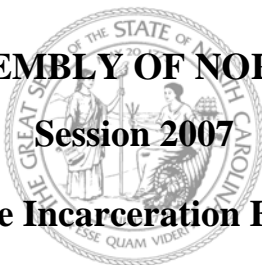


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 1358 (Second Edition)

**SHORT TITLE:** Street Gang Prevention Act.

**SPONSOR(S):** Senator Graham

	FISCAL IMPACT				
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
<b>GENERAL FUND</b>					
	<b>Note: Prison cost estimates assumes a <u>minimum fiscal impact scenario</u>; prison population and costs could be significantly higher</b>				
Correction – Prisons					
Operating (R)		\$5,000,250	\$10,591,308	\$10,909,047	\$11,236,319
Capital (NR—364 beds)	\$24,766,560				
Correction – DCC	Significant impact anticipated; amount cannot be determined.				
Judicial;	Given the number of misdemeanor offenses that could be charged as gang felonies under this bill, significant increases in man-hours and cost are anticipated for the court system. Cost cannot be determined at this time				
Justice	Justice cost cannot be determined; small cost anticipated to update expunctions on Criminal Information System.				
Crime Control & Public Safety (Grants in Senate Budget)	\$3,000,000				
<b>TOTAL EXPENDITURES:</b>	<b>\$27,766,560</b>	<b>\$5,000,250</b>	<b>\$10,591,308</b>	<b>\$10,909,047</b>	<b>\$11,236,319</b>
<b>REVENUES</b>	\$65 fee for expunction for 16/17 year old first offenders – cannot determine number of likely offenders or amount of revenue generated				
<b>ADDITIONAL PRISON BEDS:</b>					
(cumulative –Cannot project beyond 2009-10)*	0	177	364	364	364
<b>DOC POSITIONS:</b>					
(cumulative)	0	71	146	146	146
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch. Crime Control (Governors Crime Commission)					
<b>EFFECTIVE DATE:</b> December 1, 2007 except Section 3 (Grants) July 1, 2007					
*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.					

**BILL SUMMARY:** Section 1 of S.B. 1358 creates new Article 13A within Chapter 14 of the General Statutes, entitled the “North Carolina Street Gang Prevention Act” (G.S. 14-50.15). *Section 1* contains the following provisions:

G.S. 14-50.16 – Defines the terms “*criminal street gang*” (or “street gang”), “*criminal street gang activity*,” and “*pattern of criminal street gang activity*” for the purposes of the Article:

A “*criminal street gang*” is a group of three or more persons, having as one of its primary activities the commission of felony offenses (or equivalent delinquent acts), that has a common name, identifying sign or symbol, and which has three or more members engaging in, or who have engaged in, “*criminal street gang activity*.”

“*Criminal street gang activity*” is the commission or attempted commission, soliciting, coercion, or intimidation of another to commit, an act(s) for the purpose, or in furtherance, of the person’s involvement in a “*criminal street gang*.” Such acts include any offense under Article 5 of Chapter 90 (Controlled Substances Act) and any offense under Chapter 14, with certain exclusions.

“*Pattern of criminal street gang activity*” is engaging in, and having convictions for, at least two prior incidents of “*criminal street gang activity*” that are interrelated by common characteristics. At least one of the offenses must occur after December 1, 2007, and the last within three years of prior “*criminal street gang activity*,” excluding periods of imprisonment.

G.S. 14-50.17 – Prohibits participation in “*criminal street gang activity*” by creating the following new criminal offenses:

- a. Makes it a Class H felony for any person employed by or associated with a criminal street gang to conduct or participate in a “*pattern of criminal gang activity*.”
- b. Makes it a Class H felony for any person to acquire/maintain any real or personal property through a “*pattern of criminal gang activity*” or the proceeds therefrom. *Also makes it a stand alone Class H felony for any person who acquires property with the proceeds derived from gang activity.*
- c. Makes it a Class F felony for a person acting as an organizer, supervisor, or manager with regard to a criminal street gang to engage in (directly or indirectly), or conspire to engage in, a “*pattern of criminal gang activity*.”
- d. Makes it a Class H felony to cause, encourage, solicit, or coerce a person over the age of sixteen to participate in “*criminal street gang activity*;” makes it a Class F felony to commit such acts toward a person under the age of sixteen.
- e. Makes it a Class H felony to communicate with another any threat of injury/damage to a person, any associate or relative of that person, or his property with the intent to deter the person from assisting a member/associate of a “*criminal street gang*” to withdraw.
- f. Makes it a Class H felony to communicate with another any threat of injury/damage to a person, any associate or relative of that person, or his property with the intent to punish or retaliate against the person for withdrawing from a “*criminal street gang*.”

G.S. 14-50.18 – Creates a one-class penalty enhancement for misdemeanor offenses (Classes A1, 1, 2, and 3) that are committed for the benefit of, at the direction of, or in association with a “*criminal street gang*.”

G.S. 14-50.19 – For convictions of criminal offenses other than those under G.S. 14-50.17 or G.S. 14-50.18, requires the presiding judge to determine and note (on the judgment form) whether such offense involved “*criminal street gang activity*.”

G.S. 14-50.20 – Subjects to seizure and forfeiture (per G.S. 14-2.3) any property used for, intended to be used for, derived from, or realized by “*criminal street gang activity*” or a “*pattern of criminal street gang activity*.” Authorizes the court to enter a restraining order in connection with any interest subject to forfeiture, and exempts property unlawfully used without the owner’s actual knowledge.

G.S. 14-50.21 – Provides that local ordinances related to gangs and gang violence are not preempted by the Article.

G.S. 14-50.22 – Declares real property used by criminal street gangs to be a public nuisance, subject to abatement pursuant to Article 1 of Chapter 19; exempts property unlawfully used without the owner’s actual knowledge.

G.S. 14-50.23 – Provides that a defendant convicted of an offense constituting criminal gang activity cannot contest any facts determined during the criminal case in any subsequent civil action or proceeding based on the same conduct.

G.S. 14-50.24 – Provides that the Article’s provisions do not apply to juveniles under age sixteen.

G.S. 14-50.25 – Authorizes the deferral of proceedings without judgment (probation, dismissal, and discharge) and expunction of records for certain offenders convicted under G.S. 14-50.17 or G.S. 14-50.18 - those with no prior criminal conviction, and who were ages sixteen or seventeen at the time of the offense. Establishes a \$65.00 fee for expunction petitions, which are payable to the clerk of superior court and to be remitted to the General Fund.

*Section 1A* rewrites G.S. 14-34.1(b) to also make it Class D felony to willfully or wantonly discharge a firearm (or other barreled weapon) from a vehicle, and toward a person.

*Section 1B* rewrites G.S. 14-2.3 to provide for the forfeiture of any gain acquired through violation of proposed Article 13A.

*Section 2* creates a rebuttable presumption against pre-trial release, if a judicial official finds: 1) there is reasonable cause to believe the person committed an offense for the benefit of, at the discretion of, or in association with a “*criminal street gang*,” 2) the offense was committed while the person was on pretrial release for another offense; and 3) the person was convicted of an offense under G.S. 14-50.17 within five years of the date of the current offense.

*Section 3* appropriates \$3,000,000 (FY 2007-08) to the Governor’s Crime Commission to provide grants for street gang violence prevention and intervention programs, and which must include a matching requirement of 25%. The Governor’s Crime Commission must report to the Chairs of the House and Senate Appropriations Committees, and the Appropriations Subcommittees on Justice and Public Safety by April 15, 2008.

*Section 4* provides that Section 3 becomes effective July 1, 2007, while the remainder of the Act becomes effective December 1, 2007.

## **ASSUMPTIONS AND METHODOLOGY:**

### Background for Fiscal Impact for SB 1358

This fiscal note attempts to demonstrate the impact of the Street Gang Prevention Act on the prison and probation system and the courts. Providing fiscal impact is difficult since there is limited data on gangs and gang activity to use as a baseline in estimating the impact of SB 1358.

However, there is some information available that indicates gang activity is prevalent in the state. A 2004 survey by the Governor’s Crime Commission estimated there were 8,517 gang members statewide but the GCC noted that this estimate was flawed and may be low (This survey is being updated but will not be available until 2008) Table 1 shows the Department of Correction’s estimates of the number of inmates and probationers that are gang affiliated. *These numbers do not include possible gang members that are in county jails*

**Table 1 -- Gang Affiliations: Department of Correction Offenders**

<b>Offender Type</b>	<b>Total Population (as of April 21, 2007)</b>	<b>Gang Affiliated Offenders</b>
Prison Population	31,076	1,631 (5%)
Probation Population	89,821	515 (0.6%)
<b>TOTAL</b>	<b>120,897</b>	<b>2,146 (1.8%)</b>

SB 1358 creates a number of new offenses that punish gang involvement or activity when actions of that gang have a criminal purpose. The bill creates nine new offenses and enhances the sentence for misdemeanor offenses by one offense class if the offense was committed in relation to street gang activity spelled out in the bill.

*It is believed the fiscal impact of SB 1358 will be substantial, given the following: evidence of growth in criminal gang activity; multiple new offenses in this bill and the large pool of current offenses specified in the bill that could potentially trigger the new gang offenses.* For example, two criteria are required to be met for six of the nine new offenses in order to trigger the street gang offenses

1. The offender must have committed one of the offenses in current statutes specified in this bill (e.g., certain assault offenses, weapons offenses, sex offenses etc). The total offenses in the pool based on 2005/06 conviction data is 129,251 (29,520 felony convictions and 99,731 misdemeanor convictions fall under the General Statutes included in the definition of criminal street gang activity in this bill)
2. The offender must have committed the “triggering” offense as part of *criminal street gang activity*, as defined in SB 1358

For the three other offenses—GS 14-50.17 (a),(b) and (c), an offender can be charged with a Class H felony if they meet criteria 1 and 2 and they have two prior convictions for criminal street gang activity. This establishes a “pattern of criminal street gang activity.” *The offender pool for this group is a subset of the total eligible pool -- 58,515 of the 129,251 offenses are eligible based on two or more prior convictions*

**The offender pool establishes the potentially substantial fiscal impact of this bill.** However, since the offenses in SB 1358 are new, there is no data available for the Sentencing Commission to develop official estimates of the impact of this bill on the prison population. It cannot be determined how many offenders will be charged and convicted of the various “street gang” offenses in this bill.

In order to give members a plausible estimate of the “minimum” fiscal impact of this bill. Fiscal Research asked the Sentencing Commission to develop a couple scenarios.

1. For the separate new offenses in this bill, the Commission estimated the number of prison beds that would be created for every conviction. These “what if” scenarios are only the starting point for estimating the total impact of this bill

2. For the derivative offenses (committed after two prior convictions that establish a pattern of criminal gang activity), the Commission provided an estimate of the number of prison beds needed if 1% of 58,515 offenses committed by offenders with two or more prior convictions were defined as being committed as part of a “pattern of criminal gang activity”

The potential pool of offenders is shown in Table 2 below

**Table 2 – Convictions in 2005/06**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Offense Types</b>	<b>Total Convictions</b>	<b>Total Convictions: Offenses Covered by Statutes in SB 1358</b>	<b>Total Convictions: Offenses Covered by SB1358 at Prior Record Level II or higher</b>	<b>Total Convictions: Offenses at PRL II or higher, excluding Felony B1 –H*</b>
Felonies	30,951	29,520	22,179	6,572
Misdemeanors	170,001	99,731	51,943	51,943
<b>TOTAL</b>	<b>200,952</b>	<b>129,251</b>	<b>74,122</b>	<b>58,515</b>

Source: N.C. Sentencing and Policy Advisory Commission

\*The 58,515 offenses in Column 5 are the potential pool just for the “pattern” of gang activity offenses in SB 1358—offenders likely to have two or more convictions

**Department of Correction**

**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.*

**Department of Correction – Division of 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,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 6, 2006. Official Department of Correction capacity projections also assume the General Assembly will fund 500 additional prison beds, generated by partial double-celling of the future Tabor City facility (inmate admission FY 2008-09). However, Fiscal Research does not include these 500 beds in capacity estimates (row two), since these beds have not been authorized for funding.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of *additional beds needed* (row five) is *always equal* to the projected number of *additional inmates* resulting from a bill (row

<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 SOC) and 50 (SOC) square feet per inmate.

four). Rows four and five in the chart demonstrate the impact of SB 1358. As shown, the Sentencing Commission estimates that this specific legislation will add 364 inmates to the prison system by the end of FY 2010. Projections can only be estimated for two years so the number of beds shown is the same for 2011 and 2012 but bed impact will be higher.

	<u>June 30 2008</u>	<u>June 30 2009</u>	<u>June 30 2010</u>	<u>June 30 2011</u>	<u>June 30 2012</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act <sup>2</sup>	39,621	40,236	41,021	41,848	42,718
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	38,505	39,353	39,353	39,353	39,353
3. Projected No. of Beds Over/Under Inmate Population	-1,116	-883	-1,668	-2,495	-3,365
<b>4. Projected No. of Additional Inmates Due to this Bill <sup>3</sup></b>	<i>N/A</i>	<i>177</i>	<i>364</i>	<i>364</i>	<i>364</i>
<b>5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill</b>	<i>N/A</i>	<i>177</i>	<i>364</i>	<i>364</i>	<i>364</i>

**POSITIONS:** It is anticipated that by FY 2010, approximately (146) positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2011-12. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to (bill number); and, the estimated number of new beds required each year through FY 2015-16.

	<u>June 30 2013</u>	<u>June 30 2014</u>	<u>June 30 2015</u>	<u>June 30 2016</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,234	-5,117	-5,996	-6,866
2. <b>Projected No. of Additional Inmates Resulting From (Bill Number)</b>				
3. <b>Estimated No. of New Beds Required Under (Bill Number)</b>			Cannot be determined	

**CONSTRUCTION:** Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

<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 December 2006.

<sup>3</sup> Criminal penalty bills effective December 1, 2007 should not affect prison population and bed needs until FY 2008-09, due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;<sup>4</sup> or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”<sup>5</sup> Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

**Estimated Construction Cost per Custody Level, FY 2006-07**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$56,000	\$63,000	\$109,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$71,000

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.<sup>6</sup> As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

Accordingly, given an increase of 364 inmates, bed provision through construction of a “stand alone” facility could cost approximately \$24,766,560 in 2007/08. Construction of the beds as “add-ons” would cost approximately \$15,331,680. FRD assumed construction of medium custody beds plus inflation.

**OPERATING:** Operating costs are based on actual FY 2005-06 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* on Page 1 of this Note.

**Daily Inmate Operating Cost per Custody Level, FY 2005-06**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$54.81	\$70.83	\$79.72	\$66.87

For SB 1358, FRD assumed these inmates would primarily be housed in medium custody facilities. Given effective date of December 1, 2007 of new offenses, the funds to operated prison beds would not be needed until 2008/09. For the 177 inmates in 2008-09 the cost would be \$5,000,250 and for the 364 inmates in 2009-10, the cost would be \$10,591,308. To calculate these costs, FRD used the operating cost of a medium bed, with 3% inflation per year

**Methodology for Prison Bed Impact**

Table 3 summarizes the minimum prison bed impact for each criminal penalty in SB 1358.

The analysis and assumptions are primarily based on comments from the Sentencing Commission. Since these are new offenses and therefore the Commission cannot use the prison population simulation model, FRD asked the Commission to develop “what if” scenarios to estimate the minimum fiscal impact

<sup>4</sup> New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

<sup>5</sup> Close and medium custody “add-on” facilities are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. Add-on facilities built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

<sup>6</sup> Office of State Construction, March 24, 2006.

**Table 3 Prison Bed Impact of SB 1358**

<b><u>Criminal Penalties in Bill</u></b>	<b><u>#Convictions</u></b>	<b><u>FY 07/08</u></b>	<b><u>FY 08/09</u></b>	<b><u>FY 09/10</u></b>	<b><u>FY 10/11</u></b>	<b><u>FY 11/12</u></b>
<b>Section 1 – G.S. 14.50.17</b>						
Sub (a) & (b) Pattern of gang activity						
----(a)&(b) Misdemeanors to Class H	519	0	155	322	322	322
--(a &b) Felonies to Class H	65	0	14	22	22	22
Sub(b)acquire property(not “pattern”) Class H	3	0	1	2	2	2
Subsection © organizer Class F	2	0	1	3	3	3
Subsection (d) Encourage/solicit 16 or older Class H	3	0	1	2	2	2
Subsection (d) Encourage/solicit <16 years old Class F	2	0	1	3	3	3
Subsection (e) Threats etc Class H	3	0	1	2	2	2
Subsection (f) Retaliate Class H	3	0	1	2	2	2
<b><u>Sect. 1 G.S. 14-50.18 Enhanced Offense</u></b>						
--Class 1, 2, or 3 Misdemeanors	<b><u>Increases in prison beds and probation supervision for offenders with sentences of &gt;90 days; &amp; increase in jail beds if sentences &lt; 90 days</u></b>					
--Class A1 Misd to Class I felony	12	0	1	4	4	4
<b><u>Sect. 1A – Discharge weapon from vehicle at person Class D</u></b>	1	0	1	2	2	2
<b><u>Total Convictions</u></b>	613	--	--	--	--	--
<b><u>TOTAL PRISON BEDS</u></b>		<b>0</b>	<b>177</b>	<b>364</b>	<b>364</b>	<b>364</b>

Source: Sentencing and Policy Advisory Commission

Assumptions and methodology for specific offenses follow. **A general assumption for all of the new offenses is that any new sentences would run concurrently with other offenses not consecutively. Otherwise, the impact would be more substantial than shown in Table 3**

G.S. 14-50.17(a) and (b):

G.S. 14-50.17(a) makes it a Class H felony for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity. It is assumed for purposes of this analysis that the “pattern of criminal street gang activity” may be charged and result in



conviction only as a derivative of a new (third) offense subsequent to the two prior convictions for criminal gang activity, as described in the proposed G.S. 14-50.16(3). Convictions for the offense of subsection (a) therefore would occur in addition to convictions for other, companion offenses (both misdemeanor and felony). The impact of the derivative Class H offense on the prison population would depend on the offense class for the companion offense and whether the sentences are run concurrently or consecutively

G.S. 14-50.17(b) makes it a Class H felony for a person to acquire or maintain any interest in or control of any real or personal property through a pattern of criminal gang activity or proceeds derived therefrom. This offense may be committed by the person who commits a “pattern of criminal street gang activity” (as a derivative of some other offense) or as a stand-alone felony for any person who acquires an interest in property with the proceeds derived from gang activity (*i.e.*, a person not otherwise involved in gang activity may commit this offense if they acquire any of the proceeds of gang activity or use such proceeds to purchase other property).

- For the 6,572 Class I convictions and the 51,943 misdemeanor convictions in the eligible pool, additional convictions for the derivative Class H offenses may result in additional prison impact. The impact would vary depending on whether sentences are run concurrently or consecutively. The following threshold analyses assume that sentences are run concurrently. However, the impact would be greater if any sentences are run consecutively.
  - If, for example, it is assumed that 519 misdemeanor convictions (**1% of the potentially eligible misdemeanor convictions**) would result in a Class H conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 155 additional prison beds the first year and 322 additional prison beds the second year.
  - If, for example, it is assumed that 65 Class I convictions (1% of the potentially eligible Class I convictions) would result in a Class H conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 14 additional prison beds the first year and 22 additional prison beds the second year.

G.S. 14-50.17(b) Acquires an Interest in Property (stand-alone felony) In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

G.S. 14-50.17(c) makes it a Class F felony for a person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity. It is assumed for purposes of this analysis that the “pattern of criminal street gang activity” may be charged and result in conviction only as a derivative of a new (third) offense subsequent to the two prior convictions for criminal gang activity, as described in the proposed G.S. 14-50.16(3). Convictions for the offense of subsection (c) therefore would occur in addition to convictions for other, companion offenses (both misdemeanor and felony).

The offense in subsection (c) is substantially the same as that of subsection (a), with the additional element that the defendant acted as an organizer, supervisor, or manager in the gang and the alternative element (to commission, attempt, solicitation, coercion or intimidation) that the organizer may be convicted based on a conspiracy to engage in the pattern of criminal gang activity.

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

G.S. 14-50.17(d) makes it a felony for a person to cause, encourage, solicit, or coerce another to participate in criminal street gang activity. Violation of this subsection is a Class H felony when the person solicited is 16 or older and a Class F felony when the person solicited is under the age of 16.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

G.S. 14-50.17(e): G.S. 14-50.17(e) makes it a Class H felony for a person to communicate a threat of injury or damage to property with the intent to deter another person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

G.S. 14-50.17(f) makes it a Class H felony for a person to communicate a threat of injury or damage to property with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

Persons eligible for conviction of this offense include some portion of those currently convicted of the offenses listed below. The proposed offense does not encompass all conduct covered by the listed offenses because of some differences in the elements of each (*e.g.*, “communicating threats” requires that the victim actually believe the threat may be carried out, which the proposed offense does not, but the proposed offense applies only in the context of threats against those who help gang members defect).

**Table 4: Persons Eligible for Conviction under G.S. 14-50.17(e) and (f)**  
**FY 2005/06**

G.S.	Description	Class	Number of Convictions
14-16.7	Threats against executive, legislative or court officers	I	3
14-196(a)(2)	Threatening phone call	2	208
14-196.3	Cyberstalking <sup>7</sup>	2	11
14-277.1	Communicating threats	1	3,033
14-394	Anonymous or threatening letters, mailing or transmitting <sup>8</sup>	1	No AOC code

<sup>7</sup> The AOC has a single offense code for cyberstalking, which includes four distinct offenses. The proposed offense encompasses only one of those four.

<sup>8</sup> G.S. 14-394 prohibits several forms of threatening or harassing communications, including to corporate victims. Only convictions reflecting communications to individuals would be eligible for conviction under the proposed Senate Bill 1358 (Second Edition)

**Source:** Sentencing and Policy Advisory Commission

It is not known how many of the convictions in Table 4 would become Class H felonies under this proposed subsection

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

### **G.S. 14-50.18. Enhanced offense for criminal gang activity.**

G.S. 14-50.18 enhances the sentence for a misdemeanor offense by one offense class if it was committed for the benefit of, at the direction of, or in association with, any criminal street gang. Class A1 misdemeanors would be enhanced to Class I felonies under this provision.

In FY 2005/06 there were 170,001 misdemeanor convictions – 15,094 Class A1, 97,039 Class 1, 31,986 Class 2, and 25,882 Class 3 convictions. It is not known how many of these convictions involved an offense committed for the benefit of, at the direction of, or in association with, any criminal street gang. As such, it is not possible to determine how many convictions would be affected by this proposal or to determine the impact of this proposal. *However, enhancing a defendant's sentence by raising it one offense class higher than the class of the committed misdemeanor offense will, in general, increase the defendant's likelihood of receiving an active sentence and increase the chance of receiving a longer sentence that would result in the need for additional jail and prison beds.*

Any Class 1, Class 2, or Class 3 misdemeanor convictions that would be raised one offense class higher (to Class A1, Class 1, or Class 2, respectively) could result in the need for additional jail beds (sentence of 90 days or less) or prison beds (sentence greater than 90 days).

Any Class A1 misdemeanor convictions raised to Class I felony convictions would result in the need for additional prison beds. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months.

- If, for example, there were 12 Class A1 misdemeanor convictions per year that were raised to Class I felonies, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.
- If, for example, it is assumed that 151 Class A1 misdemeanor convictions (1% of Class A1 misdemeanor convictions) would be raised to Class I felonies, the combination of active sentences and probation revocations would result in the need for 13 additional prison beds the first year and 44 additional prison beds the second year.

### **FRD assumes 12 Class A1 misdemeanors as the minimum fiscal impact of this bill**

**Section 1A** amends G.S. 14-34.1(b), to create a new offense for any person who willfully or wantonly discharges a weapon described in subsection (a) of G.S. 14-34.1 from a vehicle and toward a person. Violation would be a Class D felony.

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offense. The AOC currently does not have a specific offense code for violations of G.S. 14-394. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2005/06 the average estimated time served for an offender convicted of a Class D offense was 75 months. If, for example, there was one conviction for this offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

**Note:** Although the proposed offense is created by amending the existing subsection (b) of G.S. 14-34.1, the offense created by this amendment consists of completely different elements from the existing offense. Persons eligible for conviction of the proposed offense would not necessarily be eligible for conviction of the existing offense. In FY 2005/06, there were no convictions under G.S. 14-34.1(b).

### **CURRENT LAW REGARDING CRIMINAL STREET GANG CONDUCT**

G.S. 15A-1340.16(d) lists aggravating factors that can be applied to felony sentences under Structured Sentencing. Under G.S. 15A-1340.16(d) (2a), it is an aggravating factor if:

The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

The Administrative Office of the Courts’ Automated Criminal Infraction System does not contain data on the application of aggravating or mitigating factors, so it is not known how often this factor is currently used.

### **Department of Correction – Division of Community Corrections**

Although an increased rate of active sentencing (imprisonment) is expected, the effective enhancement of otherwise lower-level offenses will increase the rate of intermediate sanctioning and length of offender supervision.<sup>9</sup> Furthermore, any new conviction and non-active sentence, resultant deferral

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<sup>9</sup> Refers to existing, lower-level criminal offenses containing elements shared by the proposed gang-related offenses (i.e. an offender could be prosecuted under the existing offense, irrespective of the proposed gang-related offense).

and mandatory supervised probation, and/or mandatory post-release supervision period will increase the demand for supervisory officers.<sup>10</sup> Presently, the estimated total position cost of an intermediate officer is approximately \$41,643. It is not known how this legislation will alter DCC supervisory officer allocations.

Likewise, it is not known how many of the roughly 400 remaining *non-active sentences* would result in intermediate or community punishments; to which sanction type; or, for how long.<sup>11</sup> However, based on the predominant Class H felony penalty level, it is assumed that most resultant non-active sentences will include intermediate sanctions. In FY 2005-06, for all offenses and prior record levels, approximately 48% of Class H convictions resulted in intermediate sanctions – predominately special probation, intensive supervision probation, or house arrest with electronic monitoring.

A brief summary of DCC supervisory costs is included below:

- General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution.
- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 (electronic house arrest) to \$14.97 (intensive supervision probation), depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months (approx. \$2,732) with general supervision assumed for a designated period thereafter.

### **Judicial Branch**

#### *Proposed G.S. 14-50.25 – Conditional discharge and expunction of records for first offense*

G.S. 14-50.25 authorizes deferred prosecution (probation, dismissal, and discharge) and the expunction of records for offenders who: 1) are convicted under G.S. 14-50.17 or G.S. 14-50.18; 2) have no prior criminal conviction; and, 3) are ages sixteen or seventeen at the time of the offense. The bill also establishes a \$65.00 fee for expunction petitions, which are payable to the clerk of superior court and are remitted to the General Fund.

*Present data precludes an estimate of the number of first time offenders, ages sixteen or seventeen, who would qualify for deferred prosecution, comply with probation requirements, and petition the court for expunction of the complete record. **Consequently, the amount of potential fee revenues and costs are indeterminate.*** Nonetheless, any resultant increase in expunction petitions is expected to increase workload and costs for superior and district court, as well as the Administrative Office of the Courts:

- Clerks would devote time to receiving, filing, and processing petitions, reporting granted expunctions, receiving and processing fees, as well as destroying and otherwise expunging court files and records;
- Judges would review affidavits, preside over hearings, and make final determinations;

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<sup>10</sup> Proposed G.S. 14-50.25 authorizes the deferral, discharge, and dismissal for first time offenders: who 1) were convicted of an offense under G.S. 14-50.17 or G.S. 14-50.18; and, 2) were age sixteen or seventeen at the age of the offense.

Per Structured Sentencing, Classes B1-E active sentences are followed by a mandatory period of post-release supervision. Based on the minimum Class D sentence of 50 months, post-release impact will primarily occur beyond the five-year fiscal note window.

<sup>11</sup> Approximation derived from the overall offender pool. Figure represents those convictions which are not assumed to result in active sentences, based on FY 2005-06 sentencing rates.

- District attorneys would allocate staff and other resources to review petitions, check files, notify victims, and, in some cases, make and argue objections.
- The Administrative Office of the Courts would also assume additional workload and costs for record-keeping; programming; development and production of forms; postage; copying, and other operating costs.

*Proposed G.S. 14-50.16 – 14-50.24, and Sections 1A, 1B, and 2: Criminal and Civil Liability*

Based on the large pool of potential offenders, Fiscal Research anticipates a significant number of new or enhanced criminal cases, accompanied by increased trial rates and case lengths, which will generate significant costs for the court-system. However, given available data, the exact impact of the proposed offenses on court caseload and personnel workload cannot be determined.

The table below illustrates the estimated costs for criminal cases, by trial and guilty plea, for the affected offense classes. ***Effectively enhancing otherwise misdemeanor offenses to felonies will elevate future cases to superior court, rather than district court.*** This elevation will increase jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

**Table 5 AOC Estimated Costs per Trial and Plea: FY 2007-08**

<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>
<b><i>G.S. 14-50.18: Criminal gang activity enhancement for misdemeanor offenses.</i></b>		
Class 2 Misdemeanor	\$2,770	\$230
Class 1 Misdemeanor	\$3,702	\$243
Class A1 Misdemeanor	\$4,215	\$245
Class I Felony	\$6,980	\$298
<b><i>G.S. 14-50.17: Participation in criminal street gang activity prohibited.</i></b>		
Class H Felony	\$7,345	\$325
Class F Felony	\$9,310	\$520
<b><i>G.S. 14-34.1: Discharging weapon from a vehicle toward a person.</i></b>		
Class D Felony	\$11,786	\$606

Additional court-time requirements could also be assumed for civil forfeiture (G.S. 14-2.3) and nuisance abatement actions (Chapter 19) related to criminal street gang activity, as well as lengthened pre-trial release hearings. However, the number and complexity/ duration of such actions are indeterminate.

**Department of Justice**

The Department of Justice receives expungement orders from the courts and performs the actual expungement from the SBI criminal records database (updating of the Criminal Information System), in addition to forwarding the orders to the Federal Bureau of Investigation (FBI). Consequently, an increase in the number of expunction petitions could necessitate additional processing resources. Additional investigative and prosecutorial workload could also be assumed, contingent upon the number of civil forfeiture (G.S. 14-2.3) and nuisance abatement actions (Chapter 19) commenced.

**Crime Control and Public Safety**

*Section 3* of SB 1358 appropriates \$3,000,000 (FY 2007-08) to the Governor’s Crime Commission to provide grants for street gang violence prevention and intervention programs, and which must include a matching requirement of 25%. The current Senate budget (Senate version of HB 1473) appropriates \$3,000,000 for these grants while the House budget appropriates \$4,760,000. It is assumed that at least \$3 million will be funded in the final Conference budget for this purpose.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

**TECHNICAL CONSIDERATIONS:** None

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**Signed Copy Located in the NCGA Principal Clerk's Offices**