

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 594 (Sixth Edition)

SHORT TITLE: Omnibus Justice Amendments.

SPONSOR(S):

FISCAL IMPACT

(\$ in millions)

Yes No No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
AOC	0.5	0.8	0.8	0.8	0.8
IDS	0.1	0.2	0.2	0.2	0.2
DPS - Prisons		0.40	0.60	0.60	0.60
DPS - CCS		0.2	0.7	0.8	0.9
Additional Prison Beds		99.0	133.0	133.0	133.0
NET STATE IMPACT	\$0.6	\$1.6	\$2.3	\$2.4	\$2.5

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

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

EFFECTIVE DATE: December 1, 2014

TECHNICAL CONSIDERATIONS:

None

This Incarceration Note only addresses criminal penalty changes included in Sections 1.2, 2.1, 3.1, 3.2, 4.1, and 9.1 of the PCS for S.B. 594.

FISCAL IMPACT SUMMARY

The PCS for S.B. 594 increases or creates several criminal penalties. Following are summaries of the impact of the bill by section.

Section 1.2 – Carrying a concealed firearm

Section 1.2 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 summary of the estimated costs for this section. Additional information about these costs may be found in the Assumptions and Methodology section of this Incarceration Note.

Total Estimated Costs					
Section 1.2 - Increase Penalty if Concealed Weapon is a Firearm					
	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Courts	\$316,710	\$554,489	\$568,462	\$583,810	\$598,230
Indigent Defense	\$2,534	\$4,435	\$4,547	\$4,670	\$4,785
DPS - Prisons		\$13,096	\$13,425	\$13,786	\$14,136
DPS - Community Corrections		(\$46,285)	\$138,137	\$142,139	\$149,391
Total	\$319,244	\$525,735	\$724,570	\$744,405	\$766,543
Additional Prison Beds		3	3	3	3

Section 2.1 – Furnishing a cell phone to an inmate; Possession of a cell phone by an inmate

Section 2.1(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 2.1(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.

Total Estimated Costs					
Section 2.1 - Violations Related to Possession of a Cell Phone by an Inmate					
	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Courts	\$141,060	\$247,019	\$253,244	\$260,081	\$266,505
Indigent Defense	\$110,186	\$192,616	\$197,470	\$202,802	\$207,811
DPS - Prisons		\$419,078	\$581,737	\$597,396	\$612,580
DPS - Community Corrections		\$237,597	\$579,700	\$710,016	\$727,534
Total	\$251,246	\$1,096,311	\$1,612,151	\$1,770,294	\$1,814,430
Additional Prison Beds		96	130	130	130

Section 3.1 – Assault on executive, legislative, or court officers

Section 3.1 of the bill expands the scope of the offense of assault on executive, legislative, or court officers (G.S. 14-16.6) by adding assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. This section may have a fiscal impact to address an increase in penalty levels for a crime. However, given there is no historical data on these offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division

cannot reasonably estimate the total additional costs that may be incurred. The following additional costs may be incurred for every one person charged and convicted of this crime at the new penalty level:

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

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

Section 3.2 – Threats against executive, legislative, or court officers

Section 3.2 of the bill expands the scope of the offense of threatening to assault an executive, legislative, or court officer (either through the mail or through some other means) (G.S. 14-16.7) by adding threatening another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. This section may have a fiscal impact to address an increase in penalty levels for a crime. However, given there is no historical data on these offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following additional costs may be incurred for every one person charged and convicted of this crime at the new penalty level:

- Administrative Office of the Courts: \$200 per disposition
- Indigent Defense Services: \$63 in district court
\$96 in superior court without a trial
\$199 in superior court with a trial
- Prison Section: \$2,394 for an active sentence (16 percent of Class I felony convictions)
- Community Corrections: minimum of \$1,112

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

Section 4.1 – Violations of the Amusement Device Safety Act of NC

Section 4.1 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 9.1 – Graffiti vandalism

Section 9.1 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 1.2 – CARRYING A CONCEALED FIREARM

Section 1.2 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 1.2 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.

AOC Costs Adjusted for Inflation Five Year Projection						
Section 1.2	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class A1 Misdemeanor						
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
Cost of Increase		\$306,172	\$535,940	\$549,446	\$564,281	\$578,219
Class I Felony to Class H Felony						
Court Cost	\$136.00	\$138.67	\$141.59	\$145.16	\$149.08	\$152.76
Offenders*		76	131	131	131	131
Cost of Increase		\$10,539	\$18,548	\$19,016	\$19,529	\$20,012
Total AOC Cost		\$316,710	\$554,489	\$568,462	\$583,810	\$598,230
<i>*FY 2014-15 offender numbers have been prorated to account for a December 1, 2014 effective date.</i>						
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>						

The Office of Indigent Defense Services (IDS) 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 D). In superior court, the additional cost would be \$39 for non-trial cases (\$494 for a Class H minus \$455 for a Class D) and \$134 for cases that go to trial (\$1,180 for a Class H minus \$1,046 for a Class D). These estimates assume the appointment of a private assigned counsel (PAC) attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

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

IDS Costs Adjusted for Inflation Five Year Projection						
Section 1.2	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class I Felony to Class H Felony						
Cost Differential	\$60.00	\$61.18	\$62.47	\$64.04	\$65.77	\$67.39
Offenders*		41	71	71	71	71
Cost of Increase		\$2,534	\$4,435	\$4,547	\$4,670	\$4,785
<i>*FY 2014-15 offender numbers have been prorated to account for a December 1, 2014 effective date.</i>						
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>						

Department of Public Safety –Prison Section

Section 1.2 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 AI 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,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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

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

Population Projections and Bed Capacity Five Year Impact					
Section 1.2	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ²	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill³	0	3	3	3	3
5. Additional Beds Required	0	0	0	0	0

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

Incarceration Costs Adjusted for Inflation Five Year Projection							
Section 1.2	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%	
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91	
Additional Inmates			3	3	3	3	
Additional Cost			\$35.88	\$36.78	\$37.77	\$38.73	
Annual Cost			\$13,096	\$13,425	\$13,786	\$14,136	

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

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

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

Offenders given PRS or intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General supervision of offenders by a probation officer costs \$123.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to PRS or to intermediate sanctions and supervised probations. The table below shows the per month rate for each year of the five year projection, adjusted for inflation.

Daily Supervision Cost Adjusted for Inflation Five Year Projection						
Section 1.2	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%
Per Month Cost	\$123.50	\$125.91	\$128.57	\$131.81	\$135.37	\$138.71

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

Section 1.2 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.

Difference in CCS Cost - Class 2 Misdemeanor and Class A1 Misdemeanor Five-Year Projection, Adjusted for Inflation							
Section 1.2	Percent	Offenders	Months	FY 15-16	FY 16-17	FY 17-18	FY 18-19
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
Difference Intermediate				\$33,942	\$57,733	\$59,292	\$60,755
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
Difference Community				(\$75,599)	\$85,281	\$87,584	\$89,745
Total Difference				(\$41,657)	\$143,014	\$146,876	\$150,500

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.

Difference in CCS Cost - Class I Felony and Class H Felony Five-Year Projection, Adjusted for Inflation							
Section 1.2	Percent	Offenders	Months	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Proposed Offense Intermediate	33%	5	29	\$7,714	\$15,817	\$19,629	\$20,113
Current Offense Intermediate	27%	4	26	\$6,171	\$12,654	\$14,078	\$14,426
Difference Intermediate				\$1,543	\$3,163	\$5,550	\$5,687
Proposed Offense Community	32%	4	27	\$6,171	\$12,654	\$14,620	\$14,981
Current Offense Community	57%	8	23	\$12,343	\$24,253	\$24,908	\$25,523
Difference Community				(\$6,171)	(\$11,599)	(\$10,288)	(\$10,542)
Proposed Offense PRS	35%	5	9	\$1,286	\$5,931	\$6,092	\$6,242
Current Offense PRS	16%	2	9	\$1,286	\$2,373	\$6,092	\$2,497
Difference PRS				\$0	\$3,559	\$0	\$3,745
Total Difference				(\$4,629)	(\$4,877)	(\$4,738)	(\$1,110)

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

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

SECTION 2.1 – FURNISHING A CELL PHONE TO AN INMATE; POSSESSION OF A CELL PHONE BY AN INMATE

Section 2.1(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 2.1(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 2.1(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.

AOC Costs Adjusted for Inflation Five Year Projection						
Section 2.1(d)	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class H Felony						
Court Cost	\$336.00	\$342.59	\$349.81	\$358.63	\$368.31	\$377.41
Offenders		6	11	11	11	11
Cost of Increase		\$2,198	\$3,848	\$3,945	\$4,051	\$4,152
<i>FY 2014-15 charges have been prorated to account for a December 1, 2014 effective date.</i>						
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>						

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. For each case disposed in district court, the additional cost for a Class H felony will be \$73 (\$255 for a Class H felony minus \$182 for a Class 1 misdemeanor). In superior court, the additional cost would be \$135 for non-trial cases (\$494 for a

Class H felony minus \$359 for a Class 1 misdemeanor) and \$333 for cases that go to trial (\$1,180 for a Class H felony minus \$847 for a Class 1 misdemeanor). These estimates assume the appointment of a private assigned counsel (PAC) attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

The Fiscal Research Division does not have any data on the rate at which indigent cases are handled in district court, superior court with no trial, and superior court with a trial. In order to estimate the additional cost to IDS resulting from this bill, we have calculated the average cost of the three types of trials. The average cost to IDS for Class H felonies is \$642. The average cost for Class 1 misdemeanors is \$463. The difference between the two felony levels is \$179 (\$642 minus \$463). In Fiscal Year 2012-13, 54 percent of people charged with a crime used IDS for defense. Using the number of charges provided by AOC, six offenders (11 offenders times 54 percent) will use IDS attorneys. The average cost to IDS for the increased penalty included in this bill will be \$1,118 in the first full year of implementation. Since the penalty is effective December 1, 2014, the first year of costs is prorated for seven months. The table below shows the average estimated cost for the next five years, adjusted for inflation.

IDS Costs Adjusted for Inflation Five Year Projection						
Section 2.1(d)	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class H Felony						
Cost Differential	\$179.00	\$182.51	\$186.36	\$191.06	\$196.21	\$201.06
Offenders		4	6	6	6	6
Cost of Increase		\$730	\$1,118	\$1,146	\$1,177	\$1,206

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

Current G.S. 14-258.1(e) makes possession of a cell phone or tobacco products by an inmate in a local confinement facility a Class 1 misdemeanor. **Section 2.1(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 2.1(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 Five Year Projection						
Section 2.1(f)	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class H Felony - Local Confinement Facility						
Court Cost	\$336.00	\$342.59	\$349.81	\$358.63	\$368.31	\$377.41
Charges		127	218	218	218	218
Cost of Increase		\$43,508	\$76,259	\$78,181	\$80,292	\$82,275
Class H Felony - State Prison System						
Court Cost	\$501.00	\$510.82	\$521.60	\$534.74	\$549.18	\$562.74
Charges		187	320	320	320	320
Cost of New Charges		\$95,353	\$166,911	\$171,117	\$175,738	\$180,078
Total Cost to AOC		\$138,861	\$243,171	\$249,299	\$256,030	\$262,354

*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.

IDS Costs Adjusted for Inflation Five Year Projection						
Section 2.1(f)	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Inflation Rates		1.96%	2.11%	2.52%	2.70%	2.47%
Class 1 Misdemeanor to Class H Felony - Local Confinement Facility						
Cost Differential	\$336.00	\$342.59	\$349.81	\$358.63	\$368.31	\$377.41
Charges		69	118	118	118	118
Cost of Increase		\$23,638	\$41,278	\$42,318	\$43,461	\$44,534
Class H Felony - State Prison System						
Average Cost	\$501.00	\$510.82	\$521.60	\$534.74	\$549.18	\$562.74
Charges		168	288	288	288	288
Cost of New Offenders		\$85,818	\$150,220	\$154,006	\$158,164	\$162,071
Total Cost to IDS		\$109,456	\$191,498	\$196,324	\$201,625	\$206,605
<i>FY 2014-15 charges have been prorated to account for a December 1, 2014 effective date.</i>						
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>						

Department of Public Safety – Prison Section

Section 2.1(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,⁴ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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

Population Projections and Bed Capacity Five Year Impact					
Section 2.1(d)	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ⁵	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill⁶	0	1	2	2	2
5. Additional Beds Required	0	0	0	0	0

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

Incarceration Costs Adjusted for Inflation Five Year Projection						
Section 2.1(d)	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91
Additional Inmates			1	2	2	2
Additional Cost			\$11.96	\$24.52	\$25.18	\$25.82
Annual Cost			\$4,365	\$8,950	\$9,191	\$9,424

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

⁴ **Expanded Operating Capacity (EOC)** is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

⁵ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

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

Section 2.1(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,⁷ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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

Population Projections and Bed Capacity Five Year Impact					
Section 2.1(f) - Local	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ⁸	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill⁹	0	25	34	34	34
5. Additional Beds Required	0	0	0	0	0

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

⁷ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

⁸ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

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

impact is assumed in FY 2014-15. The table below shows the annual cost each year of the five year projection, adjusted for inflation.

Incarceration Costs Adjusted for Inflation									
Five Year Projection									
Inmates in Local Confinement Facilities									
Section 2.1(f)	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19			
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%			
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91			
Additional Inmates			25	34	34	34			
Additional Cost			\$299.00	\$416.84	\$428.06	\$438.94			
Annual Cost			\$109,135	\$152,147	\$156,242	\$160,213			
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)</i>									

Section 2.1(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 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,¹⁰ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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

¹⁰ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
Section 2.1(f) - State	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ¹¹	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill¹²	0	70	94	94	94
5. Additional Beds Required	0	0	0	0	0

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

Incarceration Costs Adjusted for Inflation Five Year Projection Inmates in the State Prison System						
Section 2.1(f)	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91
Additional Inmates			70	94	94	94
Additional Cost			\$837.20	\$1,152.44	\$1,183.46	\$1,213.54
Annual Cost			\$305,578	\$420,641	\$431,963	\$442,942

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

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

¹¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

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

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 2.1(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 2.1(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.

Difference in CCS Cost - Class 1 Misdemeanor and Class H Felony							
Five-Year Projection, Adjusted for Inflation							
Section 2.1(f) Local	Percent	Offenders	Months	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Proposed Offense Intermediate	33%	28	29	\$43,200	\$88,576	\$109,920	\$112,633
Current Offense Intermediate	2%	2	18	\$3,086	\$4,745	\$4,873	\$4,994
Difference Intermediate				\$40,114	\$83,831	\$105,047	\$107,639
Proposed Offense Community	32%	27	27	\$41,657	\$85,413	\$98,685	\$101,120
Current Offense Community	71%	60	15	\$92,570	\$118,629	\$121,833	\$124,839
Difference Community				(\$50,914)	(\$33,216)	(\$23,148)	(\$23,719)
Proposed Offense PRS	35%	30	9	\$7,714	\$35,589	\$36,550	\$37,452
Current Offense PRS	0%	0	0	\$0	\$0	\$0	\$0
Difference PRS				\$7,714	\$35,589	\$36,550	\$37,452
Total Difference				(\$3,086)	\$86,204	\$118,449	\$121,371

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

Section 2.1(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.

CCS Cost - Class H Felony							
Five-Year Projection, Adjusted for Inflation							
Section 2.1(f) State	Percent	Offenders	Months	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Proposed Offense Intermediate	33%	79	29	\$121,884	\$249,912	\$310,133	\$317,785
Proposed Offense Community	32%	77	27	\$118,799	\$243,585	\$281,434	\$288,378
Total Cost				\$240,683	\$493,497	\$591,567	\$606,163

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

SECTION 3.1 – ASSAULT ON AN EXECUTIVE, LEGISLATIVE, OR COURT OFFICER

Section 3.1 of the bill expands the scope of the offense of assault on executive, legislative, or court officers (G.S. 14-16.6) by adding assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 3.1 of the bill expands the scope of the offense of assault on executive, legislative, or court officers (G.S. 14-16.6) by adding assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. These offenses could currently be charged as a Class 2 misdemeanor or as Class A1 misdemeanors if the offender used a deadly weapon (the Class F felony offense for inflicting serious bodily injury is the same for both categories of people). Under the proposed statute, the Class 2 misdemeanor would increase to a Class I felony, and the Class A1 misdemeanor would increase to a Class F felony. It is not known how many of the current charges would be elevated under the new statute. The difference in cost between a Class 2 misdemeanor and a Class I felony is \$277 (\$365 for a Class I felony minus \$88 for a Class 2 misdemeanor). The difference in cost between a Class A1 misdemeanor and a Class F felony is \$626 (\$912 for a Class F felony minus \$286 for a Class A1 misdemeanor).

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS reports that the difference in cost between a misdemeanor (regardless of class) and a Class I felony in district court would be \$63 (\$245 for a Class I minus \$182 for a misdemeanor). In superior court, the difference would be \$96 without a trial (\$455 for a Class I minus \$359 for a misdemeanor) and \$199 with a trial (\$1,046 for a Class I minus \$847 for a misdemeanor). The increases for the increase to a Class F felony would be: \$141 in district court (\$323 for a Class F minus \$182 for a misdemeanor); \$269 in superior court without a trial (\$628 for a Class F minus \$359 for a misdemeanor); and \$1,199 in superior court with a trial (\$2,046 for a Class F minus \$847 for a misdemeanor).

Department of Public Safety –Prison Section

Section 3.1 of the bill expands the scope of the offense of assault on executive, legislative, or court officers (G.S. 14-16.6) by adding assault on another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. This section increases the penalty of assault on a person if that person is assaulted in retaliation for the work of a legislative, executive, or court officer from a Class 2 misdemeanor to a Class I felony. If a deadly weapon is used in the assault, the offense goes from a Class A1 misdemeanor to a Class F felony. According to the Sentencing and Policy Advisory Commission, impact on the prison population will occur if Class 1 misdemeanor convictions become Class I felony convictions under the proposed statute because misdemeanants with sentences of less than 180 days are currently housed in local jails, while all felony convictions are housed in State prisons. The Sentencing Commission does not have any historical data on which to project the impact of this change on the prison population.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹³ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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

Population Projections and Bed Capacity Five Year Impact					
Section 3.1	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ¹⁴	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 Bill¹⁵	No estimate available				
5. Additional Beds Required					

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

Prison Per Diem Cost per Conviction for Section 3.1 Assault on an Executive, Legislative, or Court Officer				
Offense	Felony Level	Percent Receiving Active Sentences	Average Length of Sentence	Cost
Assault	I	16%	16 months	\$5,472
With a Deadly Weapon	F	53%	7 months	\$2,394

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-

¹³ 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.

¹⁴ 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.

¹⁵ Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$123.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

In FY 2012-13, 16 percent of Class I felony offenders received active sentences followed by nine months of PRS; 27 percent received intermediate sentences; and 57 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 26 and 23 months, respectively. For the same year, 53 percent of Class F felony offenders received active sentences followed by nine months of PRS; 37 percent received intermediate sentences; and 10 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 33 and 31 months, respectively. Therefore, at a minimum, one conviction resulting from Section 3.1 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).¹⁶

SECTION 3.2 – THREATS AGAINST AN EXECUTIVE, LEGISLATIVE, OR COURT OFFICER

Section 3.2 of the bill expands the scope of the offense of threatening to assault an executive, legislative, or court officer (either through the mail or through some other means) (G.S. 14-16.7) by adding threatening another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

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

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

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS reports that the difference in cost between a misdemeanor (regardless of class) and a Class I felony in district court would be \$63 (\$245 for a Class I minus \$182 for a misdemeanor). In superior court, the difference would be \$96 without a trial (\$455 for a Class I minus \$359 for a misdemeanor) and \$199 with a trial (\$1,046 for a Class I minus \$847 for a misdemeanor). These estimates assume the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

Department of Public Safety –Prison Section

Section 3.2 of the bill expands the scope of the offense of threatening to assault an executive, legislative, or court officer (either through the mail or through some other means) (G.S. 14-16.7) by adding threatening another person as retaliation against an executive, legislative, or court officer for the exercise of their official duties. According to the Sentencing and Policy Advisory Commission, impact on the prison population will occur if Class 1 misdemeanor convictions become Class I felony convictions under the proposed statute because misdemeanants with sentences of less than 180 days are currently housed in local jails, while all felony convictions are housed in State prisons. The Sentencing Commission does not have any historical data on which to project the impact of this change on the prison population.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹⁷ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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

Population Projections and Bed Capacity Five Year Impact					
Section 3.2	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ¹⁸	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 Bill¹⁹		1	2	2	2
5. Additional Beds Required	0	0	0	0	0

¹⁷ 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.

¹⁸ 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.

¹⁹ Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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

Department of Public Safety – Community Correction Section

Section 3.2 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.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$123.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

In FY 2012-13, 16 percent of Class I felony offenders received active sentences followed by nine months of PRS; 27 percent received intermediate sentences; and 57 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 26 and 23 months, respectively. Therefore, at a minimum, one conviction resulting from Section 3.2 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).²⁰

SECTION 4.1 – VIOLATIONS OF THE AMUSEMENT DEVICE SAFETY ACT OF NC

Section 4.1 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

²⁰ Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.

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 4.1 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.

Court Expenditures for Section 4.1 – Amusement Device Safety Act Violations	
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 4.1 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,²¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

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

Population Projections and Bed Capacity Five Year Impact					
Section 4.1	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ²²	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 Bill²³	No estimate available				
5. Additional Beds Required					

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

²¹ 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.

²² 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.

²³ 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.

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 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 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 9.1 – GRAFFITI VANDALISM

Section 9.1 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 9.1 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 9.1 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 9.1 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 9.1 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,²⁴ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

²⁴ 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).

Population Projections and Bed Capacity Five Year Impact					
Section 9.1	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ²⁵	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 Bill²⁶	No estimate available				
5. Additional Beds Required					

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.

²⁵ 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.

²⁶ 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 9.1 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.

Section 9.1 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

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DATE: June 26, 2014



APPENDIX A – Section 1.2 Community Corrections Impact Charts

Cost Differential between a Class 2 Misdemeanor and Class A1 Misdemeanor

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

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

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

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

Cost Differential between Class I Felony and Class H Felony

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

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

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

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

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

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		\$1,286	\$4,613	\$0	\$0
Number Active	5	Year 2			\$1,318	\$4,738	\$0
Number of Months	9	Year 3				\$1,354	\$4,855
Length of Active Term	10	Year 4					\$1,387
		Year 5					
PRS Total				\$1,286	\$5,931	\$6,092	\$6,242

APPENDIX B

Section 2.1(f) Violations Related to Possession of a Cell Phone by an Inmate in a Local Confinement Facility

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

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

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

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

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

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

APPENDIX C

Section 2.1(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	\$0
Number Intermediate	79	Year 2		\$0	\$124,956	\$128,331	\$54,790
Number of Months	29	Year 3			\$0	\$128,331	\$131,497
		Year 4				\$0	\$131,497
		Year 5					\$0
Intermediate Total			\$0	\$121,884	\$249,912	\$310,133	\$317,785

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

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

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