

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** Senate Bill 594 (Fifth Edition)

**SHORT TITLE:** Omnibus Justice Amendments.

**SPONSOR(S):**

**FISCAL IMPACT**

(\$ in millions)

Yes       No       No Estimate Available

|                               | <b>FY 2013-14</b> | <b>FY 2014-15</b> | <b>FY 2015-16</b> | <b>FY 2016-17</b> | <b>FY 2017-18</b> |
|-------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>State Impact</b>           |                   |                   |                   |                   |                   |
| AOC                           | 0.9               | 1.6               | 1.6               | 1.7               | 1.7               |
| IDS                           | 0.4               | 0.7               | 0.7               | 0.8               | 0.8               |
| DPS - Prisons                 |                   | 1.1               | 2.60              | 1.80              | 2.10              |
| DPS - CCS                     |                   | 0.0               | 0.4               | 0.7               | 0.8               |
| <b>Additional Prison Beds</b> |                   | <b>244</b>        | <b>588</b>        | <b>534</b>        | <b>578</b>        |
| <b>NET STATE IMPACT</b>       | <b>\$1.3</b>      | <b>\$3.4</b>      | <b>\$5.3</b>      | <b>\$5.0</b>      | <b>\$5.4</b>      |

**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

**FISCAL IMPACT SUMMARY**

S.B. 594 increases several criminal penalties. These increases result in the need for an additional 244 beds in the first full year of implementation and 588 beds in the second year. The Sentencing and Policy Advisory Commission estimates that 1,308 prison beds will be available in FY 2015-16, so new prison construction will not be required to accommodate the additional inmates. However, these projections do not take into account the closure of two additional prisons included in both the House and Senate versions of S.B. 744, Appropriations Act of 2014. If enacted, those closures will reduce the number of beds available by 565.

The chart below shows the combined effect of inmates added as a result of S.B. 594 (line 4) and bed closures included in S.B. 744 (line 5).

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                         |                         |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>S.B. 594</b>   | <b>June 30<br/>2014</b> | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>1</sup>   | 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 Bill <sup>2</sup>                 | 0                       | 244                     | 588                     | 534                     | 578                     |
| 5. Bed Closures Proposed in S.B. 744                                | 565                     | 565                     | 565                     | 565                     | 565                     |
| <b>6. Beds Over/(Under) Inmate Population</b>                       | <b>(859)</b>            | <b>(499)</b>            | <b>(37)</b>             | <b>(378)</b>            | <b>(541)</b>            |

### Section 1.1 – Possession of a firearm by a felon

Section 1.1. of the bill increases the penalty for possession of a firearm by a felon (G.S. 14-415.1) from a Class G felony to a Class F felony. 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.

| <b>Total Estimated Costs<br/>Section 1.1 - Increase Penalty for Possession of a Firearm by a Felon</b> |                  |                    |                    |                    |                    |
|--|------------------|--------------------|--------------------|--------------------|--------------------|
|  | <b>FY 14-15</b>  | <b>FY 15-16</b>    | <b>FY 16-17</b>    | <b>FY 17-18</b>    | <b>FY 18-19</b>    |
| <b>Courts</b>  | \$445,035        | \$779,086          | \$798,719          | \$820,284          | \$840,546          |
| <b>Indigent Defense</b>  | \$295,869        | \$518,081          | \$531,137          | \$545,477          | \$558,951          |
| <b>DPS - Prisons</b>   | \$0              | \$628,618          | \$2,027,130        | \$1,833,545        | \$2,087,482        |
| <b>DPS - Community Corrections</b>   |                  | (\$175,884)        | (\$304,217)        | (\$172,867)        | (\$117,765)        |
| <b>Total</b>   | <b>\$740,904</b> | <b>\$1,749,901</b> | <b>\$3,052,768</b> | <b>\$3,026,439</b> | <b>\$3,369,214</b> |
| <b>Additional Prison Beds</b>  |                  | 144                | 453                | 399                | 443                |

### Section 2.2 – Carrying a concealed firearm

Section 2.2 of the bill increases the penalty for violation of G.S. 14-269(a1), Carrying concealed weapons (pistol or gun), from a Class 2 misdemeanor to a Class A1 misdemeanor for the first offense and from a Class I felony to a Class H felony for the second and subsequent offenses. The table below shows a

<sup>1</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>2</sup> 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.

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.

| <b>Total Estimated Costs</b>   |                  |                  |                  |                  |                  |
|--|------------------|------------------|------------------|------------------|------------------|
| <b>Section 2.2 - Increase Penalty if Concealed Weapon is a Firearm</b> |                  |                  |                  |                  |                  |
|  | <b>FY 14-15</b>  | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| <b>Courts</b>  | \$316,710        | \$554,489        | \$568,462        | \$583,810        | \$598,230        |
| <b>Indigent Defense</b>  | \$2,534          | \$4,435          | \$4,547          | \$4,670          | \$4,785          |
| <b>DPS - Prisons</b>   |                  | \$13,096         | \$13,425         | \$13,786         | \$14,136         |
| <b>DPS - Community Corrections</b>                                     |                  | (\$46,285)       | \$138,137        | \$142,139        | \$149,391        |
| <b>Total</b>   | <b>\$319,244</b> | <b>\$525,735</b> | <b>\$724,570</b> | <b>\$744,405</b> | <b>\$766,543</b> |
| <b>Additional Prison Beds</b>  |                  | 3                | 3                | 3                | 3                |

**Section 3.1 – Furnishing a cell phone to an inmate; Possession of a cell phone by an inmate**

Section 3.1(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 3.1(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.

| <b>Total Estimated Costs</b>   |                  |                    |                    |                    |                    |
|--|------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Section 3.1 - Violations Related to Possession of a Cell Phone by an Inmate</b> |                  |                    |                    |                    |                    |
|  | <b>FY 14-15</b>  | <b>FY 15-16</b>    | <b>FY 16-17</b>    | <b>FY 17-18</b>    | <b>FY 18-19</b>    |
| <b>Courts</b>  | \$141,060        | \$247,019          | \$253,244          | \$260,081          | \$266,505          |
| <b>Indigent Defense</b>  | \$110,186        | \$192,616          | \$197,470          | \$202,802          | \$207,811          |
| <b>DPS - Prisons</b>   |                  | \$419,078          | \$581,737          | \$597,396          | \$612,580          |
| <b>DPS - Community Corrections</b>   |                  | \$237,597          | \$579,700          | \$710,016          | \$727,534          |
| <b>Total</b>   | <b>\$251,246</b> | <b>\$1,096,311</b> | <b>\$1,612,151</b> | <b>\$1,770,294</b> | <b>\$1,814,430</b> |
| <b>Additional Prison Beds</b>  |                  | 96                 | 130                | 130                | 130                |

**Section 4.1 – Assault on executive, legislative, or court officers**

Section 4.1 of the bill increases the penalty for assault on an executive, legislative, or court officer from a Class I felony to a Class E felony. If a deadly weapon is used in the assault, the penalty goes from a Class F felony to a Class D felony, and if serious bodily injury occurs, the penalty is increased from a Class F

felony to a Class C felony. The scope of the offense is also expanded to add assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. 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.

| <b>Total Estimated Costs</b>  |                 |                 |                 |                 |                 |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Section 4.1 - Assault on Executive, Legislative, or Court Officers</b> |                 |                 |                 |                 |                 |
|   | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| <b>Courts</b>   | \$2,555         | \$3,914         | \$4,012         | \$4,120         | \$4,222         |
| <b>Indigent Defense</b>   | \$420           | \$429           | \$440           | \$452           | \$463           |
| <b>DPS - Prisons</b>  | Unknown         |                 |                 |                 |                 |
| <b>DPS - Community Corrections</b>  | Unknown         |                 |                 |                 |                 |
| <b>Total</b>  | <b>\$2,975</b>  | <b>\$4,342</b>  | <b>\$4,452</b>  | <b>\$4,572</b>  | <b>\$4,685</b>  |
| <b>Additional Prison Beds</b>   | Unknown         |                 |                 |                 |                 |

**Section 4.2 – Threats against executive, legislative, or court officers**

Section 4.2 of the bill increases the penalty for threatening an executive, legislative, or court officer (either in person or through the mail) from a Class I felony to a Class F felony. The scope of the offense is also expanded to add assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. 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.

| <b>Total Estimated Costs</b>                              |                 |                 |                 |                 |                 |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Section 4.2 - Threats Against Government Officials</b> |                 |                 |                 |                 |                 |
|   | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| <b>Courts</b>   | \$5,019         | \$9,112         | \$9,341         | \$9,594         | \$9,831         |
| <b>Indigent Defense</b>                                   | \$2,126         | \$3,907         | \$4,006         | \$4,114         | \$4,216         |
| <b>DPS - Prisons</b>                                      |                 | \$4,365         | \$8,950         | \$9,191         | \$9,424         |
| <b>DPS - Community Corrections</b>                        | Unknown         |                 |                 |                 |                 |
| <b>Total</b>  | <b>\$7,145</b>  | <b>\$17,385</b> | <b>\$22,297</b> | <b>\$22,898</b> | <b>\$23,470</b> |
| <b>Additional Prison Beds</b>                             |                 | 1               | 2               | 2               | 2               |

**Section 4.3 – Solicitation of a felony by an inmate**

Section 4.3 of the bill amends G.S. 14-2.6, Punishment for solicitation to commit a felony or misdemeanor, by adding a new subsection (a1). Currently, a person who solicits another person to commit a felony is guilty of a felony that is two classes lower than the felony the person solicited the other person to commit. The new subsection provides that an inmate who solicits another person to commit a felony outside the prison or jail is guilty of a felony that is one class lower than the felony the person solicited the other person to commit. Exceptions are made for Class A and Class I felonies, which remain two classes lower.

Because this statute covers all felonies at all offense levels, it is not possible to estimate costs that may be incurred as a result of this section.

### **Section 5.1 – Violations of the Amusement Device Safety Act of NC**

Section 5.1 of the bill rewrites the penalty for a person to willfully violate any provision of Article 14B of Chapter 95 of the General Statutes (Amusement Device Safety Act of North Carolina) if the violation causes the death of a person. The current penalty is a Class 2 misdemeanor for the first offense and a Class 1 misdemeanor for second or subsequent offense. Violations of the Act are only crimes if the violation causes the death of a person. The new penalty would make it a Class E felony if violation of the Act causes serious injury or death. Other violations that do not cause serious injury or death would be Class 2 misdemeanors for the first offense and Class 1 misdemeanors for subsequent offenses. Therefore, the bill creates two new misdemeanors (Class 2 for first offense violations of Article 14B of Chapter 95 and Class 1 for second and subsequent violations), increases the penalty for the existing offense (violations that result in death) from a Class 2 misdemeanor to a Class E felony, and expands the scope of the existing offense (adding violations that result in serious injury).

This section may have a fiscal impact to address a new offenses being enforced, adjudicated and having penalties applied to those convicted of the offenses. 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 costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$88 to \$1,618 per disposition
- Indigent Defense Services: \$182 to \$309 in district court  
\$359 to \$761 in superior court without a trial  
\$847 to \$1,914 in superior court with a trial
- Prison Section: \$8,892 for an active sentence (60 percent of Class E felony convictions)
- Community Corrections: \$1,482 to \$1,853

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

### **Section 11.1 – Taking a Venus flytrap**

Section 11.1 of the bill increases the penalty for taking a Venus flytrap from private land from a Class 3 misdemeanor punishable only by a fine to a Class H felony.

This section may have a fiscal impact to address an increased penalty for an offense. However, given there is no historical data on this offense, or similar offenses to use as a proxy for predicting the total number of offenses, the Fiscal Research Division cannot reasonably estimate the additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$470 per disposition
- Indigent Defense Services: \$255 in district court  
\$494 in superior court without a trial  
\$1,180 in superior court with a trial
- Prison Section: \$3,420 for active sentences (35 percent of Class H 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 12.1 – Graffiti vandalism**

Section 12.1 of the bill creates a new criminal penalty for graffiti vandalism. The offense is a Class 1 misdemeanor, unless the cost to repair the damage is greater than \$1,000, and/or the person has two or more prior convictions for the violation, in which case the offense is a Class I felony. If a person is convicted of five or more violations of this section in a single session of district court or in a single week of superior court, and at least five of the offenses occurred within a 60-day period, the combined offenses will be Class I felonies, as well.

This behavior is already covered under several existing statutes. Willfully and wantonly destroying property is already a Class 1 misdemeanor under G.S. 14-127. G.S. 14-132, Disorderly conduct in and injuries to public buildings and facilities, makes it a Class 2 misdemeanor for any person to write on the walls of any public building or facility, and G.S. 14-160 makes it a Class 2 misdemeanor to wantonly and willfully injure the personal property of another unless the damage is greater than \$200, in which case the offense is a Class 1 misdemeanor.

This section may have a fiscal impact to address the increased penalties for this offense. However, given there is no way to differentiate this specific behavior from existing charges or convictions that may already cover it, the Fiscal Research Division cannot reasonably estimate the additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$77 to \$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 active sentences (16 percent of Class I convictions)
- Community Corrections: Unknown

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

## **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 1.1 – POSSESSION OF A FIREARM BY A FELON**

Section 1.1. of the PCS increases the penalty for possession of a firearm by a felon (G.S. 14-415.1) from a Class G felony to a Class F 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, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 1.1 of the bill increases the penalty for possession of a firearm by a felon (G.S. 14-415.1) from a Class G felony to a Class F felony. In calendar year 2013, there were 4,677 charges for this offense. For every person who would have been charged with a Class G felony who is now charged with a Class F felony, the additional cost to the court will be \$160 (\$912 for a Class F minus \$752 for a Class G). 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 \$779,086. The table below shows the total costs for the next five years, adjusted for inflation.

| <b>AOC Costs Adjusted for Inflation</b> |                 |                  |                  |                  |                  |                  |
|---|-----------------|------------------|------------------|------------------|------------------|------------------|
| <b>Five Year Projection</b>             |                 |                  |                  |                  |                  |                  |
| <b>Section 1.1</b>                      | <b>FY 13-14</b> | <b>FY 14-15</b>  | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
|   |                 | 1.96%            | 2.11%            | 2.52%            | 2.70%            | 2.47%            |
| <b>Class G Felony to Class F Felony</b> |                 |                  |                  |                  |                  |                  |
| Court Cost                              | \$160.00        | \$163.14         | \$166.58         | \$170.78         | \$175.39         | \$179.72         |
| Offenders                               |                 | 2,728            | 4,677            | 4,677            | 4,677            | 4,677            |
| <b>Cost of Increase</b>                 |                 | <b>\$445,035</b> | <b>\$779,086</b> | <b>\$798,719</b> | <b>\$820,284</b> | <b>\$840,546</b> |

*\*FY 2014-15 offender numbers 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 F felony will be \$22 (\$323 for a Class F minus \$301 for a Class G). In superior court, the additional cost would be \$45 for non-trial cases (\$628 for a Class F minus \$583 for a Class G) and \$522 for cases that go to trial (\$2,046 for a Class F minus \$1,524 for a Class G). 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 F felonies is \$999. The average cost for Class G felonies is \$802. The difference between the two felony levels is \$197 (\$999 minus \$802). 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, 2,526 (4,677 offenders times 54 percent) will use IDS attorneys. The average cost to IDS for the increased penalty included in this bill will be \$518,081 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.

| <b>IDS Costs Adjusted for Inflation</b> |                 |                 |                 |                 |                 |                 |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Five Year Projection</b>             |                 |                 |                 |                 |                 |                 |
| <b>Section 1.1</b>                      | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| Inflation Rates                         |                 | 1.96%           | 2.11%           | 2.52%           | 2.70%           | 2.47%           |
| <b>Class G Felony to Class F Felony</b> |                 |                 |                 |                 |                 |                 |
| Cost Differential                       | \$197.00        | \$200.86        | \$205.10        | \$210.27        | \$215.95        | \$221.28        |
| Offenders                               |                 | 1,473           | 2,526           | 2,526           | 2,526           | 2,526           |
| <b>Cost of Increase</b>                 |                 | \$295,869       | \$518,081       | \$531,137       | \$545,477       | \$558,951       |

*\*FY 2014-15 offender numbers 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)*

**Department of Public Safety – Prison Section**

Section 1.1 of the bill increases the penalty for possession of a firearm by a felon (G.S. 14-415.1) from a Class G felony to a Class F felony. The Sentencing and Policy Advisory Commission reports that there were 1,145 convictions for this offense in FY 2012-13. As a Class G felony, 43 percent of those convictions resulted in an active sentence with an average estimated time served of 14 months. In the same time period, 53 percent of Class F felons received an active sentence averaging 16 months. The increased penalty level is estimated to increase the rate of active sentences and the average estimated time served. The projected prison impact for the proposed reclassification of this offense is shown in the table below.

| <b>Fiscal Year</b> | <b>Estimated Additional Prison Beds</b> |
|--------------------|---|
| Year 1             | 144                                     |
| Year 2             | 453                                     |
| Year 3             | 399                                     |
| Year 4             | 443                                     |
| Year 5             | 500                                     |
| Year 6             | 418                                     |
| Year 7             | 562                                     |
| Year 8             | 550                                     |
| Year 9             | 414                                     |
| Year 10            | 541                                     |

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>3</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

<sup>3</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.



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.

| <b>Population Projections and Bed Capacity</b>            |                         |                         |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Five Year Impact</b>                                   |                         |                         |                         |                         |                         |
| <b>Section 1.1</b>  | <b>June 30<br/>2014</b> | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>4</sup>                                   | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>5</sup></b> | <b>0</b>                | <b>144</b>              | <b>453</b>              | <b>399</b>              | <b>443</b>              |
| <b>5. Additional Beds Required</b>                        | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                |

Although no additional beds will be required for this section, additional spending will be necessary 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 \$628,818 (\$11.49 daily cost adjusted for inflation to \$11.96 times 144 inmates equals \$1,722. \$1,722 times 365 days equals \$628,818). 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.

| <b>Incarceration Costs Adjusted for Inflation</b> |                       |                   |                   |                    |                    |                    |
|---|-----------------------|-------------------|-------------------|--------------------|--------------------|--------------------|
| <b>Five Year Projection</b>                       |                       |                   |                   |                    |                    |                    |
| <b>Section 1.1</b>                                | <b>FY<br/>2013-14</b> | <b>FY 2014-15</b> | <b>FY 2015-16</b> | <b>FY 2016-17</b>  | <b>FY 2017-18</b>  | <b>FY 2018-19</b>  |
| <b>Inflation Rate</b>                             |                       | 1.96%             | 2.11%             | 2.52%              | 2.70%              | 2.47%              |
| <b>Per Diem Cost</b>                              | \$11.49               | \$11.72           | \$11.96           | \$12.26            | \$12.59            | \$12.91            |
| <b>Additional Inmates</b>                         |                       |                   | 144               | 453                | 399                | 443                |
| <b>Additional Daily Cost</b>                      |                       |                   | \$1,722           | \$5,554            | \$5,023            | \$5,719            |
| <b>Annual Cost</b>                                |                       |                   | <b>\$628,618</b>  | <b>\$2,027,130</b> | <b>\$1,833,545</b> | <b>\$2,087,482</b> |

*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

<sup>4</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>5</sup> 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.

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.

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.

Section 1.1 of the bill increases the penalty for possession of a firearm by a felon (G.S. 14-415.1) from a Class G felony to a Class F felony. According to the Sentencing and Policy Advisory Commission, during FY 2012-13 there were 1,145 Class G felony convictions for this crime. In FY 2012-13, 43 percent of Class G felony offenders received active sentences followed by nine months post-release supervision (PRS); 44 percent received intermediate sentences; and 13 percent received community punishments. For the same year, 53 percent of Class F offenders received active sentences followed by nine months PRS. 37 percent received intermediate sentences; and 10 percent received community punishments. The average lengths of intermediate and community punishments for a Class G felony were 30 months and 29 months, respectively. The average lengths of intermediate and community punishments for a Class F felony were 33 and 31 months, respectively.

The chart below shows the difference in cost between Class G offenders and Class F 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. The bill will result in savings to the Community Correction section because more offenders (53 percent versus 43 percent) receive active sentences under the new offense level which reduces the number of offenders receiving intermediate and community punishment.

| <b>Difference in CCS Cost - Class G Felony and Class F Felony<br/>Five-Year Projection, Adjusted for Inflation</b> |                |                  |               |                    |                    |                    |                    |
|--|----------------|------------------|---------------|--------------------|--------------------|--------------------|--------------------|
| <b>Section 1.1</b>   | <b>Percent</b> | <b>Offenders</b> | <b>Months</b> | <b>FY 15-16</b>    | <b>FY 16-17</b>    | <b>FY 17-18</b>    | <b>FY 18-19</b>    |
| Proposed Offense Intermediate  | 37%            | 424              | 33            | \$654,164          | \$1,341,299        | \$1,894,097        | \$1,940,830        |
| Current Offense Intermediate   | 44%            | 504              | 30            | \$777,591          | \$1,594,374        | \$2,046,794        | \$2,097,295        |
| <b>Difference Intermediate</b>   |                |                  |               | <b>(\$123,427)</b> | <b>(\$253,075)</b> | <b>(\$152,697)</b> | <b>(\$156,465)</b> |
| Proposed Offense Community   | 10%            | 115              | 31            | \$177,427          | \$363,796          | \$482,594          | \$494,501          |
| Current Offense Community  | 13%            | 149              | 29            | \$229,883          | \$471,353          | \$584,934          | \$599,366          |
| <b>Difference Community</b>  |                |                  |               | <b>(\$52,457)</b>  | <b>(\$107,557)</b> | <b>(\$102,340)</b> | <b>(\$104,865)</b> |
| Proposed Offense PRS   | 53%            | 607              | 9             | \$0                | \$640,069          | \$739,526          | \$757,773          |
| Current Offense PRS  | 43%            | 492              | 9             | \$0                | \$583,655          | \$657,357          | \$614,208          |
| <b>Difference PRS</b>  |                |                  |               | <b>\$0</b>         | <b>\$56,415</b>    | <b>\$82,170</b>    | <b>\$143,565</b>   |
| <b>Total Difference</b>  |                |                  |               | <b>(\$175,884)</b> | <b>(\$304,217)</b> | <b>(\$172,867)</b> | <b>(\$117,765)</b> |

*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 A immediately following this note.

**SECTION 2.2 – CARRYING A CONCEALED FIREARM**

Section 2.2 of the bill increases the penalty for violation of G.S. 14-269, Carrying concealed weapons, from a Class 2 misdemeanor to a Class A1 misdemeanor for the first offense and from a Class I felony to a Class H felony for the second and subsequent offenses. 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, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 2.2 of the bill increases the penalty for violation of G.S. 14-269, Carrying concealed weapons, from a Class 2 misdemeanor to a Class A1 misdemeanor for the first offense and from a Class I felony to a Class H felony for the second and subsequent offenses. AOC reports that first violations of this offense were charged against 2,892 defendants in calendar year 2013; second and subsequent violations were charged against 131 defendants. For every person who would have been charged with a Class 2 misdemeanor who is instead charged with a Class A1 misdemeanor, the additional cost to the court will be \$198 (\$286 for a Class A1 minus \$88 for a Class 2). 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.

| <b>AOC Costs Adjusted for Inflation<br/>Five Year Projection</b>   |                 |                  |                  |                  |                  |                  |
|--|-----------------|------------------|------------------|------------------|------------------|------------------|
| <b>Section 2.2</b>   | <b>FY 13-14</b> | <b>FY 14-15</b>  | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| Inflation Rates  |                 | 1.96%            | 2.11%            | 2.52%            | 2.70%            | 2.47%            |
| <b>Class 1 Misdemeanor to Class A1 Misdemeanor</b>   |                 |                  |                  |                  |                  |                  |
| Court Cost   | \$178.00        | \$181.49         | \$185.32         | \$189.99         | \$195.12         | \$199.94         |
| Offenders*   |                 | 1,687            | 2,892            | 2,892            | 2,892            | 2,892            |
| <b>Cost of Increase</b>  |                 | <b>\$306,172</b> | <b>\$535,940</b> | <b>\$549,446</b> | <b>\$564,281</b> | <b>\$578,219</b> |
| <b>Class I Felony to Class H Felony</b>  |                 |                  |                  |                  |                  |                  |
| Court Cost   | \$136.00        | \$138.67         | \$141.59         | \$145.16         | \$149.08         | \$152.76         |
| Offenders*   |                 | 76               | 131              | 131              | 131              | 131              |
| <b>Cost of Increase</b>  |                 | <b>\$10,539</b>  | <b>\$18,548</b>  | <b>\$19,016</b>  | <b>\$19,529</b>  | <b>\$20,012</b>  |
| <b>Total AOC Cost</b>  |                 | <b>\$316,710</b> | <b>\$554,489</b> | <b>\$568,462</b> | <b>\$583,810</b> | <b>\$598,230</b> |
| <i>*FY 2014-15 offender numbers have been prorated to account for a December 1, 2014 effective date.<br/>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i> |                 |                  |                  |                  |                  |                  |

The Office of Indigent Defense Services (IDS) reports that there is no cost differential for different levels of misdemeanors, so only the increase in penalty for second and subsequent offenses included in this section will have an impact. For each case disposed in district court, the additional cost for a Class I 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.

| <b>IDS Costs Adjusted for Inflation<br/>Five Year Projection</b>   |                 |                 |                 |                 |                 |                 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Section 2.2</b>   | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| Inflation Rates  |                 | 1.96%           | 2.11%           | 2.52%           | 2.70%           | 2.47%           |
| <b>Class I Felony to Class H Felony</b>  |                 |                 |                 |                 |                 |                 |
| Cost Differential  | \$60.00         | \$61.18         | \$62.47         | \$64.04         | \$65.77         | \$67.39         |
| Offenders*   |                 | 41              | 71              | 71              | 71              | 71              |
| <b>Cost of Increase</b>  |                 | <b>\$2,534</b>  | <b>\$4,435</b>  | <b>\$4,547</b>  | <b>\$4,670</b>  | <b>\$4,785</b>  |
| <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 2.2 of the bill increases the penalty for violation of G.S. 14-269, Carrying concealed weapons, from a Class 2 misdemeanor to a Class A1 misdemeanor for the first offense. According to the Sentencing and Policy Advisory Commission, during FY 2012-13 there were 544 Class 2 misdemeanor convictions for this crime. Of those Class 2 misdemeanors, 23 percent resulted in active sentences with an average sentence imposed of 24 days. In the same year, 36 percent of Class A1 misdemeanor convictions resulted in active sentences averaging 67 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in local jails. Therefore, reclassifying Class 2 misdemeanors as Class A1 misdemeanors will have no impact on the prison population. The impact on local jails is not known.

Second and subsequent violations of G.S. 14-269, Carrying concealed weapons, are increased in the bill from a Class I felony to a Class H felony. In 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,<sup>6</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart show the impact of the bill.

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                         |                         |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 2.2</b>  | <b>June 30<br/>2014</b> | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>7</sup>   | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>8</sup></b>           | <b>0</b>                | <b>3</b>                | <b>3</b>                | <b>3</b>                | <b>3</b>                |
| <b>5. Additional Beds Required</b>                                  | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                |

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 the each year of the five year projection, adjusted for inflation.

<sup>6</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>7</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>8</sup> 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.

| <b>Incarceration Costs Adjusted for Inflation</b> |                   |                   |                   |                   |                   |                   |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>Five Year Projection</b>                       |                   |                   |                   |                   |                   |                   |
| <b>Section 2.2</b>                                | <b>FY 2013-14</b> | <b>FY 2014-15</b> | <b>FY 2015-16</b> | <b>FY 2016-17</b> | <b>FY 2017-18</b> | <b>FY 2018-19</b> |
| <b>Inflation Rate</b>                             |                   | 1.96%             | 2.11%             | 2.52%             | 2.70%             | 2.47%             |
| <b>Per Diem Cost</b>                              | \$11.49           | \$11.72           | \$11.96           | \$12.26           | \$12.59           | \$12.91           |
| <b>Additional Inmates</b>                         |                   |                   | 3                 | 3                 | 3                 | 3                 |
| <b>Additional Cost</b>                            |                   |                   | \$35.88           | \$36.78           | \$37.77           | \$38.73           |
| <b>Annual Cost</b>                                |                   |                   | <b>\$13,096</b>   | <b>\$13,425</b>   | <b>\$13,786</b>   | <b>\$14,136</b>   |

*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.

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.

| <b>Daily Supervision Cost Adjusted for Inflation</b> |                   |                   |                   |                   |                   |                   |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>Five Year Projection</b>                          |                   |                   |                   |                   |                   |                   |
| <b>Section 2.2</b>                                   | <b>FY 2013-14</b> | <b>FY 2014-15</b> | <b>FY 2015-16</b> | <b>FY 2016-17</b> | <b>FY 2017-18</b> | <b>FY 2018-19</b> |
| <b>Inflation Rate</b>                                |                   | 1.96%             | 2.11%             | 2.52%             | 2.70%             | 2.47%             |
| <b>Per Month Cost</b>                                | \$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 2.2 of the bill increases the penalty for violation of G.S. 14-269, Carrying concealed weapons, from a Class 2 misdemeanor to a Class A1 misdemeanor for the first offense and 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 544 Class 2 misdemeanor convictions for this crime. In FY 2012-13, 31 percent of Class 2 misdemeanor offenders received active sentences; 1 percent received intermediate sentences; and 68 percent received community punishments. For the same year, 36 percent of Class A1 misdemeanor offenders received active sentences; 5 percent received intermediate sentences; and 59 percent received community punishments. The average

lengths of intermediate and community punishments for a Class 2 misdemeanor were 15 months and 13 months, respectively. The average lengths of intermediate and community punishments for a Class A1 misdemeanor were 19 and 17 months, respectively.

The chart below shows the difference in cost between Class A1 misdemeanor offenders and Class 2 misdemeanor 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.

| <b>Difference in CCS Cost - Class 2 Misdemeanor and Class A1 Misdemeanor</b> |                |                  |               |                   |                  |                  |                  |
|--|----------------|------------------|---------------|-------------------|------------------|------------------|------------------|
| <b>Five-Year Projection, Adjusted for Inflation</b>                          |                |                  |               |                   |                  |                  |                  |
| <b>Section 2.2</b>   | <b>Percent</b> | <b>Offenders</b> | <b>Months</b> | <b>FY 15-16</b>   | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| Proposed Offense Intermediate  | 5%             | 27               | 19            | \$41,657          | \$67,619         | \$69,445         | \$71,158         |
| Current Offense Intermediate   | 1%             | 5                | 15            | \$7,714           | \$9,886          | \$10,153         | \$10,403         |
| <b>Difference Intermediate</b>   |                |                  |               | <b>\$33,942</b>   | <b>\$57,733</b>  | <b>\$59,292</b>  | <b>\$60,755</b>  |
| Proposed Offense Community   | 59%            | 321              | 17            | \$495,252         | \$719,287        | \$738,714        | \$756,940        |
| Current Offense Community  | 68%            | 370              | 13            | \$570,851         | \$634,006        | \$651,130        | \$667,195        |
| <b>Difference Community</b>  |                |                  |               | <b>(\$75,599)</b> | <b>\$85,281</b>  | <b>\$87,584</b>  | <b>\$89,745</b>  |
| <b>Total Difference</b>  |                |                  |               | <b>(\$41,657)</b> | <b>\$143,014</b> | <b>\$146,876</b> | <b>\$150,500</b> |

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

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.

| <b>Difference in CCS Cost - Class I Felony and Class H Felony<br/>Five-Year Projection, Adjusted for Inflation</b> |                |                  |               |                  |                   |                   |                   |
|--|----------------|------------------|---------------|------------------|-------------------|-------------------|-------------------|
| <b>Section 2.2</b>   | <b>Percent</b> | <b>Offenders</b> | <b>Months</b> | <b>FY 15-16</b>  | <b>FY 16-17</b>   | <b>FY 17-18</b>   | <b>FY 18-19</b>   |
| 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          |
| <b>Difference Intermediate</b>   |                |                  |               | <b>\$1,543</b>   | <b>\$3,163</b>    | <b>\$5,550</b>    | <b>\$5,687</b>    |
| 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          |
| <b>Difference Community</b>  |                |                  |               | <b>(\$6,171)</b> | <b>(\$11,599)</b> | <b>(\$10,288)</b> | <b>(\$10,542)</b> |
| 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           |
| <b>Difference PRS</b>  |                |                  |               | <b>\$0</b>       | <b>\$3,559</b>    | <b>\$0</b>        | <b>\$3,745</b>    |
| <b>Total Difference</b>  |                |                  |               | <b>(\$4,629)</b> | <b>(\$4,877)</b>  | <b>(\$4,738)</b>  | <b>(\$1,110)</b>  |

*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 B immediately following this note.

### **SECTION 3.1 – FURNISHING A CELL PHONE TO AN INMATE; POSSESSION OF A CELL PHONE BY AN INMATE**

Section 3.1(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 3.1(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 3.1(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.



| <b>AOC Costs Adjusted for Inflation<br/>Five Year Projection</b> |                 |                 |                 |                 |                 |                 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Section 3.1(d)</b>  | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|  |                 | 1.96%           | 2.11%           | 2.52%           | 2.70%           | 2.47%           |
| <b>Class 1 Misdemeanor to Class H Felony</b>                     |                 |                 |                 |                 |                 |                 |
| Court Cost   | \$336.00        | \$342.59        | \$349.81        | \$358.63        | \$368.31        | \$377.41        |
| Offenders  |                 | 6               | 11              | 11              | 11              | 11              |
| <b>Cost of Increase</b>  |                 | <b>\$2,198</b>  | <b>\$3,848</b>  | <b>\$3,945</b>  | <b>\$4,051</b>  | <b>\$4,152</b>  |

*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.

| <b>IDS Costs Adjusted for Inflation<br/>Five Year Projection</b> |                 |                 |                 |                 |                 |                 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Section 3.1(d)</b>  | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| Inflation Rates  |                 | 1.96%           | 2.11%           | 2.52%           | 2.70%           | 2.47%           |
| <b>Class 1 Misdemeanor to Class H Felony</b>                     |                 |                 |                 |                 |                 |                 |
| Cost Differential  | \$179.00        | \$182.51        | \$186.36        | \$191.06        | \$196.21        | \$201.06        |
| Offenders  |                 | 4               | 6               | 6               | 6               | 6               |
| <b>Cost of Increase</b>  |                 | <b>\$730</b>    | <b>\$1,118</b>  | <b>\$1,146</b>  | <b>\$1,177</b>  | <b>\$1,206</b>  |

*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 3.1(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 3.1(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<br>Five Year Projection                  |          |                  |                  |                  |                  |                  |
|---|----------|------------------|------------------|------------------|------------------|------------------|
| Section 3.1(f)  | FY 13-14 | FY 14-15         | FY 15-16         | FY 16-17         | FY 17-18         | FY 18-19         |
| <b>Inflation Rates</b>  |          | 1.96%            | 2.11%            | 2.52%            | 2.70%            | 2.47%            |
| <b>Class 1 Misdemeanor to Class H Felony - Local Confinement Facility</b> |          |                  |                  |                  |                  |                  |
| Court Cost  | \$336.00 | \$342.59         | \$349.81         | \$358.63         | \$368.31         | \$377.41         |
| Charges   |          | 127              | 218              | 218              | 218              | 218              |
| <b>Cost of Increase</b>   |          | <b>\$43,508</b>  | <b>\$76,259</b>  | <b>\$78,181</b>  | <b>\$80,292</b>  | <b>\$82,275</b>  |
| <b>Class H Felony - State Prison System</b>                               |          |                  |                  |                  |                  |                  |
| Court Cost  | \$501.00 | \$510.82         | \$521.60         | \$534.74         | \$549.18         | \$562.74         |
| Charges   |          | 187              | 320              | 320              | 320              | 320              |
| <b>Cost of New Charges</b>  |          | <b>\$95,353</b>  | <b>\$166,911</b> | <b>\$171,117</b> | <b>\$175,738</b> | <b>\$180,078</b> |
| <b>Total Cost to AOC</b>  |          | <b>\$138,861</b> | <b>\$243,171</b> | <b>\$249,299</b> | <b>\$256,030</b> | <b>\$262,354</b> |

*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 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.

| <b>IDS Costs Adjusted for Inflation<br/>Five Year Projection</b>          |                 |                  |                  |                  |                  |                  |
|---|-----------------|------------------|------------------|------------------|------------------|------------------|
| <b>Section 3.1(f)</b>   | <b>FY 13-14</b> | <b>FY 14-15</b>  | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| Inflation Rates   |                 | 1.96%            | 2.11%            | 2.52%            | 2.70%            | 2.47%            |
| <b>Class 1 Misdemeanor to Class H Felony - Local Confinement Facility</b> |                 |                  |                  |                  |                  |                  |
| Cost Differential   | \$336.00        | \$342.59         | \$349.81         | \$358.63         | \$368.31         | \$377.41         |
| Charges   |                 | 69               | 118              | 118              | 118              | 118              |
| <b>Cost of Increase</b>   |                 | <b>\$23,638</b>  | <b>\$41,278</b>  | <b>\$42,318</b>  | <b>\$43,461</b>  | <b>\$44,534</b>  |
| <b>Class H Felony - State Prison System</b>                               |                 |                  |                  |                  |                  |                  |
| Average Cost  | \$501.00        | \$510.82         | \$521.60         | \$534.74         | \$549.18         | \$562.74         |
| Charges   |                 | 168              | 288              | 288              | 288              | 288              |
| <b>Cost of New Offenders</b>  |                 | <b>\$85,818</b>  | <b>\$150,220</b> | <b>\$154,006</b> | <b>\$158,164</b> | <b>\$162,071</b> |
| <b>Total Cost to IDS</b>  |                 | <b>\$109,456</b> | <b>\$191,498</b> | <b>\$196,324</b> | <b>\$201,625</b> | <b>\$206,605</b> |

*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)*

**Department of Public Safety – Prison Section**

**Section 3.1(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,<sup>9</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart show the impact of this section.

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                         |                         |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 3.1(d)</b>   | <b>June 30<br/>2014</b> | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>10</sup>  | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>11</sup></b>          | <b>0</b>                | <b>1</b>                | <b>2</b>                | <b>2</b>                | <b>2</b>                |
| <b>5. Additional Beds Required</b>                                  | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                |

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.

<sup>9</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>10</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>11</sup> 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**

| Section 3.1(d)            | FY 2013-14 | FY 2014-15 | FY 2015-16     | FY 2016-17     | FY 2017-18     | FY 2018-19     |
|---------------------------|------------|------------|----------------|----------------|----------------|----------------|
| <b>Inflation Rate</b>     |            | 1.96%      | 2.11%          | 2.52%          | 2.70%          | 2.47%          |
| <b>Per Diem Cost</b>      | \$11.49    | \$11.72    | \$11.96        | \$12.26        | \$12.59        | \$12.91        |
| <b>Additional Inmates</b> |            |            | 1              | 2              | 2              | 2              |
| <b>Additional Cost</b>    |            |            | \$11.96        | \$24.52        | \$25.18        | \$25.82        |
| <b>Annual Cost</b>        |            |            | <b>\$4,365</b> | <b>\$8,950</b> | <b>\$9,191</b> | <b>\$9,424</b> |

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

**Section 3.1(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. 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,<sup>12</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart show the impact of the bill.

<sup>12</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                         |                         |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 3.1(f) - Local</b>                                       | <b>June 30<br/>2014</b> | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>13</sup>  | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>14</sup></b>          | <b>0</b>                | <b>25</b>               | <b>34</b>               | <b>34</b>               | <b>34</b>               |
| <b>5. Additional Beds Required</b>                                  | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                |

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.

| <b>Incarceration Costs Adjusted for Inflation<br/>Five Year Projection<br/>Inmates in Local Confinement Facilities</b> |                   |                   |                   |                   |                   |                   |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>Section 3.1(f)</b>  | <b>FY 2013-14</b> | <b>FY 2014-15</b> | <b>FY 2015-16</b> | <b>FY 2016-17</b> | <b>FY 2017-18</b> | <b>FY 2018-19</b> |
| <b>Inflation Rate</b>  |                   | 1.96%             | 2.11%             | 2.52%             | 2.70%             | 2.47%             |
| <b>Per Diem Cost</b>   | \$11.49           | \$11.72           | \$11.96           | \$12.26           | \$12.59           | \$12.91           |
| <b>Additional Inmates</b>  |                   |                   | 25                | 34                | 34                | 34                |
| <b>Additional Cost</b>   |                   |                   | \$299.00          | \$416.84          | \$428.06          | \$438.94          |
| <b>Annual Cost</b>   |                   |                   | <b>\$109,135</b>  | <b>\$152,147</b>  | <b>\$156,242</b>  | <b>\$160,213</b>  |

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

**Section 3.1(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

<sup>13</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>14</sup> 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.

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,<sup>15</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart show the impact of the bill.

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                         |                         |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 3.1(f) - State</b>                                       | <b>June 30<br/>2014</b> | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>16</sup>  | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>17</sup></b>          | <b>0</b>                | <b>70</b>               | <b>94</b>               | <b>94</b>               | <b>94</b>               |
| <b>5. Additional Beds Required</b>                                  | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                |

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.

<sup>15</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>16</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>17</sup> 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 the State Prison System**

| Section 3.1(f)            | FY 2013-14 | FY 2014-15 | FY 2015-16       | FY 2016-17       | FY 2017-18       | FY 2018-19       |
|---------------------------|------------|------------|------------------|------------------|------------------|------------------|
| <b>Inflation Rate</b>     |            | 1.96%      | 2.11%            | 2.52%            | 2.70%            | 2.47%            |
| <b>Per Diem Cost</b>      | \$11.49    | \$11.72    | \$11.96          | \$12.26          | \$12.59          | \$12.91          |
| <b>Additional Inmates</b> |            |            | 70               | 94               | 94               | 94               |
| <b>Additional Cost</b>    |            |            | \$837.20         | \$1,152.44       | \$1,183.46       | \$1,213.54       |
| <b>Annual Cost</b>        |            |            | <b>\$305,578</b> | <b>\$420,641</b> | <b>\$431,963</b> | <b>\$442,942</b> |

*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.

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 3.1(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 3.1(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.

| <b>Difference in CCS Cost - Class 1 Misdemeanor and Class H Felony</b> |                |                  |               |                   |                   |                   |                   |
|--|----------------|------------------|---------------|-------------------|-------------------|-------------------|-------------------|
| <b>Five-Year Projection, Adjusted for Inflation</b>                    |                |                  |               |                   |                   |                   |                   |
| <b>Section 3.1(f) Local</b>  | <b>Percent</b> | <b>Offenders</b> | <b>Months</b> | <b>FY 15-16</b>   | <b>FY 16-17</b>   | <b>FY 17-18</b>   | <b>FY 18-19</b>   |
| 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           |
| <b>Difference Intermediate</b>   |                |                  |               | <b>\$40,114</b>   | <b>\$83,831</b>   | <b>\$105,047</b>  | <b>\$107,639</b>  |
| 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         |
| <b>Difference Community</b>  |                |                  |               | <b>(\$50,914)</b> | <b>(\$33,216)</b> | <b>(\$23,148)</b> | <b>(\$23,719)</b> |
| Proposed Offense PRS   | 35%            | 30               | 9             | \$7,714           | \$35,589          | \$36,550          | \$37,452          |
| Current Offense PRS  | 0%             | 0                | 0             | \$0               | \$0               | \$0               | \$0               |
| <b>Difference PRS</b>  |                |                  |               | <b>\$7,714</b>    | <b>\$35,589</b>   | <b>\$36,550</b>   | <b>\$37,452</b>   |
| <b>Total Difference</b>  |                |                  |               | <b>(\$3,086)</b>  | <b>\$86,204</b>   | <b>\$118,449</b>  | <b>\$121,371</b>  |

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

**Section 3.1(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.

| <b>CCS Cost - Class H Felony<br/>Five-Year Projection, Adjusted for Inflation</b> |                |                  |               |                  |                  |                  |                  |
|---|----------------|------------------|---------------|------------------|------------------|------------------|------------------|
| <b>Section 3.1(f) State</b>   | <b>Percent</b> | <b>Offenders</b> | <b>Months</b> | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| 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        |
| <b>Total Cost</b>   |                |                  |               | <b>\$240,683</b> | <b>\$493,497</b> | <b>\$591,567</b> | <b>\$606,163</b> |

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

#### **SECTION 4.1 – ASSAULT ON AN EXECUTIVE, LEGISLATIVE, OR COURT OFFICER**

Section 4.1 of the bill increases the penalty for assault on an executive, legislative, or court officer from a Class I felony to a Class E felony. If a deadly weapon is used in the assault, the penalty goes from a Class F felony to a Class D felony, and if serious bodily injury occurs, the penalty is increased from a Class F felony to a Class C felony. The scope of the offense is also expanded to add 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 4.1 of the bill increases the penalty for assault on an executive, legislative, or court officer from a Class I felony to a Class E felony. In calendar year 2013, there were three charges for this offense. For every person who would have been charged with a Class I felony who is now charged with a Class E felony, the additional cost to the court will be \$1,253 (\$1,618 for a Class E 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 AOC in the first full year of implementation will be \$3,914. The table below shows the total costs for the next five years, adjusted for inflation.

| <b>AOC Costs Adjusted for Inflation<br/>Five Year Projection</b> |   |                 |                 |                 |                 |                 |
|--|---|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Section 4.1</b>   | <b>FY 13-14</b>                         | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|  |   | 1.96%           | 2.11%           | 2.52%           | 2.70%           | 2.47%           |
|  | <b>Class I Felony to Class E Felony</b> |                 |                 |                 |                 |                 |
| Court Cost   | \$1,253.00                              | \$1,277.56      | \$1,304.52      | \$1,337.39      | \$1,373.50      | \$1,407.42      |
| Offenders  |   | 2               | 3               | 3               | 3               | 3               |
| <b>Cost of Increase</b>  |   | <b>\$2,555</b>  | <b>\$3,914</b>  | <b>\$4,012</b>  | <b>\$4,120</b>  | <b>\$4,222</b>  |

*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)*

Penalties are also increased by Section 4.1 of the bill if a deadly weapon is used in the assault, from a Class F felony to a Class D felony, and if serious bodily injury occurs, from a Class F felony to a Class C felony. In calendar year 2013, there were no charges for either of these offenses. The difference in cost for these offense classes is shown in the table below.

| <b>AOC Cost Differential for Section 4.1 – Assault on an Executive, Legislative, or Court Officer</b> |                         |                    |                           |
|---|-------------------------|--------------------|---------------------------|
| <b>Offense</b>  | <b>Original Penalty</b> | <b>New Penalty</b> | <b>Difference in Cost</b> |
| With a Deadly Weapon  | Class F felony          | Class D felony     | \$2,553                   |
| Inflicting Serious Injury   | Class F felony          | Class C felony     | \$3,328                   |

Finally, Section 4.1 expands the scope of these offenses to include assaults on another person as retaliation against an executive, legislative, or court officer. These offenses could currently be charged as a Class 2 misdemeanor or as Class A1 misdemeanors if the offender used a deadly weapon or inflicted serious injury. It is not known how many of the current charges would be elevated under the new statute. The difference in cost for these offense classes is shown in the table below.

| <b>AOC Cost Differential for Section 4.1 – Assault on a Person as Retaliation Against an Executive, Legislative, or Court Officer</b> |                         |                    |                           |
|---|-------------------------|--------------------|---------------------------|
| <b>Offense</b>  | <b>Original Penalty</b> | <b>New Penalty</b> | <b>Difference in Cost</b> |
| Assault   | Class 2 misdemeanor     | Class E felony     | \$1,530                   |
| With a Deadly Weapon  | Class A1 misdemeanor    | Class D felony     | \$3,179                   |
| Inflicting Serious Injury   | Class A1 misdemeanor    | Class C felony     | \$3,954                   |

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 E felony will be \$64 (\$309 for a Class E minus \$245 for a Class I). In superior court, the additional cost would be \$306 for non-trial cases (\$761 for a Class E minus \$455 for a Class I) and \$868 for cases that go to trial (\$1,914 for a Class E 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 E felonies is \$994. The average cost for Class I felonies is \$582. The difference between the two felony levels is \$412 (\$994 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, one offender (3 offenders times 54 percent) will use an IDS attorney. The average cost to IDS for the increased penalty included in this bill will be \$429 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.

| <b>IDS Costs Adjusted for Inflation<br/>Five Year Projection</b> |                 |                 |                 |                 |                 |                 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Section 4.1</b>   | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| Inflation Rates  |                 | 1.96%           | 2.11%           | 2.52%           | 2.70%           | 2.47%           |
| <b>Class I Felony to Class E Felony</b>                          |                 |                 |                 |                 |                 |                 |
| Cost Differential  | \$412.00        | \$420.08        | \$428.94        | \$439.75        | \$451.62        | \$462.78        |
| Offenders  |                 | 1               | 1               | 1               | 1               | 1               |
| <b>Cost of Increase</b>  |                 | \$420           | \$429           | \$440           | \$452           | \$463           |

*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)*

Penalties are also increased by Section 4.1 of the bill if a deadly weapon is used in the assault, from a Class F felony to a Class D felony, and if serious bodily injury occurs, from a Class F felony to a Class C felony. In calendar year 2013, there were no charges for either of these offenses. The difference in cost for these offense classes is shown in the table below.

| <b>IDS Cost Differential for Section 4.1 – Assault on an Executive, Legislative, or Court Officer</b> |                         |                    |                           |
|---|-------------------------|--------------------|---------------------------|
| <b>Offense</b>  | <b>Original Penalty</b> | <b>New Penalty</b> | <b>Difference in Cost</b> |
| With a Deadly Weapon  | Class F felony          | Class D felony     | \$547                     |
| Inflicting Serious Injury   | Class F felony          | Class C felony     | \$557                     |

Finally, Section 4.1 expands the scope of these offenses to include assaults on another person as retaliation against an executive, legislative, or court officer. These offenses could currently be charged as a Class 2 misdemeanor or as Class A1 misdemeanors if the offender used a deadly weapon or inflicted serious injury. It is not known how many of the current charges would be elevated under the new statute. The difference in cost for these offense classes is shown in the table below.

| <b>IDS Cost Differential for Section 4.1 – Assault on a Person as Retaliation Against an Executive, Legislative, or Court Officer</b> |                         |                    |                           |
|---|-------------------------|--------------------|---------------------------|
| <b>Offense</b>  | <b>Original Penalty</b> | <b>New Penalty</b> | <b>Difference in Cost</b> |
| Assault   | Class 2 misdemeanor     | Class E felony     | \$531                     |
| With a Deadly Weapon  | Class A1 misdemeanor    | Class D felony     | \$1,083                   |
| Inflicting Serious Injury   | Class A1 misdemeanor    | Class C felony     | \$1,093                   |

**Department of Public Safety –Prison Section**

Section 4.1 of the bill increases the penalty for assault on an executive, legislative, or court officer from a Class I felony to a Class E felony. If a deadly weapon is used in the assault, the penalty goes from a Class F felony to a Class D felony, and if serious bodily injury occurs, the penalty is increased from a Class F felony to a Class C felony. The scope of the offense is also expanded to add assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. In FY 2012-13, there were no convictions for assault on an executive, legislative, or court officer.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>18</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                              |                         |                         |                         |                         |
|---|------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 4.1</b>  | <b>June 30<br/>2014</b>      | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>19</sup>  | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>20</sup></b>          | <b>No estimate available</b> |                         |                         |                         |                         |
| <b>5. Additional Beds Required</b>                                  |                              |                         |                         |                         |                         |

In addition to the capital costs that may be associated with additional bed needs, there are also 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.

<sup>18</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>19</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>20</sup> 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.

| <b>Prison Per Diem Cost per Conviction for Section 4.1<br/>Assault on an Executive, Legislative, or Court Officer</b> |                     |   |                                   |             |
|---|---------------------|---|-----------------------------------|-------------|
| <b>Offense</b>  | <b>Felony Level</b> | <b>Percent Receiving Active Sentences</b> | <b>Average Length of Sentence</b> | <b>Cost</b> |
| Assault   | E                   | 60%                                       | 26                                | \$8,892     |
| With a Deadly Weapon  | D                   | 100%                                      | 66                                | \$22,572    |
| Inflicting Serious Injury   | C                   | 100%                                      | 81                                | \$27,702    |

**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.

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.

All active B1 – E level sentences result in 12 months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from Section 4.1 of this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,482 per offender (\$123.50 per month times 12 months).

**SECTION 4.2 – THREATS AGAINST AN EXECUTIVE, LEGISLATIVE, OR COURT OFFICER**

Section 4.2 of the bill increases the penalty for threatening an executive, legislative, or court officer (either through the mail or by some other means) 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.

**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.

In calendar year 2013, there were 16 charges for threats against an executive, legislative, or court officer. For every person who would have been charged with a Class I felony who is now charged with a Class F felony, the additional cost to the court will be \$547 (\$912 for a Class F 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 AOC in the first full year of implementation will be \$9,112. The table below shows the total costs for the next five years, adjusted for inflation.

| <b>AOC Costs Adjusted for Inflation</b>  |                 |                 |                 |                 |                 |                 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Five Year Projection</b>  |                 |                 |                 |                 |                 |                 |
| <b>Section 4.2</b>   | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|  |                 | 1.96%           | 2.11%           | 2.52%           | 2.70%           | 2.47%           |
| <b>Class I Felony to Class F Felony</b>  |                 |                 |                 |                 |                 |                 |
| Court Cost   | \$547.00        | \$557.72        | \$569.49        | \$583.84        | \$599.60        | \$614.41        |
| Offenders  |                 | 9               | 16              | 16              | 16              | 16              |
| <b>Cost of Increase</b>  |                 | <b>\$5,019</b>  | <b>\$9,112</b>  | <b>\$9,341</b>  | <b>\$9,594</b>  | <b>\$9,831</b>  |
| <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> |                 |                 |                 |                 |                 |                 |

This section also expands the scope of the offense to include threats against another person in retaliation against an executive, legislative, or court officer. This offense would currently be charged as a Class 1 misdemeanor under G.S. 14-277.1, Communicating threats. 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 F felony is \$747 (\$912 for a Class F felony minus \$165 for a Class 1 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. For each case disposed in district court, the additional cost for a Class F felony will be \$78 (\$323 for a Class F minus \$245 for a Class I). In superior court, the additional cost would be \$173 for non-trial cases (\$628 for a Class F minus \$455 for a Class I) and \$1,000 for cases that go to trial (\$2,046 for a Class F 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 F felonies is \$999. The average cost for Class I felonies is \$582. The difference between the two felony levels is \$417 (\$999 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, nine offenders (16 offenders times 54 percent) will use an IDS attorney. The average cost to IDS for the increased penalty included in this bill will be \$3,907 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.

| <b>IDS Costs Adjusted for Inflation<br/>Five Year Projection</b> |                 |                 |                 |                 |                 |                 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Section 4.2</b>   | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| Inflation Rates  |                 | 1.96%           | 2.11%           | 2.52%           | 2.70%           | 2.47%           |
| <b>Class I Felony to Class F Felony</b>                          |                 |                 |                 |                 |                 |                 |
| Cost Differential  | \$417.00        | \$425.17        | \$434.14        | \$445.08        | \$457.10        | \$468.39        |
| Offenders  |                 | 5               | 9               | 9               | 9               | 9               |
| <b>Cost of Increase</b>  |                 | <b>\$2,126</b>  | <b>\$3,907</b>  | <b>\$4,006</b>  | <b>\$4,114</b>  | <b>\$4,216</b>  |

*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)*

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

Section 4.2 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. In FY 2012-13, there was one Class I felony conviction for threatening an executive, legislative, or court officer. According to the Sentencing and Policy Advisory Commission, impact on the prison population will occur if Class I convictions become Class F convictions under the proposed statute because of the higher rate of active sentences (16 percent for Class I compared to 53 percent for Class F) and longer average estimated time served (seven months for Class I compared to 16 months for Class F). Since the number of convictions is so small, the Sentencing Commission can only project the impact on the population for two years. 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. One additional prison bed will be needed in the first year and two in subsequent years as a result of this section of the bill.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>21</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

<sup>21</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.



| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                         |                         |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 4.2</b>  | <b>June 30<br/>2014</b> | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>22</sup>  | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>23</sup></b>          |                         | <b>1</b>                | <b>2</b>                | <b>2</b>                | <b>2</b>                |
| <b>5. Additional Beds Required</b>                                  | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                | <b>0</b>                |

In addition to the capital costs that may be associated with additional bed needs, there are also 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 annual cost for each year of the five-year projection, adjusted for inflation.

| <b>Incarceration Costs Adjusted for Inflation<br/>Five Year Projection</b> |                   |                   |                   |                   |                   |                   |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>Section 4.2</b>   | <b>FY 2013-14</b> | <b>FY 2014-15</b> | <b>FY 2015-16</b> | <b>FY 2016-17</b> | <b>FY 2017-18</b> | <b>FY 2018-19</b> |
| <b>Inflation Rate</b>  |                   | 1.96%             | 2.11%             | 2.52%             | 2.70%             | 2.47%             |
| <b>Per Diem Cost</b>   | \$11.49           | \$11.72           | \$11.96           | \$12.26           | \$12.59           | \$12.91           |
| <b>Additional Inmates</b>  |                   |                   | 1                 | 2                 | 2                 | 2                 |
| <b>Additional Cost</b>   |                   |                   | \$11.96           | \$24.52           | \$25.18           | \$25.82           |
| <b>Annual Cost</b>   |                   |                   | <b>\$4,365</b>    | <b>\$8,950</b>    | <b>\$9,191</b>    | <b>\$9,424</b>    |

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

### **Department of Public Safety – Community Correction Section**

Section 4.2 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.

<sup>22</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>23</sup> 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.

According to the Sentencing and Policy Advisory Commission, during FY 2012-13 there was one Class I felony conviction 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, 53 percent of Class F offenders received active sentences followed by nine months PRS. 37 percent received intermediate sentences; and 10 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 F felony were 33 and 31 months, respectively.

Fiscal Research cannot estimate the difference in cost for CCS resulting from the increase in penalty level because of the small number of convictions (one in FY 2012-13). If the sentence was an intermediate or community punishment as a Class I felony and now becomes an active sentence as a Class F felony, there would be savings, as active sentences require only nine months of PRS while intermediate or community sentence lengths would have required 26 or 23 months of supervision. If the sentence remains an 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 4.3 – SOLICITATION OF A FELONY BY AN INMATE**

Section 4.3 of the bill amends G.S. 14-2.6, Punishment for solicitation to commit a felony or misdemeanor, by adding a new subsection (a1). Currently, a person who solicits another person to commit a felony is guilty of a felony that is two classes lower than the felony the person solicited the other person to commit. The new subsection provides that an inmate who solicits another person to commit a felony outside the prison or jail is guilty of a felony that is one class lower than the felony the person solicited the other person to commit. Exceptions are made for Class A and Class I felonies, which remain two classes lower. Because this new offense covers all felonies at all offense levels, it is not possible to estimate costs that may be incurred as a result of this section.

### **SECTION 5.1 – VIOLATIONS OF THE AMUSEMENT DEVICE SAFETY ACT OF NC**

Section 5.1 of the bill rewrites the penalty for a person to willfully violate any provision of Article 14B of Chapter 95 of the General Statutes (Amusement Device Safety Act of North Carolina) if the violation causes the death of a person. The current penalty is a Class 2 misdemeanor for the first offense and a Class 1 misdemeanor for second or subsequent offense. Violations of the Act are only crimes if the violation causes the death of a person. The new penalty would make it a Class E felony if violation of the Act causes serious injury or death. Other violations that do not cause serious injury or death would be Class 2 misdemeanors for the first offense and Class 1 misdemeanors for subsequent offenses. Therefore, the bill creates two new misdemeanors (Class 2 for first offense violations of Article 14B of Chapter 95 and Class 1 for second and subsequent violations), increases the penalty for the existing offense (violations that result in death) from a Class 2 misdemeanor to a Class E felony, and expands the scope of the existing offense (adding violations that result in serious injury).

## **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 5.1 of the bill creates two new misdemeanors (Class 2 for first offense violations of Article 14B of Chapter 95 and Class 1 for second and subsequent violations), increases the penalty for the existing offense (violations that result in death) from a Class 2 misdemeanor to a Class E felony, and expands the scope of the existing offense (adding violations that result in serious injury). AOC does not have a specific offense code for violations of G.S. 95-111.13, indicating that the offense is infrequently charged and/or infrequently results in convictions. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the average cost to the court for each of the offenses in this section.

| <b>Court Expenditures for Section 5.1 – Amusement Device Safety Act Violations</b> |         |
|--|---------|
| Class 2 Misdemeanor  | \$88    |
| Class 1 Misdemeanor  | \$165   |
| Class E Felony   | \$1,618 |

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 estimates that the cost of a new misdemeanor (regardless of class) will be \$182 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$359 if the case does not go to trial and \$847 if it does. For a Class E felony, the costs are \$309 in district court, \$761 in superior court without a trial, and \$1,914 in superior court if the case does go to trial. 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 5.1 of the bill creates two new misdemeanor offenses and increases an existing offense from a misdemeanor to a Class E felony. For the misdemeanor offenses, the North Carolina Sentencing and Policy Advisory Commission (SPAC) expects no impact on the prison population because offenders who receive active sentences of less than 180 days will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections from the new misdemeanor offenses. For the Class E felony, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>24</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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<sup>24</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

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).

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                              |                         |                         |                         |                         |
|---|------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 5.1</b>  | <b>June 30<br/>2014</b>      | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>25</sup>  | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>26</sup></b>          | <b>No estimate available</b> |                         |                         |                         |                         |
| <b>5. Additional Beds Required</b>                                  |                              |                         |                         |                         |                         |

In addition to the capital costs that may be associated with additional bed needs, there are also 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. In FY 2012-13, 60% of Class E felony offenders received active sentences averaging 26 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$8,892 (\$342 monthly cost times 26 months).

#### **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.

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.

This section of the bill creates two new misdemeanor offenses. In FY 2012-13, 31 percent of Class 2 misdemeanor offenders received active sentences; one percent received intermediate sentences; and 68 percent received community punishments. Active misdemeanor sentences of less than 180 days are served

<sup>25</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>26</sup> 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.

in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 15 and 13 months, respectively. Therefore, at a minimum, one Class 2 misdemeanor conviction resulting in an intermediate or community punishment will require at least 13 months of supervision. The cost of 13 months of supervision is \$1,606 per offender (\$123.50 per month times 13 months).

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. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in an intermediate or community punishment will require at least 15 months of supervision. The cost of 15 months of supervision is \$1,853 per offender (\$123.50 per month times 15 months).

This section also increases an existing offense from a misdemeanor to a Class E felony. In FY 2012-13, 60 percent of Class E felony offenders received active sentences; 34 percent received intermediate sentences; and six percent received community punishments. All active sentences result in twelve months of post-release supervision (PRS). The average lengths of intermediate and community punishment imposed for this offense class were 34 and 33 months, respectively. Therefore, at a minimum, one Class E felony conviction resulting from Section 5.1 of this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,482 per offender (\$123.50 per month times 12 months).

## **SECTION 11.1 – TAKING A VENUS FLYTRAP**

Section 11.1 of the bill increases the penalty for taking a Venus flytrap from private land from a Class 3 misdemeanor punishable only by a fine to a Class H felony.

### **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 11.1 of the bill increases the penalty for taking a Venus flytrap from private land from a Class 3 misdemeanor punishable only by a fine to a Class H felony. AOC does not have a specific offense code for violations of G.S. 14-129, indicating that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many offenders might be charged under this new statute. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class H felony, the average cost to the court would be \$470, the difference between the cost for a Class 3 misdemeanor case and a Class H felony case (\$31 and \$501, respectively).

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 estimates that the cost of a Class H felony will be \$255 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$494 if the case does not go to trial and \$1,180 if it does. Since Class 3 misdemeanors punishable only by a fine would not receive indigent defense services, the costs shown for this section are the entire costs for defense of a Class H felony and have not been adjusted for the difference in costs between the two offense classes. 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.

**Department of Public Safety –Prison Section**

Section 11.1 of the bill increases the penalty for taking a Venus flytrap from private land from a Class 3 misdemeanor punishable only by a fine to a Class H felony. The Sentencing Commission does not have any historical data from which to estimate the impact of this bill 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,<sup>27</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                              |                         |                         |                         |                         |
|---|------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 11.1</b>   | <b>June 30<br/>2014</b>      | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>28</sup>  | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>29</sup></b>          | <b>No estimate available</b> |                         |                         |                         |                         |
| <b>5. Additional Beds Required</b>                                  |                              |                         |                         |                         |                         |

In addition to the capital costs that may be associated with additional bed needs, there are also 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. In FY 2012-13, 35% of Class H felony offenders received active sentences averaging ten months. For every one offender receiving an active sentence, the cost to the prison section will be \$3,420 (\$342 times ten months).

**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-

<sup>27</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>28</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2014.

<sup>29</sup> 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, 35 percent of Class H felony offenders received active sentences; 33 percent received intermediate sentences; and 32 percent received community punishments. All active sentences result in nine months of post-release supervision (PRS). The average lengths of intermediate and community punishment imposed for this offense class were 29 and 27 months, respectively. Therefore, at a minimum, one conviction resulting from Section 11.1 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).

## **SECTION 12.1 – GRAFFITI VANDALISM**

Section 12.1 of the bill creates a new criminal penalty for graffiti vandalism. The offense is a Class 1 misdemeanor, unless the cost to repair the damage is greater than \$1,000, and/or the person has two or more prior convictions for the violation, in which case the offense is a Class I felony. If a person is convicted of five or more violations of this section in a single session of district court or in a single week of superior court, and at least five of the offenses occurred within a 60-day period, the combined offenses will be Class I felonies, as well.

This behavior is already covered under several existing statutes. Willfully and wantonly destroying property is already a Class 1 misdemeanor under G.S. 14-127. G.S. 14-132, Disorderly conduct in and injuries to public buildings and facilities, makes it a Class 2 misdemeanor for any person to write on the walls of any public building or facility, and G.S. 14-160 makes it a Class 2 misdemeanor to wantonly and willfully injure the personal property of another unless the damage is greater than \$200, in which case the offense is a Class 1 misdemeanor.

### **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 12.1 of the bill increases the penalty for graffiti vandalism from a Class 2 misdemeanor to a Class 1 misdemeanor or from a Class 1 misdemeanor to a Class I felony if the damage is greater than \$1,000 or if the offender has two or more prior convictions for the offense. AOC cannot tell how many of the current offenses would fall into this new category of offenses. AOC provides estimates of the average cost to the court for a charge by offense class. For every person charged with a Class 1 misdemeanor who would have been charged with a Class 2 misdemeanor, the average cost to the court would be \$77 (\$165 for a Class 1 misdemeanor minus \$88 for a Class 2 misdemeanor). For every person charged with a Class I felony who

would have been charged with a Class 1 misdemeanor, the average cost to the court would be \$200 (\$365 for a Class I felony minus \$165 for a Class 1 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. Section 12.1 of the bill makes graffiti vandalism a Class 1 misdemeanor punishable by a fine and community service. Since the punishment for this crime does not include the possibility of confinement, no indigent defense services would be provided for the offender. Under the current law, there is no limitation on the punishment for this offense. Therefore, this section may result in savings for the Office of Indigent Defense Services. It is not known how many of the current charges for vandalism are for this specific category. Therefore, the actual savings that may be found cannot be calculated.

Section 12.1 of the bill would also impose a Class I felony charge for damages greater than \$1,000, third or subsequent offenses, or if five or more offenses occur within a sixty day period. For each case disposed in district court, the additional cost for a Class I felony will be \$63 (\$245 for a Class I felony minus \$182 for any class of misdemeanor). In superior court, the additional cost would be \$96 for non-trial cases (\$455 for a Class I felony minus \$359 for any class of misdemeanor) and \$199 for cases that go to trial (\$1,046 for a Class I felony minus \$847 for any class of 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.

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

Section 12.1 of the bill increases the penalty for graffiti vandalism from a Class 2 misdemeanor to a Class 1 misdemeanor or from a Class 1 misdemeanor to a Class I felony if the damage is greater than \$1,000 or if the offender has two or more prior convictions for the offense. The penalty for the new Class 1 misdemeanor is limited to a fine and 24 hours of community service. Since Class 1 misdemeanors that receive active sentences of less than 180 days are confined to the local jail, no savings to the Department of Public Safety is anticipated. Since there is no way to differentiate this specific behavior from existing charges or convictions that may already cover it, 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 convicted and sentenced under the new statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>30</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

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).

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<sup>30</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.



| <b>Population Projections and Bed Capacity<br/>Five Year Impact</b> |                              |                         |                         |                         |                         |
|---|------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>Section 12.1</b>   | <b>June 30<br/>2014</b>      | <b>June 30<br/>2015</b> | <b>June 30<br/>2016</b> | <b>June 30<br/>2017</b> | <b>June 30<br/>2018</b> |
| 1. Inmates <sup>31</sup>  | 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)                 |
| <b>4. Additional Inmates Due to this Bill<sup>32</sup></b>          | <b>No estimate available</b> |                         |                         |                         |                         |
| <b>5. Additional Beds Required</b>                                  |                              |                         |                         |                         |                         |

In addition to the capital costs that may be associated with additional bed needs, there are also 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. In FY 2012-13, 16 percent of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$2,394 (\$342 monthly cost times seven months).

#### **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.

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 12.1 of the bill increases the penalty for graffiti vandalism from a Class 2 misdemeanor to a Class 1 misdemeanor. The penalty for the new Class 1 misdemeanor is limited to a fine and 24 hours of community service. Since current Class 1 misdemeanor offenders could receive community or intermediate punishment, this section may result in a savings to CCS. However, because there is no way to count the number of current offenders that would fall into the new graffiti vandalism category, potential savings cannot be calculated.

<sup>31</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

<sup>32</sup> 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.

Section 12.1 of the bill also increases the penalty for graffiti vandalism from a Class 1 misdemeanor to a Class I felony if the damage is greater than \$10,000, if the offender has two or more prior convictions for the offense, or if five or instances of the vandalism occur within a sixty day period. 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, 27 percent of Class 1 misdemeanor offenders received active sentences; two percent received intermediate sentences; and 71 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 1 misdemeanor were 18 and 15 months, respectively.

**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

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Kristine Leggett

**APPROVED BY:**

Mark Trogon, Director  
Fiscal Research Division

**DATE:** June 24, 2014

**APPENDIX A – Section 1.1 Community Corrections Impact Charts**

**Cost Differential between a Class G Felony and Class F Felony**

| <b>Cost of Current Intermediate Punishment</b> |            |               | <b>FY 14-15</b> | <b>FY 15-16</b>  | <b>FY 16-17</b>    | <b>FY 17-18</b>    | <b>FY 18-19</b>    |
|--|------------|---------------|-----------------|------------------|--------------------|--------------------|--------------------|
| <b>Percentage Intermediate</b>                 | <b>44%</b> | <b>Year 1</b> |                 | \$777,591        | \$797,187          | \$409,359          | \$0                |
| <b>Number Intermediate</b>                     | <b>504</b> | <b>Year 2</b> |                 | \$0              | \$797,187          | \$818,718          | \$419,459          |
| <b>Number of Months</b>                        | <b>30</b>  | <b>Year 3</b> |                 |                  | \$0                | \$818,718          | \$838,918          |
|  |            | <b>Year 4</b> |                 |                  |                    | \$0                | \$838,918          |
|  |            | <b>Year 5</b> |                 |                  |                    |                    | \$0                |
| <b>Intermediate Total</b>                      |            |               | <b>\$0</b>      | <b>\$777,591</b> | <b>\$1,594,374</b> | <b>\$2,046,794</b> | <b>\$2,097,295</b> |

| <b>Cost of Current Community Punishment</b> |            |               | <b>FY 14-15</b> | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
|---|------------|---------------|-----------------|------------------|------------------|------------------|------------------|
| <b>Percentage Community</b>                 | <b>13%</b> | <b>Year 1</b> | \$0             | \$229,883        | \$235,676        | \$100,851        | \$0              |
| <b>Number Community</b>                     | <b>149</b> | <b>Year 2</b> |                 | \$0              | \$235,676        | \$242,042        | \$103,339        |
| <b>Number of Months</b>                     | <b>29</b>  | <b>Year 3</b> |                 |                  | \$0              | \$242,042        | \$248,013        |
|   |            | <b>Year 4</b> |                 |                  |                  | \$0              | \$248,013        |
|   |            | <b>Year 5</b> |                 |                  |                  |                  | \$0              |
| <b>Community Total</b>                      |            |               | <b>\$0</b>      | <b>\$229,883</b> | <b>\$471,353</b> | <b>\$584,934</b> | <b>\$599,366</b> |

| <b>Cost of Current Post-Release Supervision</b> |            |               | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
|---|------------|---------------|-----------------|-----------------|------------------|------------------|------------------|
| <b>Percentage Active</b>                        | <b>43%</b> | <b>Year 1</b> |                 | \$0             | \$583,655        | \$0              | \$0              |
| <b>Number Active</b>                            | <b>492</b> | <b>Year 2</b> |                 |                 | \$0              | \$657,357        | \$0              |
| <b>Number of Months</b>                         | <b>9</b>   | <b>Year 3</b> |                 |                 |                  | \$0              | \$614,208        |
| <b>Length of Active Term</b>                    | <b>14</b>  | <b>Year 4</b> |                 |                 |                  |                  | \$0              |
|   |            | <b>Year 5</b> |                 |                 |                  |                  | \$0              |
| <b>PRS Total</b>                                |            |               |                 | <b>\$0</b>      | <b>\$583,655</b> | <b>\$657,357</b> | <b>\$614,208</b> |

| <b>Cost of Proposed Intermediate Punishment</b> |            |               | <b>FY 14-15</b> | <b>FY 15-16</b>  | <b>FY 16-17</b>    | <b>FY 17-18</b>    | <b>FY 18-19</b>    |
|---|------------|---------------|-----------------|------------------|--------------------|--------------------|--------------------|
| <b>Percentage Intermediate</b>                  | <b>37%</b> | <b>Year 1</b> | \$0             | \$654,164        | \$670,649          | \$516,572          | \$0                |
| <b>Number Intermediate</b>                      | <b>424</b> | <b>Year 2</b> |                 | \$0              | \$670,649          | \$688,763          | \$529,317          |
| <b>Number of Months</b>                         | <b>33</b>  | <b>Year 3</b> |                 |                  | \$0                | \$688,763          | \$705,756          |
|   |            | <b>Year 4</b> |                 |                  |                    | \$0                | \$705,756          |
|   |            | <b>Year 5</b> |                 |                  |                    |                    | \$0                |
| <b>Intermediate Total</b>                       |            |               | <b>\$0</b>      | <b>\$654,164</b> | <b>\$1,341,299</b> | <b>\$1,894,097</b> | <b>\$1,940,830</b> |

| <b>Cost of Proposed Community Punishment</b> |            |               |                 |                  |                  |                  |                  |
|--|------------|---------------|-----------------|------------------|------------------|------------------|------------------|
|  |            |               | <b>FY 14-15</b> | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| <b>Percentage Community</b>                  | <b>10%</b> | <b>Year 1</b> | \$0             | \$177,427        | \$181,898        | \$108,973        | \$0              |
| <b>Number Community</b>                      | <b>115</b> | <b>Year 2</b> |                 | \$0              | \$181,898        | \$186,811        | \$111,662        |
| <b>Number of Months</b>                      | <b>31</b>  | <b>Year 3</b> |                 |                  | \$0              | \$186,811        | \$191,420        |
|  |            | <b>Year 4</b> |                 |                  |                  | \$0              | \$191,420        |
|  |            | <b>Year 5</b> |                 |                  |                  |                  | \$0              |
| <b>Community Total</b>                       |            |               | <b>\$0</b>      | <b>\$177,427</b> | <b>\$363,796</b> | <b>\$482,594</b> | <b>\$494,501</b> |

| <b>Cost of Proposed Post-Release Supervision</b> |            |               |                 |                 |                  |                  |                  |
|--|------------|---------------|-----------------|-----------------|------------------|------------------|------------------|
|  |            |               | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| <b>Percentage Active</b>                         | <b>53%</b> | <b>Year 1</b> |                 | \$0             | \$640,069        | \$82,170         | \$0              |
| <b>Number Active</b>                             | <b>607</b> | <b>Year 2</b> |                 |                 | \$0              | \$657,357        | \$84,197         |
| <b>Number of Months</b>                          | <b>9</b>   | <b>Year 3</b> |                 |                 |                  | \$0              | \$673,576        |
| <b>Length of Active Term</b>                     | <b>16</b>  | <b>Year 4</b> |                 |                 |                  |                  | \$0              |
|  |            | <b>Year 5</b> |                 |                 |                  |                  |                  |
| <b>PRS Total</b>                                 |            |               |                 | <b>\$0</b>      | <b>\$640,069</b> | <b>\$739,526</b> | <b>\$757,773</b> |

**APPENDIX B – Section 2.2 Community Corrections Impact Charts**

**Cost Differential between a Class 2 Misdemeanor and Class A1 Misdemeanor**

|                                |           |               | <b>Cost of Current Intermediate Punishment</b> |                 |                 |                 |                 |
|--------------------------------|-----------|---------------|--|-----------------|-----------------|-----------------|-----------------|
|                                |           |               | <b>FY 14-15</b>                                | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| <b>Percentage Intermediate</b> | <b>1%</b> | <b>Year 1</b> |  | \$7,714         | \$1,977         | \$0             | \$0             |
| <b>Number Intermediate</b>     | <b>5</b>  | <b>Year 2</b> |  | \$0             | \$7,909         | \$2,031         | \$0             |
| <b>Number of Months</b>        | <b>15</b> | <b>Year 3</b> |  |                 | \$0             | \$8,122         | \$2,081         |
|                                |           | <b>Year 4</b> |  |                 |                 | \$0             | \$8,323         |
|                                |           | <b>Year 5</b> |  |                 |                 |                 | \$0             |
| <b>Intermediate Total</b>      |           |               | <b>\$0</b>                                     | <b>\$7,714</b>  | <b>\$9,886</b>  | <b>\$10,153</b> | <b>\$10,403</b> |

|                                |           |               | <b>Cost of Proposed Intermediate Punishment</b> |                 |                 |                 |                 |
|--------------------------------|-----------|---------------|---|-----------------|-----------------|-----------------|-----------------|
|                                |           |               | <b>FY 14-15</b>                                 | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| <b>Percentage Intermediate</b> | <b>5%</b> | <b>Year 1</b> | \$0   | \$41,657        | \$24,912        | \$0             | \$0             |
| <b>Number Intermediate</b>     | <b>27</b> | <b>Year 2</b> |   | \$0             | \$42,706        | \$25,585        | \$0             |
| <b>Number of Months</b>        | <b>19</b> | <b>Year 3</b> |   |                 | \$0             | \$43,860        | \$26,216        |
|                                |           | <b>Year 4</b> |   |                 |                 | \$0             | \$44,942        |
|                                |           | <b>Year 5</b> |   |                 |                 |                 | \$0             |
| <b>Intermediate Total</b>      |           |               | <b>\$0</b>                                      | <b>\$41,657</b> | <b>\$67,619</b> | <b>\$69,445</b> | <b>\$71,158</b> |

|                             |            |               | <b>Cost of Current Community Punishment</b> |                  |                  |                  |                  |
|-----------------------------|------------|---------------|---|------------------|------------------|------------------|------------------|
|                             |            |               | <b>FY 14-15</b>                             | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| <b>Percentage Community</b> | <b>68%</b> | <b>Year 1</b> | \$0   | \$570,851        | \$48,770         | \$0              | \$0              |
| <b>Number Community</b>     | <b>370</b> | <b>Year 2</b> |   | \$0              | \$585,236        | \$50,087         | \$0              |
| <b>Number of Months</b>     | <b>13</b>  | <b>Year 3</b> |   |                  | \$0              | \$601,043        | \$51,323         |
|                             |            | <b>Year 4</b> |   |                  |                  | \$0              | \$615,872        |
|                             |            | <b>Year 5</b> |   |                  |                  |                  | \$0              |
| <b>Community Total</b>      |            |               | <b>\$0</b>                                  | <b>\$570,851</b> | <b>\$634,006</b> | <b>\$651,130</b> | <b>\$667,195</b> |

|                             |            |               | <b>Cost of Proposed Community Punishment</b> |                  |                  |                  |                  |
|-----------------------------|------------|---------------|--|------------------|------------------|------------------|------------------|
|                             |            |               | <b>FY 14-15</b>                              | <b>FY 15-16</b>  | <b>FY 16-17</b>  | <b>FY 17-18</b>  | <b>FY 18-19</b>  |
| <b>Percentage Community</b> | <b>59%</b> | <b>Year 1</b> | \$0  | \$495,252        | \$211,555        | \$0              | \$0              |
| <b>Number Community</b>     | <b>321</b> | <b>Year 2</b> |  | \$0              | \$507,732        | \$217,269        | \$0              |
| <b>Number of Months</b>     | <b>17</b>  | <b>Year 3</b> |  |                  | \$0              | \$521,445        | \$222,630        |
|                             |            | <b>Year 4</b> |  |                  |                  | \$0              | \$534,311        |
|                             |            | <b>Year 5</b> |  |                  |                  |                  | \$0              |
| <b>Community Total</b>      |            |               | <b>\$0</b>                                   | <b>\$495,252</b> | <b>\$719,287</b> | <b>\$738,714</b> | <b>\$756,940</b> |

**Cost Differential between Class I Felony and Class H Felony**

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

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

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

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

| <b>Cost of Current Post-Release Supervision</b> |            |        |                 |                 |                 |                 |                 |
|---|------------|--------|-----------------|-----------------|-----------------|-----------------|-----------------|
|   |            |        | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| <b>Percentage Active</b>                        | <b>16%</b> | Year 1 |                 | \$1,286         | \$1,054         | \$0             | \$0             |
| <b>Number Active</b>                            | <b>2</b>   | Year 2 |                 |                 | \$1,318         | \$4,738         | \$0             |
| <b>Number of Months</b>                         | <b>9</b>   | Year 3 |                 |                 |                 | \$1,354         | \$1,110         |
| <b>Length of Active Term</b>                    | <b>7</b>   | Year 4 |                 |                 |                 |                 | \$1,387         |
|   |            | Year 5 |                 |                 |                 |                 |                 |
| <b>PRS Total</b>                                |            |        |                 | <b>\$1,286</b>  | <b>\$2,373</b>  | <b>\$6,092</b>  | <b>\$2,497</b>  |

| <b>Cost of Proposed Post-Release Supervision</b> |            |        |                 |                 |                 |                 |                 |
|--|------------|--------|-----------------|-----------------|-----------------|-----------------|-----------------|
|  |            |        | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
| <b>Percentage Active</b>                         | <b>35%</b> | Year 1 |                 | \$1,286         | \$4,613         | \$0             | \$0             |
| <b>Number Active</b>                             | <b>5</b>   | Year 2 |                 |                 | \$1,318         | \$4,738         | \$0             |
| <b>Number of Months</b>                          | <b>9</b>   | Year 3 |                 |                 |                 | \$1,354         | \$4,855         |
| <b>Length of Active Term</b>                     | <b>10</b>  | Year 4 |                 |                 |                 |                 | \$1,387         |
|  |            | Year 5 |                 |                 |                 |                 |                 |
| <b>PRS Total</b>                                 |            |        |                 | <b>\$1,286</b>  | <b>\$5,931</b>  | <b>\$6,092</b>  | <b>\$6,242</b>  |

**APPENDIX C**

**Section 3.1(f) Violations Related to Possession of a Cell Phone by an Inmate in a Local Confinement Facility**

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

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

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

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

| <b>Cost of Current Post-Release Supervision</b> |  |  |  |  |  |  |
|---|--|--|--|--|--|--|
|---|--|--|--|--|--|--|



|                              |             |               | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|------------------------------|-------------|---------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Percentage Active</b>     | <b>27%</b>  | <b>Year 1</b> |                 | \$0             | \$0             | \$0             | \$0             |
| <b>Number Active</b>         | <b>23</b>   | <b>Year 2</b> |                 |                 | \$0             | \$28,428        | \$0             |
| <b>Number of Months</b>      | <b>0</b>    | <b>Year 3</b> |                 |                 |                 | \$0             | \$0             |
| <b>Length of Active Term</b> | <b>38.3</b> | <b>Year 4</b> |                 |                 |                 |                 | \$0             |
|                              |             | <b>Year 5</b> |                 |                 |                 |                 |                 |
| <b>PRS Total</b>             |             |               |                 | <b>\$0</b>      | <b>\$0</b>      | <b>\$28,428</b> | <b>\$0</b>      |

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

APPENDIX D

Section 3.1(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         |             |
| Number Intermediate       | 79  | Year 2                                   |            | \$0              | \$124,956        | \$128,331        | \$5         |
| Number of Months          | 29  | Year 3                                   |            |                  | \$0              | \$128,331        | \$13        |
|                           |     | Year 4                                   |            |                  |                  | \$0              | \$13        |
|                           |     | Year 5                                   |            |                  |                  |                  |             |
| <b>Intermediate Total</b> |     |  | <b>\$0</b> | <b>\$121,884</b> | <b>\$249,912</b> | <b>\$310,133</b> | <b>\$31</b> |

|                        |     | 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         |             |
| Number Community       | 77  | Year 2                                |            | \$0              | \$121,792        | \$125,082        | \$3         |
| Number of Months       | 27  | Year 3                                |            |                  | \$0              | \$125,082        | \$12        |
|                        |     | Year 4                                |            |                  |                  | \$0              | \$12        |
|                        |     | Year 5                                |            |                  |                  |                  |             |
| <b>Community Total</b> |     |                                       | <b>\$0</b> | <b>\$118,799</b> | <b>\$243,585</b> | <b>\$281,434</b> | <b>\$28</b> |

|                       |     | 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      |          |
| Number Active         | 84  | Year 2                                    |          |          | \$22,144 | \$79,598 |          |
| Number of Months      | 9   | Year 3                                    |          |          |          | \$22,742 | \$8      |
| Length of Active Term | 10  | Year 4                                    |          |          |          |          | \$2      |
|                       |     | Year 5                                    |          |          |          |          |          |



|                  |  |  |                 |                 |                  |             |
|------------------|--|--|-----------------|-----------------|------------------|-------------|
| <b>PRS Total</b> |  |  | <b>\$21,600</b> | <b>\$99,648</b> | <b>\$102,340</b> | <b>\$10</b> |
|------------------|--|--|-----------------|-----------------|------------------|-------------|

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