

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** Senate Bill 548 (First Edition)

**SHORT TITLE:** Strengthen Human Trafficking Laws/Studies.

**SPONSOR(S):** Senators Randleman, Daniel, and Brock

**FISCAL IMPACT**

**Yes**
         
  **No**
         
  **No Estimate Available**

	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures	\$409,567	\$427,241	\$445,933	\$465,435	\$480,447
State Positions:					
<b>NET STATE IMPACT</b>	<b>(\$409,567)</b>	<b>(\$427,241)</b>	<b>(\$445,933)</b>	<b>(\$465,435)</b>	<b>(\$480,447)</b>

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**

Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

**EFFECTIVE DATE:** When the bill becomes law, except Section 5, which is effective October 1, 2017.

**TECHNICAL CONSIDERATIONS:**

None

**BILL SUMMARY:**

Section 1 of the bill changes the class of two existing felony offenses by amending G.S. 14-43.11, Human trafficking. The bill increases the Class F felony of human trafficking with an adult victim to a Class C felony and increases the Class C felony of human trafficking with a minor victim to a Class B1 felony.

Section 5(1) of the bill amends existing G.S. 90-634, Enforcement; injunctive relief, by adding new subsection (b3) which makes it a Class 1 misdemeanor for a person, individual, association, partnership, corporation, or other entity to: (1) employ, hire, engage, or contract with a person not licensed or exempt to provide massage and bodywork therapy services to the public; (2) aid or abet any non-licensed or non-exempt person to practice message and bodywork therapy; (3) advertise, represent, or hold out any non-licensed or non-exempt person to others as a massage and bodywork therapist; (4) describe the practice of any non-licensed or non-exempt person or use any title descriptive of any branch of massage and bodywork therapy to reference any such person as licensed under G.S. 90-623.

**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.

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.

## **SECTION 1**

Section 1 of the bill increases the penalty for two existing felonies.

### **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.

Section 1 of the bill increases the penalties for violation of G.S. 14-43.11, Human trafficking, from a Class F felony to a Class C felony if the victim is an adult and from a Class C felony to a Class B1 felony if the victim is a minor. 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 F felony who is instead charged with a Class C felony, the average cost to the court will be \$4,150 (\$5,287 cost for Class C minus \$1,137 cost for Class F). In FY 2015-16, approximately 27 defendants were charged with human trafficking with an adult victim. If the same number of defendants is charged at the higher offense level, the cost to the courts would be \$112,050 (\$4,150 difference in court cost between the old offense and the new offense times 27 defendants).

For every person who would have been charged with a Class C felony who is instead charged with a Class B1 felony, the average cost to the court will be \$9,378 (\$14,665 cost for Class B1 minus \$5,287 cost for Class F). In FY 2015-16, approximately 28 defendants were charged with human trafficking with a minor victim. If the same number of defendants is charged at the higher offense level, the cost to the courts would be \$262,584 (\$9,378 difference in court cost between the old offense and the new offense times 28 defendants).

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period.

<b>AOC Cost of Increased Penalties</b>					
	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>
Inflation Rate		2.90%	2.98%	2.65%	1.89%
G.S. 14-43.11(b) - Adult victim	\$112,050	\$115,299	\$118,735	\$121,881	\$124,185
G.S. 14-43.11(b) - Minor victim	\$262,584	\$270,199	\$278,251	\$285,625	\$291,023
<b>Total AOC Cost</b>	<b>\$374,634</b>	<b>\$385,498</b>	<b>\$396,986</b>	<b>\$407,506</b>	<b>\$415,208</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (January 2017)</i>					

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 weighted average cost of a Class F felony is \$569 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, the most recent year data is available, 74% of Class F felony defendants used IDS services. Using the number of charges provided by AOC, 20 (27 defendants times 74%) defendants would have used IDS for a total cost of \$11,380 (20 times \$569).

In FY 2011-12, 82% of Class C felony defendants used IDS services. The weighted average cost of a Class C felony is \$899 per case for a PAC attorney. Using the number of charges provided by AOC, 22 (27 charges times 82%) defendants would have used IDS for a total cost of \$19,778 (22 times \$899). Therefore, the cost of this criminal penalty increase to IDS will be \$8,398 (\$19,778 Class C felony expense minus \$11,380 existing Class F felony expense).

The weighted average cost of a Class C felony is \$899 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, the most recent year data is available, 82% of Class C felony defendants used IDS services. Using the number of charges provided by AOC, 23 (28 charges times 82%) defendants would have used IDS for a total cost of \$20,677 (23 times \$899).

In FY 2011-12, 78% of Class B1 felony defendants used IDS services. The weighted average cost of a Class C felony is \$2,146 per case for a PAC attorney. Using the number of charges provided by AOC, 22 (28 charges times 78%) defendants would have used IDS for a total cost of \$47,212 (22 times \$2,146). Therefore, the cost of this criminal penalty increase to IDS will be \$26,535 (\$47,212 Class B1 felony expense minus \$20,677 existing Class C felony expense).

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. 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.

<b>IDS Cost of Increased Penalties</b>					
	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>
Inflation Rate		2.90%	2.98%	2.65%	1.89%
G.S. 14-43.11(b) - Adult victim	\$8,398	\$8,642	\$8,900	\$9,136	\$9,309
G.S. 14-43.11(b) - Minor victim	\$26,535	\$27,305	\$28,119	\$28,864	\$29,410
<b>Total IDS Cost</b>	<b>\$34,933</b>	<b>\$35,947</b>	<b>\$37,019</b>	<b>\$38,000</b>	<b>\$38,719</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (January 2017)</i>					

**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 2016.

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 exceeds the projected number of beds under the inmate population (row three).

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>
1. Inmates <sup>2</sup>	36,906	37,116	36,814	36,821	37,010
2. Prison Beds (Expanded Capacity)	37,617	37,617	37,617	37,617	37,617
3. Beds Over/(Under) Inmate Population	711	501	803	796	607

There were no Class F felony convictions under G.S. 14-43.11 where the victim of the offense is an adult in FY 2015-16. Under Structured Sentencing, all Class C felony offenders are required to receive an active sentence. Impact on the prison population will occur if Class F felony convictions become Class C felony convictions under the proposed section because of the higher rate of active sentences (50% for Class F compared to required active for Class C) and longer average estimated time served (17 months for Class F compared to 79 months for Class C).

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. The following table shows the estimated annual impact if, for example, there were two convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class F to Class C. 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 estimated growth rates in convictions. In addition, there will be some impact on post-release supervision caseloads since Class C felonies require an additional three months of supervision.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Increase Class F Felony to 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>
2 (Threshold)	1	2	4	6	8
20	10	23	42	63	83

<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.

<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 2017.

There was one Class C felony conviction under G.S. 14-43.11 where the victim of the offense is a minor in FY 2015-16. Impact will occur if any of the Class C felony convictions become Class B1 felony convictions due to the longer average estimated time served (79 months for Class C compared to 236 months for Class B1). Based on these differences in sentence lengths, impact will occur after six years. In addition, offenders will 'stack up' in prison as a result of the longer sentence lengths.

### **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 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 (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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.

A penalty increase from a Class F felony to a Class C felony will have an impact on CCS because Class F felonies require nine months of post-release supervision while Class C felonies require twelve months. However, the additional three-months of PRS will not be served until the sixth year (Class C felonies sentences average 79 months), so costs will not be incurred during the incarceration note period.

### **SECTION 5(l)**

Section 5(l) of the bill creates a new Class 1 misdemeanor.

### **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.

This section creates a new Class 1 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 1 misdemeanor, the average cost to the court would be \$206.

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, the most recent year data is available, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$202 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.

### **Department of Public Safety – Prisons**

This section creates a new Class 1 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.

### **Department of Public Safety – Community Corrections**

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 (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$148 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.

In FY 2015-16, 31% of Class 1 misdemeanor offenders received active sentences; 69% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,200 per offender (\$148 per month times 15 months).<sup>3</sup>

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<sup>3</sup> Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

**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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