



NORTH CAROLINA GENERAL ASSEMBLY

Session 2017

Legislative Incarceration Fiscal Note

Short Title: Extreme Risk Protection Orders.
Bill Number: House Bill 976 (First Edition)
Sponsor(s): Representatives Morey, Harrison, G. Martin, and Willingham

SUMMARY TABLE

FISCAL IMPACT OF H.B. 976, V.1 (\$ in millions)

	<u>FY 2018-19</u>	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</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

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, 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. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$390 per disposition
- Indigent Defense Services: \$201 per disposition
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: \$2,754 per supervised probation sentence

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 creates new G.S. 50E-13, Prohibition; Violation, which would create a new Class A1 misdemeanor for persons who violate the terms of an Extreme Risk Protection Order under Chapter 50E. 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 A1 misdemeanor, the average cost to the court would be \$390.

Section 1 of the bill also creates new G.S. 50E-14, False Statements Regarding ERPO a Misdemeanor, which would create a new Class 2 misdemeanor for persons who make false statements when petitioning for an ERPO or make false statements to law enforcement officers that an expired ERPO remains in effect. 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 2 misdemeanor, the average cost to the court would be \$120.

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 2016-17, the most recent year data is available, 52% of Class A1 misdemeanor cases and 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of either a new Class A1 misdemeanor or a new Class 2 misdemeanor is \$201 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 bill creates a new Class A1 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 are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$162 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 2016-17, 35% of Class A1 misdemeanor offenders received active sentences; 65% 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 17 months. Therefore, at a minimum, one Class A1 misdemeanor conviction resulting in probation will require at least 17 months of supervision. The cost of 17 months of supervision is \$2,754 per offender (\$162 per month times 17 months).¹

In FY 2016-17, 34% of Class 2 misdemeanor offenders received active sentences; 66% received probation. Active misdemeanor sentences are served in local jails and do not require any post-

¹ Due to the effective date of December 1, 2018 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2018-19. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2019-20.

release supervision. The average length of probation imposed for this offense class was 14 months. Therefore, at a minimum, one Class 2 misdemeanor conviction resulting in probation will require at least 14 months of supervision. The cost of 14 months of supervision is \$2,268 per offender (\$162 per month times 14 months).²

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.

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.

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Signed copy located in the NCGA Principal Clerk's Offices

² Due to the effective date of December 1, 2018 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2018-19. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2019-20.