



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

## Legislative Incarceration Fiscal Note

**Short Title:** Arson Law Revisions  
**Bill Number:** House Bill 606 (First Edition)  
**Sponsor(s):**

### SUMMARY TABLE

#### FISCAL IMPACT OF H.B. 606, 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>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
<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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#### Local Impact

Local Revenue	-	-	-	-	-
Less Local Expenditures	-	-	-	-	-

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

HB 606 proposes revising a number of arson laws covering commercial structures. Section 1(a) repeals G.S. 14-60 (burning of schoolhouses or buildings of educational institutions) and proposes covering this conduct under G.S. 14-62.3. Subsections (b)-(f) adds “Unless the conduct covered under some other provision of the law providing greater punishment” to the crimes covered under this section:

Section 1(g) amends G.S. 14-62.3, burning of commercial structures, making it a Class D felony if the individual wantonly and willfully set fire to an occupied commercial structure, and creates a Class E felony if the structure was unoccupied at the time of the fire.

Section 2 (b) creates a Class F felony if the commission of the crime resulted in serious injury for a firefighter, law enforcement officer, fire investigator, or other emergency medical personnel. In addition, Subsection (c) creates a Class I felony if a firefighter, law enforcement officer, fire investigator, or other emergency medical personnel receives a physical injury as a result of the action.

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 costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$516-\$4,905 per disposition
- Indigent Defense Services: \$333-\$1,283 per disposition
- Department of Public Safety (DPS) - Prisons: \$3,766-\$34,432
- DPS - Community Corrections: Minimum of \$1,440 per supervised probation sentence

## **FISCAL ANALYSIS**

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### **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.



The repeal of G.S. 14-60 will have no significant impact on the courts because no defendant was charged last year with violating the statute. Subsection 1(g) creates a new Class D felony offense. Fifty-two defendants were charged with violating one of the statutes that may be covered under the replacement of G.S. 14-62.3, burning of commercial structures, last year. 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.

Section 2 lowers the penalty for violations of G.S. 14-69.3, Arson or other unlawful burning that results in injury to a firefighter, law enforcement officer, fire investigator, or other emergency medical technician, from a Class E to a Class F felony, and changes the criteria from “serious bodily injury” to “serious injury”. AOC does not have an offense code for violations of G.S. 14-69.3, which is an indication of how infrequently it is charged. The difference in costs between a Class E felony (\$2,290) and Class F felony (\$1,291) is \$999 per case. This section also adds a Class I felony for violations that result in “physical injury”. AOC does not have data on the number of arsons that may have caused physical injury. For every additional person charged with a Class I felony, the average cost to the court would be \$516.

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. The difference between a Class E (\$586) and a Class F (\$569) felony is \$17 per case. Last fiscal year, 68% of Class I felony cases were handled by IDS. The weighted average is \$333 per case. 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,<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 impact of the bill.

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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.



<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
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>		<b>No estimate available</b>			
<b>5. Additional Beds Required</b>					

In FY 2017-18, 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 Sentencing Commission provides 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 results in the need for 1 prison bed the first year. 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

This conduct could currently be covered under the statutes listed in the following table if the structure is occupied at the time of the burning. Impact on the prison population would occur if any Class E, F, or H convictions become Class D convictions under the proposed bill because of the higher rate of active sentences (mandatory active for Class D compared to 60% for Class E, 51% for Class F, and 34% for Class H) and longer average estimated time served (64 months for Class D compared to 28 months for Class E, 19 months for Class F, and 11 months for Class H) for Class D convictions.

<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>G.S. Number</b>	<b>Description</b>	<b>Offense Class</b>	<b>FY 2018 Convictions</b>
G.S. 14-59	Burning of certain public buildings	Class F	0
G.S. 14-60	Burning of schoolhouses or buildings of educational institutions	Class F	0
G.S. 14-61	Burning of certain bridges and buildings	Class F	No AOC offense code
G.S. 14-62	Burning of certain buildings	Class F	7
G.S. 14-62.1	Burning of building or structure in process of construction	Class H	0
G.S. 14-62.2	Burning of churches and certain other religious buildings	Class E	0
G.S. 14-64	Burning of ginhouses and tobacco houses	Class H	No AOC offense code
G.S. 14-67.1	Burning other buildings	Class H	No AOC offense code

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).

Subsection (c) makes it a Class E felony if the burning of the commercial structure was unoccupied at the time of the fire. Since the proposed change creates a new offense, the Sentencing Commission does not have any historical data to consider. In FY 2017-18, 60% of Class E felony convictions resulted in active sentences, with an average estimated time served of 28 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. 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 E 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>
2 (Threshold)	1	3	4	4	4
20	13	27	34	35	35

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, 60% of Class E felony offenders received active sentences averaging 28 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$15,064 (\$538 monthly cost times 28 months).

Section 2 modifies the offense class and criteria under G.S. 14-69.3(b) from a Class E to a Class F felony, and changes the conduct from “serious bodily injury” to “serious injury”. AOC does not have a specific offense code for violations of this provision which is an indication that it is not charged and/or few convictions result.

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.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F 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>
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).

The Sentencing Commission notes that the depending upon the number of convictions that may result from this change there could be bed savings from the reclassification from a Class E to a Class F felony. 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. In addition, there could be some impact on post-release supervision caseloads since Class F requires a shorter period of supervision (9 months as compared to 12 months).

<b>Estimated Prison Bed Savings Using Threshold Convictions and 20 Convictions</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	0	1	1	1	1
20	2	8	12	13	13

This section also creates a new Class I felony for conduct that results in physical injury to the identified groups of responders. Since this proposal creates a new offense, there is no historical data to use to determine the impact.

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.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I 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>
10 (Threshold)	1	2	2	2	2
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 \$17.69 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).

### **Department of Public Safety – Juvenile Justice**

The following analysis estimates the impact of changes in offense classification for existing offenses; it does not take into account any impact on the youth development center (YDC) population resulting from the creation of new offenses.

<b>G.S. Number</b>	<b>Description</b>	<b>Offense</b>	<b>FY 2018</b>
G.S. 14-59	Burning of certain public buildings	Serious: Class F	1
G.S. 14-60	Burning of schoolhouses or buildings of educational institutions	Serious: Class F	1
G.S. 14-61	Burning of certain bridges and buildings	Serious: Class F	0
G.S. 14-62	Burning of certain buildings	Serious: Class F	6
G.S. 14-62.1	Burning of building or structure in process of construction	Serious: Class H	1

G.S. 14-62.2	Burning of churches and certain other religious buildings	Violent: Class E	0
G.S. 14-64	Burning of ginhouses and tobacco houses	Serious: Class H	0
G.S. 14-67.1	Burning other buildings	Serious: Class H	0

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 Structured Sentencing Simulation Data Impact

There may be an impact of the on the YDC population if offenses that are classified as Serious offenses become Violent offenses under the proposed change. An impact may occur as a result of the higher rate of Level 3 (YDC) dispositions (34% for Violent compared to 4% for Serious) and the longer average length of stay (16 months for Violent compared to 12 months for Serious). The impact on the population would depend on the number of Level 3 dispositions involved.

In FY 2018, there were no juvenile dispositions for this offense covered under amends G.S. 14-69.3.

The Sentencing Commission notes that “the reduction in the required injury, YDC savings will occur if Class E dispositions (Juvenile Offense Classification: Violent) become Class F dispositions (Juvenile Offense Classification: Serious) because of the lower rate of Level 3 (YDC) dispositions (4% for Serious compared to 34% for Violent) and the shorter average length of stay (12 months for Serious compared to 16 months for Violent). The savings would depend on the number of Level 3 dispositions involved.”

### **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, 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 12 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).

The proposal to change of the punishments from a Class E to a Class F could have some community corrections savings because of the difference in length of active supervision and the shorter time of post-release supervision (PRS). In FY 2017-18, 60% of Class E felony offenders received active sentences. The average length of probation imposed for this offense class was 33 months. All active sentences for Class B1 through E felonies result in 12 months of PRS. The cost of twelve months of supervision is \$1,920 per offender (\$160 per month times 12 months). For every offender sentenced to probation, the average cost would be \$6,720 (\$160 per month times 42 months). In FY 2017-18, 51% of Class F felony offenders received suspended sentences. The average length of probation imposed for this offense class was 31 months. The difference in two months of active supervision may result in savings of \$320 per offender (\$160 per month times 2 months). In addition, the difference in PRS may result in 3 months less time for supervision. The cost of 3 months of supervision is \$380 per offender (\$160 per month times 3 months). For every offender sentenced to probation, the average cost would be \$4,960 (\$160 per month times 31 months).

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). For every offender sentenced to probation, the average cost would be \$3,680 (\$160 per month times 23 months).

## **TECHNICAL CONSIDERATIONS**

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N/A.

## **DATA SOURCES**

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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**

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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.



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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Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

## **ESTIMATE PREPARED BY**

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## **ESTIMATE APPROVED BY**

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April 23, 2019



**Signed copy located in the NCGA Principal Clerk's Offices**