

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 703 (Third Edition)

SHORT TITLE: Felon W/Gun/B&E/Increased Penalties.

SPONSOR(S): Representatives Brawley, Dollar, and Henson

| FISCAL IMPACT | | | | | |
|---|---|-----------------------------|--|----------------------|----------------------|
| | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> No Estimate Available | | |
| State Impact | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| General Fund Revenues: | | | | | |
| General Fund Expenditures | \$842,928 | \$1,899,004 | \$2,692,731 | \$3,225,252 | \$3,284,018 |
| State Positions: | | | | | |
| NET STATE IMPACT | (\$842,928) | (\$1,899,004) | (\$2,692,731) | (\$3,225,252) | (\$3,284,018) |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: | | | | | |
| Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety | | | | | |
| EFFECTIVE DATE: December 1, 2017 | | | | | |
| TECHNICAL CONSIDERATIONS: | | | | | |
| None | | | | | |

FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

| Fiscal Impact Summary by Section and Agency/Division | | | | | |
|--|---|-------------|-------------|-------------|-------------|
| | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| Section 1 – G.S. 14-415.1(a) | | | | | |
| AOC | \$621,046 | \$1,095,525 | \$1,128,172 | \$1,158,069 | \$1,179,957 |
| IDS | \$101,802 | \$179,578 | \$184,929 | \$189,830 | \$193,418 |
| Prisons | \$0 | \$602,784 | \$1,695,764 | \$1,743,532 | \$1,774,240 |
| CCS | \$0 | (\$194,688) | (\$549,332) | (\$110,880) | (\$112,896) |
| Section 2 – G.S. 14-54(a) | | | | | |
| AOC | No est. available; \$512 per charge | | | | |
| IDS | No est. available; \$177 per indigent defendant | | | | |
| Prisons | No est. available; \$2,742 per active felony conviction | | | | |
| CCS | No est. available; savings of (\$2,664) per active felony conviction; cost of \$740 per supervised probation sentence | | | | |
| Section 2 – G.S. 14-54(a1) | | | | | |
| AOC | \$97,963 | \$172,806 | \$177,956 | \$182,672 | \$186,125 |
| IDS | \$22,117 | \$39,015 | \$40,178 | \$41,243 | \$42,022 |
| Prisons | \$0 | \$7,728 | \$20,377 | \$20,951 | \$21,320 |
| CCS | \$0 | (\$3,744) | (\$5,313) | (\$165) | (\$168) |

BILL SUMMARY:

Section 1 of the bill amends existing G.S. 14-415.1, Possession of firearms, etc., by felon prohibited, by increasing the penalty for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, any firearm or weapon of mass destruction from a Class G felony to a Class F felony.

Section 2 of the bill amends existing G.S. 14-54, Breaking or entering buildings generally, to increase the offense of breaking or entering into any building when a person is in it from a Class H felony to a Class F felony. This section also amends subsection (a1) to increase the offense of breaking or entering into any building with the intent to terrorize or injure an occupant from a Class H felony to a Class F felony.

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 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.

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.

SECTION 1

Section 1 of the bill amends existing G.S. 14-415.1, Possession of firearms, etc., by felon prohibited, by increasing the penalty for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, any firearm or weapon of mass destruction from a Class G felony to a Class F felony.

Judicial Branch

The Administrative Office of the Courts (AOC) 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 of the bill increases the penalty for violation of G.S. 14-415.1(a) from a Class G felony to a Class F felony. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class G felony who is instead charged with a Class F felony, the average cost to the court will be \$199 (\$1,137 for a Class F minus \$938 for a Class G).

In Fiscal Year 2015-16, approximately 5,350 defendants were charged with possession of a firearm by a felon. The following table shows the cost of the increase, adjusted for inflation, for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2017 effective date.

| AOC Cost to Increase Penalty from Class G Felony to Class F Felony | | | | | |
|--|-------------------|--------------------|--------------------|--------------------|--------------------|
| | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| Inflation Rate | | 2.90% | 2.98% | 2.65% | 1.89% |
| G.S. 14-415.1(a) | \$621,046 | \$1,095,525 | \$1,128,172 | \$1,158,069 | \$1,179,957 |
| Total AOC Cost | \$621,046 | \$1,095,525 | \$1,128,172 | \$1,158,069 | \$1,179,957 |
| <i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i> | | | | | |

The Office of Indigent Defense Services (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 G felony is \$498 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, the most recent year data is available, 78% of Class G felony defendants used IDS services. Using the number of charges provided by AOC, 4,173 (78% of 5,350) defendants would have used IDS for a total cost of \$2,078,154 (4,173 defendants times \$498).

In FY 2011-12, 74% of Class F felony defendants used IDS services. The weighted average cost of a Class F felony is \$569 per case for a PAC attorney. Using the number of charges provided by AOC, 3,959 (74% of 5,350) defendants would have used IDS for a total cost of \$2,252,671 (3,959 defendants times \$569). Therefore, the cost of this criminal penalty increase to IDS will be \$174,517 (\$2,252,671 Class F expense minus \$2,078,154 existing Class G expense).

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2017 effective date. 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.

| IDS Cost to Increase Penalty from Class G to Class F | | | | | | |
|--|-------------------|------------------|------------------|------------------|------------------|------------------|
| | Defendants | FY 17-18 | FY 18-19 | FY 19-20 | FY 20-21 | FY 21-22 |
| Inflation Rate | | | 2.90% | 2.98% | 2.65% | 1.89% |
| G.S. 14-415.1(a) | 5,350 | \$101,802 | \$179,578 | \$184,929 | \$189,830 | \$193,418 |
| Total IDS Cost | | \$101,802 | \$179,578 | \$184,929 | \$189,830 | \$193,418 |
| <i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i> | | | | | | |

Department of Public Safety – Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

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.

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. As shown, the Sentencing Commission estimates that this specific legislation will add 436 inmates to the prison system by the end of FY 2018-19.

| Population Projections and Bed Capacity Five Year Impact | | | | | |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| | June 30 2018 | June 30 2019 | June 30 2020 | June 30 2021 | June 30 2022 |
| 1. Inmates ² | 36,906 | 37,116 | 36,814 | 36,821 | 37,010 |
| 2. Prison Beds (Expanded Capacity) | 37,617 | 37,617 | 37,617 | 37,617 | 37,617 |
| 3. Beds Over/(Under) Inmate Population | 711 | 501 | 803 | 796 | 607 |
| 4. Additional Inmates Due to this Bill³ | 174 | 436 | 546 | 453 | 518 |
| 5. Additional Beds Required | 0 | 0 | 0 | 0 | 0 |

Although no additional beds 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. Per diem expenditures for each inmate are approximately \$15.02, or \$457 per month. This bill increases the penalty for violation of G.S. 14-415.1(a) from a Class G felony to a Class F felony. According to the Sentencing and Policy Advisory Commission, during FY 2015-16 there were 1,304 Class G felony convictions for this crime. In general, approximately 42% convictions for this offense class result in active sentences.

Additional expenditures will be required by the Department of Public Safety beginning in Fiscal Year 2018-19. The chart below shows the additional costs, adjusted for inflation, resulting from this bill.

| DPS - Prisons Cost to Increase Penalty from a Class G Felony to a Class F Felony | | | | | |
|--|-------------------|-------------------|--------------------|--------------------|--------------------|
| | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| Inflation Rates | | 2.90% | 2.98% | 2.65% | 1.89% |
| Cost of Current Offense | \$0 | \$3,176,208 | \$3,812,984 | \$3,920,392 | \$3,989,440 |
| Cost of Proposed Offense | \$0 | \$3,778,992 | \$5,508,748 | \$5,663,924 | \$5,763,680 |
| Cost Differential | \$0 | \$602,784 | \$1,695,764 | \$1,743,532 | \$1,774,240 |
| <i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i> | | | | | |

Department of Public Safety – Community Corrections

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.

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 February 2017.

³ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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.

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 (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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 chart below shows the fiscal impact the criminal penalty increase will have on CCS. Because more convictions will receive active (i.e. prison) sentences, fewer people will be placed on supervised probation, resulting in cost savings to CCS. The first year has been adjusted to reflect the December 1, 2017 effective date.

| DPS - CCS Cost to Increase Penalty from a Class G Felony to a Class F Felony | | | | | |
|--|-------------------|--------------------|--------------------|--------------------|--------------------|
| | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| | | 2.90% | 2.98% | 2.65% | 1.89% |
| Cost of Current Offense | \$0 | \$1,415,232 | \$3,803,464 | \$4,521,660 | \$4,603,872 |
| Cost of Proposed Offense | \$0 | \$1,220,544 | \$3,254,132 | \$4,410,780 | \$4,490,976 |
| Cost Differential | \$0 | (\$194,688) | (\$549,332) | (\$110,880) | (\$112,896) |
| <i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i> | | | | | |

SECTION 2

Section 2 of the bill amends existing G.S. 14-54, Breaking or entering buildings generally, to increase the offense of breaking or entering into any building when a person is in it from a Class H felony to a Class F felony. This section also amends subsection (a1) to increase the offense of breaking or entering into any building with the intent to terrorize or injure an occupant from a Class H felony to a Class F felony.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks,

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

Section 2 of the bill increases the penalty for breaking and entering an occupied building from a Class H felony to a Class G felony. It is not known how many current charges for breaking and entering occurred in occupied buildings. AOC provides estimates of the average cost to the court for a charge by offense class. For every person charged with a Class F felony who would have been charged with a Class H felony, the cost is \$512 (\$1,137 for a Class F felony minus \$625 for a class H felony).

Section 2 of the bill also increases the penalty for breaking and entering with the intent to terrorize (G.S. 14-54(a1)) from a Class H felony to a Class F felony. In FY 2015-16, there were 328 defendants charged with this offense. The following table shows the cost of the increase, adjusted for inflation, for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2017 effective date.

| AOC Cost to Increase Penalty from Class H Felony to Class F Felony | | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | Defendants | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| Inflation Rate | | | 2.90% | 2.98% | 2.65% | 1.89% |
| G.S. 14-54(a1) | 328 | \$97,963 | \$172,806 | \$177,956 | \$182,672 | \$186,125 |
| Total AOC Cost | | \$97,963 | \$172,806 | \$177,956 | \$182,672 | \$186,125 |
| <i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i> | | | | | | |

The Office of Indigent Defense Services (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 H felony is \$392 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, the most recent year data is available, 78% of Class H felony defendants used IDS services. For the same year, 74% of Class F felony defendants used IDS services. The weighted average cost of a Class F felony is \$569 per case for a PAC attorney. The cost difference for the increased penalty for breaking and entering an occupied space is \$177 (\$569 Class F felony minus \$392 Class H felony).

In FY 2011-12, 78% of Class H felony defendants used IDS services. The weighted average cost of a Class H felony is \$392 per case for a PAC attorney. Using the number of charges for breaking and entering with the intent to terrorize provided by AOC, 256 (78% of 328) defendants would have used IDS for a total cost of \$100,352 (256 defendants times \$392). In FY 2011-12, 74% of Class F felony defendants used IDS services. The weighted average cost of a Class F felony is \$569 per case for a PAC attorney. Using the number of charges provided by AOC, 243 (74% of 328) defendants would have used IDS for a total cost of \$138,267 (243 defendants times \$569). Therefore, the cost of this criminal penalty increase to IDS will be \$37,915 (\$138,267 Class F expense minus \$100,352 existing Class H expense).

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2017 effective date. 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.

| IDS Cost to Increase Penalty from Class H to Class F | | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | Defendants | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| Inflation Rate | | | 2.90% | 2.98% | 2.65% | 1.89% |
| G.S. 14-54(a1) | 328 | \$22,117 | \$39,015 | \$40,178 | \$41,243 | \$42,022 |
| Total IDS Cost | | \$22,117 | \$39,015 | \$40,178 | \$41,243 | \$42,022 |
| <i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i> | | | | | | |

Department of Public Safety – Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,⁴ and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

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 | | | | | |
|---|------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| | June 30 2018 | June 30 2019 | June 30 2020 | June 30 2021 | June 30 2022 |
| 1. Inmates ⁵ | 37,304 | 37,601 | 37,367 | 37,385 | 37,642 |
| 2. Prison Beds (Expanded Capacity) | 38,373 | 38,373 | 38,373 | 38,373 | 38,373 |
| 3. Beds Over/(Under) Inmate Population | 1,069 | 772 | 1,006 | 988 | 731 |
| 4. Additional Inmates Due to this Bill⁶ | No estimate available | | | | |
| 5. Additional Beds Required | | | | | |

Section 2 of the bill increases the penalty for breaking and entering an occupied place from a Class H felony to a Class F felony. The Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, there were 2,697 convictions under G.S. 14-54(a). It is not known how many involved an occupied building and could become Class F felonies under the proposed bill. Impact on the prison population will occur if Class H convictions become Class F convictions under the proposed amendment

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 February 2017.

⁶ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

because of the higher rate of active sentences (50% for Class F compared to 35% for Class H) and longer average estimated time served (17 months for Class F compared to 11 months for Class H). Impact on the prison population would be substantial if a large number of the existing convictions would become Class F felonies under the proposed bill; however, the impact cannot be determined.

The following table shows the estimated annual impact if, for example, there were four convictions (threshold), 20 convictions (example), or 2,697 convictions (see data above) per year that would be reclassified from Class H to Class F. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

| Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|
| Convictions | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| 4 (Threshold) | 1 | 2 | 2 | 2 | 2 |
| 20 | 3 | 8 | 9 | 9 | 9 |
| 2,697 | 525 | 1,074 | 1,205 | 1,216 | 1,228 |

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 \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class H felony offender now classified as a Class F felony offender who receives an active sentence, the cost to the prison section will be \$2,742 (\$457 monthly cost times 17 months for Class F equals \$7,769 minus \$5,027 (\$457 times 11 months for Class H)).

Section 2 of the bill also increases the penalty for breaking and entering with intent to terrorize. In FY 2015-16, there were ten Class H felony convictions under G.S. 14-54(a1). Due to the small number of convictions, a more detailed impact projection using the prison projection model would not be reliable. Impact on the prison population will occur if Class H convictions become Class F convictions under the proposed reclassification because of the higher rate of active sentences (50% for Class F compared to 35% for Class H) and longer average estimated time served (17 months for Class F compared to 11 months for Class H). The following table shows the estimated annual impact of the proposed reclassification from Class H to Class F (see data above). The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

| Estimated Prison Bed Impact of Proposed Reclassification Class H Felony to Class F Felony | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|
| Convictions | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| 10 | 2 | 4 | 5 | 5 | 5 |

Additional expenditures will be required by the Department of Public Safety beginning in Fiscal Year 2018-19. The chart below shows the additional costs, adjusted for inflation, resulting from this bill.

| DPS - Prisons Cost to Increase Penalty from a Class H Felony to a Class F Felony | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| Prisons | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| Inflation Rates | | 2.90% | 2.98% | 2.65% | 1.89% |
| Cost of Current Offense | \$0 | \$21,252 | \$21,868 | \$22,484 | \$22,880 |
| Cost of Proposed Offense | \$0 | \$28,980 | \$42,245 | \$43,435 | \$44,200 |
| Cost Differential | \$0 | \$7,728 | \$20,377 | \$20,951 | \$21,320 |
| <i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i> | | | | | |

Department of Public Safety – Community Corrections

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 F 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.

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 \$148 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.

It is not known how many convictions for breaking and entering an occupied dwelling will be increased from a Class H felony to a Class F felony. In FY 2015-16, 50% of Class F felony offenders received active sentences followed by nine months post-release supervision (PRS); 50% received some form of supervised probation. For the same year, 35% of Class H felony offenders received active sentences followed by nine months PRS; 65% received probation. 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 H felony was 27 months. Therefore, additional offenders receiving an active sentence will spend 18 fewer months in PRS than they would have served on probation. The cost for each month of PRS or probation is \$148, for a savings of \$2,664 (\$148 times 18 number of months difference). However, the length of supervised probation for a Class F felony is five months longer (32 months Class F minus 27 months Class H) than supervised probation for a Class H felony. The difference in cost for supervised probation will be \$740 (five months times \$148).

The chart below shows the fiscal impact of increasing the penalty for breaking and entering with intent to terrorize (G.S. 14-54(a1)). Because more convictions will receive an active sentence, fewer people will be

placed on supervised probation, resulting in cost savings to CCS. The first year has been adjusted to reflect the December 1, 2017 effective date.

| DPS - CCS Cost to Increase Penalty from a Class H Felony to a Class F Felony | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| CCS | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| | | 2.90% | 2.98% | 2.65% | 1.89% |
| Cost of Current Offense | \$0 | \$13,104 | \$30,268 | \$33,990 | \$34,608 |
| Cost of Proposed Offense | \$0 | \$9,360 | \$24,955 | \$33,825 | \$34,440 |
| Cost Differential | \$0 | (\$3,744) | (\$5,313) | (\$165) | (\$168) |
| <i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i> | | | | | |

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: May 8, 2017



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