



NORTH CAROLINA GENERAL ASSEMBLY

Session 2017

Legislative Incarceration Fiscal Note

Short Title: Heroin & Opioid Prevention & Enforcement Act.
Bill Number: Senate Bill 616 (Fourth Edition)
Sponsor(s):

SUMMARY TABLE

FISCAL IMPACT OF S.B. 616, V.4 (\$ in millions)

	<u>FY 2018-19</u>	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>
State Impact					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Estimate Available - Refer to Fiscal Analysis section
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FISCAL IMPACT SUMMARY

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense or the creation of new offenses. However, since there is no historical data on this offense, or similar offenses to use as a proxy for predicting the total number of 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: \$5,789 to \$225 per disposition, depending on level of offense
- Indigent Defense Services: \$958 to \$202 per disposition, depending on level of offense
- Department of Public Safety (DPS) - Prisons: \$43,460 to \$0, depending on level of offense
- DPS - Community Corrections: \$6,480 to \$1,458 per supervised probation or post-release supervision

FISCAL ANALYSIS

Bill Summary

This summary only covers the sections of the bill that impact this Incarceration Note. Part II, Sections 4, 5, and 7 create new regulated substances and changes the classification of these

regulated substances. These substances carry a host of varying degrees of possible criminal penalties. Sections 4 and 5's expanded substance list may result in new convictions ranging from Class C, D, E, F, G, H, and I felonies and Class 1 misdemeanors. Section 7 may result in new Class C, E, and F felony convictions. Section 9 also creates new criminal penalties related to distribution of certain controlled substances. This section may result in new Class G or Class E felony convictions. Part III, Section 11(a) creates three new criminal offenses carrying Class H and Class I felony charges.

Due to the large number of new criminal penalties included in this bill, for the sake of brevity, the fiscal impact of each class of conviction has been listed only once, regardless of how many new penalties in the bill may fall under that class.

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, 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 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.

Because this bill creates 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 bill creates new Class C, Class D, Class E, Class F, Class G, Class H, and

Class I felonies, as well as new Class 1 misdemeanors. The following table shows the average cost to the court for every additional person charged with each class of offense.

Class of Offense	Average Cost to the Court
Class C Felony	\$5,789
Class D Felony	\$4,731
Class E Felony	\$2,209
Class F Felony	\$1,245
Class G Felony	\$1,027
Class H Felony	\$684
Class I Felony	\$498
Class 1 Misdem.	\$225

The Office of Indigent Defense Services (IDS) provides 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.

Each average cost below uses data from FY 2016-17, the most recent available. Each 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.

Class of Offense	Percentage of Cases Through IDS	Weighted Average Cost for PAC Attorney
Class C Felony	82%	\$958 (inc. expert costs)
Class D Felony	89%	\$961
Class E Felony	79%	\$586
Class F Felony	74%	\$569
Class G Felony	78%	\$498
Class H Felony	78%	\$392
Class I Felony	68%	\$333
Class 1 Misdem.	39%	\$202

Department of Public Safety – Prisons

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 2017.

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.

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, because the Sentencing Commission cannot estimate the number of felony convictions resulting in active sentences as a result of this specific legislation, no estimate is available.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2019	June 30 2020	June 30 2021	June 30 2022	June 30 2023
1. Inmates ²	36,628	36,820	37,115	37,273	37,488
2. Prison Beds (Expanded Capacity)	38,189	38,189	38,189	38,189	38,189
3. Beds Over/(Under) Inmate Population	1,561	1,369	1,0704	916	701
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

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. 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.

In FY 2016-17, 100% of Class C felony convictions resulted in active sentences, with an average estimated time served of 82 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year. The five year estimate in this and all the following tables in this section takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions

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 2018.

³ Criminal penalty bills effective December 1, 2018 should not affect prison population and bed needs until FY 2019-20 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Class C Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In FY 2016-17, 99% of Class D felony convictions resulted in active sentences, with an average estimated time served of 64 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In FY 2016-17, 58% of Class E felony convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	3	3	3	3
20	12	26	32	33	33

In FY 2016-17, 52% of Class F felony convictions resulted in active sentences, with an average estimated time served of 18 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	2	2	2
20	10	19	20	20	21

In FY 2016-17, 39% of Class G felony convictions resulted in active sentences, with an average estimated time served of 15 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were three convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	15	15	15	15

In FY 2016-17, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	7	11	11	11	11

In FY 2016-17, 13% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was eleven convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
11 (Threshold)	1	2	3	4	5
20	2	5	5	5	5

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 \$17.42 per day, or \$530 per month, which includes the cost of food, clothing, and health care. The following

table, using FY 2016-17 data, shows the number of offenders receiving active sentences for each class of offense and the cost of their active sentence based on the average length of their sentences.

Class of Offense	Percent Receiving Active Sentences	Average Length of Time Served (Months)	Average Cost
Class C Felony	100%	82	\$43,460
Class D Felony	99%	64	\$33,920
Class E Felony	58%	27	\$14,310
Class F Felony	52%	18	\$9,540
Class G Felony	39%	15	\$7,950
Class H Felony	34%	11	\$5,830
Class I Felony	13%	7	\$3,710

This bill also 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.

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 face the same non-active sentences as felons.

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 \$162 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 probation.

All active sentences for Class B1 through E felonies result in 12 months of post-release supervision (PRS). As noted in the previous section, 100% of Class C, 99% of Class D, and 58% of Class E offenders receive active sentences and therefore would cost \$1,944 per offender (\$162 per month times 12 months).

All active sentences for Class F through I felonies result in 9 months of PRS. Therefore, the cost of each active sentence for each class of felony is listed in the following table:

Class of Offense	Percent Receiving Active Sentences	Months of PRS	Cost
Class F Felony	52%	9	\$1,458
Class G Felony	39%	9	\$1,458
Class H Felony	34%	9	\$1,458
Class I Felony	13%	9	\$1,458

Offenders who receive probation carry a similar cost of \$162 per offender per month. The following table shows the average length of probation imposed for each offense class, along with the subsequent average cost per offense (arrived at by multiplying \$162 per month times the average number of months):

Class of Offense	Average Months of Probation	Average Cost
Class D Felony	40	\$6,480
Class E Felony	33	\$5,346
Class F Felony	31	\$5,022
Class G Felony	29	\$4,698
Class H Felony	26	\$4,212
Class I Felony	23	\$3,726
Class 1 Misdem	15	\$2,430

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal

impacts on State or local governments and does not address sections that have no projected fiscal impacts.

CONTACT INFORMATION

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