of Public Safety (DPS) - Prisons: \$7,312 per active sentence
- DPS - Community Corrections: Savings of \$2,220 per active sentence

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill adds G.S. 14-54(a1), breaking or entering with intent to terrorize or injure an occupant of the building, a Class H felony, to the list of breaking or entering offenses used to determine if an offender is a

habitual breaking or entering status offender under G.S. 14-7.26. Habitual breaking or entering is a Class E felony.

In FY 2015-16, there were 37 charges for violations of G.S. 14-54(a1). It is not known how many of those defendants had previous convictions for breaking or entering offenses listed in G.S. 14-7.26. In FY 2015-16, there were 10 Class H convictions for breaking or entering with intent to terrorize under G.S. 14-54(a1). It is not known how many of those offenders had previous convictions for breaking or entering offenses.

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 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 adds an existing Class H felony to the list of breaking or entering charges that could be used to determine habitual breaking or entering status (a Class E felony), increasing the pool of offenders eligible for this status offense. In FY 2015-16, there were 37 Class H felony charges under G.S. 14-7.25. It is not known how many of those offenders may have prior convictions for breaking or entering and would be eligible for habitual breaking or entering status. 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 H felony who is instead charged with a Class E felony, the average cost to the court will be \$1,392 (\$2,017 for a Class E felony minus \$625 for a Class H felony).

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 H felony is \$392 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, the most recent year data is

available, 78% of Class H felony defendants used IDS services. For the same time period, 79% of Class E offenders used IDS services, with a weighted average cost of \$586, a difference of \$194

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. 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					

The Sentencing Commission cannot 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.

It is not known how many Class H offenders may be sentenced as Class E offenders under the proposed bill. Impact on the prison population will occur if Class H convictions become Class E habitual felon breaking and entering convictions under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 95% for Class E habitual felon breaking and entering) and longer average estimated time served (11 months for Class H compared to 31 months for Class E habitual felon breaking and entering). Using threshold data, the following table shows the estimated annual impact if, for example, four additional convictions (threshold) or 20 additional convictions per year (example) would be reclassified from Class H to Class E habitual felon breaking and entering. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting

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.

in confinement, as well as estimated growth rates in convictions. Also, there will be some additional impact on post-release supervision caseloads since Class E requires an additional three months of supervision.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	3	6	9	9	9
20	12	29	41	42	43

Although no additional beds will be required for this bill, additional spending will be required to house new prisoners or 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, which includes the cost of food, clothing, and health care. In FY 2015-16, 63% of Class E felony offenders received active sentences averaging 79 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$12,339 (\$457 monthly cost times 27 months). For the same period, 35% of Class H felony offenders received active sentences averaging eleven months, a cost of \$5,027. The difference in cost for a Class E felony offender versus a Class H felony offender is \$7,312.

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.

This bill may increase a Class H felony to a Class E felony if the offender qualifies for habitual breaking and entering status. This change will result in an additional three months mandatory PRS. In FY 2015-16, 95% of Class E habitual felon breaking and entering offenders received active sentences followed by twelve months post-release supervision (PRS); 5% received some form of supervised probation. For the same year, 35% of Class H felony offenders received active sentences followed by nine months PRS; 65% received probation. Because a higher percentage of offenders receive active sentences at the new offense level, more offenders will be serving the mandatory PRS period. So, costs may be incurred for the additional three months mandatory PRS for active sentences, and to the extent that more offenders receive active sentences, for the difference between the number of months those offenders would have served with an intermediate or community punishment and the twelve months PRS. The average length of probation for a Class H felony offense was 27 months. Therefore, additional offenders receiving an active sentence will spend 15 fewer months in PRS than they would have served on probation. The cost for each month of PRS or probation is \$148, for a savings of \$2,220 (\$148 times 15 number of months difference).

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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DATE: March 29, 2017



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