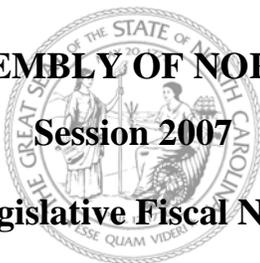


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Fiscal Note**

**BILL NUMBER:** House Bill 274 (Fifth Edition)

**SHORT TITLE:** Street Gang/Suppression.

**SPONSOR(S):** Representatives Michaux, Carney, and Frye

<b>FISCAL IMPACT</b>					
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
<b>Note: Prison cost estimates assumes a <u>minimum fiscal impact scenario</u>; prison costs and population could be significantly higher</b>					
<b>GENERAL FUND</b>					
<b>Correction - Prisons</b>					
Operating		\$5,214,603	\$10,926,234	\$11,412,083	\$12,047,493
Construction	\$27,188,784				
Correction – DCC	Significant impact anticipated, amount cannot be determined				
Juvenile Justice	Significant operating and construction costs anticipated; Costs could total \$31,787,013 by FY 2009-10; see table 5 (pg.17)				
Judicial	Significant impact anticipated, amount cannot be determined				
<b>TOTAL</b>	<b>\$29,743,787</b>	<b>\$5,458,196</b>	<b>\$12,306,188</b>	<b>\$12,704,222</b>	<b>\$12,047,493</b>
<b>EXPENDITURES:</b>	to	to	to	to	(potentially higher)
	\$49,719,265	\$14,471,135	\$23,094,919	\$22,266,049	
<b>Note: Total expenditures include possible YDC construction and operating costs</b>					
<b>ADDITIONAL PRISON BEDS:</b>					
(cumulative)*	0	175	356	361	370
<b>POSITIONS:</b>					
(cumulative)	0	70	142	144	148
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch, Department of Justice, Department of Juvenile Justice and Delinquency Prevention					
<b>EFFECTIVE DATE:</b> December 1, 2008					
*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.					

**BILL SUMMARY:**

**BACKGROUND:** *The only change from the second edition to the 3<sup>rd</sup> was to delete the appropriation of \$3,000,000 for Gang Prevention Grants in Section 4. An amount of \$4,760,195 was appropriated in HB 1473 so funding does not need to be specified in HB 274. Other language in Section 4 matches language in HB 1473 regarding grant allocation requirements.*

**The only change from the 3<sup>rd</sup> to the 4<sup>th</sup> edition was to drop the \$65 fee for expunction (Section 1).**

**The changes from the 4<sup>th</sup> to the 5<sup>th</sup> edition include the omissions of non-applicability to juveniles under 16, conditional discharge and expunction for first time offenders, and grant allocation requirements. The grant allocation requirements are now found in Section 7 of Senate Bill 1358. This edition also makes technical corrections.**

*House Bill 274 would enact the Street Gang Prevention Act, making it a Class H felony for a person associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity, to solicit or coerce another to participate in a criminal street gang, or to threaten a person to deter that person from withdrawing from a gang. The bill would make it a Class E felony to discharge a firearm from within a vehicle or other enclosure as a part of gang activity, and would provide enhanced punishment for misdemeanors committed as part of gang activity, and for using a deadly weapon in the commission of a Class E or higher felony. The bill would provide for the seizure and forfeiture of property used to facilitate criminal gang activity and declare real property used by gangs to be a public nuisance subject to abatement as provided by law. Subsequent editions of the bill have made technical changes to the bill as introduced.*

**CURRENT LAW:** Under G.S. 15A-1340.16(d)(8), it is an aggravating factor in felony sentencing if the offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" is defined as any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

**BILL ANALYSIS:**

**Section 1.** Amends the criminal forfeiture statute to include offenses under the Act.

**Section 2.** Amends the law to make it a Class E felony for a person to discharge a firearm toward a person from within any building, car, or other enclosure, when the shooting is committed as part of a pattern of criminal gang activity. Assuming no prior convictions, the presumptive minimum sentence for a Class E felony is 20-25 months intermediate or active punishment.

**Section 3.** Creates a new Article in Chapter 14 of the General Statutes. Generally, "criminal street gang activity" encompasses the commission of offenses under the Controlled Substances Act, or designated offenses under the criminal law statutes. The criminal prohibitions include:

- Employment or association with a criminal street gang (pattern of criminal gang activity). Class H felony.
- Acquiring or maintaining real or personal property derived from gang activity (through a pattern of criminal gang activity). Class H felony.

- Acting as an organizer or supervisor with a street gang, to include conspiring to engage in a pattern of gang activity. Class F felony.
- Causing, soliciting or encouraging another to participate in a street gang. Class H felony. If the person solicited or encouraged is less than 16 years old, then the person is guilty of a Class F felony, and may also be charged with the underlying offense.
- Threaten to injure another with the intent to deter the person from assisting another to withdraw from a criminal street gang. Class H felony.
- Punish or conspire to punish or retaliate against someone who withdraws from a street gang. Class H felony.

Misdemeanor Enhancement: Any misdemeanor offense that is committed for the benefit of, direction of, or in association with a street gang is elevated one class higher than its normal designation.

Seizure and forfeiture of property: The bill would provide for the seizure and forfeiture of property used in the course of criminal gang activity, or derived from criminal gang activity. The provision would not apply to the property of persons that do not have actual knowledge that property is being used for criminal street gang activity.

Real property used by gangs declared to be a public nuisance: The property would be subject to abatement as provided by law. The provision would not apply if the owner or person with legal possession of the property did not have actual knowledge that the property was being used for criminal street gang activity.

No preemption of local authority: Local ordinances consistent with State law related to gangs and gang violence would not be preempted by the State law.

**Section 4. Bail Restrictions:** The act provides that it is a rebuttable presumption that no condition of release will assure the appearance of a person (1) charged with a violation of an offense committed on behalf of a street gang; (2) who was on pretrial release for another offense; and (3) who has a prior conviction of an offense under the criminal street gang statutes within the past five years, or the defendant's release for the offense, whichever is later. Persons considered for bond under the section may only be released by a judge upon a finding that there is a reasonable assurance that the person will appear and release does not impose an unreasonable risk of harm to the community.

**Section 5. "Deadly" Weapon.** The act amends the law that provides for an enhanced penalty if a defendant is convicted of a Class E or higher felony used a firearm during commission of the felony. Currently, use of a firearm during a Class E or higher felony increases the person's minimum term of imprisonment by an additional 60 months. The bill would make the enhanced penalty applicable to the use of *any* deadly weapon. A "deadly weapon" is defined in case law as *any instrument which is likely to produce death or great bodily harm*. The courts have recognized that the deadly character of the weapon depends sometimes more upon the manner of its use, and the condition of the person assaulted, than upon the intrinsic character of the weapon itself.

**Sections 6 and 7.** The act is effective December 1, 2008, for offenses committed on or after that date if the General Assembly appropriates funds specific to the funding of the Act. The appropriation must reference the act by bill number, title, or Session Law number.

## ASSUMPTIONS AND METHODOLOGY:

**NOTE: The fiscal impact for the 2<sup>nd</sup> edition still applied for the 3<sup>rd</sup> edition. There were no changes that would affect the fiscal impact. For the 4<sup>th</sup> edition, the only fiscal change was to drop the \$65 fee for expunction. For the 5<sup>th</sup> edition, the additional of juveniles adds costs associated with juvenile adjudication and placement in YDC's. Also, this note has been updated with the most recent data from Sentencing Commission, AOC, and DOC.**

### Background for Fiscal Impact for HB 274

This fiscal note attempts to demonstrate the impact of the Street Gang Prevention Act on the prison and probation system and the courts. Providing fiscal impact is difficult since there is limited data on gangs and gang activity to use as a baseline in estimating the impact of HB 274.

However, there is some information available that indicates gang activity is prevalent in the state. A survey released in 2008 by the Governor's Crime Commission estimated there were 14,500 gang members statewide. Table 1 shows the Department of Correction's estimates of the number of inmates and probationers that are gang affiliated. *These numbers do not include possible gang members that are in county jails.*

**Table 1 -- Gang Affiliations: Department of Correction Offenders**

<b>Offender Type</b>	<b>Total Population (as of April 21, 2007)</b>	<b>Gang Affiliated Offenders</b>
Prison Population	31,782	2,172 (7%)
Probation Population	89,588	667 (0.7%)
<b>TOTAL</b>	<b>121,370</b>	<b>2,839 (2.3%)</b>

HB 274 creates a number of new offenses that punish gang involvement or activity when actions of that gang have a criminal purpose. The bill creates (a) nine new offenses; (b) enhances the sentence for misdemeanor offenses by one offense class if the offense was committed in relation to street gang activity spelled out in the bill, and (c) redefines current penalty enhancement (60 months) for use of firearm to include any deadly weapon.

*It is believed the fiscal impact of HB 274 will be substantial, given the following: evidence of growth in criminal gang activity; multiple new offenses in this bill and the large pool of current offenses specified in the bill that could potentially trigger the new gang offenses.* For example, two criteria are required to be met for six of the nine new offenses in order to trigger the street gang offenses:

1. The offender must have committed one of the offenses in current statutes specified in this bill (e.g., certain assault offenses, weapons offenses, sex offenses etc). The total offenses in the pool based on 2006/07 conviction data is 125,930 (30,276 felony convictions and 95,654 misdemeanor convictions fall under the General Statutes included in the definition of criminal street gang activity in this bill)
2. The offender must have committed the "triggering" offense as part of *criminal street gang activity*, as defined in new GS 14-15.16(c).

For the three other offenses—GS 14-50.16(a)(1), (2), and (a), an offender can be charged with a Class H felony (Class F offense under subsection (a) if they are acting as an organizer or supervisor) if they meet criteria 1 and 2 and they have two prior convictions for criminal street gang activity. This establishes a

“pattern of criminal street gang activity.” *The offender pool for this group is a subset of the total eligible pool – 57,652 of the 125,930 offenses are eligible based on two or more prior convictions.(See table 2)*

**The offender pool establishes the potentially substantial fiscal impact of this bill.** However, since the offenses in HB 274 are new, there is no data available for the Sentencing Commission to develop official estimates of the impact of this bill on the prison population. It cannot be determined how many offenders will be charged and convicted of the various “street gang” offenses in this bill.

In order to give the General Assembly a plausible estimate of the “minimum” fiscal impact of this bill, Fiscal Research asked the Sentencing Commission to develop a couple scenarios.

1. For the separate new offenses in this bill, the Commission estimated the number of prison beds that would be created for every conviction. These scenarios are only the starting point for estimating the total impact of this bill
2. For the derivative offenses (committed after two prior convictions that establish a pattern of criminal gang activity), the Commission provided an estimate of the number of prison beds needed if 1% of 57,652 offenses committed by offenders with two or more prior convictions were defined as being committed as part of a “pattern of criminal gang activity”

The potential pool of offenders is shown in Table 2 below

**Table 2 – Convictions in 2006/07**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Offense Types</b>	<b>Total Convictions</b>	<b>Total Convictions: Offenses Covered by Statutes in HB 274</b>	<b>Total Convictions: Offenses Covered by HB 274 at Prior Record Level II or higher</b>	<b>Total Convictions: Offenses at PRL II or higher, excluding Felony B1 –H*</b>
Felonies	31,711	30,276	22,576	6,743
Misdemeanors	164,882	95,654	50,909	50,909
<b>TOTAL</b>	<b>196,593</b>	<b>125,930</b>	<b>73,485</b>	<b>57,652</b>

Source: N.C. Sentencing and Policy Advisory Commission

\*The 57,652 offenses in Column 5 are the potential pool just for the “pattern” of gang activity offenses in HB 274—offenders likely to have two or more convictions; Class B1-H felonies may not result in additional prison impact with regard to the derivative Class H offenses if the sentences are run concurrently with the companion offenses and are thusly excluded from the potential offender pool.

**NOTE: The second edition of the bill added a penalty enhancement for use of a deadly weapon –this applies to all offenders not just gang related offenders. The potential pool of offenders is the 375 convictions in 06/07 (excludes offenders with deadly weapon charges as most serious offense). This pool is separate from offenders in Table 2 (Enhancement also in 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> editions)**

**Department of Correction**

**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.*

**Department of Correction – Division of Prisons**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity, and represent the total number of beds in operation, or authorized for construction or operation as of January 2008.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of HB 274. As shown, the Sentencing Commission estimates that this specific legislation will add 356 inmates to the prison system by the end of FY 2011. Projections can only be estimated for two years so the number of beds shown is the same for 2012 and 2013 but bed impact will be higher.

	<b><u>June 30</u></b> <b><u>2009</u></b>	<b><u>June 30</u></b> <b><u>2010</u></b>	<b><u>June 30</u></b> <b><u>2011</u></b>	<b><u>June 30</u></b> <b><u>2012</u></b>	<b><u>June 30</u></b> <b><u>2013</u></b>
1. Projected No. of Inmates Under Current Structured Sentencing Act	40,402	41,073	41,698	42,698	42,518
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	39,908	39,908	40,644	40,644	40,644
3. Projected No. of Beds Over/Under Inmate Population	-494	-1,165	-1,034	-1,854	-2,759
<b><i>4. Projected No. of Additional Inmates Due to this Bill</i></b>	<i>N/A</i>	<i>175</i>	<i>356</i>	<i>361</i>	<i>370</i>
<b><i>5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill</i></b>	<i>N/A</i>	<i>175</i>	<i>356</i>	<i>361</i>	<i>370</i>

**POSITIONS:** It is anticipated that by FY 2011, approximately 142 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2011-12. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to HB 274; and, the estimated number of new beds required each year through FY 2015-16.

	<b>June 30 <u>2013</u></b>	<b>June 30 <u>2014</u></b>	<b>June 30 <u>2015</u></b>	<b>June 30 <u>2016</u></b>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,234	-5,117	-5,996	-6,866
2. <b><i>Projected No. of Additional Inmates Resulting From (Bill Number)</i></b>				
3. <b><i>Estimated No. of New Beds Required Under (Bill Number)</i></b>		Cannot be determined		

**CONSTRUCTION:** Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution; or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.” Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

**Estimated Construction Cost per Custody Level, FY 2006-07**

<b><u>Custody Level</u></b>	<b><u>Minimum</u></b>	<b><u>Medium</u></b>	<b><u>Close</u></b>
Cost Per Bed: EOC “Stand Alone”	\$55,000	\$63,000	\$114,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$73,500

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs. As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

**Accordingly, given an increase of 370 inmates, bed provision through construction of a “stand alone” facility could cost approximately \$27,188,784 by FY 2012-13; provision through “add-on” could cost approximately \$16,831,152.**

**OPERATING:** Operating costs are based on actual FY 2006-07 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* (p.1).

**Daily Inmate Operating Cost per Custody Level, FY 2006-07**

<b><u>Custody Level</u></b>	<b><u>Minimum</u></b>	<b><u>Medium</u></b>	<b><u>Close</u></b>	<b><u>Daily Average</u></b>
Daily Cost Per Inmate	\$57.48	\$74.71	\$88.93	\$71.52

**Operating Costs:** For HB 274, FRD assumed these inmates would primarily be housed in medium custody facilities. Given effective date of December 1, 2008 of new offenses, the funds to operated prison beds would not be needed until 2009/10. For the **175 inmates in 2009/10 the cost would be \$5,214,603 and for the 356 inmates in 2010/11, the cost would be \$10,926,234.** To calculate these costs, FRD used the operating cost of a medium bed, with 3% inflation per year

**Methodology for Prison Bed Impact**

Table 3 summarizes the minimum prison bed impact for each criminal penalty in HB 274. The analysis and assumptions are primarily based on comments from the Sentencing Commission. Since these are new offenses and therefore the Commission cannot use the prison population simulation model, FRD asked the Commission to develop “what if” scenarios to estimate the minimum fiscal impact.

**Table 3 Prison Bed Impact of HB 274**

<b>Criminal Penalties in Bill</b>	<b>#Convictions</b>	<b>FY 08/09</b>	<b>FY 09/10</b>	<b>FY 10/11</b>	<b>FY 11/12</b>	<b>FY 12/13</b>
<b>Section 3 – G.S. 14.50.16</b>						
Sub (1) Pattern of gang activity						
--(1) & (2) Misdemeanors to Class H	509 (1%)	0	152	310	310	310
--(1) & (2) I Felonies to Class H	67 (1%)	0	14	21	21	21
(a) Organizer Class F	34	0	3	9	9	9
GS 14-50.18 Encourage/solicit <age 16 Class F	2	0	1	3	3	3
GS 14-50.17 Encourage/Solicit 16 or older	3	0	1	2	2	2
GS 14-50.19 Threats etc Class H	3	0	1	2	2	2
GS 14-50.20 Retaliate Class H	3	0	1	2	2	2
<b>Sect. 1 G.S. 14-50.22</b>						
<b>Enhanced Offense</b>						
--Class 1, 2, or 3 Misdemeanors	<b><u>Increases in prison beds and probation supervision for offenders with sentences of &gt;90 days; &amp; increase in jail beds if sentences &lt; 90 days</u></b>					
--Class A1 Misd to Class I felony	12	0	1	4	4	4
<b>Sect. 2 GS 14-34.9 –</b>						
<b><u>Discharge weapon into bldg or enclosure at person Class E (2<sup>nd</sup> edit—was D in 1st)</u></b>						
<b>Sect 5 - Deadly Weapon Enhancement</b>	38 (5%)	0	0	0	5	14
<b>Total Convictions</b>	673	--	--	--	--	--
<b>TOTAL PRISON BEDS</b>		<b>0</b>	<b>175</b>	<b>356</b>	<b>361</b>	<b>370</b>

Source: Sentencing and Policy Advisory Commission

Assumptions and methodology for specific offenses follow. For the most part, the analysis was provided by the Sentencing Commission. FRD then determined the methodology for estimating the number of beds and the fiscal impact based on scenarios requested from the Commission staff. **A general assumption for all of the new offenses is that any new sentences would run concurrently with other offenses not consecutively. Otherwise, the impact would be more substantial than shown in Table 3**

**G.S. 14-50.16(a)(1) and (2):**

G.S. 14-50.16(a)(1) makes it a Class H felony for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity. It is assumed for purposes of this analysis that the “pattern of criminal street gang activity” may be charged and result in conviction only as a derivative of a new (third) offense subsequent to the two prior convictions for criminal gang activity, as described in the proposed G.S. 14-50.16(d). Convictions for the offense of subsection (a)(1) therefore

would occur in addition to convictions for other, companion offenses (both misdemeanor and felony). The impact of the derivative Class H offense on the prison population would depend on the offense class for the companion offense and whether the sentences are run concurrently or consecutively.

G.S. 14-50.16(a)(2) makes it a Class H felony for a person employed by or associated with a criminal street gang to acquire or maintain any interest in or control of any real or personal property through a pattern of criminal street gang activity. It is assumed for purposes of this analysis that the “pattern of criminal street gang activity” may be charged and result in conviction only as a derivative of a new (third) offense subsequent to the two prior convictions for criminal gang activity, as described in the proposed G.S. 14-50.16(d). Convictions for the derivative offense of subsection (a)(2) therefore would occur in addition to convictions for other, companion offenses (both misdemeanor and felony).

- For the 6,743 Class I convictions and the 50,909 misdemeanor convictions in the eligible pool, additional convictions for the derivative Class H offenses may result in additional prison impact. The impact would vary depending on whether sentences are run concurrently or consecutively. The following threshold analyses assume that sentences are run concurrently. However, the impact would be greater if any sentences are run consecutively.
  - If, for example, it is assumed that 509 misdemeanor convictions (**1% of the potentially eligible misdemeanor convictions**) would result in a Class H conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 152 additional prison beds the first year and 310 additional prison beds the second year.
  - If, for example, it is assumed that 67 Class I convictions (1% of the potentially eligible Class I convictions) would result in a Class H conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 14 additional prison beds the first year and 21 additional prison beds the second year.

G.S. 14-50.16(a) makes it a Class F felony for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal street gang activity as an organizer, supervisor, or in any other position of management with regard to a criminal street gang. It is assumed for purposes of this analysis that the “pattern of criminal street gang activity” may be charged and result in conviction only as a derivative of a new (third) offense subsequent to the two prior convictions for criminal gang activity, as described in the proposed G.S. 14-50.16(d). Convictions for the offense of subsection (a) therefore would occur in addition to convictions for other, companion offenses (both misdemeanor and felony). In FY 2006/07, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, it is assumed that 34 Class G convictions would result in a Class F conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 3 additional prison beds the first year and 9 additional prison beds the second year.

**G.S. 14-50.18** makes it a felony for a person to cause, encourage, solicit, or coerce a person under 16 years of age to participate in criminal street gang activity. Violation of this section is a Class F felony.

In FY 2006/07, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

**G.S. 14-50.19** makes it a Class H felony for a person to communicate a threat of injury to a person, or to damage the property of another, with the intent to deter a person from assisting another to withdraw from membership in a criminal street gang.

**G.S. 14-50.20** makes it a Class H felony for a person to communicate a threat of injury to a person, or to damage the property of another, as punishment or retaliation against a person for having withdrawn from a criminal street gang.

Persons eligible for conviction of this offense include some portion of those currently convicted of the offenses listed below. The proposed offense does not encompass all conduct covered by the listed offenses because of some differences in the elements of each (e.g., “communicating threats” requires that the victim actually believe the threat may be carried out, which the proposed offense does not, but the proposed offense applies only in the context of threats against those who help gang members defect).

**Table 4: Persons Eligible for Conviction under G.S. 14-50.19 and G.S. 14-50.20  
FY 2006/07**

<b>G.S.</b>	<b>Description</b>	<b>Class</b>	<b>Number of Convictions</b>
14-16.7	Threats against executive, legislative or court officers	I	5
14-196(a)(2)	Threatening phone call	2	196
14-196.3	Cyberstalking <sup>1</sup>	2	18
14-277.1	Communicating threats	1	2,861
14-394	Anonymous or threatening letters, mailing or transmitting <sup>2</sup>	1	No AOC code
14-127	Injury to real property	1	1,284
14-160	Injury to personal property	2,1	2,101

SOURCE: North Carolina Sentencing and Policy Advisory Commission

It is not known how many of the convictions in Table 4 would become Class H felonies under this proposed subsection

In FY 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

**G.S. 14-50.22. Enhanced offense for criminal gang activity.**

G.S. 14-50.22 enhances the sentence for a misdemeanor offense by one offense class if it was committed for the benefit of, at the direction of, or in association with, any criminal street gang. Class A1 misdemeanors would be enhanced to Class I felonies under this provision.

<sup>1</sup> The AOC has a single offense code for cyberstalking, which includes four distinct offenses. The proposed offense encompasses only one of those four.

<sup>2</sup> G.S. 14-394 prohibits several forms of threatening or harassing communications, including to corporate victims. Only convictions reflecting communications to individuals would be eligible for conviction under the proposed offense. The AOC currently does not have a specific offense code for violations of G.S. 14-394. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In FY 2006/07 there were 164,882 misdemeanor convictions – 14,010 Class A1, 96,286 Class 1, 29,735 Class 2, and 2,4851 Class 3 convictions. It is not known how many of these convictions involved an offense committed for the benefit of, at the direction of, or in association with, any criminal street gang. As such, it is not possible to determine how many convictions would be affected by this proposal or to determine the impact of this proposal. ***However, enhancing a defendant's sentence by raising it one offense class higher than the class of the committed misdemeanor offense will, in general, increase the defendant's likelihood of receiving an active sentence and increase the chance of receiving a longer sentence that would result in the need for additional jail and prison beds.***

Any Class 1, Class 2, or Class 3 misdemeanor convictions that would be raised one offense class higher (to Class A1, Class 1, or Class 2, respectively) could result in the need for additional jail beds (sentence of 90 days or less) or prison beds (sentence greater than 90 days).

Any Class A1 misdemeanor convictions raised to Class I felony convictions would result in the need for additional prison beds. In FY 200/0, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months.

- 1 If, for example, there were 12 Class A1 misdemeanor convictions per year that were raised to Class I felonies, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.
- 2 If, for example, it is assumed that 151 Class A1 misdemeanor convictions (1% of Class A1 misdemeanor convictions) would be raised to Class I felonies, the combination of active sentences and probation revocations would result in the need for 13 additional prison beds the first year and 44 additional prison beds the second year.

### **FRD assumes 12 Class A1 misdemeanors as the minimum fiscal impact of this bill**

#### **G.S. 14-34.9. Discharging firearm from within an enclosure.**

G.S. 14-34.9 makes it a Class E felony for a person to willfully or wantonly discharge or attempt to discharge a firearm as a part of a pattern of criminal street gang activity from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure. (See Section 3 below for definitions related to “pattern of criminal street gang activity.”)

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2006/07, 53% of Class E convictions resulted in active sentences, with an average estimated time served of 29 months. If, for example, there were two Class E convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

#### **Section 5**

Section 5 of HB 274 amends G.S. 15A-1340.16A (the firearm enhancement) such that the minimum sentence imposed upon conviction for a Class A, B1, B2, C, D, or E felony would be enhanced 60 months if the offender committed the felony by using, displaying, or threatening the use or display of, and actually possessed about his or her person, a deadly weapon. The enhancement would not apply if evidence of the

use, display, or threatened use or display of the deadly weapon is needed to prove an element of the offense or if the person is not sentenced to active imprisonment. This new enhancement for deadly weapons is not limited to gang-related offenses.

In FY 2006/07 the current firearm enhancement, as defined in G.S. 15A-1340.16A, was not applied to any convictions. For this analysis, it was assumed that the proposed amendment to expand the enhancement to deadly weapons would not affect the application of the enhancement as it exists under current law.

*In FY 2006/07, there were 3,552 Class A through E convictions. Of these convictions, 1,294 had a deadly weapon-related conviction as the most serious conviction, and, therefore, would not be eligible for the proposed deadly weapon enhancement. The identifiable eligible pool for the proposed enhancement would be comprised of 375 convictions that had accompanying charges or additional convictions for deadly weapon-related offenses. It is important to note that the eligible pool does not include situations in which the use, display, or threatened use or display of a deadly weapon did not result in separate charges or convictions.*

It is not possible to estimate the impact of the proposed deadly weapon enhancement since it is not known how many convictions in the eligible pool would receive the 60-month enhancement. The proposed deadly weapon enhancement would result in additional prison impact for each conviction to which it would be applied (see the table below for the offense class distribution and average sentence imposed for the eligible pool). Short-term impact (i.e., within the 10-year projection period) would result from the application of the proposed enhancement to Class C, D, and E convictions whose minimum sentences are currently less than 10 years. Long-term impact (i.e., beyond the 10-year projection period) would result from the application of the proposed enhancement to convictions whose minimum sentences are currently greater than 10 years.

### Eligible Pool for Deadly Weapon Enhancement

FY 2006/07

Offense Class	Number of Convictions	Average Minimum Sentence Imposed for Active Sentences (Months)
<b>B1</b>	8	325
<b>B2</b>	93	172
<b>C</b>	84	102
<b>D</b>	47	69
<b>E</b>	143	30
<b>Total</b>	<b>375</b>	<b>107</b>

SOURCE: Sentencing and Policy Advisory Commission

As requested by Fiscal Research staff, the following table provides the projected impact of the proposed enhancement using the assumption that 10% (or 38) of the 375 convictions in the eligible pool would receive the 60-month enhancement.

**Deadly Weapon Enhancement  
10% Scenario**

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS
Year 1	0
Year 2	0
Year 3	5
Year 4	14
Year 5	23
Year 6	31
Year 7	42
Year 8	51
Year 9	59
Year 10	68

Sentencing Commission Notes:

1. Assumes effective for crimes committed on or after 12/1/2008. Based on this effective date, Fiscal Year 200/10 would represent the first full year of impact due to the gap between the time a felony offense is committed and the offender is sentenced.
2. The eligible pool does not include situations in which the use, display, or threatened use or display of a deadly weapon did not result in separate charges or convictions. Therefore, this projection may under represent the number of convictions to which the deadly weapon enhancement could be applied.
3. Since the enhancement is applied to Class B1 through Class E convictions, impact will also occur beyond the 10-year projection period for those convictions whose minimum sentences are currently greater than 10 years and to which the 60-month enhancement is applied.
4. The assumptions for number of active sentences and number of probation revocations assume the same percentages as found in FY 2006/07. Assumes no changes in judicial or prosecutorial behavior.
5. Assumes no deterrent or incapacitative effects.

## **CURRENT LAW REGARDING CRIMINAL STREET GANG CONDUCT**

G.S. 15A-1340.16(d) lists aggravating factors that can be applied to felony sentences under Structured Sentencing. Under G.S. 15A-1340.16(d) (2a), it is an aggravating factor if:

The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

The Administrative Office of the Courts’ Automated Criminal Infraction System does not contain data on the application of aggravating or mitigating factors, so it is not known how often this factor is currently used.

### **Department of Correction – Division of Community Corrections**

Although an increased rate of active sentencing (imprisonment) is expected, the effective enhancement of otherwise lower-level offenses will increase the rate of intermediate sanctioning and length of offender supervision. Furthermore, any new conviction and non-active sentence, resultant deferral and mandatory supervised probation, and/or mandatory post-release supervision period will increase the demand for supervisory officers. Presently, the estimated total position cost of an intermediate officer is approximately \$41,643. It is not known how this legislation will alter DCC supervisory officer allocations.

Likewise, it is not known how many of the roughly 400 remaining *non-active sentences* would result in intermediate or community punishments; to which sanction type; or, for how long. However, based on the predominant Class H felony penalty level, it is assumed that most resultant non-active sentences will include intermediate sanctions. In FY 2006-07, for all offenses and prior record levels, approximately 48% of Class H convictions resulted in intermediate sanctions – predominately special probation, intensive supervision probation, or house arrest with electronic monitoring.

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

## Department of Juvenile Justice and Delinquency Prevention

With the omission of the section regarding non-applicability to juveniles under the age of 16 (Version 4; GS 14-50.24), it is assumed the legislative intent of this bill is for it to apply to juveniles. Please see technical considerations for details regarding juvenile adjudications as they relate the wording of this bill.

The North Carolina Sentencing and Policy Advisory Commission attempts to project the impact of bills on the state Youth Development Center (YDC) population. For this bill, where the adult prison impact analysis addressed consolidated versus consecutive sentencing, the juvenile YDC impact analysis does not. If a juvenile is adjudicated of more than one offense during a session of juvenile court, the court must consolidate the offenses for disposition and impose a single disposition for the consolidated offenses. The disposition must be specified for the class of offense and delinquency history level of the most serious offense. Also, because all of the substantive offenses in the bill are felonies, expanding the bill's pool of potential offenders to include juveniles would permit transfer to Superior Court for any juvenile 13 or older charged with any of the substantive felonies in the bill. This is true even for the "pattern" offenses in the bill when the accompanying third offense (after the two priors that establish the pattern) is a misdemeanor, because the pattern offenses are all separate substantive felonies (G.S. 14-50.21). However, it is not known how many juveniles would be transferred due to this bill and, therefore, it is not possible to project the impact of transferred cases.<sup>3</sup> **This analysis assumes none of these cases would be transferred to Superior Court.**

### Potential Pool: Descriptive Information

In FY 2006/07, there were 7,973 juvenile delinquent dispositions extracted from NC-JOIN, the management information system of the Department of Juvenile Justice and Delinquency Prevention. Of the 7,973 delinquent dispositions, 2,822 (or 35%) had a current adjudication for one of the offenses included in the proposed definition of "criminal street gang activity" and had one or more prior delinquency history points, indicating at least one prior delinquent adjudication and, thus, providing some indication of a "pattern of criminal street gang activity."<sup>4</sup> (See Table Below.)

In FY 2006/07, 963 (or 12%) of the 7,973 cases were identified as juveniles that either associated with a gang or were a gang member. This data is based on the information entered into NC-JOIN from the Risk Assessment and is self-reported by the juvenile or by a responsible adult.<sup>5</sup> These 963 "gang association" cases are the closest representation to the bill's definition of "criminal street gang" that the data provide (see Table 1).

Of the 963 "gang association" cases, 440 had a current adjudication for one of the offenses included in the proposed definition of "pattern of criminal street gang activity" and one or more prior delinquency history

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<sup>3</sup> It is unclear whether the analysis for adult impact of the PCS, which assumed Prior Record Level II or higher for the pool of potential offenders under the "pattern" offenses, would be applicable to transferred juveniles. Because offenses for which a juvenile was adjudicated delinquent cannot be counted for prior record points in felony sentencing, juveniles transferred for offenses under the bill would be highly unlikely to have prior adult criminal convictions, and therefore would be sentenced in Prior Record Level I.

<sup>4</sup> The proposed definition of "pattern of criminal street gang activity" refers to a sequence of "offenses." For this analysis, it is assumed that "offenses" mean "adjudications" and the juvenile is eligible at the time he or she is adjudicated for their third offense. Note that information about the specific prior adjudicated offenses was not available. Although most criminal offenses are covered in the definition of "a pattern of criminal street gang activity," it is possible that the group includes cases with a prior adjudication involving offenses that fall outside the definition.

<sup>5</sup> The Risk Assessment's definition of the term "gang" is broader than the definition under the proposed bill. For purposes of evaluating peer relationships, the Risk Assessment defines a gang as "an organized, recognized group which has illegal activity as part of its purpose." (Source: Risk and Needs Assessment Procedures, DJJDP)

points, indicating at least one prior delinquent adjudication. Overall, this group was more serious and/or criminally persistent in terms of offense level and delinquency history level compared to the 7,973 delinquent dispositions in FY 2006/07. As a result, a higher proportion of this group was committed to a YDC relative to the overall group of juveniles. The table below details the potential pool of juvenile offenders broken down by offense classification, delinquency history level, and current disposition level.

**Description of the Potential Pool of Delinquent Dispositions for Juveniles  
FY 2006/07**

	Total Dispositions		Adjudicated for an Eligible Offense & at Least One Prior Adjudication*		Identified with a Gang Association			
					Total Dispositions		Adjudicated for an Eligible Offense & at Least One Prior Adjudication*	
	(n=7,973)		(n=2,822)		(n=963)		(n=440)	
	#	%	#	%	#	%	#	%
<b>Offense Classification</b>								
<b>Violent</b> Class A-E Fel.	249	3.1	113	4.0	55	5.7	35	7.9
<b>Serious</b> Class F-I Fel, Class A1 Misd	2,414	30.3	911	32.3	351	36.5	167	38.0
<b>Minor</b> Class 1-3 Misd.	5,310	66.6	1,798	63.7	557	57.8	238	54.1
<b>Delinquency History Level</b>								
<b>Low</b> 0-1 Points	5,781	72.5	927*	32.9	553	57.4	100*	22.7
<b>Medium</b> 2-3 Points	1,159	14.5	1,030	36.5	170	17.7	153	34.8
<b>High</b> 4+ Points	1,033	13.0	865	30.6	240	24.9	187	42.5
<b>Disposition Level</b>								
<b>Level 1</b> Community	5,568	69.8	1,430	50.7	525	54.5	172	39.1
<b>Level 2</b> Intermediate	2,149	27.0	1,205	42.7	332	34.5	192	43.6
<b>Level 3</b> Commitment (YDC)	256	3.2	187	6.6	106	11.0	76	17.3

Source: North Carolina Sentencing and Policy Advisory Commission

**Methodology for Juvenile YDC Impact**

Table 5 summarizes the projected low and high estimates for YDC populations as a result of HB 274. Fiscal Research Division (FRD) staff worked with the Sentencing Commission to determine impact scenarios for the bill. **The Sentencing Commission cannot predict the interaction between related subsections as they apply to juveniles, and therefore FRD provides a low estimate and a high estimate for construction and operating costs.**

**Table 5: Analysis of the Fiscal Impact of Including Juvenile Offenders in House Bill 274 (v5) Street Gang Suppression Act\***

	2008-09	2009-10	2010-11	2011-12	2012-13
Current YDC Population Projections <sup>1</sup>	481	491	494	499	n/a
YDC Population Projections for HB 274 (low estimate)		37	43	37	42
YDC Population Projections for HB 274 (high estimate)		111	129	111	126
DJJDP Current Bed Capacity <sup>2</sup>		526	526	526	526
<b>Additional Beds Needed for HB 274 (low estimate)</b>		<b>2</b>	<b>11</b>	<b>10</b>	n/a
<b>Additional Beds Needed for HB 274 (high estimate)</b>		<b>76</b>	<b>97</b>	<b>84</b>	n/a
YDC Capital Cost (\$232,273/bed x 11 beds) <sup>3</sup>	\$ 2,555,003				
YDC Capital Cost (\$232,273/bed x 97 beds) <sup>3</sup>	\$ 22,530,481				
YDC Operating Cost (2008-09) (low estimate) <sup>4</sup>		\$ 243,593	\$ 1,379,954	\$ 1,292,139	n/a
YDC Operating Cost (2008-09) (high estimate) <sup>4</sup>		\$ 9,256,532	\$ 12,168,685	\$10,853,966	n/a

<sup>1</sup> These Figures are taken from Sentencing Commission annual projections of juvenile delinquent population, April 2008.

<sup>2</sup> DJJDP Current Bed Capacity: Fiscal Research developed the bed capacity of JJDP using DJJDP's capacity estimates of YDCs for 2008/09-2009/10. These figures include existing YDC beds and beds that have been authorized and are under construction. FRD & JJDP are still discussing bed capacity, but this is the current FRD estimate as of May 30, 2008.

<sup>3</sup> YDC Capital Cost: In March 2007, State Construction estimated a cost of \$232,273 per bed to construct a new 32 bed YDC.

<sup>4</sup> YDC Operating Cost: DJJDP provided an operating cost estimate of \$118,249/bed for 2008-09. FRD applied a 3% annual inflationary increase.

**Section 3 G.S. 14-50.16 – Pattern Of Criminal Street gang Activity**

The offenses under section G.S. 14-50.16 are derivative offenses that occur only as the result of a “pattern of criminal street gang activity,” which means that they occur in conjunction with some other offense listed in G.S. 14-50.16(c). The text for individual subsections below gives the potential YDC impact of each provision based on its status as a derivative offense.

For G.S. 14-50.16(a)(1), G.S. 14-50.16(a)(2), and G.S. 14-50.16(a), YDC impact analysis was completed. By using the Risk Assessment data in NC-JOIN, an eligible pool (n=440) was identified with a “gang association.” This pool also had a “pattern of criminal street gang activity” (see Descriptive Information section for details). The impact of the derivative Class H or Class F (Serious level) offense on the YDC population would depend on the offense level for the companion offense. The shift from Minor offense level (Class 1 through Class 3 offenses) to Serious offense level is where the YDC impact occurs. Table 6 provides a summary of YDC impact for subsections (a)(1), (a)(2) and (a).

**Table 6: Summary of Additional YDC Population Above that Projected**

<b>Fiscal Year</b>	<b>G.S. 14-50.16(a)(1) Reclassify Minor to Serious (Class H)</b>	<b>G.S. 14-50.16(a)(2) Reclassify Minor to Serious (Class H)</b>	<b>G.S. 14-50.16(a) Reclassify Minor to Serious (Class F)</b>
<b>Year 1</b>	37	37	37
<b>Year 2</b>	43	43	43
<b>Year 3</b>	37	37	37
<b>Year 4</b>	42	42	42
<b>Year 5</b>	42	42	42

NOTES: 1. Assumes effective for crimes committed on or after 12/1/2008. Based on this effective date, Fiscal Year 2009/10 would represent the first full year of impact.  
 2. Assumes no changes in judicial or prosecutorial behavior.  
 3. Assumes no deterrent or incapacitative effects.

G.S. 14-50.16(a)(1) and (2) create Class H felonies for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity and for a person employed by or associated with a criminal street gang to acquire or maintain any interest in or control of any real or personal property through a pattern of criminal street gang activity, respectively. G.S. 14-50.16(a) makes it a Class F felony for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal street gang activity as an organizer, supervisor, or in any other position of management with regard to a criminal street gang. A juvenile adjudicated for these offenses would be disposed in the Serious offense level.

It is assumed for purposes of this analysis that “gang association” data extracted from NC-JOIN indicates “criminal street gang.” It also assumed that the “pattern of criminal street gang activity” may be prosecuted and adjudicated only as a derivative of a new (third) offense subsequent to the two prior adjudications for criminal gang activity, as described in the proposed G.S. 14-50.16(d). Adjudications for the offense in subsections (a)(1), (a)(2), and (a) therefore, would occur in addition to adjudications for other, companion offenses (both misdemeanor and felony). The eligible pool used to determine the impact on the YDC population is the 440 cases identified with a “gang association” and a “pattern of criminal street gang activity.”

Because juvenile offenses are consolidated for disposition, the impact of the derivative Class H and Class F (Serious level) offenses on the YDC population would depend on the offense level for the companion offense. Therefore, the shift from Minor offense level (Class 1 through Class 3 offenses) to Serious offense level is where the YDC impact would occur.

- For the 35 Violent level (Class A through Class E) cases adjudicated delinquent in the eligible pool, additional delinquent adjudications for the derivative Serious (Class H) offense may not result in additional YDC impact.
- For the 167 Serious Level (Class F through Class A1) cases adjudicated delinquent in the eligible pool, additional delinquent adjudications for the derivative Serious (Class H) offense may not result in additional YDC impact.<sup>6</sup>

<sup>6</sup> The YDC simulation model, which uses YDC length of stay and disposition levels, is based on the offense level, not the offense class. Therefore, the 68 Class I and Class A1 delinquent dispositions would show no impact based on the

- For the 235 Minor level (Class 1 through Class 3) offenses that would be reclassified as the derivative Serious level (Class H) offense, the projected YDC impact is shown in Table 6 above.

**G.S. 14-50.22**

This section enhances the sentence for a misdemeanor offense by one offense class if it was committed for the benefit of, at the direction of, or in association with, any criminal street gang. Class A1 misdemeanors would be enhanced to Class I felonies under this provision. Juveniles adjudicated delinquent for Class 2 or 3 misdemeanors committed for gang purposes still would be disposed in the Minor offense level. Juveniles adjudicated for Class A1 misdemeanors still would be disposed in the Serious offense level when enhanced to Class I. The only juvenile dispositions that would be affected by this provision are those for adjudication of Class 1 misdemeanors (Minor offense level) that would be reclassified to Class A1 misdemeanors (Serious offense level) for disposition.

Table 7 provides a summary of the juveniles adjudicated delinquent with a misdemeanor offense in FY 2006/07. Under the proposed enhancement, some portion of 2,936 Class 1 (Minor level) offenses from the 7,973 delinquent dispositions may increase to a Class A1 (Serious level) offense if the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang.

If the enhancement is strictly interpreted to require street gang involvement, as defined in G.S. 14-50.16, then some portion of the 278 Class 1 (Minor level) offenses from the 963 identified “gang association” delinquent dispositions may increase to a Class A1 (Serious level) offense if the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang.

**Table 7: Potential Misdemeanors Enhanced One Offense Class Higher  
FY 2006/07**

Current Class	Dispositions	Dispositions with Gang Association
	(n=7,973)	(n=963)
<b>Class A1</b>	798	82
<b>Class 1</b>	<b>2,936</b>	<b>278</b>
<b>Class 2</b>	2,102	236
<b>Class 3</b>	438	43
<b>Total</b>	6,274	639

It is not known how many of Class 1 (Minor level) offenses listed in Table 8 involved an offense committed for the benefit of, at the direction of, or in association with, any criminal street gang and would become Class A1 (Serious level) offenses. Therefore, YDC impact is not known.

**G.S. 14-50.17-20, G.S. 14-34.9, and G.S. 15A-1340.16A**

Sentencing Commission has no historical data from which to project potential YDC bed impact resulting from these amendments to the General Statutes.

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proposed amendment, but could result in YDC impact if the judge chooses the more serious disposition level because of the higher offense class.

## **Judicial Branch**

### *Proposed G.S. 14-50.16 – 14-50.25, and Sections 2 and 4: Criminal and Civil Liability*

Based on the large pool of potential offenders, Fiscal Research anticipates a significant number of new or enhanced criminal cases, accompanied by increased trial rates and case lengths, which will generate significant costs for the court-system. However, given available data, the exact impact of the proposed offenses on court caseload and personnel workload cannot be determined.

The table below illustrates the estimated costs for criminal cases, by trial and guilty plea, for the affected offense classes. ***Effectively enhancing otherwise misdemeanor offenses to felonies will elevate future cases to superior court, rather than district court.*** This elevation will increase jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel

**Table 5 AOC Estimated Costs per Trial and Plea: FY 2007-08**

<b><i>Offense Class</i></b>	<b><i>Trial</i></b>	<b><i>Plea</i></b>
<b><i>G.S. 14-50.18: Criminal gang activity enhancement for misdemeanor offenses.</i></b>		
Class 2 Misdemeanor	\$3,007	\$250
Class 1 Misdemeanor	\$4,016	\$265
Class A1 Misdemeanor	\$4,574	\$268
Class I Felony	\$7,537	\$324
<b><i>G.S. 14-50.17: Participation in criminal street gang activity prohibited.</i></b>		
Class H Felony	\$7,934	\$373
Class F Felony	\$10,684	\$585
<b><i>G.S. 14-34.9: Discharging weapon from building toward a person.</i></b>		
Class E Felony	\$11,394	\$607

Additional court-time requirements could also be assumed for civil forfeiture (G.S. 14-2.3) and nuisance abatement actions (Chapter 19) related to criminal street gang activity, as well as lengthened pre-trial release hearings. However, the number and complexity/duration of such actions are indeterminate.

## **Department of Justice**

Additional investigative and prosecutorial workload could be assumed, contingent upon the number of civil forfeiture (G.S. 14-2.3) and nuisance abatement actions (Chapter 19) commenced.

**SOURCES OF DATA:** North Carolina Sentencing and Policy Advisory Commission, Judicial Branch, The Office of State Construction, Department of Correction

## **TECHNICAL CONSIDERATIONS:**

### **Juvenile Adjudication**

It is unclear whether juveniles would be eligible for the “pattern” offenses in this bill as it is written. The current definition of a “pattern of criminal street gang activity” (G.S. 14-50.16(d)) requires two prior incidents of criminal street gang activity that resulted in “conviction.” For a juvenile still within the jurisdiction of the juvenile court, prior offenses could have resulted only in “adjudication” as a delinquent. Per G.S. 7B-2412, prior adjudication as a delinquent “shall [not] be considered conviction of any criminal offense... .”

Juvenile Transfer for Enhanced Class A1 to Class I Offense

Currently, juveniles charged with misdemeanors cannot be transferred to the Superior Court for trial as adults. It is not clear whether the enhancement of Class A1 misdemeanors to Class I felonies under this provision would permit juveniles 13 and older and charged with Class A1 misdemeanors to be transferred. The bill does not specify whether the gang element must be pled in the juvenile petition and probable cause found, and therefore whether a Class A1 misdemeanor committed for gang purposes would be treated as a substantive Class I felony for the purpose of eligibility for transfer. (*See, e.g., State v. Jones*, 358 N.C. 473 (2004) (possession of cocaine, a Class 1 misdemeanor under G.S. 90-95(d)(2) that is “punishable as a Class I felony,” is actually a substantive Class I felony)).

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**Signed Copy Located in the NCGA Principal Clerk's Offices**