

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** Senate Bill 532 (First Edition)

**SHORT TITLE:** Landowner Encroachment and Timber Theft Act.

**SPONSOR(S):** Senators McInnis and Brock

**FISCAL IMPACT**

**Yes**       **No**       **No Estimate Available**

<b>State Impact</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
General Fund Revenues:					
General Fund Expenditures	\$8,227	\$12,642	\$15,269	\$15,673	\$15,970
State Positions:					
<b>NET STATE IMPACT</b>	<b>(\$8,227)</b>	<b>(\$12,642)</b>	<b>(\$15,269)</b>	<b>(\$15,673)</b>	<b>(\$15,970)</b>

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

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

**EFFECTIVE DATE:** July 1, 2017

**TECHNICAL CONSIDERATIONS:**

Yes - See Technical Considerations Section

**FISCAL IMPACT SUMMARY:**

This bill will have a fiscal impact. The following costs are estimated in the first year:

- Administrative Office of the Courts: \$6,915
- Indigent Defense Services: \$1,312
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: No cost in first year; savings of \$3,744 in second year

Please see the Assumptions and Methodology section for additional information.

**BILL SUMMARY:**

This bill increases the penalty for four existing misdemeanor offenses and one existing felony offense.

Section 2 reclassifies G.S. 14-128, Injury to trees, crops, lands, etc., of another, from a Class 1 misdemeanor to a Class A1 misdemeanor.

Section 3 reclassifies G.S. 14-136, Setting fire to grass and brushlands and woodlands, from a Class 2 misdemeanor for the first offense to a Class 1 misdemeanor and from a Class 1 misdemeanor for a second

or subsequent offense to a Class A1 misdemeanor. This section also makes it a Class H felony for violating this statute with intent to damage the property of another (currently a Class I felony).

Section 4 reclassifies G.S. 14-138.1, Setting fire to grassland, brushland, or woodland, from a Class 3 misdemeanor to a Class 2 misdemeanor.

Section 5 reclassifies G.S. 14-383, Cutting timber on town watershed without disposing of boughs and debris, misdemeanor, from a Class 2 misdemeanor to a Class 1 misdemeanor.

## **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 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.

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 (AOC) 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 table below shows the estimated cost increase per case for those offenses that are increasing under this bill.

<b>AOC Cost Differential for Criminal Penalty Increases</b>					
<b>Offense</b>	<b>Current Charge Class</b>	<b>Current Cost</b>	<b>New Charge Class</b>	<b>New Cost</b>	<b>Cost Difference per Case</b>
G.S. 14-128	Class 1 MD	\$206	Class A1 MD	\$357	\$151
G.S. 14-136 (1 <sup>st</sup> offense)	Class 2 MD	\$110	Class 1 MD	\$206	\$96
G.S. 14-136 (2 <sup>nd</sup> or subsequent)	Class 1 MD	\$206	Class A1 MD	\$357	\$151
G.S. 14-136 (with intent)	Class I felony	\$455	Class H felony	\$625	\$170
G.S. 14-138.1	Class 3 MD	\$39	Class 2 MD	\$110	\$71
G.S. 14-383	Class 2 MD	\$110	Class 1 MD	\$206	\$96

AOC does not have specific offense codes for several of these offenses, which is some indication that they are infrequently charged. For the offenses that do have data on the number of defendants charged in FY 2015-16, the estimated cost of the same number of cases prosecuted at the higher offense level is shown in the following table.

<b>Estimated Cost of Increase to AOC</b>					
<b>Offense</b>	<b>Current Charge Class</b>	<b>New Charge Class</b>	<b>Cost Difference per Case</b>	<b>Charges FY 2015-16</b>	<b>Est. Cost of Increase</b>
G.S. 14-128	Class 1 MD	Class A1 MD	\$151	67	\$10,117
G.S. 14-136 (1 <sup>st</sup> offense)	Class 2 MD	Class 1 MD	\$96	No code	Unknown
G.S. 14-136 (2 <sup>nd</sup> or subsequent)	Class 1 MD	Class A1 MD	\$151	No code	Unknown
G.S. 14-136 (with intent)	Class I felony	Class H felony	\$170	No code	Unknown
G.S. 14-138.1	Class 3 MD	Class 2 MD	\$71	20	\$1,420
G.S. 14-383	Class 2 MD	Class 1 MD	\$96	No code	Unknown

The table below shows the estimated cost for AOC based on the violations with charge data available. The first year has been adjusted to account for a December 1, 2017 effective date.

<b>AOC Cost for Increased Penalties for G.S. 14-128 and G.S. 14-138.1</b>					
	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>
G.S. 14-128 (67 charges)	\$6,064	\$10,698	\$11,017	\$11,309	\$11,523
G.S. 14-138.1 (20 charges)	\$851	\$1,502	\$1,547	\$1,588	\$1,618
<b>Total AOC Cost</b>	<b>\$6,915</b>	<b>\$12,200</b>	<b>\$12,564</b>	<b>\$12,897</b>	<b>\$13,141</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (January 2017)</i>					

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 table below shows the estimated cost increase per case for those offenses that are increasing under this bill.

IDS Cost Differential for Criminal Penalty Increases							
Offense	Current Charge Class	% Using IDS	Current Cost	New Charge Class	% Using IDS	New Cost	Cost Difference per Case
G.S. 14-128	Class 1 MD	39%	\$202	Class A1 MD	52%	\$201	(\$1)
G.S. 14-136 (1 <sup>st</sup> offense)	Class 2 MD	30%	\$201	Class 1 MD	39%	\$202	\$1
G.S. 14-136 (2 <sup>nd</sup> or subsequent)	Class 1 MD	39%	\$202	Class A1 MD	52%	\$201	\$1
G.S. 14-136 (with intent)	Class I felony	68%	\$333	Class H felony	78%	\$392	\$59
G.S. 14-138.1	Class 3 MD	21%	\$200	Class 2 MD	30%	\$201	\$1
G.S. 14-383	Class 2 MD	30%	\$201	Class 1 MD	39%	\$202	\$1

For the offenses that have data on the number of defendants charged in FY 2015-16, a cost estimate for IDS can be calculated by taking the number of charges and applying the utilization rates for each classification level. In FY 2015-16, 67 defendants were charged with a Class 1 misdemeanor for violation of G.S. 14-128. Of those, 39%, or 26 defendants, used IDS services for a total cost of \$5,252 (26 defendants times \$202 per case). 52%, or 35 defendants, would be expected to use IDS services at the Class A1 misdemeanor level, for a total cost of \$7,035 (35 defendants time \$201 per case). The difference is an increase in cost of \$1,783.

In the same year, 20 defendants were charged with a Class 3 misdemeanor for violation of G.S. 14-138.1. Of those, 21%, or 4 defendants, used IDS services for a total cost of \$800 (4 defendants times \$200 per case). 30%, or 6 defendants, would be expected to use IDS services at the Class 2 misdemeanor level, for a total cost of \$1,206 (6 defendants times \$201 per case). The difference is an increase in cost of \$406.

The table below shows the estimated cost for IDS based on the violations with charge data available. The first year has been adjusted to account for a December 1, 2017 effective date.

IDS Cost for Increased Penalties for G.S. 14-128 and G.S. 14-138.1					
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
G.S. 14-128 (67 charges)	\$1,069	\$1,885	\$1,941	\$1,992	\$2,030
G.S. 14-138.1 (20 charges)	\$243	\$429	\$442	\$454	\$463
Total IDS Cost	\$1,312	\$2,314	\$2,383	\$2,446	\$2,493
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (January 2017)</i>					

### **Department of Public Safety – Prisons**

This bill increases several misdemeanor penalties. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population for these increases because all misdemeanor offenders who receive active sentences will serve them in the local jail.

The bill also increases a Class I felony to a Class H felony. 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 2016.

<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.

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). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add (total) inmates to the prison system by the end of FY 2018-19.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>
1. Inmates <sup>2</sup>	36,906	37,116	36,814	36,821	37,010
2. Prison Beds (Expanded Capacity)	37,617	37,617	37,617	37,617	37,617
3. Beds Over/(Under) Inmate Population	711	501	803	796	607
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>					
<b>5. Additional Beds Required</b>					

This bill increases the penalty for violation of G.S. 14-136 from a Class I felony to a Class H felony. AOC does not have an offense code for this offense, which is some indication that it is infrequently charged. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed section because of the higher rate of active sentences (15% for Class I compared to 35% for Class H) and longer average estimated time served (7 months for Class I compared to 11 months for Class H). The following table shows the estimated annual impact if, for example, there were 9 convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class I to Class H. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
9 (Threshold)	2	3	3	3	3
20	5	6	6	6	6

<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 2017.

<sup>3</sup> Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Although no additional beds will be required for this bill, additional spending will be required to house new prisoners or to house prisoners longer as a result of the increased penalty. Per diem expenditures for each inmate are approximately \$15.02, or \$457 per month.

**Department of Public Safety – Community Corrections**

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.

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 are supervised by the Community Corrections (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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. The table below shows the percent of convictions sentenced to probation and the average sentence length (ASL) for each offense class.

<b>Percent Sentenced to Probation and Average Sentence Length (ASL) by Offense Level</b>						
<b>Offense</b>	<b>Current Charge Class</b>	<b>% Probation</b>	<b>ASL (Months)</b>	<b>New Charge Class</b>	<b>% Probation</b>	<b>ASL (Months)</b>
G.S. 14-128	Class 1 MD	69%	15	Class A1 MD	65%	17
G.S. 14-136 (1 <sup>st</sup> offense)	Class 2 MD	66%	14	Class 1 MD	69%	15
G.S. 14-136 (2 <sup>nd</sup> , 3 <sup>rd</sup> ...)	Class 1 MD	69%	15	Class A1 MD	65%	17
G.S. 14-136 (with intent)	Class I felony	85%	23	Class H felony	65%	27
G.S. 14-138.1	Class 3 MD	76%	12	Class 2 MD	66%	14
G.S. 14-383	Class 2 MD	66%	14	Class 1 MD	69%	15

Savings may occur in the first year of implementation because a higher percentage of convictions will receive active sentences and will serve those in the local jails. However, in the second and subsequent years, there may be a slight increase in costs because supervised probations sentences at the higher offense class levels have longer average sentence lengths (from one to four months longer than the current class levels). For every one additional month of supervised probation, the cost will be \$148.

In FY 2015-16, there were eight Class 1 misdemeanor convictions for violations of G.S. 14-128. That year, 35% of Class A1 misdemeanor convictions resulted in active sentences. 65% received supervised probation for 17 months. The table below shows the estimated cost to CCS for the proposed increase from a Class 1 misdemeanor to a Class A1 misdemeanor.

<b>Difference in CCS Cost for Increase from Class 1 to Class A1 Misdemeanor (8 Convictions for violation of G.S. 14-128)</b>					
<b>CCS</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>
<b>Cost of Current Offense</b>	\$0	\$11,232	\$14,490	\$14,850	\$15,120
<b>Cost of Proposed Offense</b>	\$0	\$9,360	\$13,685	\$14,025	\$14,280
<b>Cost Differential</b>	\$0	(\$1,872)	(\$805)	(\$825)	(\$840)
<i>Costs have been adjusted for inflation based on rates from Moody's economy.com, Jan. 2017</i>					

In FY 2015-16, there were ten Class 3 misdemeanor convictions for violations of G.S. 14-138.1. That year, 34% of Class 2 misdemeanor convictions resulted in active sentences. 66% received supervised probation for 14 months. The table below shows the estimated cost to CCS for the proposed increase from a Class 3 misdemeanor to a Class 2 misdemeanor.

<b>Difference in CCS Cost for Increase from Class 3 to Class 2 Misdemeanor (10 Convictions for violation of G.S. 14-138.1)</b>					
<b>CCS</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>
<b>Cost of Current Offense</b>	\$0	\$14,976	\$15,456	\$15,840	\$16,128
<b>Cost of Proposed Offense</b>	\$0	\$13,104	\$15,778	\$16,170	\$16,464
<b>Cost Differential</b>	\$0	(\$1,872)	\$322	\$330	\$336
<i>Costs have been adjusted for inflation based on rates from Moody's economy.com, Jan. 2017</i>					

**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:** The effective date of the bill is July 1, 2017. Typically, criminal penalty changes are effective December 1 to give law enforcement and the court system sufficient lead time to make the necessary preparations, including education of officials, changes to forms, and changes to computer case index systems.

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