

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 958 (First Edition)
SHORT TITLE: Felony Death Imp. Boating/Sheyenne's Law.
SPONSOR(S): Representatives Pittman, Fraley, Ford, and J. Bell

FISCAL IMPACT					
(\$ in millions)					
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> No Estimate Available		
State Impact	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	No estimate available. Please 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, 2016					
TECHNICAL CONSIDERATIONS: None					

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address five new chargeable offenses being enforced, adjudicated, and having penalties applied to those convicted of the new offense(s). 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 these crimes:

- Administrative Office of the Courts: \$1,088 - \$10,416 per disposition
- Indigent Defense Services: \$497 - \$1,395 per disposition
- Department of Public Safety (DPS) - Prison Section: \$6,443 - \$61,398 per active sentence
- DPS - Community Corrections: \$1,260 - \$4,620 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill provides a formal title (“Sheyenne’s Law”). Section 2 creates new G.S. 75A-10.3, Death or serious injury by impaired boating; repeat offenses, which creates five new felony offenses: death by impaired boating, aggravated death by impaired boating, aggravated serious injury by impaired boating, aggravated death by impaired boating and repeat death by impaired boating. These new crimes are the same

as the penalties for driving while impaired. Section 3 amends existing G.S. 75-A10(b4) by restating that convictions of operating a boat while under the influence of an impairing substance or with an alcohol concentration of 0.08 or more shall result in a fine of not less than \$250, in addition to any other penalty imposed.

BACKGROUND:

The Wildlife Resources Commission (WRC) provided the following statistics regarding boating accidents and boating while impaired:

North Carolina Boating Statistics					
Calendar Year	Boating Accidents	Boating Deaths	Boating Deaths Caused by Impaired Boating	Serious Injuries Caused by Impaired Boating	Boating Under the Influence Citations
2011	142	28	5	12	313
2012	151	23	4	12	265
2013	143	19	3	7	178
2014	130	27	4	8	148
2015	165	20	7	14	106
<i>Source: Wildlife Resources Commission</i>					

Fiscal Research asked WRC to provide additional information about each of the deaths caused by impaired boating. They were unable to provide data about the 2011 cases. For the remaining years (2012 – 2015), in the majority of these cases, the impaired operator of the boat died. In 2013, one passenger was killed when two boats collided. The operator of one of the boats was charged with involuntary manslaughter, DWI – Motor Boat/Vessel, and operating a boat in reckless manner. The operator was found guilty of operating a boat in a reckless manner. The other two charges were dismissed. In 2015, one operator was killed when an impaired operator struck his boat, and a skier was killed when an impaired operator struck the skier. In both of these cases, the operator has been charged with involuntary manslaughter, DWI – Motor Boat/Vessel, and operating a boat in reckless manner. Neither case has been resolved yet.

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 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. 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 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 creates five new felony offenses:

- Repeat death by impaired boating - Class B2 felony;
- Death by impaired boating - Class D felony;
- Aggravated death by impaired boating - Class D felony;
- Aggravated serious injury by impaired boating - Class E felony;
- Serious injury by impaired boating - Class F felony.

Because these are new offenses, 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. The following chart shows the cost per case by felony level for each of the new penalties created in this bill.

AOC Cost Per Case by Felony Level	
Felony	AOC Cost
B2	\$10,416
D	\$4,134
E	\$1,931
F	\$1,088
<i>Source: AOC</i>	

Though AOC data cannot indicate how often these new charges would be brought, the NC Wildlife Resources Commission has provided Fiscal Research with data about the frequency of deaths and/or injuries caused by impaired boating. In calendar year 2015, two people were charged with involuntary manslaughter, a Class F felony. Under the proposed law, those two charges could be elevated to a Class D felony. The difference in cost to AOC between a Class F felony and a Class D felony is \$3,046 (\$4,134 Class D cost minus \$1,088 Class F cost). There was not enough data available about charges related to serious injuries to make a similar comparison for them.

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. The following table shows the percentage of defendants using IDS services and the cost to IDS by felony level in FY 2011-12:

IDS Weighted Average Cost Per Case by Felony Level for PAC Attorneys		
Felony	Percent Indigent	IDS Cost
B2	85%	\$1,395
D	89%	\$789
E	79%	\$512
F	74%	\$497
<i>Source: IDS and FRD</i>		

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.

The difference in cost to IDS between a Class F felony and a Class D felony is \$292 (\$789 Class D cost minus \$497 Class F cost). There was not enough data available about charges related to serious injuries to make a similar comparison for them.

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 2015.

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 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. It is not known how many beds may be required as a result of this bill.

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 2017	June 30 2018	June 30 2019	June 30 2020	June 30 2021
1. Inmates ²	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
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 \$12.46 per day, or \$379 per month, which includes the cost of food, clothing, and health care. The table below summarizes the percentage of active sentences, the average sentence length, and the total cost of each active sentence for each of the new offenses.

Average Cost of Sentence by Felony Level			
Offense Class	Percent Active Sentences	Average Length of Sentence (Months)	Cost
Class B2	100	162	\$61,398
Class D	100	64	\$24,256
Class E	64	27	\$10,233
Class F	51	17	\$6,443

Based on historical data from WRC, there have been no felony convictions related to boating while impaired resulting in death or serious injury in the past five years. The information available from WRC indicates that most people are convicted of operating a boat in a reckless manner, a Class 1 misdemeanor. Without more accurate data, we cannot make a comparison to the new penalty level. In FY 2014-15, 32% of Class 1 misdemeanor offenders received active sentences; 68% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision.

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

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 2016.

³ Criminal penalty bills effective December 1, 2016 should not affect prison population and bed needs until FY 2017-18 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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 \$140 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 2014-15, 100% of Class B2 felony offenders received active sentences. All active sentences for this felony class result in 12 months of PRS. Therefore, at a minimum, one Class B2 felony conviction resulting from Section 2 of this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,680 per offender (\$140 per month times 12 months)⁴.

In FY 2014-15, 100% of Class D felony offenders received active sentences. All active sentences result in 12 months of post-release supervision (PRS). Therefore, at a minimum, one Class D felony conviction resulting from Section 2 of this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,680 per offender (\$140 per month times 12 months).

In FY 2014-15, 61% of Class E felony offenders received active sentences; 39% received probation. All active sentences result in 12 months of PRS. The average length of probation imposed for this offense class was 33 months. Therefore, at a minimum, one Class E felony conviction resulting from Section 2 of this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,680 per offender (\$140 per month times 12 months). For every offender sentenced to probation, the average cost would be \$4,620 (\$140 per month times 33 months).

In FY 2014-15, 52% of Class F felony offenders received active sentences; 48% received probation. All active sentences result in 9 months of PRS. The average length of probation imposed for this offense class was 32 months. Therefore, at a minimum, one Class F felony conviction resulting from Section 2 of this bill will require at least 9 months of supervision. The cost of 9 months of supervision is \$1,260 per offender (\$140 per month times 9 months). For every offender sentenced to probation, the average cost would be \$4,480 (\$140 per month times 32 months).

Based on historical data from WRC, there have been no felony convictions related to boating while impaired resulting in death or serious injury in the past five years. The information available from WRC indicates that most people are convicted of operating a boat in a reckless manner, a Class 1 misdemeanor. Without more accurate data, we cannot make a comparison to the new penalty level. In FY 2014-15, 32% of Class 1 misdemeanor offenders received active sentences; 68% received probation. The average length

⁴ Due to the effective date of December 1, 2016 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2016-17. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2017-18.

of probation imposed for this offense class was 15 months. The cost of 15 months of supervision is \$2,100 per offender (\$140 per month times 15 months).

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

TECHNICAL CONSIDERATIONS: None

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