

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 1059 (First Edition)

**SHORT TITLE:** Take Venus Flytrap/Crime/New Hanover County.

**SPONSOR(S):** Representative Davis

**FISCAL IMPACT**

(\$ in millions)

Yes     
  No     
  No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**

Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

**EFFECTIVE DATE** December 1, 2014

**TECHNICAL CONSIDERATIONS:**

None

**BILL SUMMARY:**

H.B. 1059, Take Venus Flytrap/Crime/New Hanover County, increases the penalty for stealing a venus flytrap from private land in New Hanover County from a Class 3 misdemeanor punishable only by a fine to a Class H felony.

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address an increased penalty for a chargeable offense being enforced, adjudicated and having penalties applied to those convicted of it. However, given there is no historical data on the existing offense, or similar offenses to use as a proxy for predicting the total number of 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: \$407 per disposition
- Indigent Defense Services: \$255 in district court  
   \$454 in superior court without a trial  
   \$1,180 in superior court with a trial

- Prison Section: \$3,369 per conviction resulting in an active sentence
- Community Corrections: Minimum of \$1,096 per offender

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

## **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.

Although the bill is increasing the penalty for an existing offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. The Administrative Office of the Courts (AOC) does not have a specific offense code for violations of G.S. 14-129, indicating that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many offenders might be convicted and sentenced under the new statute.

### **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 the penalty for taking a venus flytrap from private land in New Hanover County from a Class 3 misdemeanor punishable only by a fine to a Class H felony. 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 H felony, the average cost to the court would be \$470, the difference between the cost for a Class 3 misdemeanor case and a Class H felony case (\$31 and \$501, respectively).

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 the cost of a Class H felony will be \$255 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$494 if the case does not go to trial and \$1,180 if it does. Since Class 3 misdemeanors punishable only by a fine would not receive indigent defense

services, the costs shown for this bill are the entire costs for defense of a Class H felony and have not been adjusted for the difference in costs between the two offense classes.

**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,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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). The cost to add one additional inmate to the prison system is \$11.23 per day, which includes the cost of food, clothing, and health care.

<b>Population Projections and Bed Capacity</b>					
<b>Five Year Impact</b>					
	<b>June 30 2014</b>	<b>June 30 2015</b>	<b>June 30 2016</b>	<b>June 30 2017</b>	<b>June 30 2018</b>
1. Inmates <sup>2</sup>	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

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 \$11.23 per day, which includes the cost of food, clothing, and health care. In FY 2012-13, 35% of Class H felony offenders received active sentences averaging ten months. For every one offender receiving an active sentence, the cost to the prison section will be \$3,369 (\$11.23 daily cost times 300 days equals \$3,369).

**Department of Public Safety – Community Correction Section**

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 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.

<sup>1</sup> 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.

<sup>2</sup> 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 2014.

<sup>3</sup> Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$4.06 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 active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

In FY 2012-13, 35% of Class H felony offenders received active sentences; 33% received intermediate sentences; and 32% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The average lengths of intermediate and community punishment imposed for this offense class were 29 and 27 months, respectively. Therefore, at a minimum, one conviction resulting from Section (bill section) of this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,096 per offender (\$4.06 per day times 2,700 days).<sup>4</sup>

**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

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Kristine Leggett

**APPROVED BY:**

Mark Trogdon, Director  
Fiscal Research Division

**DATE:** May 18, 2014



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

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<sup>4</sup> Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.