

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 676 (First Edition)

SHORT TITLE: 10 Yr. Min for 2nd Gun Felony Conviction.

SPONSOR(S): Senator Daniel

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special 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: Effective december 1, 2013 and applies to any offense that occurs on or after that date					
TECHNICAL CONSIDERATIONS:					
Yes - See Technical Considerations Section					

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address several new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, 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: \$0-\$3,875 per disposition
- Indigent Defense Services: \$91-\$306 in district court
\$107-\$644 in superior court without a trial
Savings of \$164 to a cost of \$1,991 in superior court with a trial
- Prison Section: \$11.23 per inmate per day
- Community Corrections: Minimum of \$0-\$345

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill adds new Article 3D to Chapter 14 of the General Statutes, which would create a new status offense of “armed habitual felon” (AHF) and require the courts to find for any felony conviction whether or not the defendant “used or displayed” a firearm while committing the felony. This new status offense is applicable when a defendant has been convicted or pled guilty to one or more prior firearm-related felony offenses in any State or federal court and certain conditions have been met. A person convicted of this new status offense is to be sentenced as a Class C felon, except where the defendant has been sentenced as a Class A, B1, or B2 felon. Section 1 includes provisions directing charging, sentencing, and the calculation of a prior record level.

Section 2 of this bill creates G.S.15A-1340.12A, Sentencing court to include in judgment whether firearm was used, which requires that when a person is convicted of a felony in which the person used or displayed a firearm while committing the offense the sentencing court shall include that fact when entering the judgment that imposes the sentence for the felony conviction.

The bill has an effective date of December 1, 2013, and applies to any offense that occurs on or after that date and that is the principal firearm-related felony offense for a charge as an armed habitual felon. Section 2 of the bill applies to any judgment entered for a felony conviction 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 (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies 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.

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.

The proposed status offense of armed habitual felon (AHF) is nearly identical to the three existing status offenses of habitual felon (HF), violent habitual felon (VHF) and habitual breaking and entering (HB & E). However, there is one substantive variation in the proposed AHF status that likely will require a different procedure from the existing statuses, which in turn could make prosecutions for AHF more complex and costly than prosecutions for those existing statuses. The variation is in the substance of the offense, which in turn may require a procedural change in the pleading and proving a “firearm-related felony.” It also may

limit the courts’ ability to identify and prosecute offenders under the new status, initially, except for offenders with prior convictions, which the involvement of a firearm is intrinsic to the offense. It is unclear how many (if any) offenders presently eligible for prosecution under one of the existing status offenses would be eligible for prosecution under the status of armed habitual felon.

It is unclear how many defendants might be eligible for prosecution for the new status offense. Some defendants eligible for AHF status currently may be prosecuted under one of the three existing status offenses; others may be eligible only for the new AHF status, without otherwise qualifying for one of the three existing status offenses. AOC does not expect individuals charged as violent habitual felons (VHF) to be supplanted in favor of AHF prosecutions (VHF carries a mandatory sentence of life without parole), however it is possible that an individual who is charged as a habitual felon (HF) or for habitual breaking and entering (HB&E) could be charged as an AHF instead, especially if the prior felony was “firearm related.”

Since this is a new status offense AOC does not have data upon which to estimate the number of charges for AHF that may arise annually. Because any felony offense where a firearm was found to have been used or displayed in the commission of the crime is eligible to be either the first or the second offense that triggers the status charge of AHF, the pool of potential defendants may be quite large. The charging of this status offense is at the discretion of the prosecutor, so it is possible that it might not be pursued in every possible instance. For those cases where the underlying charge was a lower-level felony but now with the additional charge of armed habitual felon will proceed as a Class C felony, the additional costs associated with the disposition of the case will be significant.

The table below shows the current cost per disposition and the increased cost if the defendant is charged at the higher Class C felony level. These estimated costs per disposition reflect an average cost for all manners of disposition (dismissal, plea, trial, etc.). If a significant number of cases are now required to be disposed by trial that may have otherwise been disposed by plea, the average cost per disposition will increase.

Estimated Cost Increase Per Case for Armed Habitual Felon Charges				
Current Charge Class of Underlying Offense	Armed Habitual Felon Charge Class	Estimated Current Cost Per Disposition	Class C Cost	Estimated Cost Increase Per Disposition
C	C	\$4,240	\$4,240	\$0
D	C	\$3,465	\$4,240	\$775
E	C	\$1,618	\$4,240	\$2,622
F	C	\$912	\$4,240	\$3,328
G	C	\$752	\$4,240	\$3,488
H	C	\$501	\$4,240	\$3,739
I	C	\$365	\$4,240	\$3,875

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. The following chart represents IDS’ additional per case costs for indigent armed habitual felon cases disposed in district court based on FY 2009-10 data.

General Statute	Current Felony Class	Proposed Felony Class	Per Case Current Cost for Private Assigned Counsel	Per Case Class C Cost	Per Case Cost Increase for Private Assigned Counsel
14-7.41(a)	Class D	Class C	\$436	\$527	\$91
14-7.41(a)	Class E	Class C	\$295	\$527	\$232
14-7.41(a)	Class F	Class C	\$296	\$527	\$231
14-7.41(a)	Class G	Class C	\$272	\$527	\$255
14-7.41(a)	Class H	Class C	\$235	\$527	\$292
14-7.41(a)	Class I	Class C	\$221	\$527	\$306

The following chart represents IDS' additional per case costs for indigent armed habitual felon cases disposed in superior court based on FY 2009-10 data. For the proposed G.S. 14-7.41(a) changes, there is a \$164 cost savings when the case is on trial in the superior court (Class D felony cost of \$3,201 minus Class C felony costs of \$3,037).

General Statute	Current Felony Class	Proposed Felony Class	Per Case Current Cost for Private Assigned Counsel	Per Case Class C Cost	Per Case Cost Difference for Private Appointed Counsel
14-7.41(a)	Class D	Class C	\$933 non-trial \$3,201 trial	\$1,040 non-trial \$3,037 trial	\$107 non-trial -\$164 trial
14-7.41(a)	Class E	Class C	\$652 non-trial \$1,914 trial	\$1,040 non-trial \$3,037 trial	\$388 non-trial \$1,123 trial
14-7.41(a)	Class F	Class C	\$593 non-trial \$2,046 trial	\$1,040 non-trial \$3,037 trial	\$447 non-trial \$991 trial
14-7.41(a)	Class G	Class C	\$534 non-trial \$1,524 trial	\$1,040 non-trial \$3,037 trial	\$506 non-trial \$1,513 trial
14-7.41(a)	Class H	Class C	\$446 non-trial \$1,180 trial	\$1,040 non-trial \$3,037 trial	\$594 non-trial \$1,857 trial
14-7.41(a)	Class I	Class C	\$396 non-trial \$1,046 trial	\$1,040 non-trial \$3,037 trial	\$644 non-trial \$1,991 trial

Department of Public Safety –Prison Section

Since the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

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 2012.

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).

The cost to add one additional inmate to the prison system is \$11.23 per day, which includes the cost of food, clothing, and health care. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C felony offenders are required to receive active sentences. Under the proposed bill, offenders convicted of this offense would receive a minimum sentence of 120 months and a maximum sentence of 156 months. The minimum average cost to the Prison Section for any individual convicted of the Class C habitual armed felony is \$40,428 (3,600 days times \$11.23 per day). This does not take into account what the cost would be for an offender who has been given a lesser felony sentence and not given the new status offense of armed habitual felon.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

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. 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.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; 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 intermediate sanctions and supervised probations.

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 2013.

³ Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

⁴ CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

Since the proposed bill creates a new status 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 offenders might be convicted and sentenced as an armed habitual felon. Twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, so there will be some impact on Post-Release Supervision (PRS) caseloads. At a minimum, one conviction resulting from this bill will require twelve months of PRS. The cost of twelve months of PRS is \$1,325 per offender (\$3.63 per day times 365 days).⁵ Offenders convicted of Class F-I felonies are required to serve nine months of PRS following their release from prison. The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days). If the defendant had been convicted of an F-I felony instead of the Class C felony offense, this bill would cost an additional \$345 per offender (\$1,325 minus \$980).

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:

AOC has raised the following issues:

1. The US Supreme Court held in Blakely v. Washington that any issue of fact other than the existence of a prior conviction that could increase the defendant's punishment beyond the normal statutory maximum must be found by a jury beyond a reasonable doubt or admitted by the defendant. This may have an impact on AOC's ability to identify prior armed offenders. The PCS for S.B. 676 does not provide the procedures required by Blakely at any stage of the proceeding.
 - a. The proposed AHF status offense in SB 676 makes no provision for prior notice to the defendant that the State alleges the involvement of a firearm in the defendant's new offense.
 - b. The court will likely need to submit the additional issue of the use or display of a firearm to the jury for a special verdict on that single element. SB 676 does not provide for any such procedure.
2. There may be difficulty establishing that a prior conviction was "firearm-related" for out-of-state convictions used to establish AHF status.
3. The proposed G.S. 14-7.41 provides that a defendant convicted of AHF status "shall serve" a term of imprisonment. This phrase creates some ambiguity; it is unclear whether or not this phrase is a directive for mandatory active punishment.
4. It is unclear from S.B. 676 what the intended interaction would be between the proposed AHF status and the existing enhancement for certain felonies involving a firearm under G.S. 15A-1340.16A. The proposed AHF statutes do not make their sentencing provisions exclusive, so there will be a class of offenses that fit the criteria of both AHF status and the existing firearm enhancement. The bill should address how these two provisions interact, or the courts will enter differing dispositions for similar offenses, based on different interpretations of how (or whether) the two provisions work in tandem.

⁵ Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

Offenses that involved solely the possession of a firearm, but not the display or use of a firearm, were not included in the Sentencing Commissions analysis. These offenses include, for example, possession of a firearm by a felon, larceny of a firearm, carrying a concealed gun. Offenses that involved solely the possession of a deadly weapon, but not the display or use, were not included in this analysis. These offenses include, for example, possess weapon of mass destruction, sell or give weapon to minor, or possession of a weapon on state property or at a courthouse.

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