

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2015**

**Legislative Incarceration Fiscal Note  
REVISED**

**BILL NUMBER:** House Bill 328 (Second Edition)

**SHORT TITLE:** Highway Safety/Citizens Protection Act.

**SPONSOR(S):**

**FISCAL IMPACT**

Yes       No       No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures	\$3,617,355	\$6,696,242	\$7,241,725	\$7,503,619	\$7,687,353
State Positions:					
<b>NET STATE IMPACT</b>	<b>(\$3,617,355)</b>	<b>(\$6,696,242)</b>	<b>(\$7,241,725)</b>	<b>(\$7,503,619)</b>	<b>(\$7,687,353)</b>

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

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

**EFFECTIVE DATE:** December 1, 2015

**TECHNICAL CONSIDERATIONS:**

None

***Revision Note:*** This note has been revised to correct the fiscal year column headers in the table above.

**FISCAL IMPACT SUMMARY:**

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

<b>Costs by Agency Adjusted for Inflation</b>					
	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
AOC	\$2,463,595	\$4,338,178	\$4,463,118	\$4,586,300	\$4,698,206
IDS	\$1,153,760	\$1,995,846	\$2,053,327	\$2,109,999	\$2,161,483
DPS - Prisons	\$0	\$378,658	\$616,080	\$633,080	\$648,584
DPS - Community Corrections	\$0	(\$16,440)	\$109,200	\$174,240	\$179,080
<b>Total</b>	<b>\$3,617,355</b>	<b>\$6,696,242</b>	<b>\$7,241,725</b>	<b>\$7,503,619</b>	<b>\$7,687,353</b>

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

There will be additional costs due to the creation of a new criminal penalty. These additional costs cannot be estimated. Please see the Assumptions and Methodology section for additional information.

#### **BILL SUMMARY:**

Section 2(a) of the bill amends G.S. 14-100.1, Possession, manufacture, or sale of certain fraudulent forms of identification. First, it reclassifies the offense from a Class 1 misdemeanor to a Class G felony, except in the following instances:

- When the violation is based on the mere possession of a false or fraudulent form of identification, rather than the manufacture or sale of a false or fraudulent form of identification;
- When the violation is by a person under the age of 21 for the purpose of purchasing alcohol; or,
- When the violation is by a person under the age of 18 for the purpose of purchasing tobacco.

Section 2(b) of the bill amends G.S. 20-30, Violations of license, learner's permit, restricted drivers permit, restricted identification card, or special identification card provisions. This section increases the following offenses from a Class 2 misdemeanor to a Class G felony:

- To display or possess a driver's license, learner's permit, restricted driver's permit or identification card, or special identification card, knowing that it is fictitious or revoked or altered (G.S. 20-30(a)(1));
- To counterfeit, sell, lend to, or knowingly permit the use of a driver's license, learner's permit, restricted driver's permit or identification card, or special identification card (G.S. 20-30(a)(2));
- To display as one's own a driver's license, learner's permit, restricted driver's permit or identification card, or special identification card not issued to the person (G.S. 20-30(a)(3));
- To fail or refuse to surrender any driver's license, learner's permit, restricted driver's permit or identification card, or special identification card that has been suspended, canceled or revoked as provided by law (G.S. 20-30(a)(4));
- To use a false or fictitious name or give a false or fictitious address in any application for a driver's license, learner's permit, restricted driver's permit or identification card, or special identification card (previously a Class 1 misdemeanor) (G.S. 20-30(a)(5));
- To copy or make a color reproduction of a driver's license, learner's permit, restricted driver's permit or identification card, or special identification card (G.S. 20-30(a)(6));
- To possess more than one commercial driver's license or to possess a commercial driver's license and a regular driver's license (G.S. 20-30(a)(8)).

Section 2(b) changes a violation of these statutes by a person under the age of 21 to purchase alcohol from a Class 2 misdemeanor to a Class 1 misdemeanor. Violation of this section by a person under the age of 18 to purchase tobacco products remains a Class 2 misdemeanor. Section 2(b) also expands the scope of the offenses by adding "restricted driver's permit" and "restricted identification card" to each subdivision.

Section 2(b) also amends G.S. 20-30(a)(7) to increase the offense of selling or offering for sale any reproduction of a driver's license, learner's permit, restricted driver's permit or identification card or special identification card from a Class I felony to a Class G felony. "Restricted drivers permit" and "restricted identification card" are added to the subdivision.

Section 2(b) also amends G.S. 20-30(a)(9) to increase the offense of presenting, displaying, or using a driver's license, learner's permit, restricted driver's permit or identification card or special identification card that contains a false name in the commission of a felony from a Class I felony to a Class G felony. "Restricted drivers permit" and "restricted identification card" are added to the subdivision.

Section 2(b) reduces these offenses by someone under 21 trying to buy alcohol from a Class I felony to a Class 1 misdemeanor. Violation by someone under 18 trying to buy tobacco is reduced to a Class 2 misdemeanor.

Finally, Section 2(b) creates a new G.S. 20-30(a)(10) making it a Class G felony to possess more than one special identification card for a fraudulent purpose. Violation by someone under 21 trying to buy alcohol is a Class 1 misdemeanor. Violation by someone under 18 trying to buy tobacco is a Class 2 misdemeanor.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

### **Judicial Branch**

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

Section 2(a) increases the penalty for violation of G.S. 14-100.1, Possession, manufacture, or sale of certain fraudulent forms of identification, from a Class 1 misdemeanor to a Class G felony, except for violations related to the underage purchase of tobacco or alcohol or violations involving merely possession, rather than the manufacture or sale. For every person who would have been charged with a Class 1 misdemeanor who is instead charged with a Class G felony under this legislation, AOC estimates the average increase in costs to the courts would be \$587 (\$752 for a Class G felony minus \$165 for a Class 1 misdemeanor).

In FY 2013-14, 432 offenders were charged with violations of G.S. 14-100.1. Of those 218 were between 18 and 21 at the time of the offense; 10 were between 16 and 17. In six cases, the age is unknown. For the purposes of this fiscal note, we are assuming that everyone charged between the ages of 18 and 21 was trying to buy alcohol and everyone charged between the ages of 16 and 17 was trying to buy tobacco. Charges for which the age is unknown have been removed from the dataset. AOC cannot differentiate simple possession charges from manufacturing charges, so it is assumed that everyone charged was

engaged in the manufacture of fraudulent identification. Based on these assumptions, 198 people would have been charged with the Class G felony under the proposed change. The cost to the courts would be an additional \$116,226 annually (\$587 times 198). Since the proposed legislation goes into effect December 1, 2015, the cost for FY 2015-16 will be \$69,053. To the extent that the number of charges that would remain Class 1 misdemeanors has been underestimated, this estimate may be overstated.

IDS has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The weighted average cost of a Class 1 misdemeanor is \$188 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, 39% of Class 1 misdemeanor defendants used IDS services. Using the number of charges provided by AOC and adjusted as noted in the previous paragraph, 77 defendants would have used IDS in FY 2013-14 for a total cost of \$14,476 (198 defendants times 39% using IDS equals 77 indigent defendants. 77 times \$188 equals \$14,476).

In FY 2011-12, 78% of Class G felony cases were handled through IDS with a weighted average cost of \$462. Using the number of charges provided by AOC, 154 defendants will use IDS attorneys under the proposed bill. The cost to IDS will be \$71,148 (198 offenders times 78% using IDS equals 154 indigent defendants. 154 times \$462 equals \$71,148). Therefore, the cost of Section 2(a) to IDS will be \$56,672 (\$71,148 Class G expense minus \$14,476 existing Class 1 expense equals \$56,672). Since the proposed legislation goes into effect December 1, 2015, the cost for FY 2015-16 will be \$33,670.

Section 2(a) also expands the scope of the offense to add “to knowing sell” (previously, it was just to knowingly possess or manufacture). This change may increase the number of people charged with a violation of this statute. For every additional person charged with a Class G felony, AOC estimates the average cost to the courts would be \$752. IDS’ cost for each additional person charged would be \$462.

The following table shows the cost to AOC and IDS for section 2(a) adjusted for inflation for each year of the five-year fiscal note period.

<b>AOC and IDS Costs Adjusted for Inflation</b>					
<b>Section 2(a)</b>					
<b>Est. Charges: 198</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
AOC Section 2(a)	\$69,053	\$121,596	\$125,098	\$128,551	\$131,688
IDS Section 2(a)	\$33,670	\$59,290	\$60,998	\$62,682	\$64,211
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

Section 2(b) elevates the general penalty for violations of G.S. 20-30 to a Class G felony, except violations related to underage purchase of tobacco or alcohol, which are punishable as Class 1 or Class 2 misdemeanors. In FY 2013-14, 6,553 offenders were charged under G.S. 20-30. Of those 487 were between 18 and 21 at the time of the offense; 34 were between 16 and 17. In one case, the age is unknown. For the purposes of this fiscal note, we are assuming that everyone charged between the ages of 18 and 21 was trying to buy alcohol and everyone charged between the ages of 16 and 17 was trying to buy tobacco. Charges for which the age is unknown have been removed from the dataset. Based on these assumptions, 6,031 would have been charged with a felony (6,553 total offenders minus 521 offenders under 21 minus one unknown age equals 6,031). The specific violations are listed in the table below with the change in charge classification and the corresponding increase or decrease in cost to the courts.

Description of Offense (subdivision)	Current Class	Proposed Class	Original Cost Per Case	Proposed Cost Per Case	Difference	FY 2013-14 Charges	Total Estimated Cost
Display or possess an invalid or fraudulent license, permit, or ID ((a)(1))	Class 2 MD	Class G felony	\$88	\$752	\$664	5,826	\$3,868,464
Counterfeit, sell, lend to, or knowingly permit the unauthorized use of license, permit, or ID ((a)(2))	Class 2 MD	Class G felony	\$88	\$752	\$664	23	\$15,272
Display or represent as one's own license, permit, or ID when not issued to the person so displaying license, permit, or ID ((a)(3))	Class 2 MD	Class G felony	\$88	\$752	\$664	63	\$41,832
Fail or refuse to surrender to DMV upon demand when suspended, canceled, or revoked ((a)(4))	Class 2 MD	Class G felony	\$88	\$752	\$664	8	\$5,312
Use or give false name or address in application ((a)(5))	Class 1 MD	Class G felony	\$165	\$752	\$587	94	\$55,178
Make a color copy/reproduction of license, permit, or ID ((a)(6))	Class 2 MD	Class G felony	\$88	\$752	\$664	2	\$1,328
Sell or offer for sale any reproduction of license, permit, or ID ((a)(7))	Class I felony	Class G felony	\$365	\$752	\$387	0	\$0
Possess more than one commercial drivers' license or both a commercial and regular license ((a)(8))	Class 2 MD	Class G felony	\$88	\$752	\$664	6	\$3,984
Present, display, or use a fake license, permit, or ID in the commission of a felony ((a)(9))	Class I felony	Class G felony	\$365	\$752	\$387	9	\$3,483
Violation by a person under 21 to buy alcohol (c) [(a)(1) to (a)(4), (a)(6), and (a)(8)]	Class 2 MD	Class 1 MD	\$88	\$165	\$77	471	\$36,267
Violation by a person under 21 to buy alcohol (c) [(a)(5)]	Class 1 MD	Class 1 MD	\$165	\$165	\$0	14	\$0
Violation by a person under 21 to buy alcohol (c) [(a)(7) and (a)(9)]	Class I felony	Class 1 MD	\$365	\$165	(\$200)	2	(\$400)
Violation by a person under 18 to buy tobacco (c) [(a)(1) to (a)(4), (a)(6), and (a)(8)]	Class 2 MD	Class 2 MD	\$88	\$88	\$0	32	\$0
Violation by a person under 18 to buy tobacco (c) [(a)(5)]	Class 1 MD	Class 2 MD	\$165	\$88	(\$77)	1	(\$77)
Violation by a person under 18 to buy tobacco (c) [(a)(7) and (a)(9)]	Class I felony	Class 1 MD	\$365	\$88	(\$277)	1	(\$277)
						<b>Total</b>	<b>\$4,030,366</b>

It is estimated that there would be a total additional cost to AOC of \$4,030,366 annually due to the changes in section 2(b) of this bill. Since the proposed legislation goes into effect December 1, 2015, the cost for FY 2015-16 will be \$2,394,542. To the extent that the number of charges that would qualify as an exception has been underestimated, this estimate may be overstated.

Section 2(b) also creates a new Class G felony for possession of more than one special identification card for a fraudulent purpose. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class G felony, the average cost to the court would be \$752.

This section will also result in increased costs to IDS. IDS has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The table below shows the percent of defendants using IDS for each offense at the current and proposed charge levels, the weighted average cost of IDS services at the current and proposed charge levels, and the difference between the two using the number of charges in FY 2013-14. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

Description of Offense (subdivision)	2013-14 Charges	Current Class	Cost Per Case	% Using IDS	Original Cost	Proposed Class	Proposed Cost Per Case	% Using IDS	New Cost	Difference
Display or possess a fake or invalid license, permit, or ID ((a)(1))	5,826	Class 2 MD	\$181	30%	\$316,388	Class G felony	\$462	78%	\$2,099,328	<b>\$1,782,940</b>
Counterfeit, sell, lend to, or permit the unauthorized use of license/permit ((a)(2))	23	Class 2 MD	\$181	30%	\$1,267	Class G felony	\$462	78%	\$8,316	<b>\$7,049</b>
Display another person's license/permit ((a)(3))	63	Class 2 MD	\$181	30%	\$3,439	Class G felony	\$462	78%	\$22,638	<b>\$19,199</b>
Fail or refuse to surrender to DMV when suspended, canceled, or revoked ((a)(4))	8	Class 2 MD	\$181	30%	\$362	Class G felony	\$462	78%	\$2,772	<b>\$2,410</b>
Use or give false or fictitious name or address in application ((a)(5))	94	Class 1 MD	\$188	39%	\$6,956	Class G felony	\$462	78%	\$33,726	<b>\$26,770</b>
Make a color copy/reproduction of license/permit ((a)(6))	2	Class 2 MD	\$181	30%	\$181	Class G felony	\$462	78%	\$924	<b>\$743</b>
Sell or offer for sale any reproduction of license/permit ((a)(7))	0	Class I felony	\$315	68%	\$0	Class G felony	\$462	78%	\$0	<b>\$0</b>
Possess more than one commercial drivers' license or both a commercial and regular license/permit ((a)(8))	6	Class 2 MD	\$181	30%	\$362	Class G felony	\$462	78%	\$2,310	<b>\$1,948</b>
Use fake ID in commission of a felony ((a)(9))	9	Class I felony	\$315	68%	\$1,890	Class G felony	\$462	78%	\$3,234	<b>\$1,344</b>
Violation by a person under 21 to buy alcohol ((a)(1) to (a)(4), (a)(6), and (a)(8))	471	Class 2 MD	\$181	30%	\$25,521	Class 1 MD	\$188	39%	\$34,592	<b>\$9,071</b>
Violation by a person under 21 to buy alcohol ((a)(5))	14	Class 1 MD	\$188	39%	\$940	Class 1 MD	\$188	39%	\$940	<b>\$0</b>
Violation by a person under 21 to buy alcohol ((a)(7) and (a)(9))	2	Class I felony	\$315	68%	\$315	Class 1 MD	\$188	39%	\$188	<b>(\$127)</b>
Violation by a person under 18 to buy tobacco ((a)(1) to (a)(4), (a)(6), and (a)(8))	32	Class 2 MD	\$181	30%	\$1,810	Class 2 MD	\$181	30%	\$1,810	<b>\$0</b>
Violation by a person under 18 to buy tobacco ((a)(5))	1	Class 1 MD	\$188	39%	\$0	Class 2 MD	\$181	30%	\$0	<b>\$0</b>
Violation by a person under 18 to buy tobacco ((a)(7) and (a)(9))	1	Class I felony	\$315	68%	\$315	Class 1 MD	\$188	39%	\$0	<b>(\$315)</b>
<b>Total</b>										<b>\$1,851,032</b>

Section 2(b) also creates a new Class G felony. In FY 2011-12 78% of Class G felony cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class G felony is \$462 per case for a private appointed counsel (PAC) attorney. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

It is estimated that there would be a total additional cost to IDS of \$1,885,276 annually due to the changes in section 2(b) of this bill. Since the proposed legislation goes into effect December 1, 2015, the cost for FY 2015-16 will be \$1,120,090. To the extent that the number of charges that would qualify as an exception has been underestimated, this estimate may be overstated.

The table below shows the total cost to AOC and IDS of the increases in Section 2(b) adjusted for inflation for each year of the five-year fiscal note period.

<b>AOC and IDS Costs Adjusted for Inflation</b>					
<b>Section 2(b)</b>					
<b>Est. Charges: 6,552*</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
AOC Section 2(b)	\$2,394,542	\$4,216,582	\$4,338,020	\$4,457,749	\$4,566,518
IDS Section 2(b)	\$1,120,090	\$1,936,556	\$1,992,329	\$2,047,317	\$2,097,272
<i>*One charge with age unknown was removed from the dataset.</i>					
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

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

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. At the request of Fiscal Research, the Sentencing Commission prepared population projection scenarios based on AOC conviction data assuming that all defendants under the age of 21 were using their ID to buy alcohol or tobacco. Based on those scenarios, the Sentencing Commission estimates that this specific legislation could add 86 inmates to the prison system by the end of FY 2016-17 and 136 by FY 2017-18. For the purposes of this note, Fiscal Research assumed the bed need level would remain stable after FY 2017-18.

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



<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2016</b>	<b>June 30 2017</b>	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>
1. Inmates <sup>2</sup>	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	0	86	136	136	136
<b>5. Additional Beds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

<b>Annual Per Diem Costs for Additional Inmates</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Annual Cost	\$4,286	\$4,403	\$4,530	\$4,655	\$4,769
Additional Inmates per Year	0	86	136	136	136
<b>Total Cost</b>	<b>\$0</b>	<b>\$378,658</b>	<b>\$616,080</b>	<b>\$633,080</b>	<b>\$648,584</b>
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

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

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

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2015.

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

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$130.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

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

In FY 2013-14, 40% of Class G felony offenders received active sentences followed by nine months post-release supervision (PRS); 60% received some form of supervised probation. Class 1 misdemeanants received active sentences 30% of the time and probation 70% of the time. For the same year, 33% of Class 2 misdemeanor offenders received active sentences; 67% percent received probation. No PRS is required for misdemeanants, so more offenders will be serving a mandatory nine-months PRS as a result of this bill. Additional costs may be incurred if the number of months the offenders would have served on probation is less than nine months. The average length of probation for a Class 1 misdemeanor is 15 months; for a Class 2 misdemeanor, the average length of probation is 13 months; and, for a Class G felony, the average length of probation is 29 months.

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

<b>Cost for DPS – Community Corrections</b> <b>Class 1 Misdemeanor Increased to Class G Felony</b> <b>Section 2(a) and Section 2(b)(a)(5)</b> <b>Est. 26 Convictions</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Cost of Current Offense	\$0	\$29,592	\$37,800	\$38,880	\$39,960
Cost of Proposed Offense	\$0	\$26,304	\$53,760	\$66,816	\$68,672
<b>Cost Differential</b>	\$0	(\$3,288)	\$15,960	\$27,936	\$28,712

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

<b>Cost for DPS – Community Corrections</b> <b>Class 2 Misdemeanor Increased to Class G Felony</b> <b>Section 2(b)(a)(1) to (a)(3), (a)(6), and (a)(8)</b> <b>Est. 116 Convictions</b>					
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Cost of Current Offense	\$0	\$128,232	\$141,960	\$146,016	\$150,072
Cost of Proposed Offense	\$0	\$115,080	\$235,200	\$292,320	\$300,440
<b>Cost Differential</b>	\$0	(\$13,152)	\$93,240	\$146,304	\$150,368

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

There were no convictions for Sections 2(b)(a)(4), (a)(6), (a)(7), or (a)(9), and section 2(b)(a)(10) is a new offense, so they are not included on these charts. In FY 2013-14, 40% of Class G felony offenders received active sentences; 60% received probation. All active sentences result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 29 months. Therefore, at a minimum, one conviction resulting from these sections of the bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,175 per offender (\$130.50 per month times nine months).<sup>4</sup>

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<sup>4</sup> Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.



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