



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Legislative Incarceration Fiscal Note

Short Title: Increase and Expand Assault on/Resist of LEO.
Bill Number: House Bill 425 (First Edition)
Sponsor(s):

SUMMARY TABLE

FISCAL IMPACT OF H.B. 425, V.1 (\$ in millions)

	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>
State Impact					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
General Fund Impact	Partial Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	Partial Estimate Available - Refer to Fiscal Analysis section				
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STATE POSITIONS	0.00	0.00	0.00	0.00	0.00
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FISCAL IMPACT SUMMARY

Section 1 of this bill would increase one felony from a Class F to a Class E offense. Assuming the same number of defendants are charged with violating this statute moving forward as were charged in FY 2017-18, the estimated annual cost to the Administrative Office of the Courts as a result of this change will be \$77,922. The estimated annual cost to the Office of Indigent Defense Services would be \$1,054. However, the small number of convictions from this offense makes prison projections using the previous data unreliable, instead requiring a threshold analysis. This results in the following estimate of potential increased costs:

- Department of Public Safety (DPS) - Prisons: \$4,842 increased costs per active sentence
- DPS - Community Corrections: Minimum of \$480 increased costs per supervised probation sentence

The proposed bill may also have a fiscal impact because of the creation of a new Class E and Class H felony, depending on the circumstances of the offense. While there is sufficient data to provide a proxy estimate for AOC and IDS for the Class H charge, there is not sufficient data to provide an estimate for the Class E charge across all agencies or for the Class H charge for DPS. The Class H charge in Section 2 is estimated to increase costs for AOC by \$66,585 and for IDS by \$15,871. The additional following costs may be incurred:

- Administrative Office of the Courts: \$2,290 per Class E disposition
- Indigent Defense Services: \$586 per Class E disposition
- Department of Public Safety (DPS) - Prisons: \$5,981-\$15,064 per active sentence
- DPS - Community Corrections: Minimum of \$1,440 per supervised probation sentence

In addition, the Class 2 misdemeanor in the bill is an existing charge and is therefore assumed to have no impact.

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, 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.

Section 1 of the bill increases an existing Class F felony to a Class E felony. AOC reports that in calendar year 2018, 78 defendants was charged with a violation under G.S. 14-34.7(a). For every additional person charged with a Class E felony, the average cost to the court would be \$2,290, while for every additional person charged with a Class F felony, the average cost to the court would be \$1,291. Therefore, the average difference in costs to the courts for each charge under this change is \$999 (\$2,290 per case for Class E minus \$1,291 per case for Class F felonies equals \$999.) Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to the court

systems from these changes would be \$77,922 (\$999 cost increase times 78 defendants equals \$77,922).

Section 2 of the bill creates two new felony charges. The new Class E felony, inflicting serious bodily injury on an officer while resisting arrest, is effectively the same as the charge in Section 1. Because these charges are substantively the same, there is unlikely to be a diversion of charges going forward, resulting in negligible fiscal impact to the courts. However, if somehow a given situation would result in a situation covered by G.S. 14-223.(2) that would not be covered by G.S. 14-37.7(a), there could be new charges. Because this is effectively 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 E felony, the average cost to the court would be \$2,290.

Section 2 also creates a new Class H felony charge for inflicting physical injury on an officer while resisting arrest. This could currently be charged under an existing Class I felony, G.S. 14-34.7(c)(1). Because these new charges are the same, but the new offense offers a higher level of punishment, there is likely to be a diversion of charges to the new offense. The average fiscal impact of this change would be an increase to the disposition cost by \$193 per case (\$709 for a Class H felony minus \$516 for a Class I felony). In 2018, there were 345 defendants charged with violating G.S. 14-34.7(c)(1). Assuming this number holds true in future years, the annual cost to the courts would be \$66,585 (\$193 per charge times 345 charges).

Finally, the bill makes it a Class 2 misdemeanor for any non-injurious resisting of an officer. Because this is an existing charge, this section will have no fiscal impact.

The Office of Indigent Defense Services (IDS) provides 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.

Regarding the heightened charge in Section 1, In FY 2017-18, the most recent year data is available, 79% of Class E felony cases were handled through IDS. The weighted average cost of a new Class E felony is \$586 per case for a PAC attorney. In FY 2017-18, 74% of Class F felony cases were handled through IDS. The weighted average cost of a new Class F felony is \$569 per case for a PAC attorney. The increased cost to IDS from the changes in Section 1 would be \$17 (\$586 per case for Class E minus \$569 per case for Class F felonies equals \$17). Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to IDS from these changes would be \$1,054 (\$17 cost increase times 62 defendants [78 defendants times 79% for Class E equals 62 defendants] equals \$1,054).

For the new Class E charge in Section 2, the weighted average cost of a new Class E felony is \$586 per case for a private appointed counsel (PAC) attorney.

Regarding the new Class H charge in Section 2, In FY 2017-18, 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, such as the one included in Section 2, is \$392 per case for a private appointed counsel (PAC)

attorney. In FY 2017-18, the most recent year data is available, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$333 per case for a private appointed counsel (PAC) attorney. The increased cost to IDS from the changes in Section 2 would be \$59 (\$392 per case for Class H minus \$333 per case for Class I felonies equals \$59). Assuming a similar number of cases are charged annually in the future as in CY 2018, the costs to IDS from these changes would be \$15,871 (\$59 cost increase times 269 defendants [345 defendants times 78% for Class H equals 269 defendants] equals \$15,871).

Because the Class 2 misdemeanor in Section 2 is an existing charge, there would be no additional or new cost to IDS.

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

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 2018.

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). Rows four and five in the chart demonstrate the impact of the bill.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2020	June 30 2021	June 30 2022	June 30 2023	June 30 2024
1. Inmates ²	36,452	36,867	37,231	37,433	37,702
2. Prison Beds (Expanded Capacity)	38,225	38,225	38,225	38,225	38,225
3. Beds Over/(Under) Inmate Population	1,773	1,358	994	792	523

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 2019.

4. Additional Inmates Due to this Bill³
5. Additional Beds Required

No estimate available

Increase from Class F to Class E Felonies

In FY 2018, there were no convictions under G.S. 14-34.6(c), which would be modified by Section 2 of this bill. Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed bill because of the higher rate of active sentences (60% for Class E compared to 51% for Class F) and longer average estimated time served (28 months for Class E compared to 19 months for Class F). The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) and 20 convictions (example) per year that would be reclassified from Class F to Class E. The table also shows the impact if the previous year’s data holds for the future hypothetical time period, although again, because of the small sample size, this data is unreliable. 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. In addition, there will be some impact on post-release supervision caseloads since Class E requires an additional three months of supervision.

Estimated Prison Bed Impact Using Threshold Convictions, 20 Convictions, and Existing Charge Data					
Increase of Class F to Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
(Threshold) 2	0	1	1	1	1
20	2	8	12	13	13
G.S. 14-34.7(a) 11	1	5	7	7	8
G. S. 14-34.7 2	0	1	1	1	1

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 \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 51% of Class F felony offenders received active sentences averaging 19 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$10,222 (\$538 monthly cost times 19 months). In FY 2017-18, 60% of Class E felony offenders received active sentences averaging 28 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$15,064 (\$538 monthly cost times 28 months). Therefore, the increased cost to the prison section as a result of these changes in the bill would be \$4,842 (\$15,064 for Class E minus \$10,222 for Class F equals \$4,842).

Section 2: New Class E Felony

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

³ Criminal penalty bills effective December 1, 2019 should not affect prison population and bed needs until FY 2020-21 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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 2017-18, 60% of Class E felony convictions resulted in active sentences, with an average estimated time served of 28 months. Twelve 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 there were two 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 E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	3	4	4	4
20	13	27	34	35	35

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 \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 60% of Class E felony offenders received active sentences averaging 28 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$15,064 (\$538 monthly cost times 28 months).

Section 2: New Class H Felony

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 2017-18, 34% 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 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	11	11	11	11

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 \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 34% 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 \$5,918 (\$538 monthly cost times 11 months).

Section 2: Class 2 Misdemeanor

This charge would have no fiscal impact on the prison system.

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 face the same non-active sentences as felons.

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 \$160 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 probation.

Increase from Class F to Class E Felonies

In FY 2017-18, 51% of Class F felony offenders received active sentences and 60% of Class E felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of PRS. However, all active sentences for Class B1 through E felonies result in 12 months of PRS. Therefore, at a minimum, one conviction resulting from the increase from Class F to Class E felonies in Sections 2 and 3 of this bill will require at least 3 more months of PRS. The cost of 9

months of PRS is \$1,440 per offender (\$160 per month times 9 months). The cost of 12 months of PRS is \$1,920 per offender (\$160 per month times 12 months). Therefore, the increased cost to CCS for post-release supervision related to these changes in the bill would be \$480 per offender.

In FY 2017-18, 49% of Class F felony offenders received suspended sentences. The average length of probation imposed for this offense class was 31 months. In FY 2017-18, 40% of Class E felony offenders received suspended sentences. The average length of probation imposed for suspended sentences in this offense class was 33 months, an increase of 2 months. For every offender sentenced to probation under these changes in the bill, the average increased cost to CCS would be \$320 (\$160 per month times 2 months).

Section 2: Class E Felony

In FY 2017-18, 60% of Class E felony offenders received active sentences and 40% received suspended sentences. The average length of probation imposed for suspended sentences in this offense class was 33 months. All active sentences for Class B1 through E felonies result in 12 months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,920 per offender (\$160 per month times 12 months).⁴ For every offender sentenced to probation, the average cost would be \$5,280 (\$160 per month times 33 months).

Section 2: Class H Felony

In FY 2017-18, 34% of Class H felony offenders received active sentences and 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for Class H felony offenders receiving a suspended sentence was 26 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). 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 \$1,440 per offender (\$160 per month times 9 months).⁵ For every offender sentenced to probation, the average cost would be \$4,160 (\$160 per month times 26 months).

Section 2: Class 2 Misdemeanor

Because this is an existing charge, there would be no fiscal impact on the community corrections system from this bill.

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

⁴ Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.

⁵ Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.

Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

CONTACT INFORMATION

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Signed copy located in the NCGA Principal Clerk's Offices