



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

## Legislative Incarceration Fiscal Note

**Short Title:** Timber Larceny/Strengthen Laws.  
**Bill Number:** Senate Bill 327 (Third Edition)  
**Sponsor(s):** Senators McInnis, Sawyer, and Burgin

### SUMMARY TABLE

#### FISCAL IMPACT OF S.B. 327, V.3 (\$ 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>   | <u>-</u>  | <u>-</u>          | <u>-</u>          | <u>-</u>          | <u>-</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> |
|-------------------------|---|

### 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:

| Penalty            | Cost per Charge/Conviction |       |                 |                           |                           |
|--------------------|----------------------------|-------|-----------------|---------------------------|---------------------------|
|                    | AOC                        | IDS   | Active Sentence |                           | Suspended Sentence        |
|                    |                            |       | DPS-Prisons     | DPS-Community Corrections | DPS-Community Corrections |
| Class 1 to Class G | \$1,065                    | \$296 | \$8,070         | Savings of \$960          | \$2,240                   |
| Class H to Class G | \$356                      | \$106 | \$2,152         | \$0                       | \$480                     |
| New Class G        | \$1,065                    | \$498 | \$8,070         | \$1,440                   | \$4,640                   |

## **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 (AOC) 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 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.

Section 1 also potentially elevates an existing Class 1 misdemeanor (larceny where the value of the property or goods is not more than \$1,000) and an existing Class H felony (larceny where the value of the property or goods is more than \$1,000) to being Class G felony offenses. Because it is not known how many of these existing offenses may have involved the goods (timber) considered by this bill, 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 G felony instead of a Class 1 misdemeanor, the average cost to the court would be \$1,065 (due to existing district court backlogs, moving cases from district to superior court does not produce savings). For every additional person charged with

a Class G felony instead of a Class H felony, the average cost to the court would be \$356 (\$1,065 per Class G minus \$709 per Class H).

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, 78% of Class G 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. The weighted average cost of a case increased from a Class H to a Class G felony is \$106 (\$498 per Class G minus \$392 per Class H). In FY 2017-18, the most recent year data is available, 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. Therefore, the cost of a case increased from a Class 1 misdemeanor to a Class G felony is \$296 (\$498 per Class G minus \$202 per Class 1).

These estimates 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**

Because Class 1 Misdemeanor offenses that result in active sentences are served in county jails rather than State prisons, any elevated offenses that become a Class G felony as a result of this bill will have the same effect as new 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,<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. 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.

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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<br/>Five Year Impact</b> |                              |                         |                         |                         |                         |
|---|------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
|   | <b>June 30<br/>2020</b>      | <b>June 30<br/>2021</b> | <b>June 30<br/>2022</b> | <b>June 30<br/>2023</b> | <b>June 30<br/>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, 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<br/>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             | 2             | 2             | 2             |
| 20   | 9             | 15            | 15            | 15            | 15            |

Impact on the prison population will also occur if Class H convictions become Class G convictions under the proposed subsection because of the higher rate of active sentences (40% for Class G compared to 34% for Class H) and longer average estimated time served (15 months for Class G compared to 11 months for Class H). The following table shows the estimated annual impact if, for

<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.

example, there were 4 convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class H to Class G. 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.

| <b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions<br/>Class H Increasing to 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> |
| 4 (Threshold)  | 1             | 2             | 2             | 2             | 2             |
| 20   | 2             | 4             | 4             | 4             | 4             |

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 15 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).

In FY 2017-18, 34% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,918 (\$538 monthly cost times 11 months). In FY 2017-18, 40% of Class G felony offenders received active sentences averaging 15 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). Therefore, the increased cost to the prison section as a result of these changes in the bill would be \$2,152 (\$8,070 for Class G minus \$5,918 for Class H equals \$2,152).

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

In FY 2017-18, 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for this offense class was 26 months. In FY 2017-18, 60% of Class G felony offenders received suspended sentences. The average length of probation imposed for this offense class was 29 months. For every offender sentenced to probation, the average cost of a Class H felony would be \$4,160 (\$160 per month times 26 months), while the average cost of a Class G felony would be \$4,640 (\$160 per month times 29 months). The average cost increase to CCS for suspended sentences as a result of the increase from Class H to Class G would be \$480 (\$4,640 for Class G minus \$4,160 for Class H equals \$480).

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). The cost of nine months of post-release supervision for a Class G felony is \$1,440 per offender (\$160 per month times 9 months). For every offender sentenced to probation for a Class G felony, the average cost would be \$4,640 (\$160 per month times 29 months). Therefore, any charges elevated from a Class 1 misdemeanor to a Class G felony as a result of this bill could result in a savings of \$960 if the conviction results in post-release supervision, or an increase in costs of \$2,240 if the conviction results in probation.

## **TECHNICAL CONSIDERATIONS**

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N/A.

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<sup>4</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.

## **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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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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May 7, 2019



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