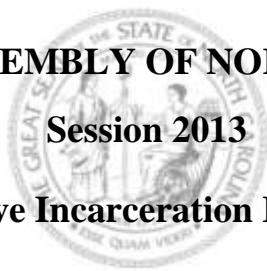


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 589 (Seventh Edition)

SHORT TITLE: VIVA/Election Reform.

SPONSOR(S):

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Administrative Office of the Courts, Indigent Defense Services, and Department of Public Safety					
EFFECTIVE DATE Varies					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY

This Incarceration Note only addresses the changes to criminal penalties included in Sections 6, 13, and 14 of the bill. A separate Fiscal Note has been completed addressing the potential fiscal impact of other sections of H.B. 589 – VIVA.

Sections 2.3, 3.1, 3.2, 3.3 and 14.1 of the bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of these new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new 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 these crimes:

- Administrative Office of the Courts: \$88 per Class 2 misdemeanor disposition
\$365 per Class I felony disposition

- Indigent Defense Services: \$166 to \$221 in district court
\$321 to \$396 in superior court without a trial
\$847 to \$1,046 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$980

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 2.3 of the bill creates a new section within G.S. 163-82.7A, Declaration of religious objection to photograph, stating that a voter may execute a declaration before an elections official providing that he holds a sincere religious objection to being photographed to be incorporated as part of the official record of voter registration. Subsection (d) provides that all declarations shall include an attestation that the voter holds the sincerely held religious objection to being photographed and requires the signature of the voter, under penalty of a Class I felony (pursuant to G.S. 163-275(13)).

Section 3.1 of the bill amends G.S. 20-37.7(d) to provide that in order to obtain a special identification card without paying a fee, a registered voter shall sign a sworn statement stating that he is registered and does not have photo identification acceptable under G.S. 163-166.13. The declaration shall prominently contain the Class I felony to which the voter is subject under G.S. 163-275(13) for falsely making the declaration. Existing G.S. 20-37.7(e) provides that it shall be a Class 2 misdemeanor for any person to commit any fraud or misrepresentation in the application for or use of a special identification card issued under G.S. 20-37.7. This amendment expands the scope of the Class 2 misdemeanor by adding this declaration to the acts for which a person may be found guilty under G.S. 20-37.7(e). Further, amended G.S. 20-37.7(d) expands the scope of the Class I felony in G.S. 163-275(13) by adding this declaration to the acts for which a person may be found guilty of a Class I felony for falsely making or presenting any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting.

Section 3.2 further expands the scope of the Class I felony in G.S. 163-275(13) by the addition of subsection (c) to G.S. 130A-93.1, Fees for vital records copies or search; automation fund. Proposed G.S. 130A-93.1(c) provides that upon verification of voter registration, the State Registrar shall not charge any fee under G.S. 130A-93.1(a) to a registered voter who signs a declaration stating he is registered to vote in this State and does not have a certified copy of his birth certificate or marriage license necessary to obtain acceptable photo identification pursuant to G.S. 163-166.13. The declaration shall prominently include the Class I felony to which the voter is subject under G.S. 163-275(13) for falsely or fraudulently making the declaration. Proposed G.S. 130A-93.1(c) expands the scope of the Class I felony in G.S. 163-275(13) by adding this declaration to the acts for which a person may be found guilty of falsely making or presenting any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting.

Section 3.3 amends G.S. 161-10(a)(8) to provide that, upon verification of voter registration, a register of deeds, pursuant to G.S. 130A-93, shall issue without charge a certified copy of a birth certificate or marriage license to any registered voter declaring he is registered to vote in this State and does not have a certified copy of his birth certificate or marriage license necessary to obtain photo identification under G.S. 163-166.13. The declaration shall prominently include the Class I felony to which the voter is subject under G.S. 163-275(13) for falsely or fraudulently making the declaration. Amended G.S. 161-10(a)(8) expands the scope of the Class I felony in G.S. 163-275(13) by adding this declaration to the acts for which

a person may be found guilty of falsely making or presenting any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting.

Section 14.1 amends G.S. 163-274, Certain acts declared misdemeanors, by making it a Class 2 misdemeanor for any person to be compensated based on the number of forms submitted for assisting persons in registering to vote.

Section 38.1(c) repeals G.S. 163-278.44, which made the willful and intentional violation of the provisions of Article 22B (Appropriations from the North Carolina Political Parties Financing Fund) a Class 2 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

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 (H.B. 642), 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. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

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.

Sections 2.3, 3.1, 3.2 and 3.3 of the bill all expand the scope of the Class I felony in G.S. 163-275(13) by adding certain declarations to the acts for which a person may be found guilty of falsely making or presenting any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting. AOC does not currently have an offense code for violations of G.S. 163-275(13), which may be some indication that this offense is infrequently charged. For every one Class I felony charge, AOC estimates a cost of \$365.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the per case cost for a private appointed counsel (PAC) attorney in district court is \$221 for a Class I felony charge. In superior court, IDS estimates that the cost would be \$396 if the case does not go to trial and \$1,046 if it does.

Section 3.1 also expands the scope of existing G.S. 20-37.7(e), a Class 2 misdemeanor offense for “any fraud or misrepresentation in the application for or use of a special identification card issued under this section.” In FY 2011-12, 22 defendants were charged with this offense. AOC is not able to estimate the number of additional charges for violation of this statute that may arise from this bill. For every one Class 2 misdemeanor charge, AOC estimates a cost of \$88.

IDS estimates that the per case cost for a PAC attorney in district court is \$166 for a Class 2 misdemeanor charge. In superior court, IDS estimates that the cost would be \$321 if the case does not go to trial and \$847 if it does.

Section 14.1 creates a new Class 2 misdemeanor. Since this is a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this change on the prison population. It is not known how many offenders might be charged, convicted or sentenced for this offense. For every one Class 2 misdemeanor charge, AOC estimates a cost of \$88.

IDS estimates that the per case cost for a PAC attorney in district court is \$166 for a Class 2 misdemeanor charge. In superior court, IDS estimates that the cost would be \$321 if the case does not go to trial and \$847 if it does.

Section 38.1 repeals an existing Class 2 misdemeanor. AOC does not have a specific offense code for these violations, which is some indication that the offense is infrequently charged and/or infrequently results in convictions. Therefore, no savings are estimated for the Judicial Branch as a result of this repeal.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

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).

The Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statutes.

¹ 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.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

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 and all misdemeanor classes, 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 types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; 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, intermediate sanctions and supervised probations.

Sections 2.3, 3.1, 3.2, and 3.3 of the bill all expand the scope of the Class I felony in G.S. 163-275(13). In FY 2011-12, 14% of Class I offenders received active sentences; 36% received intermediate sentences; and 50% received community punishments. All active sentences for Class F through I offenses result in nine months of post-release supervision (PRS). The average length of intermediate and community punishment imposed for Class I felonies was 26 and 22 months, respectively. Therefore, at a minimum, one conviction resulting from these sections of the bill will require at least nine months of PRS. The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵

Section 3.1 expands the scope of an existing Class 2 misdemeanor offense; **Section 14.1** creates a new Class 2 misdemeanor offense. In FY 2011-12, 19% of Class 2 misdemeanor offenders received active

² 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 2013.

³ Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

⁴ CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

⁵ Due to the effective date of January 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

sentences; 14% received intermediate sentences; and 81% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanor sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 16 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives an intermediate sentence is \$1,742 (480 days times \$3.63 per day). Of those convicted to a community sentence, around 27% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives community supervision is \$1,634 (450 days times \$3.63 per day).⁵

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

TECHNICAL CONSIDERATIONS: None

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