

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Fiscal Note

BILL NUMBER: House Bill 562 (Fourth Edition)

SHORT TITLE: Amend Firearm Laws.

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

FISCAL IMPACT					
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No Estimate Available		
State Impact	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
General Fund Revenues:					
General Fund Expenditures:	\$898,088	(\$54,787)	(\$67,808)	(\$69,736)	(\$71,642)
State Positions:					
NET STATE IMPACT	(\$898,088)	\$54,787	\$67,808	\$69,736	\$71,642
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Administrative Office of the Courts, Department of Public Safety, Office of Indigent Defense Services, Department of Agriculture and Consumer Services					
EFFECTIVE DATE: See Bill Summary					
TECHNICAL CONSIDERATIONS:					
Yes - See Technical Considerations Section					

FISCAL IMPACT SUMMARY:

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

Net Costs/(Savings) by Agency Adjusted for Inflation					
	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Administrative Office of the Courts (AOC) ¹	\$945,840	(\$5,608)	(\$5,770)	(\$5,929)	(\$6,074)
Office of Indigent Defense Services (IDS)	(\$3,064)	(\$3,147)	(\$3,238)	(\$3,327)	(\$3,408)
Department of Public Safety (DPS) - Community Corrections	(\$44,688)	(\$46,032)	(\$58,800)	(\$60,480)	(\$62,160)
Total	\$898,088	(\$54,787)	(\$67,808)	(\$69,736)	(\$71,642)
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>					

Please see the Assumptions and Methodology section for additional information.

¹ AOC estimates for FY 2015-16 include savings of \$5,360 from the changes in Section 9, costs of \$215,700 from the changes in Section 11.(d), costs of \$289,620 from the changes in Section 11.(h), and costs of \$428,700 from the changes in Section 11.(i), all adjusted for inflation. \$215,700 plus \$289,620 plus \$428,700 equals \$934,020 minus \$5,360 equals \$928,660. \$928,660 times 1.0185 equals \$945,840.

BILL SUMMARY:

The proposed bill makes various changes to laws regarding firearm offenses, firearm possession, firearms permits, and reporting requirements to the National Instant Criminal Background Check System (NICS). Most sections become effective on October 1, 2015 with some variation. See Assumptions and Methodology for specific information about each section of the proposed bill.

ASSUMPTIONS AND METHODOLOGY:

Sections 1.(a), 1.(b), and 1.(c)

The proposed bill amends G.S. 14-269(b) to exempt employees of the Department of Public Safety (DPS) from certain firearm offenses if they have been designated in writing and have in their possession written proof of the designation. The bill also exempts any person who is an administrative law judge. Both exempt parties must have a concealed handgun permit in accordance with Article 54B of Chapter 14 and are prohibited from carrying a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. In addition, subdivision (4a) is amended to allow a district attorney to carry a concealed weapon while in a courtroom. The bill amends G.S. 14-269.4 to exempt a pocket knife in the closed position from the prohibited weapons in the State Capitol Building and grounds. The bill amends G.S. 14-415.27 to make a conforming change. These sections have an effective date of July 1, 2015 and apply to offenses committed on or after that date.

The Fiscal Research Division (FRD) estimates no significant fiscal impact due to these changes. The Administrative Office of the Courts (AOC) states that the exceptions to the firearm offenses in G.S. 14-269(b) generally arise as affirmative defenses for pending charges and do not necessarily reduce the number of charges filed. Because the pool of individuals now included under this exemption is so small, the number of charges or cases affected by this change will be relatively minor.

Sections 1.(d) and 1.(e)

The proposed bill amends G.S. 120-32.1 to permit legislators and legislative employees who have concealed handgun permits to carry concealed handguns in State legislative buildings and grounds upon providing notice to the Chief of the General Assembly Special Police or a designee. The bill amends G.S. 14-415.11(c)(3) to make a conforming change. These sections are effective when they become law.

FRD estimates no significant fiscal impact to the General Assembly Special Police or to the courts due to these changes.

Section 2

The proposed bill amends G.S. 14-269.2(k) to expand the list of conditions under which the provisions of the section shall not apply by adding a person who remains in a locked vehicle and only unlocks the vehicle to allow the entrance or exit of another person and a person who remains in a locked vehicle and moves the handgun to or from concealment on his or her person to move it

to or from a closed compartment or container within the vehicle. This section has an effective date of July 1, 2015 and applies to offenses committed on or after that date.

FRD estimates no measurable fiscal impact due to these changes. These exemptions are more likely to arise as affirmative defenses for pending charges, rather than to defer initial charges.

Section 3

The proposed bill amends G.S. 14-269.2 by adding new subsection (l) which provides an affirmative defense to prosecution under subsection (b) or (f) of the section, stating that a person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) and removed it from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3. This section has an effective date of July 1, 2015 and applies to offenses committed on or after that date.

FRD estimates no measurable fiscal impact due to these changes. This new affirmative defense would only apply during the point of verdict in a pending case and would not defray any existing or future charges.

Sections 4.(a) and 4.(b)

The proposed bill adds new G.S. 106-503.2, Regulation of firearms at State Fair, to Article 45 of Chapter 106, which authorizes the Commissioner of Agriculture to prohibit firearms at the State Fair. Exempted from this prohibition are certain military and law enforcement personnel listed under G.S. 14-269(b) and any individual with a valid concealed handgun permit who leaves their firearm in a locked vehicle on the State Fairgrounds. The proposed bill also directs the Department of Agriculture and Consumer Services, in consultation with the DPS and the North Carolina Sheriffs' Association to study the best method to allow persons with concealed handgun permits to carry a concealed handgun from a parking lot to the entrance of the State Fairgrounds and a secure method for storage and retrieval of the handguns. This section is effective when it becomes law.

FRD estimates no fiscal impact due to Section 4 of the bill. The Department of Agriculture and Consumer Services currently does not allow firearms on the State Fairgrounds and there is no new criminal penalty directly attached to a violation of the prohibition. The Department has indicated that the new study requirement under Section 4 of the bill can be conducted with existing resources available to the Department. This analysis concurs with the Department's assessment.

Sections 5.(a) and 5.(b)

The bill amends G.S. 14-409.46 and G.S. 14-409.47 to change the effective/application dates of multiple provisions governing sport shooting ranges. These sections have an effective date of July 1, 2015. This change does not apply to pending litigation.

FRD estimates no measurable fiscal impact due to these changes. It is possible that by changing these dates there may be fewer instances in which an aggrieved party can bring a civil nuisance suit against a sport shooting range. It is unknown whether there would be an accompanying decrease in civil filings.

Section 6

The proposed bill amends G.S. 14-415.4(a) in subdivision (1) to remove machine guns (as defined in G.S. 14-409(a)) from the limit on firearm rights restoration. This section becomes effective when it becomes law and applies to restorations granted before, on, or after that date.

FRD estimates no measurable fiscal impact due to these changes. Current AOC forms and procedures used in the restoration of firearm rights do not explicitly account for the exception for machine guns.

Section 7

The proposed bill amends G.S. 14-415.12(b) in subdivision (8) and creates new subdivisions (8a), (8b), and (8c) to provide new grounds for denial of a concealed weapon permit: (i) a prior conviction of a misdemeanor crime of domestic violence in State or federal court or (ii) an adjudication of guilty, prayer for judgment continued, or suspended sentence for assaulting or threatening a law enforcement officer, probation or parole officer, etc. This section has an effective date of July 1, 2015 and applies to permit applications submitted on or after that date.

FRD estimates that Section 7 will likely lead to an increase in appeals under G.S. 14-415.15 from denials of concealed weapon permits under the new disqualifiers. These appeals are civil proceedings in district court. AOC does not have an issue code for these matters, so it is not possible to count how many are currently filed or to predict the potential increase. For these appeals in district court there will be workload impact for district court staff for an estimated average cost of \$395 per case.

Section 8

The proposed bill amends G.S. 113-291.1(c) in subdivision (2) to add a “short-barreled rifle” to the list of exemptions from the definition of a weapon of mass death and destruction as defined in G.S. 14-288.8. Weapons of mass death and destruction are items that an individual is prohibited from possessing while taking wildlife. This section has an effective date of July 1, 2015 and applies to offenses committed on or after that date.

FRD estimates no measurable fiscal impact due to this new exemption. This exemption may result in a reduction in Class 1 misdemeanor charges under G.S. 113-291.1. However, AOC does not currently have an offense code for possessing a weapon of mass death and destruction while taking wildlife, which is some indication that it is infrequently charged under current law. Cases involving a short-barreled rifle would be a subset of these charges.

Section 9

The proposed bill amends G.S. 14-415.21 in subsection (a) to reduce a Class 1 misdemeanor to an infraction for carrying a concealed handgun in violation of G.S. 14-415.11(c)(8) while holding a valid permit. Violators may be required to pay a fine up to \$500, or in lieu of paying a fine the person may surrender the permit. Subsection (b) is amended to make a conforming change. This section has an effective date of July 1, 2015 and applies to offenses committed on or after that date.

Judicial Branch

Section 9 of the bill decreases the penalty for violation of G.S. 14-415.11(c)(8) from a Class 1 misdemeanor to an infraction. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class 1 misdemeanor who is instead charged with an infraction, the average savings to the court will be \$134 (\$165 for a Class 1 minus \$31 for an infraction).

In 2014, approximately 40 defendants were charged with violation of G.S. 14-415.11(c)(8). Therefore, the savings to the courts is estimated to be \$5,360 (\$134 difference in court cost between the old offense and the new offense times 40 defendants). The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year reflects the July 1, 2015 effective date.

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Total AOC Cost	(\$5,459)	(\$5,608)	(\$5,770)	(\$5,929)	(\$6,074)

The Office of Indigent Defense Services (IDS) has provided FRD with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The weighted average cost of a Class 1 misdemeanor is \$187.56 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, 39% of Class 1 defendants used IDS services. Using the number of charges provided by AOC, 16 defendants would have used IDS in FY 2013-14 for a total cost of \$3,008 (40 defendants times 39% using IDS equals 16 indigent defendants. (16 defendants times \$187.56 equals \$3,008.) Because IDS does not appoint counsel for infractions, FRD estimates that the annualized savings to IDS from shifting this offense from a Class 1 misdemeanor to an infraction would be \$3,008.

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Total IDS Cost	(\$3,064)	(\$3,147)	(\$3,238)	(\$3,327)	(\$3,408)

Department of Public Safety – Community Correction Section

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (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 (DPS).

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 \$130.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

Monthly Supervision Cost Adjusted for Inflation Five Year Projection						
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Inflation Rate		1.85%	2.72%	2.88%	2.76%	2.44%
Monthly Cost	\$130.50	\$132.90	\$136.52	\$140.45	\$144.32	\$147.85
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)</i>						

In FY 2013-14, 30% of Class 1 offenders received active sentences. All Class 1 offenders with active sentences are housed in county jails. JRA 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.

In FY 2013-14, 70% of Class 1 offenders received probation. The average length of probation imposed for this offense class was 15 months. Offenders charged with an infraction receive neither active sentences nor probation. Therefore, Section 9 of this bill will save the cost of 15 months of probation for 70% of the offenders for this violation who would have been sentenced to probation under the Class 1 misdemeanor charge. The cost of 15 months of probation is \$1,958 per offender (\$130.50 per month times 15 months).

Sections 10.(a) and 10.(b)

Section 10.(a) of the proposed bill repeals the following statutes related to firearm purchase permits: G.S. 14-402, 14-403, 14-404, 14-405, and 14-407.1. Section 10.(b) makes conforming

changes to G.S. 14-315(b1). These sections have an effective date of October 1, 2021 and apply to offenses committed on or after that date.

FRD anticipates that the repeal of the firearm purchase permit statutes will result in a decline and eventual elimination of appeals of denials filed in district court starting in late 2021. AOC does not have historical indexed data upon which to estimate how many appeals are currently filed in an average year and the corresponding level of future diminution.

Section 10.(c)

This section amends G.S. 14-402(a) to exempt from the criminal offense of violating G.S. 14-402, which addresses transferring a pistol to a person without a permit, any person who transfers a pistol after performing a background check via the National Instant Criminal Background Check System (NICS). This section is effective October 1, 2018 and applies to offenses committed on or after that date.

FRD cannot estimate how many, if any, of the current Class 2 misdemeanor charges for violating G.S. 14-402 would be abated by this change. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$88. There may be a decrease in the number of appeals of denied purchase permits filed in district court if more pistol purchasers would now rely on licensed firearms dealers to use this new exemption and conduct a background check through NICS to qualify the purchase or transfer of a gun, instead of the individual having to apply for a pistol permit. With a decrease in permit applications there would likely be a corresponding decrease in denials and resulting appeals. Pistol purchase permits would still be required for the transfer of firearms between private parties. A decrease in civil district filings would affect the workload for deputy clerk and district court judge time for an estimated average savings of \$395 per case.

Section 10.(d)

Section 10.(d) stipulates that a sheriff shall only consider an applicant's conduct and criminal history for the five-year period immediately preceding the application for purposes of determining an applicant's good moral character to receive a handgun permit and provides that the avenue of appeal lies with the superior court rather than the district court. Section 10.(d) further states that DPS will create a permit application form in consultation with the North Carolina Sheriffs' Association and that DPS may request no additional document or evidence for such a permit other than the application form, five dollars, a government-issued identification, proof of residency, and a signed release that authorizes and requires disclosure to the sheriff of any court orders concerning the mental health or capacity of the applicant. Section 10.(d) finally requires an applicant to promptly disclose any accompanying court orders concerning mental health or capacity of the applicant. This section has an effective date of December 1, 2015 and applies to offenses committed on or after that date.

Because these cases will be heard in superior court, there will be workload impact for superior court staff for an estimated cost of \$1,042 per case. The estimated workload for the prior venue of district court is \$395 per case, so the net cost to the courts for each case would be the difference of \$647 per case. AOC does not have cost estimates for cases handled in the North Carolina Court of Appeals. Depending on the volume of appeals to the appellate bench, the corresponding workload

impact could be significant. Also, AOC would need to create a new form for use throughout the Judicial Branch to meet the requirements of new G.S. 14-404(e1)(5), which would lead to some cost to update and circulate the modified form. FRD cannot estimate that cost.

Sections 11.(a), 11.(b), and 11.(c)

Section 11.(a) repeals G.S. 122C-54(d1). Section 11.(b) recodifies G.S. 122C-54.1 as G.S. 14-409.42. Section 11.(c) repeals G.S. 14-404(c1). Subsection (a) becomes effective January 1, 2016; the remaining subsections become effective when this bill becomes law.

FRD does not estimate any costs related to these subsections.

Section 11.(d)

Section 11.(d) creates new G.S. 13-409.43, which requires clerks of superior court to continue to report certain judicial findings and determinations leading to involuntary commitment to the NICS system. New subsection (b) requires that AOC transmit any unserved felony warrants, indictments, criminal summons, or orders to arrest to NCIC or NICS not later than 48 hours, excluding Saturdays, Sundays, and holidays, after receiving notice of such an action. This subsection has an effective date of January 1, 2016.

FRD expects that the recodification of an existing statute into new subsection (a) will not have a net fiscal impact on the State. Clerks of superior court are already reporting the imposition and lifting of NICS bars for mental health commitments listed in subdivisions (1) through (7) of subsection (a). The requirement in subsection (b) that AOC transmit information on unserved felony warrants, indictments, criminal summons, or orders for arrest to the NCIC or NICS within 48 hours, excluding weekends and holidays, will require AOC to develop an interface between the existing warrant repository and the SBI/DCI to automate reporting this information to NICS. AOC's estimate for these changes is 2,876 hours of technology personnel time, equating to a cost of \$215,700. Technology Services Division staff is assigned to technology projects based on priorities identified by Judicial Branch needs. Because technology staff is fully engaged, any additional projects will require additional resources or will require a reassignment from current Judicial Branch priorities.

Sections 11.(e), 11.(f), and 11.(g)

Section 11.(e) amends G.S.122C-54(d2) to limit the record of involuntary commitment as reported to NICS to be accessible only by the sheriff or sheriff's designee for the purpose of conducting background checks under G.S. 14-404. Section 11.(f) directs that certain handgun applications must be provided electronically, and Section 11.(g) makes conforming changes. Section 11.(e) becomes effective when this bill becomes law, and Sections 11.(f) and 11.(g) become effective on October 1, 2015 and apply to applications on or after that date.

FRD expects Section 11.(e) to require clerks of superior court to provide the sheriff or the sheriff's designee with access to involuntary commitment records in the clerk's office as an exception to the usual confidentiality of such records, for which access normally requires a court order under G.S. 122C-54(d). If sheriffs query the clerks about involuntary commitments for all applications for handgun purchase permits under G.S. 14-404, the workload on clerk staff may be significant. AOC does not have data on how many applications under G.S. 14-404 are submitted to sheriffs

statewide or how many of those applications will cause the sheriff to request access to records at the clerk's office. Therefore, FRD cannot estimate a cost for Section 11.(e) at this time. FRD does not expect that Sections 11.(f) and 11.(g) will have any fiscal impact on the State.

Section 11.(h)

Section 11.(h) creates new subsections (a2) through (a5) in G.S. 15A-502 and recodifies the existing (a2) as (a6). New subsection (a2) requires arresting law enforcement agencies to fingerprint individuals charged with offenses listed in subdivisions (1) through (3), to report these offenses to NICS, and to forward the fingerprints to the SBI. New subsection (a5) requires magistrates to enter all information provided by the arresting law enforcement agency on the person arrested into the court information system. Section 11.(h) has an effective date of October 1, 2015.

FRD does not expect new subsections (a3), (a4), and (a6) to have any fiscal impact on the State. New subsection (a2), regarding the expansion of fingerprinting to numerous misdemeanors, will increase the workload for clerk of superior court staff to resolve errors in the automated interfaces between the AOC and SBI computer systems. SBI staff has indicated that this provision will result in a net increase of fingerprinted defendants. AOC anticipates a corresponding increase in error-reconciliation demands. The implementation of this provision will require AOC to report domestic violence convictions to the criminal history systems under (a2)(1) and report charges and convictions to NICS under (a2)(3). FRD estimates that these changes will take 3,862 hours of technology personnel time for AOC, equating to a cost of \$289,620. The DWI-related reporting under (a2)(2) will remain unchanged. AOC's Technology Services Division staff is assigned to technology projects based on priorities identified by Judicial Branch needs. Because technology staff is fully engaged, any additional projects will require additional resources or will require a reassignment from current Judicial Branch priorities.

FRD estimates that new subsection (a5), which requires magistrates to enter all information provided by the arresting law enforcement agency on the person arrested into the court information system, will increase workload demands on magistrates statewide. There are currently instances in which law enforcement officers draft processes, such as warrants, for judicial approval. The section transfers that responsibility to magistrates, which could lead to an increase in workload need for magistrates Statewide. FRD cannot estimate the scope of this increase at the current time.

Section 11.(i)

Section 11.(i) directs AOC to use up to \$20,000 available for the 2014-2015 fiscal year from the "Court Information Technology Fund" to comply with subsection 11.(d) of this bill and to enter certain historical records, listed as subsections (1) through (7) in the section, into NICS by May 31, 2019. AOC is also required to report on the progress made towards providing the information requested in Section 11.(d) by January 1, 2018 to the Joint Legislative Oversight Committee on Justice and Public Safety and the Joint Legislative Oversight Committee on Information Technology. This section becomes effective when it becomes law.

FRD estimates that Section 11.(i) has costs of \$428,700 to AOC, including technology costs and costs related to personnel time. This estimate also includes a \$20,000 transfer from the Court Information Technology Fund.

Compliance with subsection (1) will require all 100 clerks of superior court to conduct a manual record search of the historical mental health commitment files for cases meeting the criteria, which are involuntary commitments for mental health and substance abuse treatment. AOC does not have a computer index for confidential files in special proceedings. The workload impact for this requirement could be significant because there is no limit on the look-back time period.

Compliance with subsection (2) will similarly require all 100 clerks of superior court to conduct a manual record search of paper case files. AOC's computer index systems do not distinguish between a verdict of "not guilty by reason of insanity" from other "not guilty" verdicts. To accurately report each instance will require a manual search of all criminal files in the State. For those defendants who were found to be incompetent to proceed, computer data may be available for offenses committed on or after December 1, 2013, when AOC implemented automated codes to identify those cases. For offenses committed prior to that date a manual record search will be required.

Compliance with subsection (3) will be less intensive, as AOC's civil case computer index system does record some of the necessary data. However, cases identified in the index that have a finding that "an individual lacks the capacity to manage the individual's own affairs" would not include the necessary substantive data on the findings required by subsection (3), which are "marked subnormal intelligence or mental illness, incompetency, condition, or disease." A manual review of flagged case files would be necessary to determine which cases meet the full reporting criteria of subsection (3).

Compliance with subsections (4) through (7) can be achieved through technology enhancements and modifications to existing AOC systems. FRD estimates that these changes will require 2,520 hours of AOC technology personnel time, equating to a cost of \$189,000. AOC Technology Services Division staff is assigned to technology projects based on priorities identified by Judicial Branch needs. Because technology staff is fully engaged, any additional projects will require additional resources or will require a reassignment from current Judicial Branch priorities.

FRD estimates that the cost to the State will be \$259,700 for the manual review of paper case files required by this section, assuming that the look-back period covers calendar years 1998 to 2008. This total amount is estimated by multiplying the approximately 245,000 files to be reviewed by \$1.06, which is the estimated cost in clerk staff personnel time to manually review each file and enter information into the computer systems when applicable.

Sections 11.(j), 11.(k), 11.(l), 11.(m), 11.(n), and 11.(o)

Sections 11.(j), (k), (l), (m), and (n) make conforming changes. Section 11.(o) establishes effective dates for all of the subsections in Section 11.

FRD estimates that Sections 11.(j), (k), (l), (m) will have no fiscal impact for the State. Subsection (n) amends G.S. 15A-534(a), which addresses pretrial release conditions, to cite the fingerprinting requirements set out in Section 11.(h), which amends G.S. 15A-502. FRD estimates that this change will have some workload impact for AOC in situations where the required fingerprints have not yet been collected and the judicial official has to make the collection of fingerprints a

condition of pretrial release. Certain offenses that require DNA or fingerprints to be taken upon arrest are flagged in the AOC offense code table used by the AOC computer systems so that the judicial official setting the conditions of release would know to which defendants these requirements apply. AOC would have to edit its computer systems to include the new fingerprinting requirements proposed in this bill. FRD cannot estimate the cost of this change at this time.

Section 12

Section 12 amends G.S. 14-409.40 in subsection (b) to include taxation, manufacture, and transportation to the list of actions that, unless otherwise permitted by statute, counties and municipalities are prohibited from regulating in regards to firearms, firearm ammunition, components of firearms, dealers in firearms, and dealers in handgun components or parts. New subsection (h) allows any person who has been adversely affected by any ordinance, rule, or regulation of a county or municipality in violation of this section to bring a civil action for declaratory and injunctive relief and for actual damages arising from the violation. This new provision also requires the court to award to the prevailing party reasonable attorneys' fees and court costs as authorized by law. This section has an effective date of December 1, 2015 and applies to violations occurring on or after that date.

FRD estimates no measurable fiscal impact on the State due to the amendment of subsection (b). The expansion of restrictions on local governments to adopt regulatory ordinances may result in a decline of charges for the Class 3 misdemeanor offense under G.S. 14-4, violation of a local ordinance, if there are any such ordinances currently enacted that regulate the taxation, manufacture, and transportation of firearms or firearm ammunitions, and if there were individuals charged with violating those now-impermissible ordinances. AOC does not have data on the nature of any charges of G.S. 14-4 that would indicate how many future charges, if any, may be abated due to the change to G.S. 14-409.40(b).

FRD anticipates an increase in the number of civil superior filings due to new subsection (h). However, there is no data upon which to estimate how many may be filed in an average year. Since these cases will be heard in superior court, there will be workload impact for superior court staff for an estimated cost of \$1,042 per case. Each petition for declaratory and injunctive relief would be accompanied with a \$200 civil superior court filing fee.

Section 13

The proposed bill creates new G.S. 14-409.41 to provide a process for chief law enforcement officers (who are federal agents) to provide necessary certification for the transfer or making of a firearm. In subsection (c), an applicant whose request for certification is denied may appeal the decision to the district court of the district in which the request for certification was made. This section has an effective date of July 1, 2015.

Subsection (c) of new G.S. 14-409.41 provides for appeals to the district court of the district in which the request for certification was made. It is unclear whether this is meant to refer to federal district court or State district court. If these appeals are heard in State district court, there will be workload impact on deputy clerk and district court judge time for an estimated average cost of \$395 per case. FRD cannot estimate how many of these appeals would be filed annually.

Section 14

The proposed bill amends G.S. 14-415.15(a) to require the sheriff to issue or deny a concealed handgun permit within 90 calendar days from the date on which the application was submitted, regardless of the receipt of required records concerning the mental health or capacity of the applicant. Only if the applicant is determined to be ineligible under G.S. 14-415.12 shall the sheriff deny the application. This section has an effective date of October 1, 2015 and applies to applications submitted on or after that date.

FRD estimates no measurable fiscal impact due to these changes.

Section 15

The proposed bill amends G.S. 14-415.23 by adding new subsection (e) which allows any person who has been adversely affected by any ordinance, rule, or regulation of a local government in violation of this section to bring a civil action for declaratory and injunctive relief and for actual damages arising from the violation. This new provision also requires the court to award to the prevailing party reasonable attorneys' fees and court costs as authorized by law. This section has an effective date of December 1, 2015 and applies to violations occurring on or after that date.

Section 15 will likely increase the number of civil superior court filings. FRD has no data upon which to estimate how many may be filed in an average year. Since these cases will be heard in superior court there will be workload impact for superior court personnel for an estimated cost of \$1,042 per case.

Section 16

The proposed bill creates new Article 11, Preserving Firearms Privacy for Patients, in Chapter 90. This section lays out:

- (i) the General Assembly's findings and intent of this section;
- (ii) definitions of terms applicable to this section;
- (iii) questions that health care providers are prohibited from asking in writing of a patient, patient's parent, guardian, or custodian;
- (iv) prohibitions against the disclosure of certain information obtained verbally; and
- (v) fines and disciplinary actions for violations of this section.

This section has an effective date of October 1, 2016.

FRD estimates no measurable fiscal impact due to these changes.

Section 17

The proposed bill amends G.S. 14-415.12(a) to add as a qualified applicant for a handgun permit a person who has been lawfully admitted for permanent residence as defined in 8 U.S.C. 1101(a)(20).

FRD estimates no measurable fiscal impact due to these changes.

Section 18

Besides the effective dates mentioned above, Section 18 provides that prosecutions for offenses committed before the effective date of this bill are not abated or affected by this bill and the statutes that would be applicable but for this bill remain applicable to those prosecutions.

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

TECHNICAL CONSIDERATIONS:

Section 7

- AOC is concerned about a disconnect in citations between amended subdivision (8) and new subdivision (8a). It appears that the intention was to strike the reference to “former G.S. 14-277.3” that appears on page 5, line 43 of the PCS. The drafting accounts for G.S. 14-277.3 in the immediately-following subdivision (8a). Note that the drafting struck the reference to G.S. 14-277.3 on line 38, which suggests that the intent was to address both stalking offenses in the new subdivision (8a). If the reference to G.S. 14-277.3 remains in subdivision (8), it is a nullity, because (8) begins with “except as provided in subdivision (8a),” so the longer lookback period in subdivision (8a) would appear to control for convictions under that statute.
- AOC is concerned that proposed subdivision (8c) presents the question of whether the disqualifiers must be inherent to the elements of the conviction or just appear in the underlying facts, independent of the codified elements. Given the (presumed) limited number of applicants for concealed carry permits to whom this disqualifier would apply, fixing this issue may have little change in impact, but it may reduce some appeals if it was written to specify certain offense statutes, as is the case in subdivision (8). In addition, if this approach is taken, it is not clear how the sheriffs or the courts are supposed to know what prior offenses may be disqualifiers. It is highly unlikely that the face of a court record from many years ago showing assault on a female by her husband would contain any indicator that the female in question also was a law enforcement officer, probation officer, firefighter, or so forth. The basis for this technical concern is the case law surrounding the categorization of “aggravated” sex offenses for the purposes of GPS monitoring under G.S. 14-208.40A. If the courts follow the same line of reasoning for the proposed (8c), the appellate division likely would take the position that only offenses for which the codified elements inherently involve one of the protected victim grounds would constitute a disqualifier. The costs of appellate casework could be avoided by listing the specific disqualifying assault statutes to which this disqualifier will apply (as is the case in subdivision (8)).

Section 9

AOC is concerned that the effective date of July 1, 2015 will not provide enough time for the agency to change its technology system to conform to the changes or to educate court officials on the changes at the fall conferences and via a comprehensive memo that covers all of the recent

changes to criminal statutes and procedures. AOC points out that an effective date of December 1, 2015 will provide adequate time to make conforming changes and provide information to judicial officials.

Section 10.(d)

AOC is concerned that G.S. 14-404(b) is amended to change the venue of appeal of a denial of a permit to superior court in the district in which the application was filed and to allow a decision by the superior court upholding the sheriff's denial to be appealed to the North Carolina Court of Appeals. However, appeals from actions on concealed carry permits would still be to the district court division under G.S. 14-415.15(c), with no right of further appeal. It is not clear why the two appeal provisions would operate differently.

Section 11.(h)

- AOC is concerned in Subsection (a2)(3) that G.S. 90-95(d) is a sentencing provision, not a substantive offense. By basing the fingerprinting rule in a sentencing provision, implementation may be inconsistent based on individual agency determinations. Actual possession of controlled substances is prohibited in G.S. 90-95(a)(3). Because the proposed (a2) already is limited to "misdemeanor" arrests, the citation should be to G.S. 90-95(a)(3) to avoid errors in interpretation about which offenses are covered.
- AOC is concerned in Subsection (a3) that it is not clear if the information-gathering requirement is applicable to all offenses. By use of the phrase "charged with a crime" it seems to include every felony and misdemeanor. It is not obvious if AOC has to record all conceivable relationships between defendants and victims or if the interest is solely in "personal relationships" under G.S. 50B-1.
- AOC is concerned in Subsection (a5) that the reference to "maiden" name in proposed (a3)(1) and which the courts would have to record under (a5) is archaic and therefore ambiguous. AOC suggests the contrast of G.S. 50-12(a) and (a1), which draw distinction between "maiden" names (women) and "premarriage surname" (men).

Section 11.(i)

- AOC is concerned that the language proposed in Section 11.(d) does not address how AOC is to resolve the incompatibility of State records and NICS disqualifiers, the conflation of "NICS" and "NCIC," or the lack of compatibility with existing North Carolina criminal procedure.
- AOC is concerned that the commitment of the Court Information Technology Fund should specify that it is to be expended to cover the courts' reporting duties under subsection 11.(d). As written, it obligates the Judicial Branch's fund to pay for the sheriffs' reporting of Domestic Violence Protective Orders (DVPOs) to NCIC under the proposed G.S. 14-409.43(c).
- AOC is concerned in Subsection (4) that the reference to G.S. 90-05(d) should instead be to G.S. 90-95(a)(3). As discussed above, G.S. 90-95(d) is a sentencing provision, not a substantive offense. By basing the reference in a sentencing provision, implementation may be inconsistent based on individual agency determinations. Actual possession of controlled substances is prohibited in G.S. 90-95(a)(3). This should be the citation in order to avoid errors in interpretation about which offenses are covered.

Section 13

AOC is concerned that the reference to appeals to “the district court of the district in which the request for certification was made” in new subsection (c) may intend to refer to civil actions in the North Carolina District Courts, but given the other provisions regarding federal agencies, it is not clear. The proposed G.S. 14-409.41 appears to attempt to regulate a federal agency and its functions locally, which runs afoul of the Supremacy Clause of the U.S. Constitution (Art. VI, CL. 2) to the extent that any portion runs contrary to federal statute or regulation adopted thereunder.

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DATE: June 8, 2015



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