



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Legislative Incarceration Fiscal Note

Short Title: Modernizing Sexual Assault Laws.
Bill Number: House Bill 393 (First Edition)
Sponsor(s):

SUMMARY TABLE

FISCAL IMPACT OF H.B. 393, V.1 (\$ 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>
State Impact					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	-	-	-	-	-
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

HB 393 proposes expanding G.S. 14-401.11 (Distribution of certain food at Halloween and all other times prohibited) to include the distribution of certain “beverages” or “drinkable” substances.

Section 2

Under the penalty subsection (b)(1), violations of subsection (a)(1) would be limited to substances that cause a “person any physical discomfort” would be a Class I felony.

Under the penalty subsection (b)(2), violations of (a)(1) would be any controlled substance that “the actual or possible effect on a person eating the food or substance was or would be greater than mild physical discomfort without any lasting effect” would be a Class H felony.

Under the penalty subsection (b)(3), violations of (a)(2), any controlled substance listed in the Controlled Substances Act schedule would be a Class F felony.

Under the penalty subsection (b)(4), violations of (a)(3) would be any “poisonous chemical or compound or any foreign substance such as, but not limited to, razor blades, pins, and ground

glass, which might cause death, serious physical injury or serious physical pain and discomfort.” These violations would be a Class C felony.

Section 3

Section 3 amends G.S. 14-27.202(2) broadens the definition of “mentally incapacitated” to include acts committed by the victim as well as the perpetrator to cover three offenses.

- 1) G.S. 14-27.22 (Second-degree forcible rape) is a Class C felony.
- 2) G.S. 14-27.27 (Second-degree forcible sexual offense) is a Class C felony.
- 3) G.S. 14-27.33 (Sexual battery violation) is a Class A1 misdemeanor.

However, since there is no historical data on the impact of broadening the offenses covered under Section 2, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. In addition, the offenses covered under Section 3, there were 52 convictions in FY 2017-18 for violations of G.S. 14-27.22, but it isn’t known how many additional convictions may result from the change. There were 30 convictions for violations of G.S. 14-27.27, but it isn’t known how many additional convictions may result from the change. Finally, there were 162 convictions for violations of G.S. 14-27.33, but it isn’t known how many additional convictions may result from the change.

The proposed bill may have a fiscal impact because of the application of a more stringent penalty 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 ranges may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$404-\$6,001 per disposition
- Indigent Defense Services: \$201-\$958 per disposition
- Department of Public Safety (DPS) - Prisons: \$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.

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. AOC provides estimates of the average cost to the court for a charge by offense class.

Section 2

This section of the bill broadens the criteria of G.S. 14-401.11 to include “drinkable” items and makes violations a Class I 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 I felony, the average cost to the court would be \$516.

This section also expands the penalty for violations of G.S. 14-401.11 (a)(1). Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. For every additional person charged with a Class H felony, the average cost to the court would be \$709.

This section also expands the penalty for violations of G.S. 14-401.11 (a)(2). Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. For every additional person charged with a Class F felony, the average cost to the court would be \$1,291.

Finally, the bill expands violations of G.S. 14-401.11 (a)(3). Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. 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.

Below is a table of IDS cases and costs for FY 2017-18 for Section Two:

Crime	Handled by IDS	Weighted Average Cost*
Class I	68%	\$333
Class H	78%	\$392
Class F	74%	\$569
Class C	82%	\$899

*Cost per case for a Private Assigned Counsel (PAC) Attorney

Section 3

This section amends G.S. 14-27.20(2) by broadening the definition of “mentally incapacitated” to cover acts committed by the victim and the perpetrator, including expanding three offenses where the victim might be mentally incapacitated.

In FY 2017-18, there were 52 Class C convictions under G.S. 14.27-22 (Second-degree forcible rape), and there were 30 convictions under G.S. 14-27.27 (Second-degree forcible sexual offense). It is unknown how many additional convictions may result from the expansion. For every additional person charged with a Class C felony, the average cost to the court would be \$6,001.

Finally, there were 162 convictions under G.S. 14-27.33 (Sexual battery), but it is unknown has many additional convictions may be covered under the expansion of the current law. For every additional person charged with a Class A1 misdemeanor, the average cost to the court would be \$404.

In FY 2017-18, the most recent year data is available, 82% of Class C felony cases were handled through IDS. The weighted average cost of a new Class C felony is \$958 per case for a private appointed counsel (PAC) attorney including expert costs. . In addition, 52% of Class A1 misdemeanor cases were handled through IDS the weighted average cost of a new Class A1 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney. These estimates assume 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,¹ 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

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.

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 2019-20.

Section 2

Population Projections and Bed Capacity Five Year Impact					
	June 30 2020	June 30 2021	June 30 2022	June 30 2023	June 30 2024
1. Inmates ²	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. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

Since the bill expands the criteria for 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 2017-18, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. The following table shows the estimated annual impact if there were 10 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.

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

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 2019.

³ 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.

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, 15% of Class I felony offenders received active sentences averaging 7 months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,766 (\$538 monthly cost times 7 months).

In FY 2017-18, 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. 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.

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 2017-18, 51% of Class F felony convictions resulted in active sentences, with an average estimated time served of 19 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. 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.

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	3	3	3
20	11	19	22	22	22

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, 51% of Class F felony offenders received active sentences averaging 19 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$10,222 (\$538 monthly cost times 19 months).

In FY 2017-18, 100% of Class C felony convictions resulted in 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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions 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 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, 100 % of Class C felony offenders received active sentences averaging 81 months. 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).

This bill creates a new Class A1 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 \$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.

In FY 2017-18, 85% of Class I felony offenders received suspended sentences. The average length of probation imposed for this offense class was 23 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 (\$160 per month times 9 months).⁴ For every offender sentenced to probation, the average cost would be \$3,680 (\$160 per month times 23 months).

In FY 2017-18, 34% of Class H felony offenders received active sentences and 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for Class H felony offenders receiving a suspended sentence was 26 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 (\$160 per month times 9 months). For every offender sentenced to probation, the average cost would be \$4,160 (\$160 per month times 26 months).

In FY 2017-18, 49% of Class F felony offenders received suspended sentences. The average length of probation imposed for this offense class was 31 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 9 months of supervision. The cost of 9 months of supervision is \$1,440 per offender (\$160 per month times 9 months). For every offender sentenced to probation, the average cost would be \$4,960 (\$160 per month times 31 months).

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).

In FY 2017-18, 37% of Class A1 misdemeanor offenders received active sentences; 63% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 16 months. Therefore, at a minimum, one Class A1 misdemeanor conviction resulting in probation will require

⁴ 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.

at least 16 months of supervision. The cost of 16 months of supervision is \$2,560 per offender (\$160 per month times 16 months).

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