

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2015**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 113 (Second Edition)

**SHORT TITLE:** Protect Our Students Act.

**SPONSOR(S):** Representatives Hastings, Presnell, R. Turner, and Bishop

**FISCAL IMPACT**

(\$ in millions)

Yes       No       No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>

<b>Local Impact</b>					
Revenues:					
Expenditures:					
<b>NET LOCAL IMPACT</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Department of Public Safety; Administrative Office of the Courts; Office of Indigent Defense Services.

**EFFECTIVE DATE:** December 1, 2015

**TECHNICAL CONSIDERATIONS:**

None

**BILL SUMMARY:**

Amends G.S. 14-27.7(b), concerning sexual offenses involving defendants who are teachers, school administrators, student teachers, school safety officers, coaches, or other school personnel that are less than four years older than the victim, providing that such defendants that engage in vaginal intercourse or other

sexual acts with a student victim. HB 113 proposes to increase the penalty from a Class A1 misdemeanor to a Class I felony.

Amends G.S. 14-202.4(b) to provide that defendants who are school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the student victim and takes indecent liberties. HB 113 proposes to increase the penalty from a Class A1 misdemeanor to a Class I felony.

Enacts new G.S. 14-208.15(c) which directs the Sheriff of any county, upon the request of an institution of higher education, to provide a report containing sex offender registry information for any registrant that has stated that they are a student or employee, or expected to become such, of that higher education institution.

The bill directs the Department of Public Safety to provide each sheriff with the ability to generate the above report from the statewide registry, electronically and without charge, and allows the institution of higher education to receive a written report for reasonable duplication and mailing costs.

### **FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact resulting from an increase in the penalty for violations. In Calendar Year (CY) 2014, there were no charges for violations of G.S. 14-27.7 (b) or G.S. 14-202.4(b). However, the following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$365 per disposition
- Indigent Defense Services: \$245 in district court  
\$455 in superior court without a trial  
\$1,046 in superior court with a trial
- Prison Section: \$11.23 per inmate per day
- Community Corrections: Minimum of \$1,111

Please see the Assumptions and Methodology section for additional information.

### **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. 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.

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.

Since there were no convictions last year, 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 statute.

### **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 of the bill increases the penalty from a Class A1 misdemeanor to a Class I felony offense. In CY 2013-14, there were no charges for violation of this law. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged and convicted of a Class I felony, the average cost to the court would be \$365.

Section 3 of the bill increases the penalty from a Class A1 misdemeanor to a Class I felony offense. In CY 2013-14, there were no charges for violation of this law. For every additional person charged and convicted of a Class I felony, the average cost to the court would be \$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 cost of a new Class I felony will be \$245.30 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$455.40 if the case does not go to trial and \$1,046 if it does. 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, these costs may not be incurred.

### **Department of Public Safety –Prison Section**

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. The cost to add one additional inmate to the prison system is \$11.53 per day, or \$351 per month, which includes the cost of food, clothing, and health care. In FY 2013-14, 13 percent of Class I felony offenders received active sentences averaging 6 months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$2,106 (\$351 monthly cost times 6 months equal \$2,106).

### **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 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 \$123.50 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 probations.

In FY 2013-14, 13% of Class I felony offenders received an active sentence, which requires 9 months of post-release supervision (PRS), and 87% of Class I felony offenders received community supervision of an of 23 months of probation. Therefore, at a minimum, one conviction resulting from Section 2 or 3 of this bill will require at least 9 months of supervision and up to 23 months of supervision. The cost of 9 months of supervision is \$1,111.50 per offender (\$123.50 per month times 9 months) and the cost of 23 months of supervision is \$2,840 per offender (\$123.50 per month times 23 months).<sup>1</sup>

**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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**Signed Copy Located in the NCGA Principal Clerk's Offices**

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<sup>1</sup> Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.