



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Legislative Incarceration Fiscal Note

REVISED

Short Title: Gun Violence Prevention Act.
Bill Number: House Bill 86 (First Edition)
Sponsor(s): Representatives Clark, Morey, Harrison, and Willingham

SUMMARY TABLE

FISCAL IMPACT OF H.B. 86, V.1 (\$ in millions)

	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>
State Impact					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT No Estimate Available - Refer to Fiscal Analysis section

FISCAL IMPACT SUMMARY

Revision Note: Revision corrects bill number reference in Summary Table above to match bill number.

This bill amends or creates provisions pertaining to the sale and ownership of firearms. This incarceration fiscal note applies only to the sections that change criminal penalties.

Section	Offense	New Class	Total Number of Convictions
1	Amends G.S. 14-402 (Sale of certain weapons without permit forbidden)	Class 2	none
2	Amends G.S. 14-269.7 (Prohibitions on handguns for minors)	Class 1	38
2	G.S. 14-315 (Selling or giving weapons to minors)	Class H	none
3	Creates G.S. 14-409A (Bump stocks and triggers cranks prohibited)	Class I	none

4	Creates G.S. 14-409.44 (Require safe storage of firearms)	Class A 1	none
6	Creates G.S. 14-409.13 (Report of loss or theft of firearm)	Class 3 and Class I	
8	Creates G.S. 14-409.61 (Large capacity magazines prohibited)	Class 2 & Class 1	
8	Creates G.S. 14-409.61 (Large capacity magazines prohibited)--used in a crime	Class I	
11	Creates G.S. 14-409.62 (Required DPS to develop a roster of unsafet handguns)	Class 3	

Here are the potential ranges of costs for new offenses:

- Administrative Office of the Courts: \$44-\$516 per disposition
- Indigent Defense Services: \$200-\$333 per disposition
- Department of Public Safety (DPS) - Prisons: \$3,766 per active sentence
- DPS - Community Corrections: Minimum of \$1,440-\$2,080 per supervised probation sentence

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, 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.

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

Section One of the bill amends G.S. 14-402 (Sale of certain weapons without permit forbidden) to expand to scope of restrictions regarding the sale, transfer, or purchase of weapons from pistol to pistol to include assault weapons and long guns unless the individual has a permit issued by the county sheriff. Also, makes it a Class 2 misdemeanor for any individual to receive a pistol, assault weapon, or long gun unless a period of 72 hours has passed between the date of purchase or transfer. This section creates a new Class 2 misdemeanor offense. 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 2 misdemeanor, the average cost to the court would be \$124.

The Office of Indigent Defense Services (IDS) provides 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.

In FY 2017-18, the most recent year data is available, 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 2 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney. The estimates throughout this note 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.

Section 2

Amends G.S. 14-269.7 (Prohibitions on handguns for minors) to expand the type of weapons minors are precluded from possessing to include no long guns for minors under 18 and no assault weapons for minors under 21. Violations of this offense will be a Class 1 misdemeanor. In addition, it creates a Class H felony in G.S. 14-315 for an individual to sell, offer for sale, give, or transfer a long gun or an assault weapon to a minor. In FY 2017-18, there were no convictions for violations of G.S. 14-315.

This section expands the scope of a Class 1 misdemeanor offense. There were 38 convictions for violations of G.S. 14-269.7, but it is unknown how many additional convictions would result from an expansion of the statute. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$233.

In FY 2017-18, the most recent year data is available, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$202 per case for a private appointed counsel (PAC) attorney.

In addition, this section creates a new Class H felony offense. 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 H felony, the average cost to the court would be \$709.

In FY 2017-18, the most recent year data is available, 78% of Class H felony cases were handled through IDS. The weighted average cost of a new Class H felony is \$392 per case for a private appointed counsel (PAC) attorney.

Section 3

This section adds a new statute (G.S. 14-409A-Bump stocks and triggers cranks prohibited) making the sale of a bumper stock or trigger crank illegal. This addition creates a new Class I felony offense. 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 I felony, the average cost to the court would be \$516.

In FY 2017-18, the most recent year data is available, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$333 per case for a private appointed counsel (PAC) attorney

Section 4

Repeals G.S. 14-315.1 (storage of firearms to protect minors), which convicted violators were guilty of a Class 1 misdemeanor. The bill enacts G.S. 14-409.44 (Require safe storage of firearms) which details provisions of the storage of firearms related to minors. Violations of this statute will be Class A1 misdemeanors. 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 A1 misdemeanor, the average cost to the court would be \$404.

The Office of Indigent Defense Services (IDS) provides 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.

In FY 2017-18, the most recent year data is available, 52% of Class A1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class A1 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney

Section 6

Section 6 creates a new statute (G.S. 14-409.13-report of loss or theft of firearm). This section requires a firearm owner to report a loss or theft of a firearm within 48 hours after the owner is

aware of the loss. Initial violations of this statute are a Class 3 misdemeanor and subsequent violations are a Class I felony.

This section creates a new Class 3 misdemeanor offense. 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 3 misdemeanor, the average cost to the court would be \$44.

In FY 2017-18, the most recent year data is available, 14% of Class 3 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 3 misdemeanor is \$200 per case for a private appointed counsel (PAC) attorney.

Subsequent violations of this section create a new Class I felony offense. 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 I felony, the average cost to the court would be \$516.

In FY 2017-18, the most recent year data is available, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$333 per case for a private appointed counsel (PAC) attorney.

Section 8

This section creates Article 53D, including G.S. 14-409.61 (a) creating a new offense for the sale, transfer, or possession of large-capacity ammunition magazines. Violations of this new offense would be a Class 2 misdemeanor offense. 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 2 misdemeanor, the average cost to the court would be \$124. In addition, 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 2 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney.

Subsequent violations of this offense would be a Class 1 misdemeanor offense. 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 1 misdemeanor, the average cost to the court would be \$233.

In FY 2017-18, the most recent year data is available, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$202 per case for a private appointed counsel (PAC) attorney.

In addition, a violation of G.S. 14-409.61 (a) and the person possessed the large-capacity magazine during the commission of felony is a Class I felony. 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 I felony, the average cost to the court would be \$516.



In FY 2017-18, the most recent year data is available, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$333 per case for a private appointed counsel (PAC) attorney.

As part of the proposed Article 53D, G.S. 14-409.62 (a) requires that North Carolina manufacturers of large-capacity magazines must include a permanent stamp or marking stating the magazine was manufactured after the effective date of December 1, 2019. Violations of this new requirement would be a Class 2 misdemeanor. 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 2 misdemeanor, the average cost to the court would be \$124. In addition, 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 2 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney.

Section 11

This section adds a new requirement under G.S. 14-406.2 (Prohibition on sale, transfer, ownership, or possession of unsafe guns) that requires the Department of Public Safety to develop a list of handguns determined not to be unsafe. Violators include individuals, firms, or corporations to manufacture, sell, give, loan, import, or otherwise transfer a handgun not listed. These violations constitute a Class 3 misdemeanor.

This section creates a new Class 3 misdemeanor offense. 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 3 misdemeanor, the average cost to the court would be \$44.

In FY 2017-18, the most recent year data is available, 14% of Class 3 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 3 misdemeanor is \$200 per case for a private appointed counsel (PAC) attorney.

Department of Public Safety – Prisons

This bill creates 9 new misdemeanor and 4 felony offenses. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail. As previously noted, 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.

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

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.

represent the total number of beds in operation, or authorized for construction or operation as of December 2018.

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 (total) inmates to the prison system by the end of FY 2019-20.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2020	June 30 2021	June 30 2022	June 30 2023	June 30 2024
1. Inmates ²	36,452	36,867	37,231	37,433	37,702
2. Prison Beds (Expanded Capacity)	38,225	38,225	38,225	38,225	38,225
3. Beds Over/(Under) Inmate Population	1,773	1,358	994	792	523
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

Section 2

This section creates a new Class H felony offense, 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 2017-18, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as

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 2019.

³ Criminal penalty bills effective December 1, 2019 should not affect prison population and bed needs until FY 2020-21 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	7	11	11	11	11

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 \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 34% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,918 (\$538 monthly cost times 11 months).

Sections 3 and 6

These sections create a new Class I felony offenses, 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 2017-18, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. The following table shows the estimated annual impact if there were 10 convictions (the threshold) or 20 convictions for this proposed offense per year. 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 growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
10 (Threshold)	1	2	2	2	2
20	2	5	5	5	5

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 \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 15% of Class I felony offenders received active sentences averaging 7 months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,766 (\$538 monthly cost times 7 months).

Department of Public Safety – Community Corrections

Active misdemeanor sentences are served in local jails and do not require any post-release supervision. 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 Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$160 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 probation. This bill creates 9 new misdemeanor and 4 felony punishments, including:

Class 2 misdemeanor offenders: in FY 2017-18, 39% received active sentences; 61% received probation. The average length of probation imposed for this offense class was 14 months. Therefore, at a minimum, one Class 2 misdemeanor conviction resulting in probation will require at least 14 months of supervision. The cost of 14 months of supervision is \$2,240 per offender (\$160 per month times 14 months).⁴

Class 1 misdemeanor offenders 34% received active sentences; 66% received probation. The average length of probation imposed for this class of offense was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,400 per offender (\$160 per month times 15 months).

Class A1 misdemeanor offenders: 37% received active sentences; 63% received probation. The average length of probation imposed for this offense class was 16 months. Therefore, at a minimum, one Class

⁴ Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.

A1 misdemeanor conviction resulting in probation will require at least 16 months of supervision. The cost of 16 months of supervision is \$2,560 per offender (\$160 per month times 16 months).

Class 3 misdemeanor offenders: 23% received active sentences; 77% received probation. The average length of probation imposed for this offense class was 13 months. Therefore, at a minimum, one Class 3 misdemeanor conviction resulting in probation will require at least 13 months of supervision. The cost of 13 months of supervision is \$2,080 per offender (\$160 per month times 13 months).

Class I felony offenders: 34% of Class H felony offenders received active sentences and 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for Class H felony offenders receiving a suspended sentence was 26 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,440 per offender (\$160 per month times 9 months). For every offender sentenced to probation, the average cost would be \$4,160 (\$160 per month times 26 months).

Class H felony offenders: 85% of Class I felony offenders received suspended sentences. The average length of probation imposed for this offense class was 23 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,440 per offender (\$160 per month times 9 months). For every offender sentenced to probation, the average cost would be \$3,680 (\$160 per month times 23 months).

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

CONTACT INFORMATION

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910

ESTIMATE PREPARED BY

John Poteat

ESTIMATE APPROVED BY

Mark Trogdon, Director of Fiscal Research
Fiscal Research Division
March 27, 2019



Signed copy located in the NCGA Principal Clerk's Offices