

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2015**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 627 (First Edition)

**SHORT TITLE:** Fight Financial Transaction Card Fraud.

**SPONSOR(S):** Representative McNeill

**FISCAL IMPACT**

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

	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures	\$1,034,411	\$1,971,849	\$2,121,597	\$2,211,903	\$2,428,114
State Positions:					
<b>NET STATE IMPACT</b>	<b>(\$1,034,411)</b>	<b>(\$1,971,849)</b>	<b>(\$2,121,597)</b>	<b>(\$2,211,903)</b>	<b>(\$2,428,114)</b>

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

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

**EFFECTIVE DATE:** December 1, 2015

**TECHNICAL CONSIDERATIONS:**

None

This incarceration note only addresses the criminal penalty changes included in Section 3 of the bill. The other criminal penalty changes in the bill are infractions and will not have an impact on the prison population.

**FISCAL IMPACT SUMMARY:**

The proposed bill is estimated to have a fiscal impact. The following costs are estimated:

	<b>Costs by Agency Adjusted for Inflation</b>				
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
AOC	\$728,493	\$1,282,813	\$1,319,758	\$1,356,183	\$1,389,274
IDS	\$305,918	\$538,695	\$554,209	\$569,505	\$583,401
DPS - Prisons	\$0	\$202,538	\$276,330	\$265,335	\$433,979
DPS - Community Corrections	\$0	(\$52,197)	(\$28,700)	\$20,880	\$21,460
<b>Total</b>	<b>\$1,034,411</b>	<b>\$1,971,849</b>	<b>\$2,121,597</b>	<b>\$2,211,903</b>	<b>\$2,428,114</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

Section 3 of the bill increases the penalty for some violations of Article 2A of Chapter 75, Identity Theft Protection Act, from a Class 2 misdemeanor to a Class I felony, and other violations of the Article from a Class I felony to a Class G felony.

## **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 3 of the bill increases the penalty for some violations of Article 2A of Chapter 75, Identity Theft Protection Act, from a Class 2 misdemeanor to a Class I felony (G.S. 14-113.17(a)). 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 2 misdemeanor who is instead charged with a Class I felony, the average cost to the court will be \$277 (\$365 for a Class I minus \$88 for a Class 2 misdemeanor).

In FY 2013-14, approximately 931 defendants were charged under G.S. 14-113.17(a). (Of these, none were convicted.) Therefore, the cost to the courts is estimated to be \$257,887 (\$277 difference in court cost between the old offense and the new offense times 931 defendants). The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date.

<b>AOC Costs Adjusted for Inflation</b>					
<b>Changes to G.S. 14-113.17(a)</b>					
<b>Charges: 931</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	2%	3%	3%	3%	2%
Increase Cost	\$153,217	\$269,802	\$277,572	\$285,233	\$292,193
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

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 2 misdemeanor is \$181 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, 30% of Class 2 misdemeanor defendants used IDS services. Using the number of charges provided by AOC, 279 defendants would have used IDS in FY 2013-14 for a total cost of \$50,499 (931 defendants times 30% using IDS equals 279 indigent defendants. 279 times \$181 equals \$50,499).

In FY 2011-12, 68% of Class I felony defendants used IDS services. The weighted average cost of a Class I felony is \$315 per case for a PAC attorney. Using the number of charges provided by AOC, 633 defendants would have used IDS in FY 2013-14 for a total cost of \$199,395 (931 defendants times 68% using IDS equals 633 indigent defendants. 633 times \$315 equals \$199,395). Therefore, the cost of this criminal penalty increase to IDS will be \$148,896 (\$199,395 Class I felony expense minus \$50,499 existing Class 2 misdemeanor expense equals \$148,896).

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date. 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.

<b>IDS Costs Adjusted for Inflation</b>					
<b>Changes to G.S. 14-113.17(a)</b>					
<b>Charges: 931</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Increase Cost	\$88,463	\$155,775	\$160,261	\$164,684	\$168,702
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

Section 3 of the bill also increases the penalty for some violations of Article 2A of Chapter 75, Identity Theft Protection Act, from a Class I felony to a Class G felony (G.S. 14-113.17(b)). For every person who would have been charged with a Class I felony who is instead charged with a Class G felony, the average cost to the court will be \$387 (\$752 for a Class G minus \$365 for a Class I).

In FY 2013-14, approximately 2,502 defendants were charged under G.S. 14-113.17(b). (Of these, 116 were convicted.) Therefore, the cost to the courts is estimated to be \$968,274 (\$387 difference in court cost between the old offense and the new offense times 2,502 defendants). The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date.

<b>AOC Costs Adjusted for Inflation</b>					
<b>Changes to G.S. 14-113.17(b)</b>					
<b>Charges: 2,502</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	2%	3%	3%	3%	2%
Increase Cost	\$575,276	\$1,013,011	\$1,042,186	\$1,070,950	\$1,097,081
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

This change will also result in increased costs to IDS. The weighted average cost of a Class I felony is \$315 per case for a PAC attorney. In FY 2011-12, 68% of Class I felony defendants used IDS services. Using the number of charges provided by AOC, 1,701 defendants would have used IDS in FY 2013-14 for a total cost of \$535,815 (2,502 defendants times 68% using IDS equals 1,701 indigent defendants. 1,701 times \$315 equals \$535,815).

In FY 2011-12, 78% of Class G felony defendants used IDS services. The weighted average cost of a Class G felony is \$462 per case for a PAC attorney. Using the number of charges provided by AOC, 1,952 defendants would have used IDS in FY 2013-14 for a total cost of \$901,824 (2,502 defendants times 68% using IDS equals 1,952 indigent defendants. 1,952 times \$462 equals \$901,824). Therefore, the cost of this criminal penalty increase to IDS will be \$366,009 (\$901,824 Class G expense minus \$535,815 existing Class I expense).

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date. 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.

<b>IDS Costs Adjusted for Inflation</b>					
<b>Changes to G.S. 14-113.17(b)</b>					
<b>Charges: 2,502</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Increase Cost	\$217,455	\$382,920	\$393,948	\$404,821	\$414,699
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

### **Department of Public Safety –Prison Section**

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 2013.

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. As shown, the Sentencing Commission estimates that this specific legislation would require an additional 46 beds in the prison system by the end of FY 2016-17.

<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.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2016</b>	<b>June 30 2017</b>	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>
1. Inmates <sup>2</sup>	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	0	46	61	57	91
<b>5. Additional Beds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Although no additional bed construction will be required for this bill, additional spending will be required to house new prisoners or to house prisoners longer as a result of the increased penalty. The cost to add one additional inmate to the prison system is \$11.53 per day, or \$4,208 per year, which includes the cost of food, clothing, and health care. The table below shows the per diem costs related to the additional beds projected by the Sentencing Commission for each year of the five year projection, adjusted for inflation.

<b>Annual Per Diem Costs for Additional Inmates</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Annual Cost	\$4,286	\$4,403	\$4,530	\$4,655	\$4,769
Additional Inmates per Year	0	46	61	57	91
<b>Total Cost</b>	<b>\$0</b>	<b>\$202,538</b>	<b>\$276,330</b>	<b>\$265,335</b>	<b>\$433,979</b>
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

### **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. 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.

<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 2015.

<sup>3</sup> Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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 \$130.50 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. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

<b>Daily Supervision Cost Adjusted for Inflation Five Year Projection</b>						
	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
Inflation Rate		1.85%	2.72%	2.88%	2.76%	2.44%
Monthly Cost	\$130.50	\$132.90	\$136.52	\$140.45	\$144.32	\$147.85
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>						

There were no convictions under G.S. 14-113.17(a) in FY 2013-14. In that year, 40% of Class G felony offenders received active sentences followed by nine months post-release supervision (PRS); 60% received some form of supervised probation. Class 2 misdemeanants received active sentences 33% of the time and probation 67% of the time. No PRS is required for misdemeanants, so more offenders will be serving a mandatory nine-months PRS as a result of this bill. Additional costs may be incurred if the number of months the offenders would have served on probation is less than nine months. The average length of probation for a Class 2 misdemeanor is 13 months; for a Class G felony, the average length of probation is 29 months.

In FY 2013-14, there were 116 convictions under G.S. 14-113.17(b). That same year, 16% of Class I felony offenders received active sentences followed by nine months post-release supervision (PRS); 84% received some form of supervised probation for an average of 23 months. Class G felony offenders received active sentences 40% of the time and supervised probation 60% of the time. The average length of probation for a Class G felony is 29 months.

The charts below shows the difference in cost for community corrections resulting from the increased penalty in G.S. 14-113.17(b) for each year of the five year projection, adjusted for inflation. For the purposes of this incarceration note, it is assumed that no sentences would begin until the second year of the five-year fiscal note period. Savings occur in the second year because more offenders are serving active prison sentences for a Class G felony and therefore do not require community correction services as soon as Class I offenders do.

**Cost for DPS – Community Corrections  
Class I Felony Increased to Class G Felony  
G.S. 14-113.17(b)  
Est. 116 Convictions**

	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Cost of Current Offense	\$0	\$167,277	\$328,300	\$337,680	\$347,060
Cost of Proposed Offense	\$0	\$115,080	\$299,600	\$358,560	\$368,520
<b>Cost Differential</b>	\$0	(\$52,197)	(\$28,700)	\$20,880	\$21,460

*Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)*

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