



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

## Legislative Incarceration Fiscal Note

**Short Title:** Death by Distribution.  
**Bill Number:** Senate Bill 375 (First Edition)  
**Sponsor(s):**

### SUMMARY TABLE

#### FISCAL IMPACT OF S.B. 375, 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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SB 375 proposes enactment of two new felony offenses: Subsection (b) enacts a new G.S. 14-18.4 which creates the crime of death by distribution of certain controlled substances applicable in instances when:

- (1) the person unlawfully distributed at least one certain controlled substance to the victim,
- (2) the ingestion of the certain controlled substance or substances caused the user's death,
- (3) the person's unlawful distribution of the certain controlled substance or substances was a proximate cause of the victim's death, and
- (4) the person did not act with malice.

Violations of the new G.S. 14-18.4 would be punishable as a Class C felony.

In addition, subsection(c) creates a new B2 felony if a person is guilty of aggravated death by distribution of certain controlled substances, meet the elements of distribution detailed in Section 1, and has a previous conviction under this statute.

### 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: \$6,001 to \$12,536 per disposition
- Indigent Defense Services: \$899-\$1,970 per disposition
- Department of Public Safety (DPS) - Prisons: \$43,578 to \$88,232
- 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 (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.

### **Subsection (b)**

This sub bill creates a new Class C 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. This conduct is currently



covered by G.S. 14-18 (Involuntary Manslaughter), which is a Class F felony. In FY 2017-18, there were 81 defendants charged with involuntary manslaughter. AOC does not have data on the number of charges caused by drug distribution, but cost ranges between a Class C (\$6,001) and Class F (\$1,291).

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, 82% of Class C felony cases were handled through IDS. The weighted average cost of a new Class C felony is \$869 per case for a private appointed counsel (PAC) attorney. In addition, 74% of Class F felony cases were handled through IDS. The weighted average of a Class F felony is \$569. 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.

### **Subsection (c)**

This subsection of the bill creates a new Class B2 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 B2 felony, the average cost to the court would be \$12,356.

In FY 2017-18, the most recent year data is available, 85% of Class B2 felony cases were handled through IDS. The weighted average cost of a new Class B2 felony is \$1,970 per case for a private appointed counsel (PAC) attorney including expert costs. This 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**

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.



**Subsection (b)**

<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.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class C 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

The Sentencing Commission notes that “this conduct is currently covered under G.S. 14-18, Involuntary Manslaughter, a Class F felony. There were 71 convictions under G.S. 14-18 in FY 2018. While no data are available to indicate how many involved conduct covered under the proposed section, the Conference of District Attorneys estimates that 5% of the involuntary manslaughter convictions would contain the elements of the proposed Class C felony. Based on this estimate, 4 of the 71 convictions in FY 2018 would reflect the criminal behavior of the proposed bill. Impact on the prison population will occur if Class F convictions become Class C convictions under the proposed bill because of the higher rate of active sentences (mandatory active for Class C compared to 51% for Class F) and longer average estimated time served (81 months for Class C compared to 19 months for Class F).”

<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.

Below is a table that shows the estimated impact if the convictions were reclassified from a Class F to a Class C using 2 convictions as the threshold, 20 convictions as an example, or 4 convictions (see analysis above)

<b>Estimated Prison Bed Impact 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)	1	2	3	5	7
4	2	4	7	9	15
20	9	22	39	60	80

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). Based upon the Conference of District Attorneys estimate, 4 of the 71 convictions would become Class C convictions. The difference between a Class C and Class F is 62 months served at a cost of \$33,356 (\$538 monthly cost times 62).

**Subsection (c)**

In FY 2017-18, 100% of Class B2 felony convictions resulted in active sentences, with an average estimated time served of 164 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.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class B2 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

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 B2 felony offenders received active sentences averaging 164 months.

For every one Class B2 felony offender receiving an active sentence, the cost to the prison section will be \$88,232 (\$538 monthly cost times 164 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.

There will be an impact from moving offenses from Class F to a Class C felony. Class F felonies receive three months less post release supervision than B1 through D felonies.

In FY 2017-18, 100% of Class B2 and C felony offenders received active sentences. All active sentences for Class B1 through D 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).<sup>4</sup>

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

The Sentencing Commission notes that “there may be an impact on the Youth Development Center (YDC) population will occur if Class F dispositions (Juvenile Offense Classification: Serious)

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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 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.

become Class C or Class B2 dispositions (Juvenile Offense Classification: Violent) because 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 YDC population would depend on the number of Level 3 dispositions involved.” There were no juvenile dispositions for violations of G.S. 14-18 (Involuntary manslaughter) in FY 2017-18.

**ESTIMATE PREPARED BY**

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April 8, 2019



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