



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Incarceration Fiscal Note

Short Title: SBI Emergency Pen Register/Trap and Trace.
Bill Number: House Bill 148 (First Edition)
Sponsor(s): Representatives McNeill, Hurley, C. Smith, and Greene

SUMMARY TABLES

CHARGES

| | Charge | Cost per Charge | Cost of Staff | Equivalence |
|-------------------------------------|---------|--------------------------------------|---------------------------|--|
| Administrative Office of the Courts | Class 1 | \$274 | Deputy Clerk: \$54,532 | 199 new charges = 1 new Deputy Clerk |
| Office of Indigent Defense Services | | Percent of cases handled by IDS: 39% | | Increased cost to PAC Fund per charge: \$205 |

CONVICTIONS – ACTIVE SENTENCE

Active sentences for misdemeanors are served in county jails and do not require post-release supervision.

CONVICTIONS – SUSPENDED SENTENCE

| | Charge | Avg. Suspended | Cost per Conviction | Cost of Staff | Equivalence |
|-----------------------------|---------|----------------|----------------------|--|----------------------------|
| DPS – Community Corrections | Class 1 | 62% | Supervision: \$2,550 | Probation Parole Officer (PPO): \$53,760 | 21 new charges = 1 new PPO |

* All costs annualized

FISCAL IMPACT SUMMARY

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of the offense. Section 2 of the proposed bill creates an exception to the prohibition on the use of pen registers and trap and trace devices. Section 4 of the bill creates a new Class 1 misdemeanor offense. The criminal offense modifications in the proposed bill may have a fiscal impact on the judicial and correction systems. However, due to a lack of sufficient historical data on this offense or similar offenses, the Fiscal Research Division (FRD) is unable to provide a reasonable estimate of the total fiscal impact. Each additional person charged with this crime will result in costs to the judicial system and each additional person convicted will result in costs to the corrections system. All costs in the tables above have been annualized. Offense changes are typically effective on December 1. FRD assumes that costs incurred in the first year to the judicial and corrections systems would be less than annualized costs due to lag time in charges and convictions.

FISCAL IMPACT OF H.B.148, V.1

| | <u>FY 2021-22</u> | <u>FY 2022-23</u> | <u>FY 2023-24</u> | <u>FY 2024-25</u> | <u>FY 2025-26</u> |
|----------------------------|---|-------------------|-------------------|-------------------|-------------------|
| State Impact | | | | | |
| General Fund Revenue | - | - | - | - | - |
| Less Expenditures | - | - | - | - | - |
| General Fund Impact | No Estimate Available - Refer to Fiscal Analysis section | | | | |

| | | | | | |
|-------------------------|---|--|--|--|--|
| NET STATE IMPACT | No Estimate Available - Refer to Fiscal Analysis section | | | | |
|-------------------------|---|--|--|--|--|

FISCAL ANALYSIS

General

The Sentencing and Policy Advisory Commission (SPAC) prepares prison population projections for each bill containing a criminal penalty. SPAC assumes that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime rates. Likewise, FRD assumes no deterrent effects for any modifications to criminal penalties. The estimates in this Incarceration Note make no assumptions about the larger impact on crime rates or costs to society or the State.

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of the offense which may lead to an increase/decrease in the number of offenders charged. FRD assumes that new offenses and changes to an offense’s scope will have no historical data upon which to estimate the number of charges or convictions that might occur. FRD assumes that a change in offense class may have an unknown effect on charge or conviction numbers. To that end, FRD estimates the average cost to the judicial and correction systems for one additional charge or conviction.

Judicial Branch

The Administrative Office of the Courts (AOC) provides FRD with a fiscal impact analysis for most criminal penalty bills. Fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in charges 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 2 of the bill provides an exception to an existing Class 1 misdemeanor offense and Section 4 of the bill creates a new Class 1 misdemeanor offense. Based on the AOC estimate of the average cost to the court for a charge by offense class, the average cost to the court for every additional person charged with a Class 1 misdemeanor would be \$274. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 199 charges of this new offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

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 uses this data to calculate a weighted average of IDS costs for each class of offense. This estimate assumes the appointment of a Private Assigned Counsel (PAC) attorney. In districts that have Public Defender (PD) offices, cases may be handled by those offices. In those instances, this cost may not be incurred, but the PD office may experience costs in terms of greater workload.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 39% of Class 1 misdemeanor cases. The weighted average cost of a new Class 1 misdemeanor is \$205 per case for a PAC attorney.

Department of Public Safety – Prisons

This bill creates a new Class 1 misdemeanor offense. SPAC 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 suspended sentences exclusively or in conjunction with imprisonment (split-sentence). Under S.L. 2011-192, the Justice Reinvestment Act (JRA), both community and intermediate probation may include sanctions such as electronic monitoring, short-term periods of confinement, community service, substance abuse assessment, monitoring, and treatment, or 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.

Active Sentences

In FY 2019-20, 38% of Class 1 misdemeanor offenders received active sentences. Active misdemeanor sentences are served in local jails and do not require any post-release supervision.

Suspended Sentences

In FY 2019-20, 62% of Class 1 misdemeanor offenders received probation. Supervision by a probation officer costs \$170 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. The average length of probation imposed for this class of offense was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,550 per offender (\$170 per month times 15 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 21 convictions of this new offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO.

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

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

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

ESTIMATE PREPARED BY

William Childs

ESTIMATE APPROVED BY

Mark Trogdon, Director of Fiscal Research
Fiscal Research Division
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Signed copy located in the NCGA Principal Clerk's Offices