



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

## Legislative Incarceration Fiscal Note

**Short Title:** Human Trafficking Commission Recommendations.-AB  
**Bill Number:** House Bill 198 (Second Edition)  
**Sponsor(s):**

### SUMMARY TABLE

#### FISCAL IMPACT OF H.B. 198, V.2 (\$ in millions)

	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	=	=	=	=	=
<b>General Fund Impact</b>	<b>No Estimate Available - Refer to Fiscal Analysis section</b>				

<b>NET STATE IMPACT</b>	<b>No Estimate Available - Refer to Fiscal Analysis section</b>
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### FISCAL IMPACT SUMMARY

The proposed bill may have a fiscal impact because of the application of more stringent penalties for each offense. 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 range of costs may be incurred for every one person charged and convicted of these expanded and new crimes:

- Administrative Office of the Courts: \$1,065-\$6,001 per disposition
- Indigent Defense Services: \$498-\$958 per disposition
- Department of Public Safety (DPS) - Prisons: \$8,070-\$43,578
- DPS - Community Corrections: Minimum of \$1,920

### 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.

House Bill 198 implements recommendations of the North Carolina Human Trafficking Commission to criminalize buyer conduct in cases of sexual servitude and prohibit the promotion or sale of sex tourism services.

Part One (Section 1) of the proposal amends G.S. 14-43.13 (Sexual Servitude) to make the offense a Class D felony when the person maintains or obtains another person for the purposes of sexual servitude involving and adult. In addition, it makes it a Class C offense if the individual is a minor. In FY 2017-18, there were no convictions for violations of G.S. 14-43.13 but the proposal expands the scope of the statute.

Part One (Section 2) of the proposal creates a new section to Article 27 of Chapter 14 (Prostitution) and creates a new Class G for an offense of Promoting Travel for Unlawful Sexual Conduct

## **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 1**

This section of the bill expands an existing Class D felony offense. It is not known how many additional convictions may occur as a result of the expansion of G.S. 14-43.1. Because this is an expansion of an 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 D felony, the average cost to the court would be \$4,905.

In addition this section expands Class C felonies for convictions involving minors. It is not known how many additional convictions may occur as a result of the Class C expansion of G.S. 14-43.1. Because this is an expansion of an 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 C felony, the average cost to the court would be \$6,001.

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.

In FY 2017-18, the most recent year data is available, 89% of Class D felony cases were handled through IDS. The weighted average cost of a new Class D felony is \$961 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.

In addition, 82% of Class C felonies were handled by IDS. The weighted average cost of a new Class C felony is \$899 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.

## **Section 2**

This section creates a new Class G felony for violations of this new section. The Sentencing Commission does not have any historical data to estimate its impact. This section of the bill creates a new Class G felony 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 G felony, the average cost to the court would be \$1,065.

In FY 2017-18, the most recent year data is available, 78% of Class D felony cases were handled through IDS. The weighted average cost of a new Class G felony is \$498 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 – 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,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2018.

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

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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.

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 2019-20.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>	<b>June 30 2023</b>	<b>June 30 2024</b>
1. Inmates <sup>2</sup>	36,452	36,867	37,231	37,433	37,702
2. Prison Beds (Expanded Capacity)	38,225	38,225	38,225	38,225	38,225
3. Beds Over/(Under) Inmate Population	1,773	1,358	994	792	523
4. <i>Additional Inmates Due to this Bill</i> <sup>3</sup>	<b>No estimate available</b>				
5. <i>Additional Beds Required</i>					

Since the bill expands an existing offense, 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 2017-18, 99% of Class D felony convictions resulted in active sentences, with an average estimated time served of 64 months. In FY 2017-18, 100% of Class C convictions resulted in an active sentences, with an average estimated time served of 81 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 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.

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

<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 2019.

<sup>3</sup> Criminal penalty bills effective December 1, 2019 should not affect prison population and bed needs until FY 2020-21 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class C 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>
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

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 \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 99% of Class D felony offenders received active sentences averaging 64 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$34,432 (\$538 monthly cost times 64 months). In addition, for every one Class C felony offender receiving an active sentence, the cost to the prison section will be \$43,578 (\$538 monthly cost times 81 months).

## **Section 2**

In FY 2017-18, 40% 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. 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 growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G 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>
3 (Threshold)	1	2	3	4	5
20	9	15	15	15	15

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 \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 40% of Class G felony offenders received active sentences averaging 64 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$8,070 (\$538 monthly cost times 15 months).

## **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 \$160 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.

## **Section 1**

In FY 2017-18, 99% of Class D felony offenders received active sentences. The average length of probation imposed for this offense class was 42 months. All active sentences for Class B1 through E felonies result in 12 months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of twelve months of supervision is \$1,920 per offender (\$160 per month times 12 months).<sup>4</sup> For every offender sentenced to probation, the average cost would be \$6,720 (\$160 per month times 42 months). In addition, In FY 2017-18, 100% of Class C felony offenders received active sentences. All active sentences for Class B1 through E felonies result in 12 months of post-release supervision (PRS). Therefore one conviction resulting from this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,920 per offender (\$160 per month times 12 months).<sup>5</sup>

## **Section 2**

In FY 2017-18, 40% of Class G felony offenders received active sentences and 60% received suspended sentences. The average length of probation imposed for Class G felony offenders receiving suspended sentences was 29 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,440 per offender

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<sup>4</sup> Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2018-19. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2019-20.

<sup>5</sup> Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.

(\$160 per month times 9 months).<sup>6</sup> For every offender sentenced to probation, the average cost would be \$4,640 (\$160 per month times 29 months).

**ESTIMATE PREPARED BY**

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March 19, 2019



Signed copy located in the NCGA Principal Clerk's Offices

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<sup>6</sup> Due to the effective date of December 1, 2018 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2018-19. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2019-20.