



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Legislative Incarceration Fiscal Note

Short Title: Clarify Felony Possess Sweepstakes Machine.
Bill Number: Senate Bill 380 (Fifth Edition)
Sponsor(s):

SUMMARY TABLE

FISCAL IMPACT OF S.B. 380, V.5 (\$ in millions)

	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>
State Impact					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Estimate Available - Refer to Fiscal Analysis section
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FISCAL IMPACT SUMMARY

This bill amends G.S. 14-306.4 to expand the existing offense and creating a new offense. Section 1 of the bill expands the scope of the existing offense by amending the definition of “electronic machine or device” to include machines or devices that are autonomous and by expanding the definition of “entertaining display.” The current offense for violations of this section is a Class 1 misdemeanor for the first offense, a Class H felony for a second offense, and a Class G felony for a third or subsequent offense. Any of these offenses could apply for an action under the expanded scope of the existing offense. Section 1 also adds a Class G felony offense involving the operation of multiple electronic machines or devices in close proximity or electronic machines or devices that do not operate autonomously.

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, there were no convictions for violations under G.S. 14-306.4 in FY 2018-19. Since there is no historical data on this offense, or similar offenses to use as a proxy for predicting the total number of offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred.

Penalty	Administrative Office of the Courts (AOC)	Office of Indigent Defense Services (IDS)	Department of Public Safety (DPS) - Prisons	DPS - Community Corrections
Class 1 misdemeanor	\$233 per disposition	\$202 per disposition	No cost	\$2,535 per supervised

				probation sentence
Class H felony	\$709 per disposition	\$392 per disposition	\$5,740 per active sentence	\$1,521 minimum for post-release supervision
Class G felony	\$1,065 per disposition	\$498 per disposition	\$8,610 per active sentence	\$1,520 minimum for post-release supervision

FISCAL ANALYSIS

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, 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.

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 expands the scope of a Class 1 misdemeanor offense, a Class H felony offense, a Class G felony offense, and creates a new Class G felony offense. Because there have been no charges



under the existing 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. For every additional person charged with a Class G felony, the average cost to the court would be \$1,065. For every additional person charged with a Class H felony, the average cost to the court would be \$709. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$233.

The Office of Indigent Defense Services (IDS) provides 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 2017-18, the most recent year data is available, 78% of Class G felony cases were handled through IDS. The weighted average cost of a new Class G felony is \$498 per case for a private appointed counsel (PAC) attorney. In the same year, 78% of Class H felony cases were handled through IDS and the weighted average cost of a new Class H felony is \$392 per case for a PAC attorney. This estimate assumes the appointment of a PAC attorney. In the same year, 39% of Class 1 misdemeanor cases were handled through IDS, and the weighted average cost of a new Class 1 misdemeanor is \$202 per case for 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 – Prisons

Class 1 Misdemeanor

This bill expands the scope of a 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.

Class H and Class G Felonies

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 2019.

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). Rows four and five in the chart demonstrate the impact of the 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 2021	June 30 2022	June 30 2023	June 30 2024	June 30 2025
1. Inmates ²	35,982	36,147	36,328	36,416	36,738
2. Prison Beds (Expanded Capacity)	37,330	37,330	37,330	37,330	37,330
3. Beds Over/(Under) Inmate Population	1,348	1,183	1,002	914	592
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required	No estimate available				

Since there have been no convictions under the existing offense and 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. 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.

In FY 2018-19, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year. 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 growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	11

In FY 2018-19, 40% of Class G felony convictions resulted in active sentences, with an average estimated time served of 15 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table

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 2020.

³ Criminal penalty bills effective December 1, 2020 should not affect prison population and bed needs until FY 2021-22 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

shows the estimated annual impact if there were three convictions (the threshold) or 20 convictions for this proposed offense per year. 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 growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	15	15	15	15

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 \$18.86 per day, or \$574 per month, which includes the cost of food, clothing, and health care. In FY 2018-19, 40% of Class G felony offenders received active sentences averaging 15 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$8,610 (\$574 monthly cost times 15 months). In FY 2018-19, 34% 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 \$5,740 (\$574 monthly cost times 10 months).

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.

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 face the same non-active sentences as felons.

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 \$169 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 probation.

In FY 2018-19, 40% of Class G felony offenders received active sentences and 60% received suspended sentences. The average length of probation imposed for Class G felony offenders receiving suspended sentences was 28 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,521 per offender (\$169 per month times 9 months).⁴ For every offender sentenced to probation, the average cost would be \$4,732 (\$169 per month times 28 months).

In FY 2018-19, 34% of Class H felony offenders received active sentences and 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for Class H felony offenders receiving a suspended sentence was 26 months. All active sentences for Class F through I felonies result in nine months of PRS. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,521 per offender (\$169 per month times 9 months). For every offender sentenced to probation, the average cost would be \$4,394 (\$169 per month times 26 months).

In FY 2018-19, 35% of Class 1 misdemeanor offenders received active sentences; 66% 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 class of offense 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 \$2,535 per offender (\$169 per month times 15 months).

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

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

⁴ Due to the effective date of December 1, 2020 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2020-21. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2021-22.

LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

CONTACT INFORMATION

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

ESTIMATE PREPARED BY

William Childs

ESTIMATE APPROVED BY

Mark Trogdon, Director of Fiscal Research
Fiscal Research Division
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Signed copy located in the NCGA Principal Clerk's Offices