

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 369 (Fourth Edition)

SHORT TITLE: Criminal Law Changes.

SPONSOR(S):

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Estimate Available					
State Impact	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
AOC	0.2	0.3	0.3	0.3	0.3
IDS	0.1	0.2	0.2	0.2	0.2
DPS - Prisons		0.40	0.60	0.60	0.60
DPS - Community Corr.		0.2	0.6	0.7	0.7
Additional Prison Beds		99	133	133	133
NET STATE IMPACT	\$0.3	\$1.1	\$1.7	\$1.8	\$1.8

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
 Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE: December 1, 2014

TECHNICAL CONSIDERATIONS:
 None

This Incarceration Memo only addresses criminal penalty changes included in Sections 5, 6(a), 6(b), and 13 of H.B. 369, Criminal Law Changes.

FISCAL IMPACT AND BILL SUMMARY

The bill for H.B. 369 increases or creates several criminal penalties. Following are summaries of the impact of the bill by section.

Section 5 – Furnishing a cell phone to an inmate; Possession of a cell phone by an inmate

Section 5(d) of the bill increases the penalty for providing a cell phone to an inmate (G.S. 14-258.1(d)) from a Class 1 misdemeanor to a Class H felony.

Section 5(f) of the bill increases the penalty for possession of a cell phone by an inmate in a local confinement facility (G.S. 14-258.1(e)) from a Class 1 misdemeanor to a Class H felony and adds inmates in the custody of the Division of Adult Correction of the Department of Public Safety (DPS) to the offense. Currently, cell phone violations by offenders in the custody of DPS are handled as infractions within the Department, not as criminal penalties in the regular court system.

The table below shows a summary of the estimated costs for this section. Additional information about these costs may be found in the Assumptions and Methodology section of this Incarceration Note.

Total Estimated Costs					
Section 5 - Violations Related to Possession of a Cell Phone by an Inmate					
	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Courts	\$141,060	\$247,019	\$253,244	\$260,081	\$266,505
Indigent Defense	\$110,186	\$192,616	\$197,470	\$202,802	\$207,811
DPS - Prisons		\$419,078	\$581,737	\$597,396	\$612,580
DPS - Community Corrections		\$237,597	\$579,700	\$710,016	\$727,534
Total	\$251,246	\$1,096,311	\$1,612,151	\$1,770,294	\$1,814,430
Additional Prison Beds		96	130	130	130

Section 6(a) – Assault on executive, legislative, or court officers

Section 6(a) of the bill expands the scope of the offense of assault on executive, legislative, or court officers (G.S. 14-16.6) by adding assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. This section may have a fiscal impact to address an increase in penalty levels for a crime. However, given there is no historical data on these 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 additional costs may be incurred for every one person charged and convicted of this crime at the new penalty level:

- Administrative Office of the Courts: \$277 to \$626 per disposition
- Indigent Defense Services: \$63 to \$141 in district court
\$96 to \$269 in superior court without a trial
\$199 to \$1,199 in superior court with a trial
- Prison Section: \$2,394 to \$5,472 for an active sentence (53 percent of Class F felony convictions and 16 percent of Class I felony convictions)
- Community Corrections: minimum of \$1,112

Additional information about these costs may be found in the Assumptions and Methodology section of this Incarceration Note.

Section 6(b) – Threats against executive, legislative, or court officers

Section 6(b) of the bill expands the scope of the offense of threatening to assault an executive, legislative, or court officer (either through the mail or through some other means) (G.S. 14-16.7) by adding threatening another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. This section may have a fiscal impact to address an increase in penalty levels for a crime. However, given there is no historical data on these 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 additional costs may be incurred for every one person charged and convicted of this crime at the new penalty level:

- Administrative Office of the Courts: \$200 per disposition
- Indigent Defense Services: \$63 in district court
\$96 in superior court without a trial
\$199 in superior court with a trial

- Prison Section: \$2,394 for an active sentence (16 percent of Class I felony convictions)
- Community Corrections: minimum of \$1,112

Additional information about these costs may be found in the Assumptions and Methodology section of this Incarceration Note.

Section 13 – Carrying a concealed firearm

Section 13 of the bill increases the penalty for violation of G.S. 14-269(a1), Carrying concealed weapons (pistol or gun), from a Class I felony to a Class H felony for the second and subsequent offenses. The table below shows a summary of the estimated costs for this section. Additional information about these costs may be found in the Assumptions and Methodology section of this Incarceration Note.

Total Estimated Costs					
Section 13 - Increase Penalty if Concealed Weapon is a Firearm					
	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Courts	\$10,539	\$18,548	\$19,016	\$19,529	\$20,012
Indigent Defense	\$2,534	\$4,435	\$4,547	\$4,670	\$4,785
DPS - Prisons		\$13,096	\$13,425	\$13,786	\$14,136
DPS - Community Corrections		(\$4,629)	(\$4,877)	(\$4,738)	(\$1,110)
Total	\$13,072	\$31,451	\$32,111	\$33,247	\$37,823
Additional Prison Beds		3	3	3	3

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.

SECTION 5 – FURNISHING A CELL PHONE TO AN INMATE; POSSESSION OF A CELL PHONE BY AN INMATE

Section 5(d) of the bill increases the penalty for providing a cell phone to an inmate (G.S. 14-258.1(d) from a Class 1 misdemeanor to a Class H felony.

Section 5(f) of the bill increases the penalty for possession of a cell phone by an inmate in a local confinement facility (G.S. 14-258.1(e)) from a Class 1 misdemeanor to a Class H felony and adds inmates in the custody of the Division of Adult Correction of the Department of Public Safety (DPS) to the offense. Currently, cell phone violations by offenders in the custody of DPS are handled as infractions within the Department, not as criminal penalties in the regular court system.

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 5(d) of the bill increases the penalty for providing a cell phone to an inmate from a Class 1 misdemeanor to a Class H felony. In calendar year 2013, there were 11 charges for this offense. For every person who would have been charged with a Class 1 misdemeanor who is now charged with a Class H felony, the additional cost to the court will be \$336 (\$501 for a Class H felony minus \$165 for a Class 1 misdemeanor). Since the penalty is effective December 1, 2014, the first year of costs is prorated for seven months. Assuming the same number of charges, the total cost to AOC in the first full year of implementation will be \$3,848. The table below shows the total costs for the next five years, adjusted for inflation.

AOC Costs Adjusted for Inflation						
Five Year Projection						
Section 5(d)	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class H Felony						
Court Cost	\$336.00	\$342.59	\$349.81	\$358.63	\$368.31	\$377.41
Offenders		6	11	11	11	11
Cost of Increase		\$2,198	\$3,848	\$3,945	\$4,051	\$4,152

FY 2014-15 charges have been prorated to account for a December 1, 2014 effective date.
Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

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. For each case disposed in district court, the additional cost for a Class H felony will be \$73 (\$255 for a Class H felony minus \$182 for a Class 1 misdemeanor). In superior court, the additional cost would be \$135 for non-trial cases (\$494 for a Class H felony minus \$359 for a Class 1 misdemeanor) and \$333 for cases that go to trial (\$1,180 for a Class H felony minus \$847 for a Class 1 misdemeanor). These estimates assume the appointment of a private assigned counsel (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.

The Fiscal Research Division does not have any data on the rate at which indigent cases are handled in district court, superior court with no trial, and superior court with a trial. In order to estimate the additional

cost to IDS resulting from this bill, we have calculated the average cost of the three types of trials. The average cost to IDS for Class H felonies is \$642. The average cost for Class 1 misdemeanors is \$463. The difference between the two felony levels is \$179 (\$642 minus \$463). In Fiscal Year 2012-13, 54 percent of people charged with a crime used IDS for defense. Using the number of charges provided by AOC, six offenders (11 offenders times 54 percent) will use IDS attorneys. The average cost to IDS for the increased penalty included in this bill will be \$1,118 in the first full year of implementation. Since the penalty is effective December 1, 2014, the first year of costs is prorated for seven months. The table below shows the average estimated cost for the next five years, adjusted for inflation.

IDS Costs Adjusted for Inflation						
Five Year Projection						
Section 5(d)	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class H Felony						
Cost Differential	\$179.00	\$182.51	\$186.36	\$191.06	\$196.21	\$201.06
Offenders		4	6	6	6	6
Cost of Increase		\$730	\$1,118	\$1,146	\$1,177	\$1,206

FY 2014-15 charges have been prorated to account for a December 1, 2014 effective date.
Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

Current G.S. 14-258.1(e) makes possession of a cell phone or tobacco products by an inmate in a local confinement facility a Class 1 misdemeanor. **Section 5(f)** of the bill increases the penalty for possession of a cell phone by an inmate in a local confinement facility from a Class 1 misdemeanor to a Class H felony. Possession of tobacco products in a local confinement facility remains a Class 1 misdemeanor.

In calendar year 2013, there were 291 charges for violation of G.S. 14-258.1(e). AOC data does not clearly state how many of those charges were for having tobacco versus having a cell phone. For the purposes of this Incarceration Note, Fiscal Research is estimating that of 75 percent of the charges were for possession of a cell phone. To the extent that that percentage is incorrect, this estimate may be understated. For every person in a local confinement facility who would have been charged with a Class 1 misdemeanor who is now charged with a Class H felony, the additional cost to the court will be \$336 (\$501 for a Class H felony minus \$165 for a Class 1 misdemeanor). Since the penalty is effective December 1, 2014, the first year of costs is prorated for seven months. Assuming 75 percent of the charges are for cell phone violations, the total cost to AOC for inmates in local confinement facilities in the first year will be \$76,259.

Currently, possession of a cell phone by an inmate in the State system is a prison infraction handled internally within the Department of Public Safety (DPS). **Section 5(f)** of the bill would make possession of a cell phone by an inmate a Class H felony. The following table shows the number of cell phone confiscations by DPS for the previous four years.

Calendar Year	Confiscation Record	Inmate Possessor Identified
2010	633	331
2011	625	334
2012	734	407
2013	641	320

Source: NC Department of Public Safety

In calendar year 2013, 320 offenders received a prison infraction for possession of a cell phone. Assuming that all of those violations would be handled by the court system under the new law, the cost to AOC in the first full year of implementation would be \$166,911. The chart below shows the total cost to AOC for the penalty change.

AOC Costs Adjusted for Inflation						
Five Year Projection						
Section 5(f)	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class H Felony - Local Confinement Facility						
Court Cost	\$336.00	\$342.59	\$349.81	\$358.63	\$368.31	\$377.41
Charges		127	218	218	218	218
Cost of Increase		\$43,508	\$76,259	\$78,181	\$80,292	\$82,275
Class H Felony - State Prison System						
Court Cost	\$501.00	\$510.82	\$521.60	\$534.74	\$549.18	\$562.74
Charges		187	320	320	320	320
Cost of New Charges		\$95,353	\$166,911	\$171,117	\$175,738	\$180,078
Total Cost to AOC		\$138,861	\$243,171	\$249,299	\$256,030	\$262,354
<i>FY 2014-15 charges have been prorated to account for a December 1, 2014 effective date.</i>						
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>						

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. For each case disposed in district court, the additional cost for a Class H felony will be \$73 (\$255 for a Class H felony minus \$182 for a Class 1 misdemeanor). In superior court, the additional cost would be \$135 for non-trial cases (\$494 for a Class H felony minus \$359 for a Class 1 misdemeanor) and \$333 for cases that go to trial (\$1,180 for a Class H felony minus \$847 for a Class 1 misdemeanor). These estimates assume the appointment of a private assigned counsel (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.

The Fiscal Research Division does not have any data on the rate at which indigent cases are handled in district court, superior court with no trial, and superior court with a trial. In order to estimate the additional cost to IDS resulting from this bill, we have calculated the average cost of the three types of trials. The average cost to IDS for Class H felonies is \$642. The average cost for Class 1 misdemeanors is \$463. The difference between the two violation levels is \$179 (\$642 minus \$463). In Fiscal Year 2012-13, 54 percent of people charged with a crime used IDS for defense. If 75 percent of the 2013 charges against inmate in local confinement facilities were for cell phone use, 118 offenders are expected to use IDS services (291 charges times 75 percent equals 218 times 54 percent usage rate). The average cost to IDS for the increased penalty for violations in a local confinement facility will be \$41,278 in the first full year of implementation. Since the penalty is effective December 1, 2014, the first year of costs is prorated for seven months.

It is likely that most State prisons inmates will qualify for indigent defense services, so to calculate the cost to IDS for making possession of a cell by a State inmate a Class H felony, Fiscal Research assumed that 90 percent of the inmates charged would use IDS for defense. To the extent that this percentage is too high,

this estimate may be overstated. If 90 percent of the State prison inmates use IDS services, the cost in the first full year of implementation would be \$150,220. The table below shows the total average estimated costs for the next five years, adjusted for inflation.

IDS Costs Adjusted for Inflation Five Year Projection						
Section 5(f)	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class H Felony - Local Confinement Facility						
Cost Differential	\$336.00	\$342.59	\$349.81	\$358.63	\$368.31	\$377.41
Charges		69	118	118	118	118
Cost of Increase		\$23,638	\$41,278	\$42,318	\$43,461	\$44,534
Class H Felony - State Prison System						
Average Cost	\$501.00	\$510.82	\$521.60	\$534.74	\$549.18	\$562.74
Charges		168	288	288	288	288
Cost of New Offenders		\$85,818	\$150,220	\$154,006	\$158,164	\$162,071
Total Cost to IDS		\$109,456	\$191,498	\$196,324	\$201,625	\$206,605
<i>FY 2014-15 charges have been prorated to account for a December 1, 2014 effective date.</i>						
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>						

Department of Public Safety – Prison Section

Section 5(d) of the bill increases the penalty for providing a cell phone to an inmate from a Class 1 misdemeanor to a Class H felony. The Sentencing and Policy Advisory Commission reports that there was one conviction for this offense in FY 2012-13. For statistical reasons, the Sentencing Commission’s prison projection model cannot be used to project the impact of misdemeanor to felony reclassifications. Using threshold data, if this one conviction was reclassified from a Class 1 misdemeanor to a Class H felony, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. The Sentencing Commission only provides two year projections for estimates using scenario data. However, for the purposes of this Note, the Fiscal Research Division is assuming the same number of beds will be required for the fourth and fifth year of the projection.

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 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 show the impact of this section.

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					
Section 5(d)	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ²	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill³	0	1	2	2	2
5. Additional Beds Required	0	0	0	0	0

Although no additional beds will be required for this section, additional spending will be required to house new prisoners or to house prisoners longer as a result of the increased penalty. Per diem expenditures for each inmate are approximately \$11.49. Additional inmates in the first year will cost \$4,365. Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), no impact is assumed in FY 2014-15. The table below shows the annual cost for each year of the five year projection, adjusted for inflation.

Incarceration Costs Adjusted for Inflation Five Year Projection						
Section 5(d)	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91
Additional Inmates			1	2	2	2
Additional Cost			\$11.96	\$24.52	\$25.18	\$25.82
Annual Cost			\$4,365	\$8,950	\$9,191	\$9,424

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

Section 5(f) of the bill increases the penalty for possession of a cell phone by an inmate in a local confinement facility (G.S. 14-258.1(e)) from a Class 1 misdemeanor to a Class H felony. The Sentencing and Policy Advisory Commission reports that there were 113 Class 1 misdemeanor convictions for this offense in FY 2012-13. However, AOC data does not make a distinction between those convicted for possession of a cell phone and those convicted for possession of tobacco products. For statistical reasons, the Sentencing Commission's prison projection model cannot be used to project the impact of misdemeanor to felony reclassifications. If 75 percent of the 113 convictions were for possession of a cell phone, then 85 convictions could be reclassified from a Class 1 misdemeanor to a Class H felony. This would result in the need for 25 additional prison beds the first year and 34 additional prison beds the second year. The Sentencing Commission only provides two year projections for estimates with using scenario data.

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 March 2014.

³ Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

However, for the purposes of this Note, the Fiscal Research Division is assuming the same number of beds will be required for the fourth and fifth year of the projection. To the extent that more than 75 percent of the convictions were for possession of a cell phone, this estimate may be understated.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,⁴ 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 show the impact of the bill.

Population Projections and Bed Capacity Five Year Impact					
Section 5(f) - Local	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ⁵	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill⁶	0	25	34	34	34
5. Additional Beds Required	0	0	0	0	0

Although no additional beds will be required for this section, additional spending will be required to house new prisoners or to house prisoners longer as a result of the increased penalty. Per diem expenditures for each inmate are approximately \$11.49. Additional inmates in the first year will cost \$109,135. Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), no impact is assumed in FY 2014-15. The table below shows the annual cost each year of the five year projection, adjusted for inflation.

⁴ 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.

⁵ 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 March 2014.

⁶ Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Incarceration Costs Adjusted for Inflation								
Five Year Projection								
Inmates in Local Confinement Facilities								
Section 5(f)	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19		
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%		
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91		
Additional Inmates			25	34	34	34		
Additional Cost			\$299.00	\$416.84	\$428.06	\$438.94		
Annual Cost			\$109,135	\$152,147	\$156,242	\$160,213		
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>								

Section 5(f) of the bill also creates a new Class H felony for possession of a cell phone by a State prison inmate. In calendar year 2013, 320 inmates were sanctioned by the Department of Public Safety for possession of a cell phone. Fiscal Research asked the Sentencing and Policy Advisory Commission to provide prison population projections based on the assumption that 75 percent of those inmates would be convicted of the new Class H felony. To the extent that this assumption is too low and a higher rate of inmates are convicted, this estimate may be understated. The Sentencing Commission determined that 240 convictions (75 percent of 320) for a Class H felony would result in the need for 70 additional beds in the first year, and 94 additional beds in the second year. The Sentencing Commission only provides two year projections for estimates with a using scenario data. However, for the purposes of this Note, the Fiscal Research Division is assuming the same number of beds will be required for the fourth and fifth year of the projection.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,⁷ 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 show the impact of the bill.

⁷ 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					
Section 5(f) - State	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ⁸	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill⁹	0	70	94	94	94
5. Additional Beds Required	0	0	0	0	0

Although no additional beds will be required for this section, additional spending will be required to house new prisoners or to house prisoners longer as a result of the increased penalty. Per diem expenditures for each inmate are approximately \$11.49. Additional inmates in the first year will cost \$305,578. Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), no impact is assumed in FY 2014-15. The table below shows the annual cost for each year of the five year projection, adjusted for inflation.

Incarceration Costs Adjusted for Inflation Five Year Projection Inmates in the State Prison System						
Section 5(f)	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91
Additional Inmates			70	94	94	94
Additional Cost			\$837.20	\$1,152.44	\$1,183.46	\$1,213.54
Annual Cost			\$305,578	\$420,641	\$431,963	\$442,942

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

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 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.

⁸ 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 March 2014.

⁹ Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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 \$123.50 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, intermediate sanctions and supervised probations.

Section 5(d) of the bill increases the penalty for providing a cell phone to an inmate from a Class 1 misdemeanor to a Class H felony. The Sentencing and Policy Advisory Commission reports that there was one conviction for this offense in FY 2012-13. In FY 2012-13, 27 percent of Class 1 misdemeanor offenders received active sentences; two percent received intermediate sentences; and 71 percent received community punishments. For the same year, 35 percent of Class H felony offenders received active sentences; 33 percent received intermediate sentences; and 32 percent received community punishments. The average lengths of intermediate and community punishments for a Class 1 misdemeanor were 18 months and 15 months, respectively. The average lengths of intermediate and community punishments for a Class H felony were 29 and 27 months, respectively. Misdemeanor sentences do not require PRS. All active sentences for a Class H felony require nine months of PRS.

Fiscal Research cannot estimate the difference in cost for CCS resulting from the increase in penalty level because of the small number of convictions. If the sentence was an intermediate or community punishment as a Class 1 misdemeanor and now becomes an active sentence as a Class H felony, there would be savings, as active felony sentences require nine months of PRS while intermediate or community sentence lengths would have required 26 or 23 months of supervision. If the sentence remains an active, intermediate or community punishment at the higher offense level, or an active sentence at the lower level becomes an intermediate or community punishment at the higher level, there would be a cost because the number of months of supervision required would increase.

Section 5(f) of the bill increases the penalty for possession of a cell phone by an inmate in a local confinement facility (G.S. 14-258.1(e)) from a Class 1 misdemeanor to a Class H felony.

According to the Sentencing and Policy Advisory Commission, during FY 2012-13 there were 113 Class 1 misdemeanor convictions for this crime. However, AOC data does not make a distinction between those convicted for possession of a cell phone and those convicted for possession of tobacco products. If 75 percent of the 113 convictions were for possession of a cell phone, then 85 convictions could be reclassified from a Class 1 misdemeanor to a Class H felony. In FY 2012-13, 27 percent of Class 1 misdemeanor offenders received active sentences; two percent received intermediate sentences; and 71 percent received community punishments. For the same year, 35 percent of Class H felony offenders received active sentences; 33 percent received intermediate sentences; and 32 percent received community punishments. The average lengths of intermediate and community punishments for a Class 1 misdemeanor were 18 months and 15 months, respectively. The average lengths of intermediate and community punishments for a Class H felony were 29 and 27 months, respectively. Misdemeanor sentences do not require PRS. All active sentences for a Class H felony require nine months of PRS. To the extent that more than 75 percent of the Class 1 misdemeanor convictions were for possession of a cell phone, this estimate may be understated.

The chart below shows the difference in cost between Class 1 misdemeanor offenders and Class H felony offenders for each level of punishment for each year of the five year projection, adjusted for inflation. Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), no impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.

Difference in CCS Cost - Class 1 Misdemeanor and Class H Felony							
Five-Year Projection, Adjusted for Inflation							
Section 5(f) Local	Percent	Offenders	Months	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Proposed Offense Intermediate	33%	28	29	\$43,200	\$88,576	\$109,920	\$112,633
Current Offense Intermediate	2%	2	18	\$3,086	\$4,745	\$4,873	\$4,994
Difference Intermediate				\$40,114	\$83,831	\$105,047	\$107,639
Proposed Offense Community	32%	27	27	\$41,657	\$85,413	\$98,685	\$101,120
Current Offense Community	71%	60	15	\$92,570	\$118,629	\$121,833	\$124,839
Difference Community				(\$50,914)	(\$33,216)	(\$23,148)	(\$23,719)
Proposed Offense PRS	35%	30	9	\$7,714	\$35,589	\$36,550	\$37,452
Current Offense PRS	0%	0	0	\$0	\$0	\$0	\$0
Difference PRS				\$7,714	\$35,589	\$36,550	\$37,452
Total Difference				(\$3,086)	\$86,204	\$118,449	\$121,371

Charts detailing the cost calculations for the Community Corrections Section can be found in Appendix A immediately following this Note.

Section 5(f) of the bill also creates a new Class H felony for possession of a cell phone by a State prison inmate. In calendar year 2013, 320 inmates were sanctioned by the Department of Public Safety for possession of a cell phone. For the purpose of this Note, the Fiscal Research Division is assuming that 75 percent of those inmates would be convicted of the new Class H felony. To the extent that this assumption is too low and a higher rate of inmates are convicted, this estimate may be understated.

In FY 2012-13, 35 percent of Class H felony offenders received active sentences; 33 percent received intermediate sentences; and 32 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 29 and 27 months, respectively. Although typically all active sentences result in nine months of post-release supervision (PRS) for a Class H felony, this estimate assumes that most of these offenders would already be required to do at least nine months of PRS as a result of their original felony offense. Therefore, no additional costs are assumed for PRS as a result of this section of the bill. The estimated costs for additional intermediate and community punishment are shown in the table below.

CCS Cost - Class H Felony							
Five-Year Projection, Adjusted for Inflation							
Section 5(f) State	Percent	Offenders	Months	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Proposed Offense Intermediate	33%	79	29	\$121,884	\$249,912	\$310,133	\$317,785
Proposed Offense Community	32%	77	27	\$118,799	\$243,585	\$281,434	\$288,378
Total Cost				\$240,683	\$493,497	\$591,567	\$606,163

Charts detailing the cost calculations for the Community Corrections Section can be found in Appendix B immediately following this Note.

SECTION 6(a) – ASSAULT ON AN EXECUTIVE, LEGISLATIVE, OR COURT OFFICER

Section 6(a) of the bill expands the scope of the offense of assault on executive, legislative, or court officers (G.S. 14-16.6) by adding assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties.

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 6(a) of the bill expands the scope of the offense of assault on executive, legislative, or court officers (G.S. 14-16.6) by adding assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. These offenses could currently be charged as a Class 2 misdemeanor or as Class A1 misdemeanors if the offender used a deadly weapon (the Class F felony offense for inflicting serious bodily injury is the same for both categories of people). Under the proposed statute, the Class 2 misdemeanor would increase to a Class I felony, and the Class A1 misdemeanor would increase to a Class F felony. It is not known how many of the current charges would be elevated under the new statute. The difference in cost between a Class 2 misdemeanor and a Class I felony is \$277 (\$365 for a Class I felony minus \$88 for a Class 2 misdemeanor). The difference in cost between a Class A1 misdemeanor and a Class F felony is \$626 (\$912 for a Class F felony minus \$286 for a Class A1 misdemeanor).

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. IDS reports that the difference in cost between a misdemeanor (regardless of class) and a Class I felony in district court would be \$63 (\$245 for a Class I minus \$182 for a misdemeanor). In superior court, the difference would be \$96 without a trial (\$455 for a Class I minus \$359 for a misdemeanor) and \$199 with a trial (\$1,046 for a Class I minus \$847 for a misdemeanor). The increases for the increase to a Class F felony would be: \$141 in district court (\$323 for a Class F minus \$182 for a misdemeanor); \$269 in superior court without a trial (\$628 for a Class F minus \$359 for a misdemeanor); and \$1,199 in superior court with a trial (\$2,046 for a Class F minus \$847 for a misdemeanor).

Department of Public Safety –Prison Section

Section 6(a) of the bill expands the scope of the offense of assault on executive, legislative, or court officers (G.S. 14-16.6) by adding assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. This section increases the penalty of assault on a person if that person is assaulted in retaliation for the work of a legislative, executive, or court officer from a Class 2 misdemeanor to a Class I felony. If a deadly weapon is used in the assault, the offense goes from a Class A1 misdemeanor to a Class F felony. According to the Sentencing and Policy Advisory Commission, impact on the prison population will occur if Class 1 misdemeanor convictions become Class I felony convictions under the proposed statute because misdemeanants with sentences of less than 180 days are currently housed in local jails, while all felony convictions are housed in State prisons. The Sentencing Commission does not have any historical data on which to project the impact of this change on the prison population.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹⁰ 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).

Population Projections and Bed Capacity Five Year Impact					
Section 6(a)	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ¹¹	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill¹²	No estimate available				
5. Additional Beds Required					

Although no need for additional beds is projected for this section, there may be per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$11.23 per day, or \$342 per month, which includes the cost of food, clothing, and health care. The table below shows the per diem cost to house one additional inmate at each of the offense levels covered in this section.

Prison Per Diem Cost per Conviction for Section 6(a) Assault on an Executive, Legislative, or Court Officer				
Offense	Felony Level	Percent Receiving Active Sentences	Average Length of Sentence	Cost
Assault	I	16%	16 months	\$5,472
With a Deadly Weapon	F	53%	7 months	\$2,394

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 and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-

¹⁰ 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.

¹¹ 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 March 2014.

¹² Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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 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 \$123.50 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, intermediate sanctions and supervised probations.

In FY 2012-13, 16 percent of Class I felony offenders received active sentences followed by nine months of PRS; 27 percent received intermediate sentences; and 57 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 26 and 23 months, respectively. For the same year, 53 percent of Class F felony offenders received active sentences followed by nine months of PRS; 37 percent received intermediate sentences; and 10 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 33 and 31 months, respectively. Therefore, at a minimum, one conviction resulting from Section 6(a) of this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,112 per offender (\$123.50 per month times nine months).¹³

SECTION 6(b) – THREATS AGAINST AN EXECUTIVE, LEGISLATIVE, OR COURT OFFICER

Section 6(b) of the bill expands the scope of the offense of threatening to assault an executive, legislative, or court officer (either through the mail or through some other means) (G.S. 14-16.7) by adding threatening another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties.

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.

This section expands the scope of the offense of threatening to assault an executive, legislative, or court officer (either through the mail or through some other means) (G.S. 14-16.7) by adding threatening another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. The offense, which is currently charged as a Class 1 misdemeanor under G.S. 14-277.1, Communicating threats, would become a Class I felony. It is not known how many of the current charges would be elevated under the new statute. The difference in cost between a Class 1 misdemeanor and a Class I felony is \$200 (\$365 for a Class I felony minus \$165 for a Class 1 misdemeanor).

¹³ Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.

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. IDS reports that the difference in cost between a misdemeanor (regardless of class) and a Class I felony in district court would be \$63 (\$245 for a Class I minus \$182 for a misdemeanor). In superior court, the difference would be \$96 without a trial (\$455 for a Class I minus \$359 for a misdemeanor) and \$199 with a trial (\$1,046 for a Class I minus \$847 for a misdemeanor). These estimates assume the appointment of 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 –Prison Section

Section 6(b) of the bill expands the scope of the offense of threatening to assault an executive, legislative, or court officer (either through the mail or through some other means) (G.S. 14-16.7) by adding threatening another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. According to the Sentencing and Policy Advisory Commission, impact on the prison population will occur if Class 1 misdemeanor convictions become Class I felony convictions under the proposed statute because misdemeanants with sentences of less than 180 days are currently housed in local jails, while all felony convictions are housed in State prisons. The Sentencing Commission does not have any historical data on which to project the impact of this change on the prison population.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹⁴ 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).

Population Projections and Bed Capacity Five Year Impact					
Section 6(b)	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ¹⁵	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill¹⁶		1	2	2	2
5. Additional Beds Required	0	0	0	0	0

¹⁴ 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.

¹⁵ 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 March 2014.

¹⁶ Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Although no need for additional beds is projected for this section, there may be per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$11.23 per day, or \$342 per month, which includes the cost of food, clothing, and health care. The average sentence length for Class I felonies is seven months. The per diem cost to house one additional Class I felon is \$2,394 (\$342 per month times seven months).

Department of Public Safety – Community Correction Section

Section 6(b) of the bill increases the penalty for threatening an executive, legislative, or court officer from a Class I felony to a Class F felony. The scope of the offense is also expanded to add threatening another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties.

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 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.

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 \$123.50 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, intermediate sanctions and supervised probations.

In FY 2012-13, 16 percent of Class I felony offenders received active sentences followed by nine months of PRS; 27 percent received intermediate sentences; and 57 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 26 and 23 months, respectively. Therefore, at a minimum, one conviction resulting from Section 6(b) of this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,112 per offender (\$123.50 per month times nine months).¹⁷

SECTION 13 – CARRYING A CONCEALED FIREARM

Section 13 of the bill increases the penalty for second and subsequent violations of G.S. 14-269, Carrying concealed weapons, from a Class I felony to a Class H felony. Estimated costs for the increase by agency are explained below.

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,

¹⁷ Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.

and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 13 of the bill increases the penalty for second and subsequent violations of G.S. 14-269, Carrying concealed weapons, from a Class I felony to a Class H felony. AOC reports that second and subsequent violations of this offense were charged against 131 defendants in FY 2012-13. For every person who would have been charged with a Class I felony who is instead charged with a Class H felony, the cost will be \$136 (\$501 for a Class H minus \$365 for a Class I). Since the penalty is effective December 1, 2014, the first year of costs is prorated for seven months. Assuming the same number of charges, the total cost to the court system in the first full year of implementation will be \$554,489. The table below shows the total costs for the next five years, adjusted for inflation.

AOC Costs Adjusted for Inflation Five Year Projection						
Section 13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class I Felony to Class H Felony						
Court Cost	\$136.00	\$138.67	\$141.59	\$145.16	\$149.08	\$152.76
Offenders*		76	131	131	131	131
Cost of Increase		\$10,539	\$18,548	\$19,016	\$19,529	\$20,012
<i>*FY 2014-15 offender numbers have been prorated to account for a December 1, 2014 effective date.</i>						
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>						

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. For each case disposed in district court, the additional cost for a Class H felony will be \$10 (\$255 for a Class H minus \$245 for a Class I). In superior court, the additional cost would be \$39 for non-trial cases (\$494 for a Class H minus \$455 for a Class I) and \$134 for cases that go to trial (\$1,180 for a Class H minus \$1,046 for a Class I). These estimates assume the appointment of a private assigned counsel (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.

The Fiscal Research Division does not have any data on the rate at which indigent cases are handled in district court, superior court with no trial, and superior court with a trial. In order to estimate the additional cost to IDS resulting from this bill, we have calculated the average cost of the three types of trials. The average cost to IDS for Class H felonies is \$642. The average cost for Class I felonies is \$582. The difference between the two felony levels is \$60 (\$642 minus \$582). In Fiscal Year 2012-13, 54 percent of people charged with a crime used IDS for defense. Using the number of charges provided by AOC, 71 (131 offenders times 54 percent) will use IDS attorneys. The average cost to IDS for the increased penalty included in this bill will be \$4,435 in the first full year of implementation. Since the penalty is effective December 1, 2014, the first year of costs is prorated for seven months. The table below shows the average estimated cost for the next five years, adjusted for inflation.

IDS Costs Adjusted for Inflation Five Year Projection						
Section 13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class I Felony to Class H Felony						
Cost Differential	\$60.00	\$61.18	\$62.47	\$64.04	\$65.77	\$67.39
Offenders*		41	71	71	71	71
Cost of Increase		\$2,534	\$4,435	\$4,547	\$4,670	\$4,785
<i>*FY 2014-15 offender numbers have been prorated to account for a December 1, 2014 effective date.</i>						
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>						

Department of Public Safety –Prison Section

Section 13 of the bill increases the penalty for second and subsequent violations of G.S. 14-269, Carrying concealed weapons, from a Class I felony to a Class H felony. According to the Sentencing and Policy Advisory Commission, during FY 2012-13 there were 14 convictions for this crime. Only 16 percent of Class I offenders received active sentences, while 35 percent of Class H offenders were sentenced to prison. Class H offenders also had longer sentences than Class I offenders (ten months compared to seven months). Therefore, the Sentencing and Policy Advisory Commission (SPAC) estimates the increased penalty will result in a need for three additional prison beds in the first full year of implementation and three additional beds in the second year. The Sentencing Commission only provides two year projections for estimates with a low number of convictions. However, for the purposes of this Note, the Fiscal Research Division is assuming the same number of beds will be required for the fourth and fifth year of the projection.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹⁸ 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 show the impact of the bill.

¹⁸ 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					
Section 13	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ¹⁹	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill²⁰	0	3	3	3	3
5. Additional Beds Required	0	0	0	0	0

Although no additional beds will be required for this section, additional spending will be required to house new prisoners or to house prisoners longer as a result of the increased penalty. Per diem expenditures for each inmate are approximately \$11.49. Three additional inmates in the first year will cost \$13,096. Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), no impact is assumed in FY 2014-15. The table below shows the annual cost for each year of the five year projection, adjusted for inflation.

Incarceration Costs Adjusted for Inflation Five Year Projection							
Section 13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%	
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91	
Additional Inmates			3	3	3	3	
Additional Cost			\$35.88	\$36.78	\$37.77	\$38.73	
Annual Cost			\$13,096	\$13,425	\$13,786	\$14,136	

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

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.

¹⁹ 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 March 2014.

²⁰ Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Offenders given PRS or intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General supervision of offenders by a probation officer costs \$123.50 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 PRS or to intermediate sanctions and supervised probations. The table below shows the per month rate for each year of the five year projection, adjusted for inflation.

Daily Supervision Cost Adjusted for Inflation Five Year Projection						
Section 13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%
Per Month Cost	\$123.50	\$125.91	\$128.57	\$131.81	\$135.37	\$138.71

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

Section 13 of the bill increases the penalty for violation of G.S. 14-269, Carrying concealed weapons, from from a Class I felony to a Class H felony for the second and subsequent offenses.

According to the Sentencing and Policy Advisory Commission, during FY 2012-13 there were 14 Class I felony convictions for this crime. In FY 2012-13, 16 percent of Class I felony offenders received active sentences followed by nine months post-release supervision (PRS); 27 percent received intermediate sentences; and 57 percent received community punishments. For the same year, 35 percent of Class H offenders received active sentences followed by nine months PRS. Thirty-three percent received intermediate sentences; and 32 percent received community punishments. The average lengths of intermediate and community punishments for a Class I felony were 26 months and 23 months, respectively. The average lengths of intermediate and community punishments for a Class H felony were 29 and 27 months, respectively.

The chart below shows the difference in cost between Class H offenders and Class I offenders for each level of punishment for each year of the five year projection, adjusted for inflation. Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), no impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.

**Difference in CCS Cost - Class I Felony and Class H Felony
Five-Year Projection, Adjusted for Inflation**

Section 13	Percent	Offenders	Months	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Proposed Offense Intermediate	33%	5	29	\$7,714	\$15,817	\$19,629	\$20,113
Current Offense Intermediate	27%	4	26	\$6,171	\$12,654	\$14,078	\$14,426
Difference Intermediate				\$1,543	\$3,163	\$5,550	\$5,687
Proposed Offense Community	32%	4	27	\$6,171	\$12,654	\$14,620	\$14,981
Current Offense Community	57%	8	23	\$12,343	\$24,253	\$24,908	\$25,523
Difference Community				(\$6,171)	(\$11,599)	(\$10,288)	(\$10,542)
Proposed Offense PRS	35%	5	9	\$1,286	\$5,931	\$6,092	\$6,242
Current Offense PRS	16%	2	9	\$1,286	\$2,373	\$6,092	\$2,497
Difference PRS				\$0	\$3,559	\$0	\$3,745
Total Difference				(\$4,629)	(\$4,877)	(\$4,738)	(\$1,110)

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

Charts detailing the cost calculations for the Community Correction Section can be found in Appendix C immediately following this note.

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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DATE: July 17, 2014

APPENDIX A

Section 5(f) Violations Related to Possession of a Cell Phone by an Inmate in a Local Confinement Facility

Cost of Current. Intermediate Punishment							
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Intermediate	2%	Year 1		\$3,086	\$1,582	\$0	\$0
Number Intermediate	2	Year 2		\$0	\$3,163	\$1,624	\$0
Number of Months	18	Year 3			\$0	\$3,249	\$1,665
		Year 4				\$0	\$3,329
		Year 5					\$0
Intermediate Total			\$0	\$3,086	\$4,745	\$4,873	\$4,994

Cost of Proposed Intermediate Punishment							
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Intermediate	33%	Year 1	\$0	\$43,200	\$44,288	\$18,952	\$0
Number Intermediate	28	Year 2		\$0	\$44,288	\$45,484	\$19,419
Number of Months	29	Year 3			\$0	\$45,484	\$46,607
		Year 4				\$0	\$46,607
		Year 5					\$0
Intermediate Total			\$0	\$43,200	\$88,576	\$109,920	\$112,633

Cost of Current Community Punishment							
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Community	71%	Year 1	\$0	\$92,570	\$23,726	\$0	\$0
Number Community	60	Year 2		\$0	\$94,903	\$24,367	\$0
Number of Months	15	Year 3			\$0	\$97,466	\$24,968
		Year 4				\$0	\$99,871
		Year 5					\$0
Community Total			\$0	\$92,570	\$118,629	\$121,833	\$124,839

Cost of Proposed Community Punishment							
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Community	32%	Year 1	\$0	\$41,657	\$42,706	\$10,965	\$0
Number Community	27	Year 2		\$0	\$42,706	\$43,860	\$11,236
Number of Months	27	Year 3			\$0	\$43,860	\$44,942
		Year 4				\$0	\$44,942
		Year 5					\$0
Community Total			\$0	\$41,657	\$85,413	\$98,685	\$101,120

Cost of Current Post-Release Supervision							
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Active	27%	Year 1		\$0	\$0	\$0	\$0
Number Active	23	Year 2			\$0	\$28,428	\$0
Number of Months	0	Year 3				\$0	\$0
Length of Active Term	38.3	Year 4					\$0
		Year 5					
PRS Total				\$0	\$0	\$28,428	\$0

Cost of Proposed Post-Release Supervision							
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Active	35%	Year 1		\$7,714	\$27,680	\$0	\$0
Number Active	30	Year 2			\$7,909	\$28,428	\$0
Number of Months	9	Year 3				\$8,122	\$29,129
Length of Active Term	10	Year 4					\$8,323
		Year 5					
PRS Total				\$7,714	\$35,589	\$36,550	\$37,452

APPENDIX B

Section 5(f) Violations Related to Possession of a Cell Phone by an Inmate in a State Prison

			Cost of Proposed Intermediate Punishment				
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Intermediate	33%	Year 1	\$0	\$121,884	\$124,956	\$53,471	\$0
Number Intermediate	79	Year 2		\$0	\$124,956	\$128,331	\$54,790
Number of Months	29	Year 3			\$0	\$128,331	\$131,497
		Year 4				\$0	\$131,497
		Year 5					\$0
Intermediate Total			\$0	\$121,884	\$249,912	\$310,133	\$317,785

			Cost of Proposed Community Punishment				
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Community	32%	Year 1	\$0	\$118,799	\$121,792	\$31,270	\$0
Number Community	77	Year 2		\$0	\$121,792	\$125,082	\$32,042
Number of Months	27	Year 3			\$0	\$125,082	\$128,168
		Year 4				\$0	\$128,168
		Year 5					\$0
Community Total			\$0	\$118,799	\$243,585	\$281,434	\$288,378

			Cost of Proposed Post-Release Supervision				
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Active	35%	Year 1		\$21,600	\$77,504	\$0	\$0
Number Active	84	Year 2			\$22,144	\$79,598	\$0
Number of Months	9	Year 3				\$22,742	\$81,561
		Year 4					\$23,303
Length of Active Term	10	Year 5					\$0
PRS Total				\$21,600	\$99,648	\$102,340	\$104,865

APPENDIX C

Section 13 Second Offense of Carrying a Concealed Firearm

			Cost of Current Intermediate Punishment				
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Intermediate	27%	Year 1		\$6,171	\$6,327	\$1,083	\$0
Number Intermediate	4	Year 2		\$0	\$6,327	\$6,498	\$1,110
Number of Months	26	Year 3			\$0	\$6,498	\$6,658
		Year 4				\$0	\$6,658
		Year 5					\$0
Intermediate Total			\$0	\$6,171	\$12,654	\$14,078	\$14,426

			Cost of Proposed Intermediate Punishment				
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Intermediate	33%	Year 1	\$0	\$7,714	\$7,909	\$3,384	\$0
Number Intermediate	5	Year 2		\$0	\$7,909	\$8,122	\$3,468
Number of Months	29	Year 3			\$0	\$8,122	\$8,323
		Year 4				\$0	\$8,323
		Year 5					\$0
Intermediate Total			\$0	\$7,714	\$15,817	\$19,629	\$20,113

			Cost of Current Community Punishment				
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Community	57%	Year 1	\$0	\$12,343	\$11,599	\$0	\$0
Number Community	8	Year 2		\$0	\$12,654	\$11,913	\$0
Number of Months	23	Year 3			\$0	\$12,996	\$12,206
		Year 4				\$0	\$13,316
		Year 5					\$0
Community Total			\$0	\$12,343	\$24,253	\$24,908	\$25,523

			Cost of Proposed Community Punishment				
			FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Percentage Community	32%	Year 1	\$0	\$6,171	\$6,327	\$1,624	\$0
Number Community	4	Year 2		\$0	\$6,327	\$6,498	\$1,665
Number of Months	27	Year 3			\$0	\$6,498	\$6,658
		Year 4				\$0	\$6,658
		Year 5					\$0
Community Total			\$0	\$6,171	\$12,654	\$14,620	\$14,981

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