

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 937 (First Edition)

**SHORT TITLE:** Amend Various Firearms Laws.

**SPONSOR(S):** Representatives Schaffer, Burr, Faircloth, and Cleveland

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety					
<b>EFFECTIVE DATE</b> October 1, 2013					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address changes in existing offenses being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on these offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

Sections 1 through 3 and Section 1 of the bill may result in a cost-savings because they narrow the scope of an existing penalty. Sections 4 and 5 may result in a cost because they expand or add enhancements to existing penalties.

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

Section 1 of this bill narrows the scope of existing Class I felony and Class 2 misdemeanor offenses. G.S. 14-269 provides in subsection (a1) that it shall be unlawful for any person to carry a concealed weapon except in certain circumstances. This bill narrows the scope of the existing offenses by stating that the Class 2 misdemeanor and Class I felony offenses do not apply to a person who has a valid concealed handgun permit, or who is exempt from obtaining such, provided that the weapon is a handgun, is in a closed compartment or container within the person's locked vehicle, and the vehicle is in a parking area owned or leased by State Government.

Section 2 amends existing G.S. 14-269.2, Weapons on campus or other education property, by adding new subsections (i), (j), and (k), which narrows the scope of several existing criminal penalties. New subsection (i) would exempt from violation employees of a higher education institution who reside on campus and meet certain criteria; (j) would exempt employees of a public or nonpublic school who reside on campus and meet certain criteria; (k) would exempt people who have a concealed handgun permit and have a handgun in a closed compartment within a locked vehicle on the property of a higher education institution.

Section 3 of this bill creates G.S. 14-269.3(b)(5), Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed, which narrows the scope of the existing Class 1 misdemeanor by exempting from violation of 14-269.3, a person carrying a handgun if the person has a properly issued, valid concealed handgun permit, or is exempt from obtaining such, but does not permit a person to carry a handgun on any premises where the owner or person in control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises. Currently, G.S. 14-269.3 provides that it shall be a Class 1 misdemeanor for any person to carry any gun, rifle, or pistol into any assembly where a fee has been charged for admission thereto, or into any establishment in which alcoholic beverages are sold and consumed.

Section 4 of this bill expands the scope of an existing Class 2 misdemeanor. Currently, G.S.14-316, Permitting young children to use dangerous firearms, provides that it shall be a Class 2 misdemeanor for any parent, guardian, or person standing in loco parentis to knowingly permit his child under the age of 12 to have the possession, custody or use in any manner whatever, any gun, pistol, or other dangerous firearm, whether loaded or unloaded, except when the child is under the supervision of the parent, guardian or person standing in loco parentis. This bill amends G.S. 14-316 to provide that it shall be unlawful for any person to permit a child to have access to, or possession, custody or use in any manner whatever, of any gun, pistol or other dangerous weapon, whether loaded or unloaded, unless the person has the permission of the child's parent or guardian, and the child is under the supervision of an adult. Thus, the scope of the Class 2 misdemeanor is expanded to any person, not just a parent, guardian or person standing in loco parentis violating G.S. 14-316, and the acts by which a person may violate G.S. 14-316 are expanded to include allowing access by a child under the age of 12 to a gun.

Section 5 amends existing G.S. 15A-1340.16A, Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony raising the minimum term of imprisonment to 72 months to which the person shall be sentenced if the felony is a Class A, B1, B2, C, D or E felony offense and it is found that the conditions regarding the use of a firearm or deadly weapon requirement were met. New subdivision (2) creates a new sentence enhancement of 36 months for Class F or G felony offenses when it is found that the conditions regarding the use of a firearm or deadly weapon requirement were met. New subdivision (3) creates a new sentence enhancement of 12 months for Class H or I felony offenses when it is found that the conditions regarding the use of a firearm or deadly weapon requirement were met.

Section 11 of the bill narrows the scope of the existing Class H felony, by amending G.S. 14-415.3, Possession of a firearm or weapon of mass destruction by persons acquitted of certain crimes by reason of insanity or persons determined to be incapable to proceed prohibited. Currently, G.S. 14-415.3 provides that it shall be a Class H felony for a person who has been acquitted by reason of insanity of certain crimes or who has been determined to lack capacity to proceed for certain crimes to purchase, own, possess, or have in his custody, care, or control, any firearm or any weapon of mass death and destruction. The addition of subsection (c) to G.S. 14-415.3 would narrow the scope of the Class H felony by exempting from violation of G.S. 14-415.3 a person whose rights have been restored pursuant to G.S. 122C-54.1, Restoration process to remove mental commitment bar.

Sections 1 through 6 have an effective date of October 1, 2013, and apply to offenses committed on or after that date. The remainder of this bill becomes effective on October 1, 2013.

**ASSUMPTIONS AND METHODOLOGY:**

**General**

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

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina’s court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

**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.

Sections 1 through 3 of the bill narrow the scope of existing criminal penalties. AOC is not able to determine how many of the charges under existing law would no longer be violations under the changes proposed in these sections. For each of these current charges that are no longer violations, AOC will see a savings of the average cost to dispose of the case. The average cost for each offense is as follows:

<b>Charge Class</b>	<b>Cost per Disposition</b>
Class 2 misdemeanor	\$88
Class 1 misdemeanor	\$165
Class I felony	\$365
Class F Felony	\$912

Section 4 expands the scope of an existing Class 2 misdemeanor offense for violating existing provisions of G.S. 14-316(a). AOC is not able to determine how many additional charges of this offense may occur due to the broadening of the scope of the violation. For every additional person charged with this offense, AOC estimates the cost to the course would be \$88.

Section 5 amends existing G.S. 15A-1340.16A, and raises the minimum term of imprisonment in an existing sentence enhancement and creates two new sentence enhancements. The possibility for an increased length of active sentence punishment could result in a more vigorous defense and therefore a more lengthy trial/sentencing hearing. AOC does not have data on the number of cases that these increased and new sentence enhancements would apply to, and thus, cannot estimate any increase in court workload from the changes proposed in this section.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. This bill would not have a direct and quantifiable impact on IDS. By expanding the coverage of an existing offense, Section 4 of the bill may increase the number of indigent cases in which IDS has to provide appointed counsel. In addition, by increasing the seriousness of a criminal penalty and sentence in Section 5, the private appointed counsel (PAC) attorneys may have to spend more time on cases. IDS's data does not provide any way to quantify impact.

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

Since the bill makes changes to several existing offenses, 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 changes made in this bill.

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 2012.

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). The cost to add one additional inmate to the prison system is \$11.23 per day, which includes the cost of food, clothing, and health care.

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

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2013</b>	<b>June 30 2014</b>	<b>June 30 2015</b>	<b>June 30 2016</b>	<b>June 30 2017</b>
1. Inmates <sup>2</sup>	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

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

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

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.<sup>4</sup> General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; 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 intermediate sanctions and supervised probations.

Section 1 narrows the scope of an existing Class 2 misdemeanor offense because it is not known how many fewer convictions may result from this. As a result, the impact cannot be determined. Section 4 expands the scope of an existing Class 2 misdemeanor. It is not currently known how many additional convictions may result from the proposed broadening of the current statute. In FY 2011-12, 29% of offenders convicted of a Class 2 misdemeanor were sentenced to active sentences for an average length of 39 days; 1% received intermediate sentences; and 70% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 16 and 13 months, respectively. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives an intermediate sentence is \$1,742 (480 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives community supervision is \$1,416 (390 days times \$3.63 per day).

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

<sup>3</sup> Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

<sup>4</sup> CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

Section 1 and Section 2 narrows the scope of existing Class I felonies because it is not known how many fewer convictions may result from this. As a result, the impact cannot be determined. In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup> The average length of intermediate and community punishment imposed for this offense class was 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is \$2,831 (780 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is \$2,396 (660 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced to intermediate or supervised community sentences under the proposed bill.

Section 2 and Section 3 narrows the scope of existing Class 1 misdemeanors because it is not known how many fewer convictions may result from this. As a result, the impact cannot be determined. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is \$1,960 (540 days times \$3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is \$1,634 (450 days times \$3.63 per day).

Section 2 narrows the scope of existing Class F felonies because it is not known how many fewer convictions may result from the proposed narrowing of the current statute. As a result, the impact cannot be determined. In FY 2011-12, 53% of Class F felony offenders received active sentences; 47% received intermediate sentences. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup> The average length of intermediate punishment imposed for this offense class was 33 months. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence is \$3,594 (990 days times \$3.63 per day).

Section 5 amends an existing sentencing enhancement for certain Class A through E felony offenses and creates two new sentencing enhancements for certain Class F and G felony offenses and certain Class H and I felony offenses. The proposed change of the minimum sentence enhancement for the Class A through Class E firearm/deadly weapon enhancement from 60 to 72 months would result in long-term impact. However, the impact would depend on its usage. Over the past ten fiscal years, this firearm/deadly weapon enhancement has been applied to only one conviction. In FY 2011-12 the firearm/deadly weapon enhancement was applied to a Class B2 second degree murder conviction. It is not known whether the usage of the enhancement would increase with the proposed change in the length of the minimum sentence enhancement.

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<sup>5</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

The creation of a new firearm/deadly weapon enhancement of 36 months for Class F or G felony offenses would also result in long-term impact, while the 12-month enhancement for Class H or I felony offenses would result in short-term impact. The impact would depend on its usage. Since the proposed bill creates new enhancements, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might receive these enhancements.

Section 11 narrows the scope of the existing Class H felony because it is not known how many fewer convictions may result from this. As a result, the impact cannot be determined. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup> The average length of intermediate and community punishment imposed for this offense class was 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is \$3,158 (870 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is \$2,831 (780 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

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

**TECHNICAL CONSIDERATIONS:** None

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