

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 582 (Second Edition)

SHORT TITLE: Amend Felony Firearms Act/Increase Penalties.

SPONSOR(S): Representatives Daughtry and Jordan

| | FISCAL IMPACT | | | | |
|---|-------------------|-------------------|---------------------------|-------------------|-------------------|
| | Yes (X) | No () | No Estimate Available () | | |
| | <u>FY 2011-12</u> | <u>FY 2012-13</u> | <u>FY 2013-14</u> | <u>FY 2014-15</u> | <u>FY 2015-16</u> |
| EXPENDITURES: | | | | | |
| Correction | | | | | |
| Probation | | | | | |
| Judicial | | | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch | | | | | |
| EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to offenses committed on or after that date. | | | | | |
| <i>*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.</i> | | | | | |

BILL SUMMARY:

The proposed legislation would increase the criminal penalty for certain violations of the Felony Firearms Act. Under current law, all violations of the Felony Firearms Act are a Class G felony. House Bill 582 would add ammunition and electric weapons to the prohibited item a felon cannot possess. The act would also prohibit a felon from carrying a concealed weapon, including a tear gas gun or similar device intended for use as a weapon.

The act would change the penalties for violation of the law as follows:

- Violation of the act in general- Class G felony
- Violation and discharging of the weapon- Class E felony

- Violation resulting in serious injury to a person- Class D felony
- Violation resulting in serious bodily injury to a person- Class C felony

The act defines serious bodily injury and serious injury using the same definitions that are used in the assault statutes and the common law. The proposed legislation becomes effective date of December 1, 2011 and applies to offenses committed on or after that date.

Adopted from Community Counsel's bill summary dated May 13, 2011.

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.

Department of Correction – Division of Prisons

This bill amends G.S. 14-415.1, Possession of firearms, etc., by felon prohibited, by broadening the scope of the existing offense and creating several new offenses within the section. Existing G.S. 14-415.1(a) provides that it shall be a Class G felony for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or weapon of mass death and destruction.

G.S. 14-415.1(a) is amended by adding to the list of items that a convicted felon shall not purchase, own, possess or have in his custody, care or control, any ammunition or any electric weapon or electric device intended to be used as a weapon, thereby expanding the scope of the existing Class G felony. The scope of the Class G felony is further expanded by the amendment to G.S. 14-415.1(a) that provides that it is also unlawful for any person who has been convicted of a felony to carry a concealed weapon, including a tear gas gun or a chemical weapon or chemical device intended to be used as a weapon. G.S. 14-415.1(a1)(1) provides that unless the conduct is covered under some other provision of law providing greater punishment, a violation of G.S. 14-415.1(a) is a Class G felony.

There were 1,145 convictions under G.S. 14-415.1(a) for possession of a firearm by a felon during FY 2009-10. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2009-10, 42 percent of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. If, for example, there were two additional Class G convictions for this proposed offense 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.

This bill creates a new offense and could reclassify some offenders who are currently convicted under several existing offenses through the addition of G.S. 14-415.1(a1)(2). G.S. 14-415.1(a1)(2) creates a new Class E felony, providing that unless the conduct is covered under some other provision of law providing greater punishment, a person who violates G.S. 14-415.1(a) and discharges the firearm, electronic weapon or device or any other weapon described in G.S. 14-415.1(a) is guilty of a Class E felony.

1. The bill reclassifies some offenders who may currently be charged with a Class G felony under G.S. 14-415.1(a), as Class E felons under G.S. 14-145.1(a1)(2).

It is unknown how many of the 1,145 convictions for possession of a firearm by a felon would meet the requirements for a Class E felony under the proposed statute. Impact on the prison population will occur if Class G convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (51 percent for Class E compared to 42 percent for Class G) and longer average estimated time served (27 months compared to 15 months for Class G). If, for example, there were two Class G felony convictions that were reclassified as Class E felony convictions, this would result in the need for no additional prison beds the first year and one additional prison bed the second year. No additional prison beds would be needed in year one because average estimated time served for both Class G and Class E felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. 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.

2. The bill also creates a new Class E felony for some offenders who discharge a firearm. Offenders who are convicted felons and may currently be charged under G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property, or under G.S. 14-34.9, Discharging a firearm from within an enclosure, could be charged under G.S. 14-415.1(a2). G.S. 14-34.1(a) provides that it shall be a Class E felony for any person to willfully and wantonly discharge or attempt to discharge any firearm or barreled weapon into any building, structure, vehicle, or enclosure while it is occupied. G.S. 14-34.9 provides that it shall be a Class E felony for any person to willfully or wantonly discharge or attempt to discharge a firearm, as part of a pattern of criminal street gang activity, from within any building, structure, motor vehicle, or other conveyance, erection or enclosure toward a person(s) not within that enclosure. Since the current offenses and the new offense are Class E felonies, it would not change the classification of the offense of conviction.

In FY 2009-10, there were 83 convictions for discharging a weapon into occupied property and no convictions for discharging a firearm from within an enclosure. It is unknown how many of these offenses were committed by convicted felons. Charging convicted felons under the proposed section would have no effect on the prison population, because it does not change the offense class.

3. Finally, a new Class E felony is created by G.S. 14-415.1(a1)(2). Some offenders may be charged with a Class E felony for the new offense of discharging an electric weapon or device, a tear gas gun, or a chemical weapon or device.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2009-10, 51 percent of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two Class E convictions for this proposed offense 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. 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.

The bill creates a new offense and could reclassify some offenders who are currently convicted under two existing offenses through the addition of G.S. 14-415.1(a1)(3), which provides that a person who violates G.S. 14-415.1(a) is guilty of a Class D felony if the violation results in serious injury to a person.

1. This bill reclassifies some offenders who may currently be charged with a Class G felony under G.S. 14-415.1(a), as Class D felons under G.S. 14-415.1(a1)(3).

It is unknown how many of the 1,145 convictions for possession of a firearm by a felon would meet the requirements for a Class D felony under the proposed statute. Impact on the prison population will occur if Class G convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100 percent for Class D compared to 42 percent for Class G) and longer average estimated time served (63 months compared to 15 months for Class G). If, for example, there were two Class G felony convictions that were reclassified as Class D felony convictions, this 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.

2. Some offenders guilty of the conduct prohibited in G.S. 14-415.1(a1)(3), may currently be punished under G.S. 14-32(b). G.S. 14-32(b) provides that it shall be a Class E felony for any person to assault another with a deadly weapon and inflict a serious injury in so doing; this bill would reclassify those offenders who inflict serious injury to a person as a result of violating the provisions of G.S. 14-415(a) as Class D felons.

There were 432 convictions for assault with a deadly weapon inflicting serious injury in FY 2009-10. It is unknown how many of these convictions were for offenses committed by convicted felons and would be reclassified from Class E to Class D under the proposed bill. Impact on the prison population will occur if Class E convictions become Class D

convictions under the proposed statute because of the higher rate of active sentences (100 percent for Class D compared to 51 percent for Class E) and longer average estimated time served (63 months compared to 27 months for Class E). If, for example, there were two Class E felony convictions that were reclassified as Class D felony convictions, this would result in the need for one additional prison bed the first year and one additional prison bed 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.

3. Finally, a new Class D felony is created by G.S. 14-145(a1)(3). Some offenders may be charged with a Class D felony for the new offense of inflicting serious injury to a person as a result of carrying ammunition, an electric weapon or device, a tear gas gun, or a chemical weapon or device.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2009-10 the average estimated time served for an offender convicted of a Class D offense was 63 months. If, for example, there was one conviction for this proposed offense per year, this proposed change 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.

Finally, G.S. 14-415.1(a1)(4) creates a new Class C felony and could reclassify some offenders who are currently convicted under an existing offense. G.S. 14-415.1(a1)(4) provides that a person who violates G.S. 14-415.1(a) is guilty of a Class C felony if the violation results in serious bodily injury to a person.

1. This bill reclassifies some offenders who may currently be charged with a Class G felony under G.S. 14-415.1(a), as Class C felonies under G.S. 14-415.1(a1)(4).

It is unknown how many of the 1,145 convictions for possession of a firearm by a felon would meet the requirements for a Class C felony under the proposed statute. Impact on the prison population will occur if Class G convictions become Class C convictions under the proposed statute because of the higher rate of active sentences (100 percent for Class C compared to 42 percent for Class G) and longer average estimated time served (82 months compared to 15 months for Class G). If, for example, there were two Class G felony convictions that were reclassified as Class C felony convictions, this 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.

2. Some offenders guilty of the conduct prohibited in G.S. 14-415.1(a1)(4), may currently be punished under G.S. 14-32.4(a). G.S. 14-32.4(a) provides that it shall be a Class F felony for any person to assault another and inflict serious bodily injury in so doing. The bill would reclassify those offenders who inflict serious bodily injury to a person as a result of violating the provisions of G.S. 14-415(a) as Class C felonies.

There were 214 Class F felony convictions for assault with a deadly weapon inflicting serious injury under G.S. 14-32.4 in FY 2009-10. It is unknown how many of these convictions were for offenses committed by convicted felons and would be reclassified from Class F to Class C under the proposed bill. Impact on the prison population will occur if Class F convictions become Class C convictions under the proposed statute because of the higher rate of active sentences (100 percent for Class C compared to 54.3percent for Class F) and longer average estimated time served (82 months for Class C compared to 18 months for Class F). If, for example, there were two Class F felony convictions that were reclassified as Class C felony convictions, this 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.

3. Also, a new Class C felony is created by G.S. 14-415.1(a1)(4) inflicting serious bodily injury as a result of carrying ammunition, an electric weapon or device, a tear gas gun, or a chemical weapon or device.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2009-10, the average estimated time served for an offender convicted of a Class C offense was 82 months. If, for example, there was one conviction for this proposed offense per year, this proposed change 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.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 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 ranges from \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

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.

The proposed legislation may create new charges through the expansion of the list of prohibited items and may elevate existing charges based on certain aspects of the offense. These changes are likely to cause an increase in court workload.

In calendar year 2010, there were a total of 3,996 defendants with possession of firearm by felon. It is not known how many of these charges had a superseding charge stemming from the same incident or would have been upgraded under this bill. It is anticipated that by elevating these charge classifications the courts will experience an increase in workload due to fewer defendants entering pleas and more opting for disposition by trial. In addition, charges with lengthy potential sentences generally involve a more vigorous (and more time consuming) defense, consequently impacting in-court workload. Impact would be in superior court, affecting superior court judges, court reporters, deputy clerks, assistant district attorneys, and victim witness legal assistants.

Overall, In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: North Carolina Sentencing and Policy Advisory Commission; Judicial Branch

TECHNICAL CONSIDERATIONS: None

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