

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

## Legislative Incarceration Fiscal Note

**BILL NUMBER:** Senate Bill 668 (First Edition)  
**SHORT TITLE:** Enhanced Penalty for Second Degree Trespass.  
**SPONSOR(S):** Senators Britt, Daniel, and Ballard

<b>FISCAL IMPACT</b>					
(\$ 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
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
<b>EFFECTIVE DATE:</b> December 1, 2017					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated, and having penalties applied to those convicted of the new offense. However, given that there is no historical data on this new offense 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 for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$167 per disposition
- Indigent Defense Services: \$2 per disposition
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: Savings may occur in first year; cost of \$444 in second and subsequent years

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

This bill amends existing G.S. 14-159.12, Second degree trespass, by adding new subsection (c) creating a new Class 1 misdemeanor if the offense occurs in a multi-occupancy bathroom, shower, or changing facility. Currently, this behavior would be charged as a Class 3 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 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 creates a new Class 1 misdemeanor offense, essentially increasing the penalty for behavior currently covered by a Class 3 misdemeanor. 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 person who would have been charged with a Class 3 misdemeanor who is instead charged with a Class 1 misdemeanor, the average cost to the court will be \$167 (\$206 for a Class 1 misdemeanor minus \$39 for a Class 3 misdemeanor).

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 1 misdemeanor is \$202 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, the most recent year data is available, 39% of Class 1 misdemeanor defendants used IDS services. For the same year, 21% of Class 3 misdemeanor defendants used IDS services. The weighted average cost of a Class 3 misdemeanor is \$200 per case for a PAC attorney. The difference in per case cost of this criminal penalty increase to IDS will be \$2 (\$202 Class 1 misdemeanor expense minus \$200 existing Class 3 misdemeanor expense).

### **Department of Public Safety – Prisons**

This bill creates a new Class 1 misdemeanor offense. 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.

### **Department of Public Safety – Community Corrections**

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, including intermediate or community sanctions, are supervised by the Community Corrections (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders 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, intermediate sanctions and supervised probation.

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, 24% of Class 3 misdemeanor offenders received active sentences; 76% received probation. The average length of probation imposed for this offense class was 12 months. Savings may occur in the first year of implementation because a higher percentage of convictions will receive active sentences and will serve those in the local jails. However, in the second and subsequent years, there may be a slight increase in costs because supervised probation sentences at the higher offense class levels have longer average sentence lengths - in this case three months longer. Three additional months of probation costs \$444 (three months times \$148).

**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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**Signed Copy Located in the NCGA Principal Clerk's Offices**