



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Legislative Incarceration Fiscal Note

Short Title: North Carolina Farm Act of 2019.
Bill Number: Senate Bill 315 (Sixth Edition)
Sponsor(s): Senators B. Jackson, Sanderson, and Johnson

SUMMARY TABLE

FISCAL IMPACT OF S.B. 315, V.6 (\$ 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	-	-	-	-	-
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. 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: \$233-\$4,905 per disposition
- Indigent Defense Services: \$202-\$791 per disposition
- Department of Public Safety (DPS) - Prisons: \$3,766 to \$119,436 per active sentence
- DPS - Community Corrections: Minimum of \$1,440 per supervised probation sentence

Section 2 (a) "smokable hemp" has been added to the definition of marijuana in G.S. 90-87(16). Under the new definition in this bill, "marijuana" would include smokable hemp but not include hemp products or hemp extracts. This amendment would expand the number of people eligible for violation of offenses related to marijuana, including four trafficking felonies, 4 non-trafficking felonies, and 3 non-trafficking misdemeanors.

Section 8 of the NC Farm Act creates Article 50F, North Carolina Hemp Program, under G.S. 106, and establishes two new misdemeanors and a felony for violations of this article.

Subsection (a) creates a new Class I felony for any person to “willfully, knowingly, or intentionally manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, purchase, or possesses with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana on property used for hemp production, or in a manner intended to disguise the marijuana due to its proximity to hemp.”

Subsection (b) creates a Class 1 misdemeanor for providing false or misleading information in relation to a license application or renewal.

Subsection (c) creates a Class 1 misdemeanor for anyone tampering with a hemp crop.

FISCAL ANALYSIS

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.



Section 2

Section 2 of the bill expands the current statute. Smokable hemp has been added to the definition of “marijuana” and thus expands the pool of individuals eligible for trafficking and non-trafficking offense violations. It is known how many additional charges will result. 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.

Below are the trafficking offenses that exist and the court costs incurred for one offense:

Felony or Misdemeanor	General Statute	Offense	Court Cots
Class D felony	90-95(h)(1)d	Trafficking in marijuana (10,000 pounds or more).	\$4,905
Class F felony	90-95(h)(1)c	Trafficking in marijuana (2,000 pounds or more, less than 10,000 pounds).	\$1,291
Class G felony	90-95(h)(1)b	Trafficking in marijuana (50 pounds or more, less than 2,000 pounds).	\$1,065
Class H felony	90-95(h)(1)a	Trafficking in marijuana (more than 10 pounds, less than 50 pounds).	\$709

The proposal would add smokable hemp to the definition of marijuana as a Class VI controlled substance. As with the trafficking offenses, AOC doesn’t know how many additional charges would result from the expansion. Below are the non-trafficking offenses that exist and the court costs incurred for one offense:

Felony or Misdemeanor	General Statute	Offense	Court Cost
Class H felony	90-95(b)(2)	Sale of a Schedule III, IV, V or VI Controlled Substance.	\$709
Class I felony	90-95(b)(2)	Manufacture, deliver, or possess with intent to manufacture, sell or deliver, a Schedule III, IV, V, or VI Controlled Substance.	\$516
Class I felony	90-95(d)(2)	Possession of more than 100 dosage units of a Schedule II, III, or IV Controlled Substance.	\$516
Class I felony	90-95(d)(4)	Possession of more than 1.5 ounces of Marijuana or .15 ounces of Hashish.	\$516

Class 1 misdemeanor	90-95(a)(3) and (d)(2)	Violations; penalties (possession of a controlled substance classified in Schedule II, III, or IV not listed as felony)	\$233
Class 1 misdemeanor	90-95(a)(3) and (d)(4)	Violations; penalties (possession of (1) greater than ½ ounce of marijuana or (2) 1/20 ounce of hashish).	\$233
Class 3 misdemeanor	90-95(a)(3) and (d)(4)	Violations; penalties (possession of a controlled substance classified in Schedule VI).	\$44

Section 8 subsection (a) of the bill creates a new 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. In addition the bill creates a series of new Class 1 misdemeanors. Because these are 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. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$233.

Section 2

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 the potential impact on IDS for the expansion of trafficking and non-trafficking offenses:

Felony or Misdemeanor	Offense	% Handled by IDS	IDS Cost
Class D felony	Trafficking in marijuana (10,000 pounds or more).	89%	\$961
Class F felony	Trafficking in marijuana (2,000 pounds or more, less than 10,000 pounds).	74%	\$569
Class G felony	Trafficking in marijuana (50 pounds or more, less than 2,000 pounds).	78%	\$498
Class H felony	Trafficking in marijuana (more than 10 pounds, less than 50 pounds).	78%	\$392
Class H felony	Sale of a Schedule III, IV, V or VI Controlled Substance.	78%	\$392

Class I felony	Manufacture, deliver, or possess with intent to manufacture, sell or deliver, a Schedule III, IV, V, or VI Controlled Substance.	68%	\$333
Class I felony	Possession of more than 100 dosage units of a Schedule II, III, or IV Controlled Substance.	68%	\$333
Class I felony	Possession of more than 1.5 ounces of Marijuana or .15 ounces of Hashish.	68%	\$333
Class 1 misdemeanor	Violations; penalties (possession of a controlled substance classified in Schedule II, III, or IV not listed as felony possession).	39%	\$202
Class 1 misdemeanor	Violations; penalties (possession of (1) greater than ½ ounce of marijuana or (2) 1/20 ounce of hashish).	39%	\$202
Class 3 misdemeanor	Violations; penalties (possession of a controlled substance classified in Schedule VI).	14%	\$200

Section 8

In FY 2017-18, the most recent year data is available, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$333 per case for a private appointed counsel (PAC) attorney. In addition, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$202 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

Section 2

It is not known how many convictions may result from the proposed expansion of the four trafficking offenses. The North Carolina Sentencing and Policy Advisory Commission provided a range of the minimum to the maximum sentence for these offenses.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity, 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. 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.

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 ¹	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 Bill²	No estimate available				
5. Additional Beds Required					

Since the bill expands an existing statute, 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.

Since it is not known how many convictions may result from the proposed expansion of the four trafficking offenses. The Sentencing Commission provided a range of the minimum to the maximum sentence for these offenses. The impact would depend on the number of convictions involved. Unless substantial assistance is found according to G.S. 90-95(h)(5), drug trafficking convictions are subject to mandatory active sentences. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation for a Class D and 9 months is required for Class F-I. 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.

¹ 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.

² 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.

Below is the table with the ranges of the minimum and maximum sentences, with the projected cost.

Class	% Active	Minimum Sentence	Minimum Cost	Maximum Sentence	Maximum Cost
D	99%	175	\$94,150	222	\$119,436
F	51%	70	\$37,660	93	\$50,034
G	40%	35	\$18,830	51	\$27,438
H	34%	25	\$13,450	39	\$20,982

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).

The following table shows the estimated annual impact if, for example, there was 1 additional conviction (threshold) or 20 additional convictions (example) per year as a result of the proposed change. 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.

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

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F 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

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	3	4
20	21	41	60	64	64

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	3	3
20	21	41	47	48	48

This bill expands Class 1 and 3 misdemeanor offenses. 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.

Section 8

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

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 – 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 2

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).³ For every offender sentenced to probation, the average cost would be \$6,720 (\$160 per month times 42 months).

The average length of probation imposed for Class F felonies was 31 months. The cost of 31 months of supervision is \$4,960 per offender (\$160 per month times 31 months). The average length of probation imposed for Class G felonies was 29. The cost of 29 months of supervision is \$4,640 per offender (\$160 per month times 29 months). In addition, the average length of probation imposed for Class H felonies was 26. The cost of 26 months of supervision is \$4,160 per offender (\$160 per month times 26 months). Finally, the average length of probation imposed for Class I felonies was 23. The cost of 23 months of supervision is \$3,680 per offender (\$160 per month times 23 months).

Section 8

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).

³ 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.

In FY 2017-18, 34% of Class 1 misdemeanor offenders received active sentences; 66% 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 class of offense was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,400 per offender (\$160 per month times 15 months).

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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