

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 1099 (First Edition)

SHORT TITLE: Unmanned Aircraft Regulation.

SPONSOR(S): Representative Torbett

FISCAL IMPACT

(\$ in millions)

Yes
 No
 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:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

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

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

EFFECTIVE DATE Criminal penalties effective December 1, 2014

TECHNICAL CONSIDERATIONS:

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 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: \$31 to \$501 per disposition
- Indigent Defense Services: \$182 to \$255 in district court
\$359 to \$494 in superior court without a trial
\$847 to \$1,180 in superior court with a trial
- Prison Section: \$11.23 per inmate per day
- Community Corrections: Minimum of \$1,112 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

H.B. 1099 creates four new criminal penalties related to the use of unmanned aircraft:

- Section 3 makes it a Class H felony for a person to willfully damage, disrupt or interfere with a manned aircraft through the use of an unmanned aircraft system while the manned aircraft is in motion.
- Section 4 makes it a Class I felony to possess or use an unmanned aircraft or aircraft system that has a weapon attached.
- Section 4 also makes it a Class 3 misdemeanor for any person to use an unmanned aircraft while hunting or fishing.
- Section 5 creates a new offense of operating an unmanned aircraft system for commercial purposes without a license issued by the Department of Transportation, Division of Aviation. First offenses are infractions punishable only by a fine. Second and subsequent offenses are charged as Class 3 misdemeanors.

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.

Since the bill creates several new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. 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 3 of the bill creates a new Class H felony offense. Because this is 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 H felony, the average cost to the court would be \$501.

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 new 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. 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.

Section 4 of the bill creates a new Class I felony offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC estimates that for every additional person charged with a Class I felony, the average cost to the court would be \$365.

IDS estimates that the cost of a new Class I felony will be \$245 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$455 if the case does not go to trial and \$1,046 if it does. 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.

Section 4 of the bill also creates a new Class 3 misdemeanor offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC estimates that for every additional person charged with a Class 3 misdemeanor, the average cost to the court would be \$31.

IDS estimates that the cost of a new misdemeanor offense will be \$182 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$359 if the case does not go to trial and \$847 if it does. 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.

Section 5 of the bill creates a new infraction and a new Class 3 misdemeanor offense. Since these are new offenses, AOC does not have historical data upon which to estimate the number of charges that might occur. Because the infraction is punishable only by a fine, no additional costs are estimated for the courts. For every additional person charged with a Class 3 misdemeanor, the average cost to the court would be \$31.

IDS does not provide counsel for infractions punishable only by a fine, so no additional costs will be incurred by them for this new offense. For the new Class 3 misdemeanor, IDS estimates that the cost will be \$182 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$359 if the case does not go to trial and \$847 if it does. 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 –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.

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.

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).

Since the bill creates two new felony offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute. 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.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ²	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)
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

This bill also creates two new Class 3 misdemeanor offenses. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because offenders who receive active sentences of less than 180 days will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

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.

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 \$123.50 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

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 March 2014.

³ 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.

percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

Section 3 of the bill creates a new Class H felony. In FY 2012-13, 35 percent of Class H felony offenders received active sentences; 33 percent received intermediate sentences; and 32 percent 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 4 of this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,112 per offender (\$123.50 per month times nine months).⁴

Section 4 of the bill creates a new Class I felony. In FY 2012-13, 16 percent of Class I felony offenders received active sentences; 27 percent received intermediate sentences; and 57 percent 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 26 and 23 months, respectively. Therefore, at a minimum, one conviction resulting from Section 4 of this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,112 per offender (\$123.50 per month times nine months).⁴

Sections 4 and 5 of the bill create new Class 3 misdemeanors. In FY 2012-13, 32 percent of Class 3 misdemeanor offenders received active sentences and 68 percent received community punishments for an average of 12 months. Less than one percent received an intermediate punishment. Active misdemeanor sentences of less than 180 days are served in county jails and are not subject to post-release supervision. Therefore, active sentences for violation of either of the new offenses will not result in additional costs to the Department of Public Safety. However, community punishments for either of the new offenses will cost an additional \$1,482 per offender (\$123.50 per month times twelve months).⁴

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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Principal Clerk's Offices

⁴ 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.