

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 187 (First Edition)

SHORT TITLE: Stalking by GPS/Criminal Offense.

SPONSOR(S): Representatives Glazier, Horn, Faircloth, and McGrady

FISCAL IMPACT					
(\$ in millions)					
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
State Impact	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
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, Department of Public Safety, Indigent Defense Services					
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. However, given that there are 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 this crime:

- Administrative Office of the Courts: \$88 per disposition
- Indigent Defense Services: \$181 per disposition
- Prison Section: (\$11.23 per inmate per day)
- Community Corrections: Minimum of \$1,606

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill amends G.S. 14-196.3 by adding new subdivisions (3) and (4) in subsection (a), which define an electronic tracking device and a fleet vehicle, respectively. Subdivision (5) in subsection (b) expands the existing Class 2 Misdemeanor to include knowingly installing or placing an electronic tracking device

without consent, or to cause an electronic tracking device to be installed without consent, and to use the electronic tracking device to track the location of any person.

Within subdivision (5) there are exceptions for the following:

- Law enforcement officers, judicial officers, probation or parole officers, and Division of Corrections employees while engaged in the lawful performance of official duties and in accordance with State or federal law,
- The parent or legal guardian of a minor when tracking the minor or when tracking a caretaker of the minor authorized by the parent or legal guardian when the minor is in sole care of the caretaker, and provided that the electronic tracking device is not located on the physical person of the caretaker
- A legally authorized representative of a disabled adult as defined in G.S. 108A-101(d),
- The owner of fleet vehicles when tracking such vehicles,
- A licensed private investigator as defined in G.S. 74C-3(a)(8) acting in the normal course of his or her business and with the consent of the property owner upon which the electronic tracking device is to be placed (a licensed private investigator may not use this exception to work on behalf of a client who is subject to a Chapter 50B domestic violence protective order or to aid in the commission of a crime),
- The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

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 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 existing Class 2 Misdemeanor offense of cyberstalking. Under the current version of G.S. 14-196.3 there have been 2,104 defendants charged with Class 2 Misdemeanor cyberstalking in calendar year 2014. In Fiscal Year 2013-14, there were 109 Class 2 misdemeanor convictions under G.S. 14-196.3. Because this bill expands the scope of this offense, AOC does not have historical data upon which to estimate the number of additional 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.

30% of cases at this offense class are handled through the Office of Indigent Defense Services (IDS). IDS provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. The cost of every new Class 2 Misdemeanor will be \$180.90 per case for a private appointed counsel (PAC) attorney. This estimate is a weighted average of IDS costs including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. 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 –Prison Section

This bill expands the scope of an existing 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.

Department of Public Safety – Community Correction Section

For felony offense classes E through I and all misdemeanor classes, 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 \$123 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 probations.

In Fiscal Year 2013-14, 33 percent of Class 2 misdemeanor offenders received active sentences and 67 percent received intermediate or community punishments. The average active sentence was 21 days. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 15 and 13 months, respectively. Therefore, at a minimum, one conviction resulting from Section 1 of

this bill will require at least 13 months of supervision. The cost of 13 months of supervision is \$1,606 per offender (\$123.50 per month times 13 months).¹

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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Signed Copy Located in the NCGA Principal Clerk's Offices

¹ 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.