

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 140 (First Edition)

SHORT TITLE: Financial Exploitation of Older Adults.

SPONSOR(S): Senator Bingham

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:					
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, Indigent Defense Services, Department of Public Safety					
EFFECTIVE DATE: The first day of a month that is six months after this act becomes law					
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: \$365-\$912 per disposition
- Indigent Defense Services: \$221-\$296 in district court
\$396-\$593 in superior court without a trial
\$1,046-\$2,046 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: \$980-\$3,594

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Currently, G.S. 14-122.2 provides that it is unlawful for a person who is trusted by an elder or disabled adult or who has a business relationship with an elder or disabled adult to knowingly use or try to use an elder adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property. G.S. 14-122.2(d) makes it a Class F felony if the assets, funds or property are valued at \$100,000 or more, a Class G felony if the assets are valued at \$20,000 or more but less than \$100,000, and a Class H felony if the assets are valued at less than \$20,000.

G.S. 14-122.2(c) provides that it is illegal for any person, who knows or should know that an elder adult or disabled adult lacks the capacity to consent, to obtain or use their funds, assets, or property with the intent to deprive the adult or benefit someone other than the elder or disabled adult, of the use of the funds, assets, or property. A violation is a Class G felony if the funds, assets, or property involved is valued at \$100,000 or more, a Class H felony if the assets are valued at \$20,000 or more but less than \$100,000 and a Class I felony if the assets are valued at less than \$20,000.

Senate Bill 140 expands the definition of elder adult by stating that an elder adult is a "person 60 years of age or older" and removing any additional requirements. This bill also amends the offense in G.S. 14-112.2(c) to declare that it is unlawful for a person to knowingly, by deception or intimidation, obtain or use an elder or disabled adult's funds, assets or property for use by someone other than the elder adult or disabled adult. This bill also expands the scope of the existing offense by removing the requirement that the person violating the statute "knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent." The overall effect of the bill is to expand the scope of the existing offenses.

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.

This bill expands the scope of six criminal offenses. AOC does not have offense codes for these violations, which may be some indication that they are infrequently charged. It is not known how many times these offenses were charged in FY 2011-12. In addition, AOC is not able to estimate how the expanded scope of the legislation may affect the frequency at which these sections are violated and the associated criminal offenses are charged.

The following chart shows the estimated cost to the courts for every one person charged with these crimes:

Offense (G.S.)	Description	Existing charge class	Total monetary cost per charge
14-122.2(d)(1)	\$100,000 or more	Class F felony	\$912
14-122.2(d)(2)	\$20,000 up to \$100,000	Class G felony	\$752
14-122.2(d)(3)	Less than \$20,000	Class H felony	\$501
14-122.2(e)(1)	\$100,000 or more	Class G felony	\$752
14-122.2(e)(2)	\$20,000 up to \$100,000	Class H felony	\$501
14-122.2(e)(3)	Less than \$20,000	Class I felony	\$365

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 cannot estimate the total number of indigent cases that would be impacted by this legislation. For every additional charge, IDS estimates that the cost of a PAC attorney per case for the expanded Class F offense would be \$296 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class F felony offense would be \$593 if the case does not go to trial and \$2,046 if it does.

For every additional charge, IDS estimates that the cost of a PAC attorney per case for the expanded Class G offense would be \$272 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class G felony offense would be \$534 if the case does not go to trial and \$1,524 if it does.

For every additional charge, IDS estimates that the cost of a PAC attorney per case for the expanded Class H offense would be \$235 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class H felony offense would be \$446 if the case does not go to trial and \$1,180 if it does.

For every additional charge, IDS estimates that the cost of a PAC attorney per case for the expanded Class I offense would be \$221 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class I felony offense would be \$396 if the case does not go to trial and \$1,046 if it does.

Department of Public Safety –Prison Section

Since the bill expands the scope of a current offense, the Sentencing Commission is not able to estimate how many additional convictions may result from this bill. It is not known how many offenders might be convicted and sentenced under the expanded statute.

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).

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	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

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.⁴ General post-release supervision and 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 active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

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 2013.

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.

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

Overall, there were twelve felony convictions for violations of G.S. 14-112.2(b) in FY 2011-12. There were three Class F convictions where the funds, assets or property involved is valued at \$100,000 or more; no Class G convictions where the funds, assets or property involved is valued at \$20,000 or more but less than \$100,000; and nine Class H convictions where the funds, assets, or property is valued at less than \$20,000.

Overall, there were five felony convictions for violations of G.S. 14-112.2(c) in FY 2011-12. There was one Class G conviction where the funds, assets or property involved is valued at \$100,000 or more; one Class H conviction where the funds, assets or property involved is valued at \$20,000 or more but less than \$100,000; and three Class I convictions where the funds, assets, or property is valued at less than \$20,000.

In FY 2011-12, 53% of Class F felony offenders received active sentences; 47% received intermediate sentences. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average lengths of intermediate punishment imposed for this offense class was 33 months. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence is \$3,594 (990 days times \$3.63 per day). It is not known how many additional convictions may result from the proposed broadening of the current statute.

In FY 2011-12, 42% of Class G felony offenders received active sentences; 58% received intermediate sentences. All active Class G sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average lengths of intermediate punishment imposed for this offense class was 31 months. The average cost to community corrections for any individual convicted of a Class G felony who receives an intermediate sentence is \$3,376 (930 days times \$3.63 per day). It is not known how many additional convictions may result from the proposed broadening of the current statute.

In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average lengths of intermediate and community punishment imposed for this offense class were 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is \$3,158 (870 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is \$2,831 (780 days times \$3.63 per day). It is not known how many additional convictions may result from the proposed broadening of the current statute.

In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average lengths of intermediate and community punishment imposed for this offense class were 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is \$2,831 (780 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is \$2,396 (660 days times \$3.63 per day). It is not known how many additional convictions may result from the proposed broadening of the current statute.

⁵ Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

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