

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 343 (Fourth Edition)
SHORT TITLE: Student Assault on Teacher/Felony Offense.
SPONSOR(S): Senator Tillman

FISCAL IMPACT					
(\$ 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
State Impact					
General Fund Revenues:					
General 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: December 1, 2015					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated, and having penalties applied to those convicted of the new offenses. However, given that there is no historical data on the new offenses 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:

- Administrative Office of the Courts: \$501 to \$752 per felony disposition
- Indigent Defense Services: \$353 to \$462 per felony disposition
- Department of Public Safety (DPS) - Prison Section: \$3,510 to \$4,914 per felony conviction resulting in an active sentence
- DPS - Community Corrections: \$1,175 to \$10,179 per felony conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill creates a new section within Article 8 of Chapter 14, G.S. 14-33.3, Student Assault on a School Employee. The statute makes it unlawful for a student to assault a school employee if the student is 16 years old or older and does not have an Individualized Education Program (IEP) or Section 504 Plan. The first offense is a Class A1 misdemeanor; the second offense is a Class H felony; and third or subsequent offenses are Class G 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 creates 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.

Charges and Convictions

This conduct could currently be charged under several existing laws, including G.S. 14.33(c)(6), Assault on a school employee/volunteer. In FY 2013-14, 94 defendants were charged with 106 counts of this offense. In the same year, there were 29 convictions for this offense (charges and convictions do not always occur in the same year). G.S. 14.33(c)(6) is not limited to students as the new offense is. It is not known how many of the defendants charged in FY 2013-14 were students. It is also not known how many of the defendants had prior convictions for assaulting a school employee.

Since the first offense covered by the new statute is already a Class A1 misdemeanor, the creation of that offense is presumed to have no fiscal impact. This incarceration note will address the creation of the new Class H and Class G felonies for second and subsequent offenses.

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 creates two new felony offenses. Because these are new offenses, 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. The following table shows AOC’s cost by offense class for every one person charged.

AOC Cost by Offense Level	
Offense Level	Cost
Class H felony	\$501
Class G felony	\$752

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. The following table shows the weighted average cost for each offense level 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, these costs may not be incurred.

IDS Cost by Offense Level		
Offense Level	Percent Using IDS	Cost
Class H felony	78%	\$353
Class G felony	78%	\$462

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 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 creates 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 beds may be required as a result of this bill.

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.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2016	June 30 2017	June 30 2018	June 30 2019	June 30 2020
1. Inmates ²	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
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

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. The following table shows the cost for each additional offender receiving an active sentence by offense level.

DPS – Prison Per Diem Cost by Offense Level			
	% Active	Average Sentence Length (Months)	Cost
Class H felony	35%	10	\$3,510
Class G felony	40%	14	\$4,914

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

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 2015.

³ 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.

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.

Both Class H and Class G felonies result in nine months of PRS. The cost of nine months of PRS is \$1,175 (\$130.50 times nine months). There may also be costs for convicted offenders sentenced to supervised probation. The following table shows the CCS costs for supervised probation by offense level.⁴

CCS Supervised Probation Cost by Offense Level			
Offense Level	% Supervised Probation	Average Sentence Length (Months)	Cost
Class H felony	65%	28	\$9,828
Class G felony	60%	29	\$10,179

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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DATE: April 29, 2015



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⁴ 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.