

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

I

**BILL NUMBER:** House Bill 464 (Third Edition)

**SHORT TITLE:** Revise Schedule of Controlled Substances.

**SPONSOR(S):** Representatives Horn, Murphy, and Malone

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
<b>State Impact</b>					
General Fund Revenues:					
General 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> December 1, 2017					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**BILL SUMMARY:**

This bill adds several substances to the list of Schedule I, II, III, IV, and V controlled substances, expanding the scope of all offenses that involve Schedule I, II, III, IV, and V controlled substances, and moves one substance from Schedule VI to Schedule I.

**FISCAL IMPACT SUMMARY:**

This bill will have a fiscal impact. The following chart summarizes the impact by section.

<b>Fiscal Impact Summary by Section and Agency/Division</b>					
	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Section 2</b>					
AOC	No est. available; range of \$39 to \$5,287 per charge				
IDS	No est. available; range of \$200 to \$961 per indigent defendant				
Prisons	No est. available; range of \$3,199 to \$36,103 per active felony conviction				
CCS	No est. available; range of \$1,332 to \$1,776 per active felony conviction				
<b>Section 3</b>					
AOC	\$49,816	\$87,875	\$90,494	\$92,892	\$94,647
IDS	\$23,038	\$40,637	\$41,848	\$42,956	\$43,768
Prisons	\$0	\$27,531	\$28,329	\$29,127	\$29,640
CCS	\$0	\$4,212	\$59,892	\$62,865	\$64,008
<b>Section 4</b>					
AOC	No est. available; range of \$206 to \$5,287 per charge				
IDS	No est. available; range of \$202 to \$961 per indigent defendant				
Prisons	No est. available; range of \$3,199 to \$36,103 per active felony conviction				
CCS	No est. available; range of \$1,332 to \$1,776 per active felony conviction				
<b>Section 5</b>					
AOC	No est. available; range of \$206 to \$4,320 per charge				
IDS	No est. available; range of \$202 to \$961 per indigent defendant				
Prisons	No est. available; range of \$3,199 to \$30,162 per active felony conviction				
CCS	No est. available; range of \$1,332 to \$1,776 per active felony conviction				
<b>Section 6</b>					
AOC	No est. available; range of \$206 to \$4,320 per charge				
IDS	No est. available; range of \$202 to \$961 per indigent defendant				
Prisons	No est. available; range of \$3,199 to \$30,162 per active felony conviction				
CCS	No est. available; range of \$1,332 to \$1,776 per active felony conviction				
<b>Section 7</b>					
AOC	No est. available; range of \$110 to \$4,320 per charge				
IDS	No est. available; range of \$201 to \$961 per indigent defendant				
Prisons	No est. available; range of \$3,199 to \$30,162 per active felony conviction				
CCS	No est. available; range of \$1,332 to \$1,776 per active felony conviction				

For additional information, please see the Assumptions and Methodologies Section.

## **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. All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

### **SECTION 2**

Section 2 of the bill amends G.S. 90-87, Definitions, by removing the exclusions from the current definition of "isomer" in subsection (14a), so that the definition will cover any type of isomer for a controlled substance. Each of the schedules I through V in Article 5 lists one or more controlled substances or classes of substances that also include isomers.

Section 2 also amends G.S. 90-87(17), Narcotic drugs, to cover "opioids" in addition to "opiates" and opium, but the definition of "narcotic drug" in subsection (17), to which opioid would be added, already covers a substance produced independently by means of chemical synthesis. Therefore, this change would not result in an expanded scope of substances.

### **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 2 of the bill expands the definition of isomer, thereby expanding the scope of related offenses for every controlled substance schedule. The following table shows the offense class by schedule for most controlled substance offenses.

**Offense Class by Schedule for Most Controlled Substance Offenses**

Statute	Title	Schedule					
		I	II	III	IV	V	VI
90-95(a)(2)	Create, sell, deliver, or possess with intent to sell or deliver a counterfeit controlled substance	Class I	Class I	Class I	Class I	Class I	Class I
90-95(a)(3)	Possess a Schedule I controlled substance	Class I	Class 1 MD	Class 1 MD	Class 1 MD	Class 2 MD	Class 3 MD
90-95(a)(1)	Manufacture, deliver, or possess with intent to manufacture, sell or deliver	Class H	Class H	Class I	Class I	Class I	Class I
90-95(a)(1)	Sell	Class G	Class G	Class H	Class H	Class H	Class H
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class G	Class G	Class H	Class H	Class H	Class H
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to sell	Class F	Class F	Class G	Class G	Class G	Class G
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class F	Class F	Class G	Class G	Class G	Class G
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to sell	Class E	Class E	Class F	Class F	Class F	Class F
90-95.4(a)(1)	Over 21-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class E	Class E	Class F	Class F	Class F	Class F
90-95.4(b)(1)	Over 21-year-old employing or intentionally using minor over 13 to sell	Class D	Class D	Class E	Class E	Class E	Class E
90-95.4(a)(2)	Over 21-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class D	Class D	Class E	Class E	Class E	Class E
90-95.4(b)(2)	Over 21-year-old employing or intentionally using minor under 13 to sell	Class C	Class C	Class D	Class D	Class D	Class D

AOC does not have historical data upon which to estimate the number of charges that might occur as a result of the changes in this section. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost to AOC for each offense class affected.

<b>AOC Cost by Offense Class</b>	
<b>Offense Class</b>	<b>AOC Cost</b>
Class 3 MD	\$39
Class 2 MD	\$110
Class 1 MD	\$206
Class I felony	\$455
Class H felony	\$625
Class G felony	\$938
Class F felony	\$1,137
Class E felony	\$2,017
Class D felony	\$4,320
Class C felony	\$5,287

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The following table shows the IDS usage rate and the weighted average cost for each offense class affected by this section. These estimates assume 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.

<b>Offense Class</b>	<b>IDS Usage Rate</b>	<b>IDS Cost</b>
Class 3 MD	21%	\$200
Class 2 MD	30%	\$201
Class 1 MD	39%	\$202
Class I felony	68%	\$333
Class H felony	78%	\$392
Class G felony	78%	\$498
Class F felony	74%	\$569
Class E felony	79%	\$586
Class D felony	89%	\$961
Class C felony	82%	\$899

### **Department of Public Safety – 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 2016.

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

<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.

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).

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>
1. Inmates <sup>2</sup>	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

Since Section 2 of the bill expands the scope of existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. Misdemeanor offenses will have no impact on the prison population because defendants who receive active misdemeanor sentences will serve them in the local jail. For felony offenses, a threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were nine convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimates take into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
9 (Threshold)	1	2	2	2	2
20	2	4	4	4	4

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 15% of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender

<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 2017.

<sup>3</sup> Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

receiving an active sentence, the cost to the prison section will be \$3,199 (\$457 monthly cost times seven months).

In FY 2015-16, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	10

In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months).

In FY 2015-16, 39% of Class G felony convictions resulted in active sentences, with an average estimated time served of 14 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were three convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

In FY 2015-16, 39% of Class G felony offenders received active sentences averaging 14 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$6,398 (\$457 monthly cost times 14 months).

In FY 2015-16, 50% of Class F felony convictions resulted in active sentences, with an average estimated time served of 17 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	2	2	2	2
20	10	18	19	19	19

In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$7,259 (\$457 monthly cost times 17 months).

In FY 2015-16, 63% of Class E felony convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	3	3	3	3
20	13	28	34	34	35

In FY 2015-16, 63% of Class E felony offenders received active sentences averaging 27 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$12,339 (\$457 monthly cost times 27 months).

In FY 2015-16, 98% of Class D felony convictions resulted in active sentences, with an average estimated time served of 66 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In FY 2015-16, 98% of Class D felony offenders received active sentences averaging 66 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$30,162 (\$457 monthly cost times 66 months).

In FY 2015-16, 100% of Class C felony convictions resulted in active sentences, with an average estimated time served of 79 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class C Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102



In FY 2015-16, all Class C felony offenders received active sentences averaging 79 months. For every one Class C felony offender receiving an active sentence, the cost to the prison section will be \$36,103 (\$457 monthly cost times 79 months).

**Department of Public Safety – Community Corrections**

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. Additionally, for felony offense classes F 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.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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 following table provides the cost of PRS and the cost of probation by offense class.

<b>Community Corrections Section Cost of PRS and Probation by Offense Class</b>						
<b>Class</b>	<b>% Active</b>	<b>PRS Length (months)</b>	<b>Cost of PRS</b>	<b>% Probation</b>	<b>Length of Probation (months)</b>	<b>Cost of Probation</b>
Class C felony	100%	12	\$1,776	NA	NA	NA
Class D felony	98%	12	\$1,776	2%	40	\$5,920
Class E felony	63%	12	\$1,776	37%	33	\$4,884
Class F felony	50%	9	\$1,332	50%	32	\$4,736
Class G felony	39%	9	\$1,332	61%	29	\$4,292
Class H felony	35%	9	\$1,332	65%	27	\$3,996
Class I felony	15%	9	\$1,332	85%	23	\$3,404
Class 1 MD	31%	NA	NA	69%	15	\$2,220
Class 2 MD	34%	NA	NA	66%	14	\$2,072
Class 3 MD	24%	NA	NA	76%	12	\$1,776

**SECTION 3**

Section 3 of the bill amends G.S. 90-89 in subsections (3), (4), and (5), to add hallucinogens, depressants, and stimulants to the list of controlled substances in Schedule I. Section 3 also creates a new subsection (1a) to add fentanyl derivatives to the Schedule. Finally, Section 3 adds new subsection (7) which moves

synthetic cannabinoids from Schedule VI to Schedule I. These changes effectively expand the scope of existing Schedule I criminal offenses.

The impact of the addition of new drugs to Schedule I cannot be estimated because it is unknown how many additional charges will occur as a result of this change. For a general discussion of the costs of expanding the scope of Schedule I penalties, please see the Section 2 analysis. The impact of the transition of synthetic cannabinoids from Schedule VI to Schedule I can be estimated. The analysis of this change follows.

**Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 3 of the bill transitions synthetic cannabinoids from Schedule VI to Schedule I. The following table shows the original charge class and the new charge class, defendants in FY 2015-16, and the related costs for offense classes affected by this change.

Comparison of Schedule I Offense Class Cost to Schedule VI Offense Class Cost							
Statute	Title	Schedule VI Offense Class	AOC Cost	Schedule I Offense Class	AOC Cost	Cost Difference	Defendants FY 2015-16
90-95(a)(3)	Possession < 7 grams	Class 3 MD	\$39	Class I	\$455	\$416	169
90-95(a)(3)	Possess 7 - 21 grams	Class 1 MD	\$206	Class I	\$455	\$249	17
90-95(a)(1)	Manufacture, deliver, or possess with intent	Class I	\$455	Class H	\$625	170	51
90-95(a)(1)	Sell a controlled substance	Class H	\$625	Class G	\$938	\$313	7

The table below shows the cost to move synthetic cannabinoids from Schedule VI to Schedule I, adjusted for inflation. The first year has been adjusted to account for the December 1, 2017 effective date.

AOC Cost to Move Schedule VI Substance to Schedule I						
	Defendants	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Inflation Rate			2.90%	2.98%	2.65%	1.89%
G.S. 90-95(a)(3)	169	\$41,011	\$72,343	\$74,499	\$76,473	\$77,918
G.S. 90-95(a)(3)	17	\$2,469	\$4,356	\$4,486	\$4,605	\$4,692
G.S. 90-95(a)(1)	51	\$5,058	\$8,921	\$9,187	\$9,430	\$9,608
G.S. 90-95(a)(1)	7	\$1,278	\$2,255	\$2,322	\$2,384	\$2,429
<b>Total AOC Cost</b>		<b>\$49,816</b>	<b>\$87,875</b>	<b>\$90,494</b>	<b>\$92,892</b>	<b>\$94,647</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>						

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The following table shows the original charge class and the new charge class, defendants in FY 2015-16, as well as the related costs, for offense classes affected by this change.

<b>IDS Comparison of Schedule VI Offenses to Schedule I Offenses</b>							
<b>Statute</b>	<b>Offense Class</b>	<b>IDS Usage Rate</b>	<b>IDS Cost</b>	<b>Offense Class</b>	<b>IDS Usage Rate</b>	<b>IDS Cost</b>	<b>Defendants FY 2015-16</b>
90-95(a)(3)	Class 3 MD	21%	\$200	Class I	68%	\$333	169
90-95(a)(3)	Class 1 MD	39%	\$202	Class I	68%	\$333	17
90-95(a)(1)	Class I	68%	\$333	Class H	78%	\$392	51
90-95(a)(1)	Class H	78%	\$392	Class G	78%	\$498	7

The table below shows the cost to move synthetic cannabinoids from Schedule VI to Schedule I, adjusted for inflation. The first year has been adjusted to account for the December 1, 2017 effective date.

<b>IDS Cost to Move Schedule VI Substance to Schedule I</b>						
	<b>Defendants</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>
Inflation Rate			2.90%	2.98%	2.65%	1.89%
G.S. 14-113.17(b)	169	\$18,759	\$33,091	\$34,077	\$34,980	\$35,641
G.S. 14-113.17(a)	17	\$1,548	\$2,730	\$2,811	\$2,885	\$2,940
G.S. 14-113.17(b)	51	\$2,413	\$4,256	\$4,383	\$4,499	\$4,584
G.S. 14-113.17(b)	7	\$318	\$560	\$577	\$592	\$603
<b>Total IDS Cost</b>		<b>\$23,038</b>	<b>\$40,637</b>	<b>\$41,848</b>	<b>\$42,956</b>	<b>\$43,768</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>						

These estimates assume 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.

### **Department of Public Safety – 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>4</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

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).

<sup>4</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 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>
1. Inmates <sup>5</sup>	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
<b>4. Additional Inmates Due to this Bill<sup>6</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

There were 37 convictions for violations of G.S. 90-95(a)(3) that would become Class I felonies under this section of the bill. In FY 2015-16, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were four convictions (the threshold), 20 convictions, or 37 convictions per year that would be reclassified to a Class I felony. The five year estimates take into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group. In addition, there will be some impact on post-release supervision (PRS) caseloads since nine months of PRS is required for offenders convicted of Class I felonies.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	2	4	4	4	4
37	4	8	8	8	8

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 15% of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,199 (\$457 monthly cost times seven months). The table below shows the cost, adjusted for inflation, to the prison section if 37 convictions were increased from a Class 3 misdemeanor to a Class I felony. The first year has been adjusted to reflect the December 1, 2017 effective date. The cost of the current offense is \$0 because all misdemeanants receiving active sentences are housed in county jails.

<sup>5</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 2017.

<sup>6</sup> Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

<b>Cost to Prisons of Increasing Penalty from Class 3 MD to Class I Felony</b>					
<b>Prisons</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>
		<b>2.90%</b>	<b>2.98%</b>	<b>2.65%</b>	<b>1.89%</b>
Cost of Current Offense	\$0	\$0	\$0	\$0	\$0
Cost of Proposed Offense	\$0	\$20,286	\$20,874	\$21,462	\$21,840
<b>Cost Differential</b>	<b>\$0</b>	<b>\$20,286</b>	<b>\$20,874</b>	<b>\$21,462</b>	<b>\$21,840</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

There were five Class I felony convictions for Schedule VI violations in FY 2015-16. The number of convictions is too small to have a discernable impact on the prison population if the penalty is increased to a Class H felony. The Sentencing Commission provided the following threshold estimates to illustrate the number of convictions that would have an impact on the prison population. Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed statute because of the higher rate of active sentences (15% for Class I compared to 35% for Class H) and longer average estimated time served (seven months for Class I compared to 11 months for Class H). The following table shows the estimated annual impact if, for example, there were nine convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class I to Class H.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
9 (Threshold)	2	3	3	3	3
20	7	10	10	10	10

In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months). The table below shows the cost, adjusted for inflation, to Prisons if five convictions were increased from a Class I felony to a Class H felony. The first year has been adjusted to reflect the December 1, 2017 effective date.

<b>Cost to Prisons of Increasing Penalty to Class H Felony</b>					
<b>Prisons</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>
		<b>2.90%</b>	<b>2.98%</b>	<b>2.65%</b>	<b>1.89%</b>
Cost of Current Offense	\$0	\$3,381	\$3,479	\$3,577	\$3,640
Cost of Proposed Offense	\$0	\$10,626	\$10,934	\$11,242	\$11,440
<b>Cost Differential</b>	<b>\$0</b>	<b>\$7,245</b>	<b>\$7,455</b>	<b>\$7,665</b>	<b>\$7,800</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

There were no Class H convictions for Schedule VI violations in FY 2015-16. Section 3 increases those penalties to Class G felonies. Impact on the prison population will occur if Class H convictions become Class G convictions under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 39% for Class G) and longer average estimated time served (11 months for Class H compared to 14 months for Class G). The following table shows the estimated annual impact if, for example, there were four convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class H to Class G.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

In FY 2015-16, 39% of Class G felony offenders received active sentences averaging 14 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$6,398 (\$457 monthly cost times 14 months).

**Department of Public Safety – Community Corrections**

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. Additionally, for felony offense classes F 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.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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.

In FY 2015-16, 15% of Class I felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 23 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).<sup>7</sup> For every offender sentenced to probation, the average cost would be \$3,404 (\$148 per month times 23 months). The table below shows the cost, adjusted for inflation, to CCS if 37 convictions were increased from a Class 3 misdemeanor to a Class I felony. The first year has been adjusted to reflect the December 1, 2017 effective date.

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<sup>7</sup> Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

Cost to CCS of Increasing Penalty to Class I Felony					
CCS	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
		2.90%	2.98%	2.65%	1.89%
Cost of Current Offense	\$0	\$52,416	\$54,096	\$55,440	\$56,448
Cost of Proposed Offense	\$0	\$58,032	\$114,793	\$117,645	\$119,784
<b>Cost Differential</b>	<b>\$0</b>	<b>\$5,616</b>	<b>\$60,697</b>	<b>\$62,205</b>	<b>\$63,336</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

In FY 2015-16, 35% of Class H felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 27 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).<sup>8</sup> For every offender sentenced to probation, the average cost would be \$3,996 (\$148 per month times 27 months). The table below shows the cost, adjusted for inflation, to CCS if five convictions were increased from a Class I felony to a Class H felony. The first year has been adjusted to reflect the December 1, 2017 effective date.

Cost to CCS of Increasing Penalty to Class H Felony					
CCS	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
		2.90%	2.98%	2.65%	1.89%
Cost of Current Offense	\$0	\$7,956	\$15,939	\$16,335	\$16,632
Cost of Proposed Offense	\$0	\$6,552	\$15,134	\$16,995	\$17,304
<b>Cost Differential</b>	<b>\$0</b>	<b>(\$1,404)</b>	<b>(\$805)</b>	<b>\$660</b>	<b>\$672</b>
<i>Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2017)</i>					

In FY 2015-16, 39% of Class G felony offenders received active sentences. All active sentences for Class G through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 29 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).<sup>9</sup> For every offender sentenced to probation, the average cost would be \$4,292 (\$148 per month times 29 months).

#### **SECTION 4**

Section 4 of the bill amends G.S. 90-90, Schedule II controlled substances, by expanding the hydrocodone list to include any material, compound, mixture, or preparation which contains any quantity of hydrocodone.

#### **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

<sup>8</sup> Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

<sup>9</sup> Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 4 of the bill expands the definition of Schedule II controlled substances, thereby expanding the scope of Schedule II related offenses. AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost to AOC for each offense class affected by this section.

<b>AOC Cost for Schedule II Offenses</b>			
<b>Statute</b>	<b>Title</b>	<b>Offense Class</b>	<b>AOC Cost</b>
90-95(a)(2)	Create, sell, deliver, or possess with intent to sell or deliver a counterfeit controlled substance	Class I felony	\$455
90-95(a)(3)	Possess	Class 1 MD	\$206
90-95(a)(1)	Manufacture, deliver, or possess with intent to manufacture, sell or deliver	Class H felony	\$625
90-95(a)(1)	Sell	Class G felony	\$938
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class G felony	\$938
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to sell	Class F felony	\$1,137
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class F felony	\$1,137
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to sell	Class E felony	\$2,017
90-95.4(a)(1)	Over 21-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class E felony	\$2,017
90-95.4(b)(1)	Over 21-year-old employing or intentionally using minor over 13 to sell	Class D felony	\$4,320
90-95.4(a)(2)	Over 21-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class D felony	\$4,320
90-95.4(b)(2)	Over 21-year-old employing or intentionally using minor under 13 to sell	Class C felony	\$5,287

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The following table shows the IDS usage rate and the weighted average cost for each offense class affected by this section. These estimates assume 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.



IDS Cost for Schedule II Offenses			
Statute	Offense Class	IDS Usage Rate	IDS Cost
90-95(a)(2)	Class I felony	68%	\$333
90-95(a)(3)	Class I MD	39%	\$202
90-95(a)(1)	Class H felony	78%	\$392
90-95(a)(1)	Class G felony	78%	\$498
90-95.4(a)(1)	Class G felony	78%	\$498
90-95.4(a)(1)	Class F felony	74%	\$569
90-95.4(a)(2)	Class F felony	74%	\$569
90-95.4(a)(2)	Class E felony	79%	\$586
90-95.4(a)(1)	Class E felony	79%	\$586
90-95.4(b)(1)	Class D felony	89%	\$961
90-95.4(a)(2)	Class D felony	89%	\$961
90-95.4(b)(2)	Class C felony	82%	\$899

### **Department of Public Safety – 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>10</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

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).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates <sup>11</sup>	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
4. <i>Additional Inmates Due to this Bill</i> <sup>12</sup>	<b>No estimate available</b>				
5. <i>Additional Beds Required</i>					

<sup>10</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.

<sup>11</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 2017.

<sup>12</sup> Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Since Section 4 of the bill expands the scope of existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were nine convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimates take into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
9 (Threshold)	1	2	2	2	2
20	2	4	4	4	4

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 15% of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,199 (\$457 monthly cost times seven months).

In FY 2015-16, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	10

In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months).

In FY 2015-16, 39% of Class G felony convictions resulted in active sentences, with an average estimated time served of 14 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were three convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

In FY 2015-16, 39% of Class G felony offenders received active sentences averaging 14 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$6,398 (\$457 monthly cost times 14 months).

In FY 2015-16, 50% of Class F felony convictions resulted in active sentences, with an average estimated time served of 17 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	2	2	2	2
20	10	18	19	19	19

In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$7,769 (\$457 monthly cost times 17 months).

In FY 2015-16, 63% of Class E felony convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	3	3	3	3
20	13	28	34	34	35

In FY 2015-16, 63% of Class E felony offenders received active sentences averaging 27 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$12,339 (\$457 monthly cost times 27 months).

In FY 2015-16, 98% of Class D felony convictions resulted in active sentences, with an average estimated time served of 66 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In FY 2015-16, 98% of Class D felony offenders received active sentences averaging 66 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$30,162 (\$457 monthly cost times 66 months).

In FY 2015-16, 100% of Class C felony convictions resulted in active sentences, with an average estimated time served of 79 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class C Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In FY 2015-16, all Class C felony offenders received active sentences averaging 79 months. For every one Class C felony offender receiving an active sentence, the cost to the prison section will be \$36,103 (\$457 monthly cost times 79 months).

**Department of Public Safety – Community Corrections**

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. Additionally, for felony offense classes F 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.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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 following table provides the cost of PRS and the cost of probation by offense class.

<b>Community Corrections Section Cost of PRS and Probation by Offense Class</b>						
<b>Class</b>	<b>% Active</b>	<b>PRS Length (months)</b>	<b>Cost of PRS</b>	<b>% Probation</b>	<b>Length of Probation (months)</b>	<b>Cost of Probation</b>
Class C felony	100%	12	\$1,776	NA	NA	NA
Class D felony	98%	12	\$1,776	2%	40	\$5,920
Class E felony	63%	12	\$1,776	37%	33	\$4,884
Class F felony	50%	9	\$1,332	50%	32	\$4,736
Class G felony	39%	9	\$1,332	61%	29	\$4,292
Class H felony	35%	9	\$1,332	65%	27	\$3,996
Class I felony	15%	9	\$1,332	85%	23	\$3,404
Class 1 MD	31%	NA	NA	69%	15	\$2,220

### **SECTION 5**

Section 5 of the bill amends G.S. 90-91, Schedule III controlled substances, by adding five new substances to the list.

### **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 5 of the bill expands the definition of Schedule III controlled substances, thereby expanding the scope of Schedule III related offenses. AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost to AOC for each offense class affected by this section.

<b>AOC Cost for Schedule III Offenses</b>			
<b>Statute</b>	<b>Title</b>	<b>Offense Class</b>	<b>AOC Cost</b>
90-95(a)(2)	Create, sell, deliver, or possess with intent to sell or deliver a counterfeit controlled substance	Class I felony	\$455
90-95(a)(3)	Possess a controlled substance	Class 1 MD	\$206
90-95(a)(1)	Manufacture, deliver, or possess with intent to manufacture, sell or deliver	Class I felony	\$455
90-95(a)(1)	Sell a controlled substance	Class H felony	\$625
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class H felony	\$625
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to sell	Class G felony	\$938
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class G felony	\$938
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to sell	Class F felony	\$1,137
90-95.4(a)(1)	Over 21-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class F felony	\$1,137
90-95.4(b)(1)	Over 21-year-old employing or intentionally using minor over 13 to sell	Class E felony	\$2,017
90-95.4(a)(2)	Over 21-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class E felony	\$2,017
90-95.4(b)(2)	Over 21-year-old employing or intentionally using minor under 13 to sell	Class D felony	\$4,320

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The following table shows the IDS usage rate and the weighted average cost for each offense class affected by this section. These estimates assume 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.

IDS Cost for Schedule III Offenses			
Statute	Offense Class	IDS Usage Rate	IDS Cost
90-95(a)(2)	Class I felony	68%	\$333
90-95(a)(3)	Class I MD	39%	\$202
90-95(a)(1)	Class I felony	68%	\$333
90-95(a)(1)	Class H felony	78%	\$392
90-95.4(a)(1)	Class H felony	78%	\$392
90-95.4(a)(1)	Class G felony	78%	\$498
90-95.4(a)(2)	Class G felony	78%	\$498
90-95.4(a)(2)	Class F felony	74%	\$569
90-95.4(a)(1)	Class F felony	74%	\$569
90-95.4(b)(1)	Class E felony	79%	\$586
90-95.4(a)(2)	Class E felony	79%	\$586
90-95.4(b)(2)	Class D felony	89%	\$961

### **Department of Public Safety – 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>13</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

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).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates <sup>14</sup>	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
4. <i>Additional Inmates Due to this Bill</i> <sup>15</sup>	<b>No estimate available</b>				
5. <i>Additional Beds Required</i>					

<sup>13</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.

<sup>14</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 2017.

<sup>15</sup> Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Since Section 5 of the bill expands the scope of existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were nine convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimates take into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
9 (Threshold)	1	2	2	2	2
20	2	4	4	4	4

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 15% of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,199 (\$457 monthly cost times seven months).

In FY 2015-16, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	10

In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months).

In FY 2015-16, 39% of Class G felony convictions resulted in active sentences, with an average estimated time served of 14 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were three convictions (the threshold) or 20 convictions for this proposed offense per year.



<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

In FY 2015-16, 39% of Class G felony offenders received active sentences averaging 14 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$6,398 (\$457 monthly cost times 14 months).

In FY 2015-16, 50% of Class F felony convictions resulted in active sentences, with an average estimated time served of 17 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	2	2	2	2
20	10	18	19	19	19

In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$7,769 (\$457 monthly cost times 17 months).

In FY 2015-16, 63% of Class E felony convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	3	3	3	3
20	13	28	34	34	35

In FY 2015-16, 63% of Class E felony offenders received active sentences averaging 27 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$12,339 (\$457 monthly cost times 27 months).

In FY 2015-16, 98% of Class D felony convictions resulted in active sentences, with an average estimated time served of 66 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In FY 2015-16, 98% of Class D felony offenders received active sentences averaging 66 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$30,162 (\$457 monthly cost times 66 months).

**Department of Public Safety – Community Corrections**

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. Additionally, for felony offense classes F 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.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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 following table provides the cost of PRS and the cost of probation by offense class.

<b>Community Corrections Section Cost of PRS and Probation by Offense Class</b>						
<b>Class</b>	<b>% Active</b>	<b>PRS Length (months)</b>	<b>Cost of PRS</b>	<b>% Probation</b>	<b>Length of Probation (months)</b>	<b>Cost of Probation</b>
Class D felony	98%	12	\$1,776	2%	40	\$5,920
Class E felony	63%	12	\$1,776	37%	33	\$4,884
Class F felony	50%	9	\$1,332	50%	32	\$4,736
Class G felony	39%	9	\$1,332	61%	29	\$4,292
Class H felony	35%	9	\$1,332	65%	27	\$3,996
Class I felony	15%	9	\$1,332	85%	23	\$3,404
Class 1 MD	31%	NA	NA	69%	15	\$2,220

## **SECTION 6**

Section 6 of the bill amends G.S. 90-92, Schedule IV controlled substances, by adding five new substances to the list.

### **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 6 of the bill expands the definition of Schedule IV controlled substances, thereby expanding the scope of Schedule IV related offenses. AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost to AOC for each offense class affected by this section.

<b>AOC Cost for Schedule IV Offenses</b>			
<b>Statute</b>	<b>Title</b>	<b>Offense Class</b>	<b>AOC Cost</b>
90-95(a)(2)	Create, sell, deliver, or possess with intent to sell or deliver a counterfeit controlled substance	Class I felony	\$455
90-95(a)(3)	Possess a controlled substance	Class 1 MD	\$206
90-95(a)(1)	Manufacture, deliver, or possess with intent to manufacture, sell or deliver	Class I felony	\$455
90-95(a)(1)	Sell a controlled substance	Class H felony	\$625
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class H felony	\$625
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to sell	Class G felony	\$938
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class G felony	\$938
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to sell	Class F felony	\$1,137
90-95.4(a)(1)	Over 21-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class F felony	\$1,137
90-95.4(b)(1)	Over 21-year-old employing or intentionally using minor over 13 to sell	Class E felony	\$2,017
90-95.4(a)(2)	Over 21-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class E felony	\$2,017
90-95.4(b)(2)	Over 21-year-old employing or intentionally using minor under 13 to sell	Class D felony	\$4,320

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used

this data to calculate a weighted average of IDS costs. The following table shows the IDS usage rate and the weighted average cost for each offense class affected by this section. These estimates assume 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.

<b>IDS Cost for Schedule IV Offenses</b>			
<b>Statute</b>	<b>Offense Class</b>	<b>IDS Usage Rate</b>	<b>IDS Cost</b>
90-95(a)(2)	Class I felony	68%	\$333
90-95(a)(3)	Class 1 MD	39%	\$202
90-95(a)(1)	Class I felony	68%	\$333
90-95(a)(1)	Class H felony	78%	\$392
90-95.4(a)(1)	Class H felony	78%	\$392
90-95.4(a)(1)	Class G felony	78%	\$498
90-95.4(a)(2)	Class G felony	78%	\$498
90-95.4(a)(2)	Class F felony	74%	\$569
90-95.4(a)(1)	Class F felony	74%	\$569
90-95.4(b)(1)	Class E felony	79%	\$586
90-95.4(a)(2)	Class E felony	79%	\$586
90-95.4(b)(2)	Class D felony	89%	\$961

**Department of Public Safety – 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>16</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

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).

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<sup>16</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 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>
1. Inmates <sup>17</sup>	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
<b>4. Additional Inmates Due to this Bill<sup>18</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

Since Section 6 of the bill expands the scope of existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were nine convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimates take into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
9 (Threshold)	1	2	2	2	2
20	2	4	4	4	4

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 15% of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,199 (\$457 monthly cost times seven months).

In FY 2015-16, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual

<sup>17</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 2017.

<sup>18</sup> Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

bed impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	10

In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months).

In FY 2015-16, 39% of Class G felony convictions resulted in active sentences, with an average estimated time served of 14 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were three convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

In FY 2015-16, 39% of Class G felony offenders received active sentences averaging 14 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$6,398 (\$457 monthly cost times 14 months).

In FY 2015-16, 50% of Class F felony convictions resulted in active sentences, with an average estimated time served of 17 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	2	2	2	2
20	10	18	19	19	19

In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$7,769 (\$457 monthly cost times 17 months).

In FY 2015-16, 63% of Class E felony convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	3	3	3	3
20	13	28	34	34	35

In FY 2015-16, 63% of Class E felony offenders received active sentences averaging 27 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$12,339 (\$457 monthly cost times 27 months).

In FY 2015-16, 98% of Class D felony convictions resulted in active sentences, with an average estimated time served of 66 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In FY 2015-16, 98% of Class D felony offenders received active sentences averaging 66 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$30,162 (\$457 monthly cost times 66 months).

**Department of Public Safety – Community Corrections**

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. Additionally, for felony offense classes F 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.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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 following table provides the cost of PRS and the cost of probation by offense class.

<b>Community Corrections Section Cost of PRS and Probation by Offense Class</b>						
<b>Class</b>	<b>% Active</b>	<b>PRS Length (months)</b>	<b>Cost of PRS</b>	<b>% Probation</b>	<b>Length of Probation (months)</b>	<b>Cost of Probation</b>
Class D felony	98%	12	\$1,776	2%	40	\$5,920
Class E felony	63%	12	\$1,776	37%	33	\$4,884
Class F felony	50%	9	\$1,332	50%	32	\$4,736
Class G felony	39%	9	\$1,332	61%	29	\$4,292
Class H felony	35%	9	\$1,332	65%	27	\$3,996
Class I felony	15%	9	\$1,332	85%	23	\$3,404
Class 1 MD	31%	NA	NA	69%	15	\$2,220

**SECTION 7**

Section 7 of the bill amends G.S. 90-93, Schedule V controlled substances, by adding a new the new class of anticonvulsants to the list.

**Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 7 of the bill expands the definition of Schedule V controlled substances, thereby expanding the scope of Schedule V related offenses. AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost to AOC for each offense class affected by this section.



<b>AOC Cost for Schedule V Offenses</b>			
<b>Statute</b>	<b>Title</b>	<b>Offense Class</b>	<b>AOC Cost</b>
90-95(a)(2)	Create, sell, deliver, or possess with intent to sell or deliver a counterfeit controlled substance	Class I felony	\$455
90-95(a)(3)	Possess a controlled substance	Class 2 MD	\$110
90-95(a)(1)	Manufacture, deliver, or possess with intent to manufacture, sell or deliver	Class I felony	\$455
90-95(a)(1)	Sell a controlled substance	Class H felony	\$625
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class H felony	\$625
90-95.4(a)(1)	18- 20-year-old employing or intentionally using minor over 13 to sell	Class G felony	\$938
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class G felony	\$938
90-95.4(a)(2)	18- 20-year-old employing or intentionally using minor under 13 to sell	Class F felony	\$1,137
90-95.4(a)(1)	Over 21-year-old employing or intentionally using minor over 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class F felony	\$1,137
90-95.4(b)(1)	Over 21-year-old employing or intentionally using minor over 13 to sell	Class E felony	\$2,017
90-95.4(a)(2)	Over 21-year-old employing or intentionally using minor under 13 to manufacture, deliver, or possess with intent to manufacture, sell, or deliver	Class E felony	\$2,017
90-95.4(b)(2)	Over 21-year-old employing or intentionally using minor under 13 to sell	Class D felony	\$4,320

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The following table shows the IDS usage rate and the weighted average cost for each offense class affected by this section. These estimates assume 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.

<b>IDS Cost for Schedule V Offenses</b>			
<b>Statute</b>	<b>Offense Class</b>	<b>IDS Usage Rate</b>	<b>IDS Cost</b>
90-95(a)(2)	Class I felony	68%	\$333
90-95(a)(3)	Class 2 MD	39%	\$201
90-95(a)(1)	Class I felony	68%	\$333
90-95(a)(1)	Class H felony	78%	\$392
90-95.4(a)(1)	Class H felony	78%	\$392
90-95.4(a)(1)	Class G felony	78%	\$498
90-95.4(a)(2)	Class G felony	78%	\$498
90-95.4(a)(2)	Class F felony	74%	\$569
90-95.4(a)(1)	Class F felony	74%	\$569
90-95.4(b)(1)	Class E felony	79%	\$586
90-95.4(a)(2)	Class E felony	79%	\$586
90-95.4(b)(2)	Class D felony	89%	\$961

### **Department of Public Safety – 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>19</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

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).

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>
1. Inmates <sup>20</sup>	37,304	37,601	37,367	37,385	37,642
2. Prison Beds (Expanded Capacity)	38,373	38,373	38,373	38,373	38,373
3. Beds Over/(Under) Inmate Population	1,069	772	1,006	988	731
<b>4. Additional Inmates Due to this Bill<sup>21</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

<sup>19</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.

<sup>20</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 2017.

<sup>21</sup> Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Since Section 7 of the bill expands the scope of existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were nine convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimates take into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
9 (Threshold)	1	2	2	2	2
20	2	4	4	4	4

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 15% of Class I felony offenders received active sentences averaging seven months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,199 (\$457 monthly cost times seven months).

In FY 2015-16, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual bed impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	10

In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months).

In FY 2015-16, 39% of Class G felony convictions resulted in active sentences, with an average estimated time served of 14 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were three convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
3 (Threshold)	1	2	2	2	2
20	8	14	14	14	14

In FY 2015-16, 39% of Class G felony offenders received active sentences averaging 14 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$6,398 (\$457 monthly cost times 14 months).

In FY 2015-16, 50% of Class F felony convictions resulted in active sentences, with an average estimated time served of 17 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	2	2	2	2
20	10	18	19	19	19

In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$7,769 (\$457 monthly cost times 17 months).

In FY 2015-16, 63% of Class E felony convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	3	3	3	3
20	13	28	34	34	35

In FY 2015-16, 63% of Class E felony offenders received active sentences averaging 27 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$12,339 (\$457 monthly cost times 27 months).

In FY 2015-16, 98% of Class D felony convictions resulted in active sentences, with an average estimated time served of 66 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In FY 2015-16, 98% of Class D felony offenders received active sentences averaging 66 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$30,162 (\$457 monthly cost times 66 months).

**Department of Public Safety – Community Corrections**

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. Additionally, for felony offense classes F 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.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 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 following table provides the cost of PRS and the cost of probation by offense class.

<b>Community Corrections Section Cost of PRS and Probation by Offense Class</b>						
<b>Class</b>	<b>% Active</b>	<b>PRS Length (months)</b>	<b>Cost of PRS</b>	<b>% Probation</b>	<b>Length of Probation (months)</b>	<b>Cost of Probation</b>
Class D felony	98%	12	\$1,776	2%	40	\$5,920
Class E felony	63%	12	\$1,776	37%	33	\$4,884
Class F felony	50%	9	\$1,332	50%	32	\$4,736
Class G felony	39%	9	\$1,332	61%	29	\$4,292
Class H felony	35%	9	\$1,332	65%	27	\$3,996
Class I felony	15%	9	\$1,332	85%	23	\$3,404
Class 2 MD	34%	NA	NA	66%	14	\$2,072

**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

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Kristine Leggett

*Kristine E. Leggett*

**APPROVED BY:**

Mark Trogon, Director  
Fiscal Research Division

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