

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 746 (Second Edition)

**SHORT TITLE:** Omnibus Gun Changes.

**SPONSOR(S):** Representatives Millis, Pittman, Burr, and Speciale

<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					

*This Incarceration Note only addresses the fiscal impact of criminal penalty changes included in this bill. A separate Fiscal Note has been prepared to address other fiscal impacts the bill may have.*

**FISCAL IMPACT SUMMARY:**

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

- Administrative Office of the Courts: Savings of (\$515) to cost of \$625 per disposition
- Indigent Defense Services: Savings of (\$191) to cost of \$392 per indigent defendant
- Department of Public Safety (DPS) - Prisons: Savings of (\$5,027) to cost of \$5,027 per felony conviction resulting in an active sentence
- DPS - Community Corrections: Savings of \$3,996 to cost of \$3,996 per conviction

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

### Section 1.1

This section creates new Article 54C, Carrying Handguns and Restrictions on Carrying Weapons in Certain Locations, within Chapter 14. New G.S. 14-415.35(g) effectively creates a copy of existing offenses and applies them to the population as a whole (the existing offenses only apply to actual holders of concealed handgun permits).

New G.S. 14-415.37 and G.S. 14-415.38, No firearms at executive and judicial facilities, replace existing G.S. 14-269.4 which is repealed in Section 1.3 of the bill.

New G.S. 14-415.39, Firearms and other weapons prohibited at picket lines and certain demonstrations, replaces it G.S. 14-277.2 (repealed in Section 1.3 of the bill), which also covers parades and funeral processions. The new statute makes it a Class 1 misdemeanor for anyone to carry a firearm or other weapon at picket lines or demonstrations.

New G.S. 14-415.41, Exceptions to statutes restricting firearms and other weapons, creates a list of persons to be exempt from this bill's premises-based offenses, which is substantively identical to the list of persons in existing G.S. 14-269(b), the current list of persons exempt from most of the existing premises-based and concealed weapon offenses.

New G.S. 14-415.42, Carrying handgun on premises of State-owned rest area and within State Parks System, recodifies the authorization to carry handguns on certain State properties, repealed from G.S. 14-415.11(c1) and (c3) in Section 2.8 of the bill.

### Section 1.2

This section recodifies existing G.S. 14-269.3, Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed, as G.S. 14-415.36.

### Section 2.1

This section repeals G.S. 14-269(a1), Carrying concealed weapons, and partially replaces it in new G.S. 14-415.35(g)(3) in Section 1.1 of the bill (discussed above).

### Section 5.1

This section amends existing G.S. 14-269.2, Weapons on campus or other educational property, to add new subsections that create new exemptions from the offenses under that section.

### Section 7.3

This section codifies the existing common law offense of going armed to the terror of the people as new G.S. 14-277.6.

## **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 1.1**

Section 1.1 of the bill creates new **G.S. 14-415.35(g)(1)** (violations of subsection (c), Prohibition on carrying handgun on posted private property. This conduct is currently covered for permit holders under G.S. 14-415.11(c)(8) and G.S. 14-415.21(a), so for those cases, the impact would be neutral. However, the proposed G.S. 14-415.35(c) and (g)(1) would also apply to any handgun (not just concealed as in the existing offense) and to any person, not just permit holders. This may result in additional infraction charges. It is not known how many additional infractions may be charged. The cost to the court system for every infraction charged is \$39. This section is not expected to have any impact on Indigent Defense Services, Prisons, or Community Corrections.

Section 1.1 of the bill also creates new **G.S. 14-415.35(g)(2)**, violations of subsection (d), which makes it a Class 1 misdemeanor to carry a concealed weapon while using alcohol or drugs. This conduct is currently covered for both permit holders and non-permit holders under G.S. 14-415.11(c2) (repealed in Section 2.3 of the bill) and G.S. 415.21(a1). Non permit holders who carry concealed handguns likely are currently charged under G.S. 14-269(a1). For non-permit holders, when charged under G.S. 14-269(a1) as the generic carrying concealed weapon regardless of alcohol or drug status, this offense is a Class 2 misdemeanor for the first offense and a Class H felony for the second and subsequent offenses. Section 2.1 of the bill would repeal subsection (a1) and its two penalty provisions, so in concert, the proposed G.S. 14-415.35(g)(2) and the repeal of G.S. 14-269(a1) may result in an unknown number of current Class 2 misdemeanors being charged instead as Class 1 misdemeanors.

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. This section may increase an existing Class 2 misdemeanor to a Class 1 misdemeanor. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class 2 misdemeanor who is instead charged with a

Class 1 misdemeanor, the average cost to the court will be \$96 (\$206 for a Class 1 misdemeanor minus \$110 for a Class 2 misdemeanor).

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. In FY 2011-12, the most recent year data is available, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$202 per case for a private appointed counsel (PAC) attorney. For the same period 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 2 misdemeanor is \$201, a difference from a Class 1 misdemeanor of \$1. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail.

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

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, including intermediate or community sanctions, are supervised by the Community Corrections (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders 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, intermediate sanctions and supervised probation.

In FY 2015-16, 34% of Class 2 misdemeanor offenders received active sentences; 66% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 14 months. Therefore, at a minimum, one Class 2 misdemeanor conviction resulting in probation will require at least 14 months of supervision. The cost of 14 months of supervision is \$2,072 per offender (\$148 per month times 14 months).<sup>1</sup>

In FY 2015-16, 31% of Class 1 misdemeanor offenders received active sentences; 69% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one

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<sup>1</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.

Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,200 per offender (\$148 per month times 15 months).<sup>1</sup>

For every Class 2 misdemeanor that becomes a Class 1 misdemeanor under the proposed bill, the cost to the Community Corrections section will be \$148 (the cost of the one additional month of supervision required for a Class 1 misdemeanor).

Section 1.1 of the bill also creates new **G.S. 14-415.35(g)(3)**, violations of subsection (e), which makes it a Class 2 misdemeanor for the first offense and a Class H felony for second and subsequent offenses of possession of a handgun by a prohibited person. The pool of potential offenders for this violation is different from the existing G.S. 14-269(a1) offense (although it is the same charge class). The current offense applies only to any person who carries a concealed firearm (of any sort) without a permit. The proposed (g)(3) applies to any person who carries a handgun, but not other firearm types, openly or concealed, but only if within the classes of prohibited persons listed in subsection (e). To the extent that the two parts of the scope of the proposed (g)(3) are smaller than under the existing G.S. 14-269(a1) (fewer firearms are covered and there is a limited set of prohibited persons as opposed to the portion of the population that lacks a permit), fewer charges may be filed for the Class 2 and Class H misdemeanor offenses for unlawful possession of a handgun. To the extent that part of the scope of the proposed (g)(3) are larger than under the existing G.S. 14-269(a1), which only applies to carrying a concealed weapon, as opposed to carrying concealed or openly, more charges may be filed for the Class 2 and Class H misdemeanor offenses. The cost to AOC for a Class 2 misdemeanor is \$110. A Class H felony is \$625.

In FY 2011-12, the most recent year data is available, 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 2 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney. For the same time period, 78% of Class H felony cases were handled by IDS for a weighted average cost of \$392. 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.

The Sentencing Commission expects no impact on the prison population from the Class 2 misdemeanor because all misdemeanor offenders who receive active sentences will serve them in the local jail.

For the Class H felony, the Sentencing Commission cannot estimate the impact of this bill 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, 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. The five year estimate takes 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 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 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, 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, 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>2</sup> For every offender sentenced to probation, the average cost would be \$3,996 (\$148 per month times 27 months).

Section 1.1 of the bill also creates new **G.S. 14-415.35(g)(4)**, violations of subsection (f), which makes it an infraction to fail to notify law enforcement of a concealed gun and/or provide identification. This conduct is currently covered for permit holders under G.S. 14-415.11(a) and G.S. 14-415.21(a), so for those cases, the impact would be neutral. To the extent the proposed subsection would apply to any person, not just permit holders, the number of infractions may increase. It is not known how many additional infractions may be charged. The cost to the court system for every infraction charged is \$39. This section is not expected to have any impact on Indigent Defense Services, Prisons, or Community Corrections.

Section 1.1 of the bill also creates new **G.S. 14-415.37** and **G.S. 14-415.38**, prohibiting firearms or other weapons at executive buildings and courthouses. The scope and exemptions of the new statutes are effectively identical to existing G.S. 14-269.4. The two proposed statutes are both infractions, which is a reduction in classification from the repealed statute's Class 1 misdemeanor offense. The savings for AOC for every Class 1 misdemeanor that is now charged as an infraction is \$167 per case (\$206 for a Class 1 misdemeanor minus \$39 for an infraction). The cost savings to IDS is \$202 (the entire cost to represent a Class 1 misdemeanor defendant). There will be no impact on prison costs. Since the punishment for an infraction is only a fine, there will be savings for the Community Correction Section of \$2,200 for every Class 1 misdemeanant who would have been sentenced to supervised probation who is instead charged with an infraction.

Section 1.1 of the bill also creates new **G.S. 14-415.39**, making it a Class 1 misdemeanor for anyone to carry a firearm or other weapon at picket lines or demonstrations. The proposed offense is narrower in scope than the existing offense in G.S. 14-277.2 (repealed in Section 1.3 of the bill), which also covers parades and funeral processions. AOC has no data from which to determine which prior charges resulted from settings that would be excluded under the proposed offense. The cost aversion for each Class 1 misdemeanor no longer charged would be \$206 for AOC; \$202 for IDS; and \$2,200 for Community Corrections.

Finally, Section 1.1 of the bill also creates new **G.S. 14-415.40**, making it a Class 1 misdemeanor to carry a handgun into certain areas. Subsection (a)(1) prohibits the possession of a handgun on legislative property ("an area prohibited by rule adopted under G.S. 120-32.1"). Violations of rules under that statute are already Class 1 misdemeanors. To the extent that rules currently exist to prohibit firearm possession on those premises, the impact of this section would be neutral. If there is no such rule, then there is no offense

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<sup>2</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.

committed under this subdivision and impact would only result if such a rule were adopted in the future. Subsection (a)(2) would prohibit handgun possession in places prohibited by federal law. To the extent such possession already would be a federal offense, it is unlikely that State charges would be pursued in addition to federal prosecution. Therefore, no impact is expected from this subsection. Finally subsection (a)(3) prohibits the possession of a handgun in a law enforcement or correctional facility. It is currently a Class 2 misdemeanor under G.S. 14-415.11(c)(5) to carry a concealed handgun into these facilities. The proposed bill increases the penalty to a Class 1 misdemeanor and expands the scope of the offense to concealed or open carry. The cost difference between a Class 1 misdemeanor and a Class 2 misdemeanor is \$96 for AOC; \$1 for IDS; and \$148 for Community Corrections. There is no prison impact, as misdemeanants receiving active sentences serve them in local jails.

## **SECTION 1.2**

Section 1.2 of the bill recodifies existing G.S. 14-269.3, Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed, as **G.S. 14-415.36**. The new statute is substantively identical to the existing statute, and the offenses are of the same offense class. Therefore, no impact is expected to result from this section.

## **SECTION 2.1**

This section amends existing **G.S. 14-269**, Carrying concealed weapons, by subsuming the conduct prohibited in subsection (a1), carrying a concealed gun, into subsection (a), carrying a concealed weapon. The bill includes the clarification that a handgun is not considered a “weapon” or a “gun” under this section. The punishment provision in subsection (c) is amended to eliminate the Class H felony for second and subsequent violation; any violation under amended subsection (a) is a Class 2 misdemeanor, the same penalty for first violations. In FY 2015-16, there were 595 Class 2 misdemeanor convictions for the first offense and 26 Class H felony convictions for the second and subsequent offense. It is not known how many of these convictions involved guns that were not handguns. Potential savings would occur if any of the Class H felonies become Class 2 misdemeanors under the proposed subsection. Savings in AOC would be \$515 (\$625 cost for a Class H felony minus \$110 cost for a Class 2 misdemeanor). Savings in IDS would be \$191 per indigent defendant (\$392 cost for a Class H felony minus \$201 for a Class 2 misdemeanor). Savings to the prison section would be \$5,027 per active sentence. Savings to the Community Corrections section would be \$1,332 per active sentence and \$3,996 per offender sentenced to probation.

## **SECTION 5.1**

This section amends existing **G.S. 14-269.2**, Weapons on campus or other educational property, by reducing the scope of the existing Class I felony by excluding certain criteria from the prohibited conduct. Pursuant to G.S. 14-269.2(b), it is a Class I felony for any person to knowingly possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property, or to a curricular or extracurricular activity sponsored by a school. New subsection (b2) creates exceptions to when the restrictions on extracurricular activities do not apply. New subsections (k1) and (k2) create exceptions to when a person may carry a handgun onto educational property, notwithstanding G.S. 14-269.2(b).

In FY 2015-16, there were 17 Class I felony convictions for violations of G.S. 14-269.2. It is not known how many convictions may be excluded as a result of the proposed statute. Potential savings could occur if there are fewer charges and convictions for this Class I felony. Savings in AOC would be \$455. Savings in IDS would be \$333 per indigent defendant. Savings to the prison section would be \$3,199 per active sentence. Savings to the Community Corrections section would be \$1,332 per active sentence and \$3,404 per offender sentenced to probation.

**SECTION 7.3**

This section codifies the existing common law offense of going armed to the terror of the people as new **G.S. 14-277.6**. Both the common law and the proposed new statute make the offense a Class 1 misdemeanor, so no impact is expected. In FY 2015-16, there were 46 Class 1 misdemeanor convictions for violations of going armed to the terror of the people.

**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

**APPROVED BY:**

Mark Trogon, Director  
Fiscal Research Division

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