

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2015**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 659 (First Edition)

**SHORT TITLE:** Controlled Substances/Update Precursor List.

**SPONSOR(S):** Representatives Horn and Jackson

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
<b>EFFECTIVE DATE:</b> December 1, 2015					
<b>TECHNICAL CONSIDERATIONS:</b>					
Yes. See Technical Considerations Section.					

**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 that 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: \$501 to \$912 per disposition
- Indigent Defense Services: \$353 to \$497 per disposition
- Department of Public Safety (DPS) - Prison Section: \$3,510 to \$5,967 per conviction resulting in an active sentence
- DPS - Community Corrections: Minimum of \$1,175 per conviction

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

Currently under G.S. 90-95(d1)(1)c, it is unlawful for a person to possess a pseudoephedrine product if the person has a prior conviction for the possession or manufacture of methamphetamine. Violation is a Class H felony. The bill expands the pool of eligible offenders by adding people who possess a pseudoephedrine product if the person has a prior conviction for possession with the intent to sell or deliver methamphetamine, sale or delivery of methamphetamine, trafficking methamphetamine, or possession of an immediate precursor chemical, thereby expanding the scope of the existing Class H felony.

The bill also adds five chemicals to the list of immediate precursor chemicals in G.S. 90-95(d2). The possession of any of these chemicals with the intent to manufacture a controlled substance is a violation of subsection (d1). If the intent is to manufacture methamphetamine, it is a Class F felony. If the intent is to manufacture any other controlled substance, it is a Class H felony. (Please see the Technical Considerations section for a discussion of an interpretation problem in the existing G.S. 90-95(d2).) Adding chemicals to the list in G.S. 90-95(d2) expands the scope of the existing Class H and Class F felonies.

## **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. 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.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Since the bill expands the scope of existing 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 expanded 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.

The bill expands the scope of three existing offenses: two Class H felony offenses and one Class F felony offense. AOC is unable to estimate the expanded number of individuals that may be charged for these offenses. 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. For every additional person charged with a Class F felony, the average cost to the court would be \$912.

IDS has provided 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 used this data to calculate a weighted average of IDS costs. In FY 2011-12, 78% of Class H felony cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class H felony is \$353 per case for a private appointed counsel (PAC) attorney. In the same year, 74% of Class F felony cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class F felony is \$497 per case for a private appointed counsel (PAC) attorney. 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, this cost 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,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2014.

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 expands the scope of existing 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 beds may be required as a result of this bill.

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<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.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2016</b>	<b>June 30 2017</b>	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>
1. Inmates <sup>2</sup>	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
<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 \$11.53 per day, or \$351 per month, which includes the cost of food, clothing, and health care. In FY 2013-14, 35% of Class H felony offenders received active sentences averaging ten months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$3,510 (\$351 monthly cost times ten months). In the same year, 51% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$5,967 (\$351 monthly cost times 17 months).

#### **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 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.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, 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.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$130.50 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 percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations.

<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 2015.

<sup>3</sup> Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

In FY 2013-14, 35% of Class H felony offenders received active sentences; 65% received probation. All active sentences result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 28 months. Therefore, at a minimum, one conviction resulting from the expanded scope of this crime will require at least nine months of supervision. The cost of nine months of supervision is \$1,175 per offender (\$130.50 per month times nine months).<sup>4</sup>

In FY 2013-14, 51% of Class F felony offenders received active sentences; 49% received probation. All active sentences result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 32 months. Therefore, at a minimum, one conviction resulting from the expanded scope of this crime will require at least nine months of supervision. The cost of nine months of supervision is \$1,175 per offender (\$130.50 per month times nine months).<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:**

It is unclear if the expansion to the precursor chemical list in subsection (d2) would increase the number of prosecutions under (d1)(2), the Class F felony offense for possession of a precursor chemical with the intent to manufacture methamphetamine, as opposed to the Class H felony offense under (d1)(1) and (2) for intent to manufacture any controlled substance.

According to AOC:

[T]he issue is unclear because there is a problem with the list of precursor offenses. Subsection (d2) provides that the precursor list applies to “subsection (d1) and (d1a) of this section.” There is no (d1a); what currently appears as (d1)(2) was drafted as (d1a) in S.L. 2004-178. The Revisor of Statutes changed it after enactment but made no conforming change to (d2). Because criminal statutes are construed strictly against the State, and (d2) does not apply the precursor list to (d1)(2), it is unclear whether or not a precursor prosecution under (d1)(2) is even possible.

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**DATE:** April 23, 2015



**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, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.