

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2015**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 804 (Second Edition)

**SHORT TITLE:** Kelsey Smith Act.

**SPONSOR(S):** Representatives Hurley, Glazier, Schaffer, and Lambeth

<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>					
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 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: \$165 per disposition
- Indigent Defense Services: \$188 per disposition
- Department of Public Safety (DPS) - Prison Section: No cost
- DPS - Community Corrections: Minimum of \$1,958 per conviction

Please see the Assumptions and Methodology section for additional information.

**BILL SUMMARY:**

Section 2 of this bill proposes amending Chapter 15A of the General Statutes by adding new Article 16C. This new Article directs that a wireless service provider provide call location information of a

telecommunications device to law enforcement in an emergency situation that involves imminent risk of death or serious physical harm. A cause of action against the provider or its employees for providing tracking information in answering a request under this Article would not be allowed. The new Article also directs the State Bureau of Investigation to maintain a database of emergency contact information for each wireless telecommunications carrier registered to do business in North Carolina.

Section 3(a) of the bill creates new G.S. 15A-265. This section allows a law enforcement officer to install and use a pen register or trap and trace device before an order could be obtained if the officer determines that an emergency situation exists and that there are grounds that an order could be entered authorizing such use. This section also requires the officer seek an order to approve the installation and use of the device within 48 hours after the installation and provides how the use of such a device should terminate. An officer that does not seek an order within 48 hours of installation is in violation of this Chapter and is subject to a Class 1 Misdemeanor. Section 3(b) makes conforming changes.

## **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. 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.

### **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(a) of the bill creates a new Class 1 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 provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$165.

The Office of Indigent Defense Services (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, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 Misdemeanor is \$188 per case for a private appointed counsel (PAC) attorney. This estimate assumes 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**

This bill creates a new Class 1 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences 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 misdemeanor 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, 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 \$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, intermediate sanctions and supervised probation.

In FY 2013-14, 30% of Class 1 misdemeanor offenders received active sentences with an average sentence length of 37 days; 70% received probation. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one conviction resulting from this bill will require at least 15 months of supervision. The cost of 15 months of supervision is \$1,958 per offender (\$130.50 per month times 15 months).<sup>1</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:** Jordan Paschal and William Childs

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<sup>1</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.

**APPROVED BY:**

Mark Trogdon, Director  
Fiscal Research Division

**DATE:** July 27, 2015



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