

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 711 (Second Edition)

SHORT TITLE: Prohibit Counterfeit/Nonfunctional Air Bags.

SPONSOR(S): Representatives Faircloth, Blust, and Hardister

FISCAL IMPACT

(\$ in millions)

Yes
 No
 No Estimate Available

| | FY 2015-16 | FY 2016-17 | FY 2017-18 | FY 2018-19 | FY 2019-20 |
|---------------------------|--|------------|------------|------------|------------|
| State Impact | | | | | |
| General Fund Revenues: | | | | | |
| General 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; Department of Public Safety

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated, and having penalties applied to those convicted of the new offense. The proposed bill may have further impact because of the application of a more stringent penalty for an offense. However, given that there is no historical data on this new offense 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 the new Class 2 misdemeanor in Section 2 or the increased penalty from a Class 1 misdemeanor to a Class H felony in Section 3:

- Administrative Office of the Courts: \$88-\$336 per disposition
- Indigent Defense Services: \$165-\$181 per disposition
- Department of Public Safety (DPS) - Prison Section: \$3,510 for every active Class H conviction
- DPS - Community Corrections: Savings of \$783 for every active Class H sentence to a minimum cost of \$1,697 for every Class 2 misdemeanor or intermediate/community Class H sentence

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill creates a new Class 2 misdemeanor offense and expands and reclassifies an existing offense from Class 1 to Class H.

Section 1 of this bill amends G.S. 20-4.01, Definitions, to add definitions for “air bag,” “counterfeit air bag,” and “nonfunctional air bag” to the list of terms used throughout Chapter 20.

Section 2 adds subdivision (a)(3) to G.S. 20-71.4, Failure to disclose damage to a vehicle shall be a misdemeanor, which makes it unlawful for a transferor of a motor vehicle to transfer a motor vehicle having knowledge that a counterfeit air bag or a nonfunctional air bag has been installed in the vehicle. Violation of this section is a Class 2 misdemeanor.

Section 3 expands G.S. 20-136.2, (renamed) Counterfeit and nonfunctional air bags, to make it unlawful for any person, firm, or corporation to knowingly import, manufacture, sell, offer for sale, install, or reinstall (was “install or reinstall”) a counterfeit air bag or nonfunctional air bag. The Section also reclassifies the offense from a Class 1 misdemeanor to a Class H felony.

The proposed bill is effective December 1, 2015, and applies to offenses committed on or after that date.

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.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research Division (FRD) 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 creates a new Class 2 misdemeanor 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 2 misdemeanor, the average cost to the court would be \$88.

Section 3 of the bill increases the penalty for violation of G.S. 20-136.2 from a Class 1 misdemeanor to a Class H felony. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class 1 misdemeanor who is instead charged with a Class H felony, the average cost to the court will be \$336 (\$501 for a Class H minus \$165 for a Class 1).

AOC currently does not have a specific offense code for violations of G.S. 20-136.2. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. FRD cannot estimate additional cost to the court resulting from the proposed broadening of the current statute at this time.

The Office of Indigent Defense Services (IDS) has provided 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 2011-12, 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 2 misdemeanor is \$181 per case for a private appointed counsel (PAC) attorney. 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.

The weighted average cost of a Class H felony is \$353 per case for a PAC attorney, while the weighted average cost of a Class 1 misdemeanor is \$188 per case for a PAC attorney. In FY 2011-12, 78% of Class H defendants used IDS services, while 39% of Class 1 defendants did so. For the sake of comparison, if 100 offenders were charged in one year with the offense in G.S. 20-136.2, under the Class 1 offense, FRD would expect that 39 of those would use IDS services for a cost of \$7,332 (39 defendants times \$188 per case equals \$7,332 in IDS costs). Under the same assumptions, under the new Class H offense class, FRD would expect that 78 defendants would use IDS services for a cost of \$27,534 (78 defendants times \$353 per case equals \$27,534 in IDS costs). The difference would be the estimated cost to IDS, which under this scenario would be \$20,202. 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. Because AOC currently does not have a specific offense code for violations of G.S. 20-136.2, FRD cannot estimate the costs to IDS of this bill at this time.

Department of Public Safety –Prison Section

Section 2 of this bill creates a new Class 2 misdemeanor offense. 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. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections from Section 2.

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 2014.

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.

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).

Since AOC currently does not have a specific offense code for violations of G.S. 20-136.2 in Section 3 of this bill, 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 beds may be required as a result of this bill. If, for example, 4 convictions per year were reclassified from Class 1 misdemeanors to Class H felonies, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year.

| Population Projections and Bed Capacity Five Year Impact | | | | | |
|---|------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| | June 30 2016 | June 30 2017 | June 30 2018 | June 30 2019 | June 30 2020 |
| 1. Inmates ² | 37,360 | 37,522 | 37,348 | 37,462 | 37,610 |
| 2. Prison Beds (Expanded Capacity) | 38,749 | 38,749 | 38,749 | 38,749 | 38,749 |
| 3. Beds Over/(Under) Inmate Population | 1,389 | 1,227 | 1,401 | 1,287 | 1,139 |
| 4. Additional Inmates Due to this Bill³ | No estimate available | | | | |
| 5. Additional Beds Required | | | | | |

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 \$11.53 per day, or \$351 per month, which includes the cost of food, clothing, and health care. The table below shows the per diem rate for each year of the five year projection, adjusted for inflation. In FY 2013-14, 35% of Class H felony offenders received active sentences averaging 10 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$3,510 (\$351 monthly cost times 10 months equals \$3,510).

| Daily Incarceration Cost Adjusted for Inflation Five Year Projection | | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | FY 2014-15 | FY 2015-16 | FY 2016-17 | FY 2017-18 | FY 2018-19 | FY 2019-20 |
| Inflation Rate | | 1.85% | 2.72% | 2.88% | 2.76% | 2.44% |
| Per Diem Cost | \$11.53 | \$11.74 | \$12.06 | \$12.41 | \$12.75 | \$13.06 |
| <i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i> | | | | | | |

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 2015.

³ Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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.

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, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$130.50 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, intermediate sanctions and supervised probation. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

| Monthly Supervision Cost Adjusted for Inflation Five Year Projection | | | | | | |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | FY 2014-15 | FY 2015-16 | FY 2016-17 | FY 2017-18 | FY 2018-19 | FY 2019-20 |
| Inflation Rate | | 1.85% | 2.72% | 2.88% | 2.76% | 2.44% |
| Monthly Cost | \$130.50 | \$132.90 | \$136.52 | \$140.45 | \$144.32 | \$147.85 |

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

In FY 2013-14, 35% of Class H offenders received active sentences; 65% received intermediate or community punishments. All active sentences result in nine months of post-release supervision (PRS) for this felony class. The average length of probation imposed for this offense class was 28 months. Therefore, at a minimum, one conviction resulting from Section 3 of this bill will require at least nine months of PRS. The cost of nine months of PRS is \$1,175 per offender (\$130.50 per month times nine months).⁴ For the same time period, 30% of Class 1 offenders received active sentences; 70% received

probation. The average length of probation imposed for this offense class was 15 months. Therefore, for one offender sentenced to an active sentence, Section 3 of this bill will require six fewer months of probation. The savings for six fewer months of probation is \$783 per offender (\$130.50 per month times six months). On the other hand, for one offender sentenced to supervised probation, Section 3 of this bill will require 13 additional months of probation. The cost of 13 additional months of probation is \$1,697 (\$130.50 per month times 13 months).⁵

In FY 2013-14, 33% of Class 2 misdemeanor offenders received active sentences; 67% received probation. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 13 months. Therefore, at a minimum, one conviction resulting from Section 2 of this bill will require at least 13 months of supervision. The cost of 13 months of supervision is \$1,697 per offender (\$130.50 per month times 13 months).⁶

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

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: William Childs

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 24, 2015



Signed Copy Located in the NCGA Principal Clerk's Offices

⁴ Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

⁵ Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

⁶ Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.