

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 19 (First Edition)

SHORT TITLE: Respect Our Fallen Heroes.

SPONSOR(S): Representatives T. Moore and Hastings

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
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:					
Department of Public Safety; Administrative Office of the Courts; Office of Indigent Defense Services					
EFFECTIVE DATE December 1, 2013					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

This bill may have a fiscal impact. However, the Fiscal Research Division cannot estimate the cost of this bill at this time because we cannot estimate how many people may be charged with this crime. The following costs may be incurred if the violations of this statute are reclassified as outlined in this bill:

- A second violation of this statute would be a Class I felony rather than a Class 1 misdemeanor. Under the Justice Reinvestment Act, all felons are now required to be supervised for a minimum of nine months after release from prison, at a cost of \$980 per offender.
- A third violation under this statute would be a Class H felony rather than a Class I felony. Increased court and incarceration costs for a Class H felony over a Class I felony would be approximately \$8,174 per offender.

BILL SUMMARY: H.B.19, Respect Our Fallen Heroes, expands and reclassifies an existing offense. The bill amends the offense in G.S. 14-288.4, Disorderly Conduct, subsection (a)(8) by expanding its scope, and reclassifies the newly expanded offense in G.S. 14-288.4(a)(8) by amending the violation provisions in G.S. 14-288.4(c).

This bill also reclassifies violations of G.S. 14-288.4(a)(8), by amending G.S. 14-288.4(c). Currently, G.S. 14-288.4(c) makes a first violation of G.S. 14-288.4(a)(8) a Class 2 misdemeanor, a second violation a Class 1 misdemeanor, and third or subsequent violations a Class I felony. This bill amends G.S. 14-288.4(c) to provide that a first offense shall be a Class 1 misdemeanor, a second offense shall be a Class I felony, and third or subsequent offenses shall be a Class H felony. The act becomes effective December 1, 2013 and applies to offenses committed on or after that date.

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. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

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.

In calendar year 2012, five defendants were charged with a first offense of violating G.S. 14-288.4(a)(8). Of these, none were convicted. Presently, AOC estimates that the elevation of the offense from a Class 2 misdemeanor to a Class 1 misdemeanor could result in an increased cost of \$77 per case (the difference between a Class 1 misdemeanor (\$165) and a Class 2 misdemeanor (\$88)). If, for example, five defendants per year now face the elevated charge, the cost to the court system would be \$385 annually.

The elevation of the Class 1 misdemeanor (second offense) to a Class I felony, and the Class I felony (third-or-subsequent offense) to a Class H felony could result in a more vigorous defense and therefore more time for superior court personnel. On average, increasing a criminal penalty from a Class 1 misdemeanor to a Class I felony costs an additional \$200 (\$365 for a Class 1 felony; \$165 for a Class 1 misdemeanor) and the increase from the Class I felony to a Class H felony will increase costs by \$136 (\$501 for a Class H felony; \$365 for a Class I felony).

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that elevating a Class 1 misdemeanor to a Class I felony will result in an increase of \$55 per case for a private appointed counsel (PAC) attorney in district courts. In superior court, IDS estimates that elevating a Class

1 misdemeanor to a Class I felony will increase costs by \$75 (if the case does not go to trial) and \$199(if it does).

IDS further estimates that the cost of elevating a Class I felony to a Class H felony will result in an increase of \$14 per case for PAC attorneys in district courts. In superior court, for the same reclassification from Class I felony to Class H felony, IDS estimates that the cost of a PAC attorney will increase by \$50 if the case does not go to trial and \$134 if it does.

Department of Public Safety –Prison Section

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 2012.

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. The Sentencing Commission cannot estimate how many inmates will be added to the system by this specific legislation in FY 2014-15. There were no convictions under the existing statute (G.S. 14-288.4(a)(8)) during FY 2011-12.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	38,999	39,062	39,091	39,047	39,135
2. Prison Beds (Expanded Capacity)	40,926	40,926	40,926	40,926	40,926
3. Beds Over/(Under) Inmate Population	(1,927)	(1,864)	(1,835)	(1,879)	(1,791)
4. <i>Additional Inmates Due to this Bill³</i>	<i>No estimate available.</i>				
5. <i>Additional Beds Required</i>					

This bill reclassifies a first violation of this statute from misdemeanor Class 2 to misdemeanor Class 1. In FY 2011-12, 26% of Class 1 misdemeanor resulted in active sentences. The average sentence imposed for Class 1 convictions was 39 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement program (91-180 days) or

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 2012.

³ Criminal penalty bills effective December 1, 2013, should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

in county jails (90 days or less). Therefore, convictions of this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanor Confinement Program and local jail populations is not known.

Department of Public Safety – Community Correction Section

For felony offense classes E through I and all misdemeanor classes, 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.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; 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 intermediate sanctions and supervised probations.

This bill reclassifies a second violation of the statute from a misdemeanor Class 1 to a felony Class I. Since JRA requires that all felons be supervised after their release from prison, this bill may impact the community corrections population. The cost of supervision is \$3.63 per day, per offender, with a minimum length of nine months. Therefore, each offender who serves an active sentence under this revised statute will incur a minimum supervision cost of \$980 (\$3.63 per day times 270 days equals \$980). However, since the minimum nine-month term of post-release supervision applies to all persons convicted of a felony, reclassifying the third violation of this statute from Class I to Class H does not increase supervision costs beyond those already incurred by a Class I felony.

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

⁴ DCC incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.