



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

## Legislative Incarceration Fiscal Note

**Short Title:** Aerial Adventure Courses/Sanders' Law.  
**Bill Number:** House Bill 380 (Second Edition)  
**Sponsor(s):** Representatives Davis, Howard, Setzer, and Lucas

### SUMMARY TABLE

#### FISCAL IMPACT OF H.B. 380, 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	-	-	-	-	-
Less Expenditures	-	-	-	-	-
<b>General Fund Impact</b>	<b>No Estimate Available - Refer to Fiscal Analysis section</b>				

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

This proposal creates Article 14C, Aerial Adventure Course Safety to regulate aerial adventure courses, including ropes courses, challenge courses, adventure courses, adventure parks, zip lines, zip line tours, canopy tours, and high challenge courses, and creates new criminal penalties for violations of this act. The criminal penalties do not take effect until July 1, 2020.

### 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: \$124-\$2,290 per disposition
- Indigent Defense Services: \$202-\$586 per disposition
- Department of Public Safety (DPS) - Prisons: No cost-\$15,064
- DPS - Community Corrections: \$1,920 per supervised probation sentence

Section 2 of the bill creates a new Class 2 misdemeanor offense for violations of G.S. 95-112.14(g). 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 2 misdemeanor, the average cost to the court would be \$124.

The bill makes a second or subsequent violations of G.S. 95-112.14(g). For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$233.

In addition, the proposal makes it a Class E felony for any person to willfully violate Article 14C and those actions cause serious injury or death. For every additional person charged with a Class E felony, the average cost to the court would be \$2,290.

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, 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 2 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney. Also, in FY 2017-18, 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. Finally, 79% of Class E felony cases were handled through IDS. The weighted average cost of a new Class E felony is \$586 per case for a private appointed counsel (PAC) attorney. These 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**

This bill creates new Class 2 and Class 1 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.

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. There is no estimate available for additional beds that this may be required by this legislation.

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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>					

Since the bill creates a new 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, 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

<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> This criminal penalty bill is effective July 1, 2020 and should not affect prison population and bed needs until FY 2021-22 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, 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).

### **Department of Public Safety – Community Corrections**

All misdemeanor 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.

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, 39% of Class 2 misdemeanor offenders received active sentences; 61% 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 14 months. Therefore, at a minimum, one Class 2 misdemeanor conviction resulting in probation will require at least 14 months of supervision. The cost of 14 months of supervision is \$2,240 per offender (\$160 per month times 14 months).<sup>4</sup>

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

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<sup>4</sup> Due to the effective date of July 1, 2020 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2020-21. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2021-22.

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).

In FY 2017-18, 60% of Class E felony offenders received active sentences and 40% received suspended sentences. The average length of probation imposed for suspended sentences in this offense class was 33 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 12 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 \$5,280 (\$160 per month times 33 months).

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## **TECHNICAL CONSIDERATIONS**

N/A.

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## **DATA SOURCES**

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

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## **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.

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## **CONTACT INFORMATION**

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

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## **ESTIMATE APPROVED BY**

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April 8, 2019



Signed copy located in the NCGA Principal Clerk's Offices