

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 683 (First Edition)

SHORT TITLE: Safe Harbor/Victims of Human Trafficking.

SPONSOR(S): Senators Goolsby, Barringer, and Kinnaird

Yes **No** **No Estimate Available**

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE: December 1, 2013, and applies to offenses committed on or after that date.

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

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

- Administrative Office of the Courts: Savings of \$165 – Cost of \$7,818 per disposition
- Indigent Defense Services: Savings of \$166 – Cost of \$552 in district court
\$59 - \$1,001 in superior court without a trial
Savings of \$132 – Cost of \$4,551 in superior court with a trial
- Prison Section: \$11.23 per inmate per day
- Community Corrections: \$365 - \$3,594

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill amends G.S. 14-43.11, Human trafficking, by reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard of the fact, recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude. Violation would be a Class E felony if the victim is an adult. It remains a Class C felony if the victim is a minor. The bill also adds a new offense if a person knowingly or in reckless disregard of the facts causes a minor to be held in involuntary servitude or sexual servitude. Presumably, this would be a Class C felony since the victim is a minor.

Section 2 of the bill amends G.S. 14-43.12, Involuntary Servitude, reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard, holds another in involuntary servitude.

Section 3 of this bill amends G.S. 14-43.13, Sexual Servitude, by reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard, subjects or maintains another in sexual servitude.

Section 4 of this bill repeals eight statutes from Chapter 14 of the General Statutes.

Section 5 of this bill enacts six new statutes related to prostitution. G.S. 14-203.2, Prostitution, makes it illegal for any person to knowingly perform, offer, or agree to perform any sexual act for any money, property, token, object, article, or anything of value. This statute broadens the conduct covered by the existing offense to include any sexual act and any touching or fondling of the sex organs of one person by another. Violation is a Class 1 misdemeanor. Some of this conduct is currently covered by subsection (7) of G.S. 14-204 (repealed in Section 4). If the offender has not previously been convicted of or placed on probation for misdemeanor prostitution, the court must place him or her on probation without conviction (conditional discharge). If the offender is a minor, he or she is immune from prosecution. (There is no immunity for minors in the current statute.)

G.S. 14-203.3, Solicitation of a sexual act, makes it illegal for a person to offer another person who is not his or her spouse, any money, property, token, object, or article or anything of value for that person to perform any sexual act, or any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification. Violation is a Class F felony or a Class C felony if the act is solicited from a minor or a person who is severely or profoundly mentally disabled. Some of this conduct is currently covered by G.S. 14-190.19 (repealed in Section 4), Participating in prostitution of a minor.

G.S. 14-203.4, Promoting prostitution, makes it illegal for a person to knowingly promote prostitution by any of the means listed in the statute or otherwise. Violation is a Class F felony. Some of this conduct is currently covered by subsections (1), (2), (3), (4), and (7) of G.S. 14-204, Prostitution. Violation within 1,000 feet of real property comprising a school is a Class C felony. In addition, a second or subsequent violation of G.S. 14-203.4(a)(1) or (a)(2)(c) is a Class C felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.5 (promoting prostitution of a minor), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony.

G.S. 14-203.5, Promoting prostitution of a minor, makes it illegal for a person to knowingly promote prostitution of a minor or a person who is severely or profoundly mentally disabled at the time of the offense by any of the means listed in the statute. Violation of subdivision (a)(1) or (a)(2) is a B2 felony. Some of this conduct is currently covered by G.S. 14-190.18, Promoting prostitution of a minor (repealed in

Section 4). Violation within 1,000 feet of real property comprising a school is a Class B1 felony. Violation of subdivision (a)(3) is a Class B1 felony. In addition a second or subsequent violation of any of the subdivisions is a Class B1 felony. A violation of subdivisions (a)(1), (2), or (3), in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class B1 felony.

G.S. 14-203.6, Patronizing a prostitute, makes it illegal for a person to knowingly perform any of the following acts with a person not his or her spouse:

- (1) Engage in a sexual act with a prostitute.
- (2) Enter or remain in a place of prostitution with intent to engage in a sexual act.
- (3) Engage in any touching or fondling with a prostitute of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

A violation of this subsection is a Class F felony. Some of this conduct is currently covered by subsection (2), (6), and (7) of G.S. 14-204. Prostitution. Violation within 1,000 feet of real property comprising a school is a Class C felony. In addition, a second or subsequent violation is a Class C felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony.

G.S. 14-203.7, Patronizing a minor engaged in prostitution, makes it illegal for a person to do any of the following:

- (1) Engage in a sexual act with a person engaged in prostitution that is a minor or is a severely or profoundly mentally disabled person.
- (2) Engage in any touching or fondling, with a person engaged in prostitution that is either a minor or is a severely or profoundly mentally disabled person, of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

A violation of this subsection is a Class C felony. Some of this conduct is currently covered by G.S. 14-190.19, Participating in prostitution of a minor (repealed in Section 4). Violation within 1,000 feet of real property comprising a school is a Class B2 felony. In addition, a second or subsequent violation is a Class B2 felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.6 (patronizing a prostitute) is a Class B2 felony.

Section 8 of this bill amends existing G.S. 15A-1415(b)(10), grounds for appropriate relief which may be asserted by the defendant after the verdict; limitation as to time, and creates a new ground for the motion for appropriate relief (MAR), which can be asserted at any time after conviction of certain offenses against a minor.

Section 9 creates new G.S. 15A-1416.1, Motion by the defendant to vacate prostitution conviction for sex trafficking victim, which provides a procedure for hearing the MARs allowed under Section 8. These motions would be brought before the Court of Appeals.

Section 11 creates new G.S. 15A-1340.16(d)(19a) and (19b) (within Aggravated and mitigated sentences) by creating two new aggravating factors for felony sentencing for violations of the human trafficking, involuntary servitude, and sexual servitude statutes, for (i) cases involving multiple victims or (ii) if the victims suffer serious injury as a result of the offense.

Section 13 amends existing G.S. 7B-101, Definitions, to modify the definition of an “abused juvenile” under Chapter 7B, subchapter I, to replace the reference to G.S. 14-190.18 (repealed in Section 4) with its corresponding G.S. 14-204.5 (created in Section 5). It also adds to the list of offenses committed by a

parent, guardian, etc., that render a child “abused” in subdivision (g), which covers the human trafficking/servitude offenses.

This bill is effective December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

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

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

Judicial Branch

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

Sections 1, 2, and 3 amend the existing statutes by expanding the potential pool of defendants. These sections also raise the offenses, if they involve adults, from the current Class F felony to a Class E felony. The Class C felony offenses for violations involving minors are unchanged. By expanding the scope of the existing offenses in the amendment to the required state of mind of the defendant, there is a possibility that there may be an increase in charges under this bill. In FY 2011-12, there were no defendants charged with the existing Class F felony offense (increased to Class E felony in Section 1) of human trafficking; there were three defendants charged with the existing Class C felony offense (charge class remains unchanged) of human trafficking involving a child victim. Of those, none were convicted. In FY 2011-12 there were no defendants charged with the existing Class F felony offense (increased to Class E in Section 2 of this bill) of involuntary servitude; there were no defendants charged with the existing Class C felony offense (charge class remains unchanged) of involuntary servitude involving a child victim. In FY 2011-12 there were three defendants charged with the existing Class F felony offense (increased to Class E felony in Section 3 of this bill) of sexual servitude; there were eleven defendants charged with the existing Class C felony offense (charge class remains unchanged) of sexual servitude involving a child victim. Of those, there were no convictions involving an adult victim. There was one conviction involving a minor victim. For every additional person charged with a Class E felony, AOC estimates the average cost to the courts would be \$706 (\$1,618 for a Class E felony minus \$912 for a Class F felony).

Section 5 of this bill enacts six new statutes related to prostitution. Pursuant to G.S. 14-203.2(b), prostitution would remain a Class 1 misdemeanor, which would have no fiscal impact on AOC. However,

new 14-203.2(d) would provide that minors are immune from prosecution for prostitution and instead would be subject to temporary custody provisions found elsewhere in the General Statutes. For every person who would have been charged with prostitution under current law who would not be charged under the proposed bill, AOC will save \$165.

The table below shows the average cost to the courts for each new General Statute enacted in Section 5.

General Statute	Offense	Current Class	Proposed Class	Per Case Original Cost	Per Case Proposed Cost	Per Case Cost Increase
G.S. 14-203.3(b)	Solicitation of a sexual act from an adult	Class 1 misdemeanor	Class F felony	\$165	\$912	\$747
G.S. 14-203.3(b)	Solicitation of a sexual act from a minor	Class F felony	Class C felony	\$912	\$4,240	\$3,328
G.S. 14-203.4(b)	Promoting prostitution	Class 1 misdemeanor	Class F felony	\$165	\$912	\$747
G.S. 14-203.4(b)	Promoting prostitution within 1,000 feet of a school	Class 1 misdemeanor	Class C felony	\$165	\$4,240	\$4,075
G.S. 14-203.45(c)	Promoting prostitution of a minor	Class C felony	Class B2 felony	\$4,240	\$8,730	\$4,490
G.S. 14-203.5(c)	Promoting prostitution of a minor within 1,000 feet of a school or second or subsequent offense	Class C felony	Class B1 felony	\$4,240	\$11,762	\$7,522
G.S. 14-203.6(b)	Patronizing a prostitute	Class 1 misdemeanor	Class F felony	\$165	\$912	\$747
G.S. 14-203.6(b)	Patronizing a prostitute within 1,000 feet of a school	Class 1 misdemeanor	Class C felony	\$165	\$4,240	\$4,075
G.S. 14-203.7(c)	Patronizing a minor engaged in prostitution	Class F felony	Class C felony	\$912	\$4,240	\$3,328
G.S. 14-203.7(c)	Patronizing a minor engaged in prostitution within 1,000 feet of a school	Class F felony	Class B2 felony	\$912	\$8,730	\$7,818

Sections 8 and 9 set new grounds for a motion by the defendant. This may create additional motions, which would impact the workload of superior court judges; however, the number of additional motions is anticipated to be small because the proposed change encompasses an extremely limited class of offenders.

Section 11 creates two new aggravating factors. Since the finding of one or both of these aggravating factors carries the possibility of a more severe sentence (up to 25% longer) and defendants might put forth a more vigorous defense, AOC anticipates additional trial court proceedings to prove the two new factors in applicable cases. The number of defendants for whom these aggravating factors may be sought is unknown and thus, any additional costs incurred from these longer proceedings cannot be estimated.

Section 13 amends the existing definition of an abused juvenile. AOC anticipates a possibility for an increase in juvenile abuse/neglect/dependency petitions and related proceedings, but only to the extent that the persons prosecuted for these newly created offenses may have custody or control over juveniles that

were involved in the offenses. The number of criminal defendants to whom this situation may apply is unknown, and thus, any additional costs to the court system cannot be estimated.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. There will be no significant difference in cost to IDS in district court. In superior court, IDS estimates that the cost of the elevated Class E felony in Sections 1, 2, and 3 will result in an increase of \$59 per case (the difference between the current Class F felony offense of \$593 and the new, elevated Class E felony of \$652) for a PAC attorney if the case does not go to trial and a savings of \$132 per case (the difference between the current Class F felony offense of \$2,046 and the new, elevated Class E felony of \$1,914) if it does.

To the extent that additional Class E felony charges are brought under Sections 1, 2, or 3 due to expanded grounds, IDS estimates that the cost of a PAC attorney per case would be \$295 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class E felony would be \$652 if the case does not go to trial and \$1,914 if it does.

Section 5 enacts new G.S. 14-203(b), which keeps prostitution as a Class 1 misdemeanor. This would not have any fiscal impact on IDS. However, new G.S. 14-203.2(d) would provide that minors are immune from prosecution for prostitution and instead shall be subject to temporary custody provisions found elsewhere in the General Statutes. IDS estimates that by making minors immune to prosecution for prostitution, it would save \$295 in district court per case on PAC attorneys. In superior court, IDS estimates the savings would be \$321 per case if the case does not go to trial and \$847 if it does.

Pursuant to new G.S. 14-203.3(b), solicitation of a sexual act from an adult would be a Class F felony, and solicitation of a sexual act from a minor would be a Class C felony. Under current law, solicitation of a sexual act from an adult is a Class 1 misdemeanor, and solicitation of a sexual act from a minor is a Class F felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Adult	Class 1 misdemeanor	Class F felony	\$166	\$296	\$130
Minor	Class F felony	Class C felony	\$296	\$527	\$231

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Adult	Class 1 misdemeanor	Class F felony	\$321 non-trial \$847 trial	\$593 non-trial \$2,046 trial	\$272 non-trial \$1,199 trial
Minor	Class F felony	Class C felony	\$593 non-trial \$2,046 trial	\$1,040 non-trial \$3,037 trial	\$447 non-trial \$991 trial

Pursuant to new G.S. 14-203.4(b), promoting prostitution would be a Class F felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class C felony. Under current law, promoting prostitution is a Class 1 misdemeanor. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting	Class 1 misdemeanor	Class F felony	\$166	\$296	\$130
Enhanced Sentence	Class 1 misdemeanor	Class C felony	\$166	\$527	\$361

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting	Class 1 misdemeanor	Class F felony	\$321 non-trial \$847 trial	\$593 non-trial \$2,046 trial	\$272 non-trial \$1,199 trial
Enhanced Sentence	Class 1 misdemeanor	Class C felony	\$321 non-trial \$847 trial	\$1,040 non-trial \$3,037 trial	\$719 non-trial \$2,190 trial

Pursuant to new G.S. 14-203.5(c), promoting prostitution of a minor in violation of G.S. 14-203.5(a)(1) would be a Class B2 felony unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class B1 felony. Under current law, promoting prostitution of a minor is a Class C felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting of a Minor	Class C felony	Class B2 felony	\$527	\$848	\$321
Enhanced Sentence	Class C felony	Class B1 felony	\$527	\$848	\$321

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting of a Minor	Class C felony	Class B2 felony	\$1,040 non-trial \$3,037 trial	\$1,594 non-trial \$6,597 trial	\$554 non-trial \$3,560 trial
Enhanced Sentence	Class C felony	Class B1 felony	\$1,040 non-trial \$3,037 trial	\$1,594 non-trial \$6,597 trial	\$554 non-trial \$3,560 trial

Pursuant to new G.S. 14-203.6(b), patronizing a prostitute would be a Class F felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class C felony. Under current law, patronizing a prostitute is a Class 1 misdemeanor. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class 1 misdemeanor	Class F felony	\$166	\$296	\$130
Enhanced Sentence	Class 1 misdemeanor	Class C felony	\$166	\$527	\$361

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class 1 misdemeanor	Class F felony	\$321 non-trial \$847 trial	\$593 non-trial \$2,046 trial	\$272 non-trial \$1,199 trial
Enhanced Sentence	Class 1 misdemeanor	Class C felony	\$321 non-trial \$847 trial	\$1,040 non-trial \$3,037 trial	\$719 non-trial \$2,190 trial

Pursuant to new G.S. 14-203.7(c), patronizing a minor engaged in prostitution would be a Class C felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class B2 felony. Under current law, patronizing a minor engaged in prostitution is a Class F felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class F felony	Class C felony	\$296	\$527	\$231
Enhanced Sentence	Class F felony	Class B2 felony	\$296	\$1,079	\$783

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class F felony	Class C felony	\$593 non-trial \$2,046 trial	\$1,040 non-trial \$3,037 trial	\$447 non-trial \$991 trial
Enhanced Sentence	Class F felony	Class B2 felony	\$593 non-trial \$2,046 trial	\$1,594 non-trial \$6,597 trial	\$1,001 non-trial \$991 trial

Section 10 of Senate Bill 683 would create a right to an expunction for certain defendants who have been convicted of prostitution. Because there is no right to an appointed attorney in an expunction proceeding, this Section would not have any fiscal impact on IDS.

Section 11 of this bill would amend G.S. 15A-1340.16(d) to add two new aggravating factors to the felony sentencing scheme. Although litigating the application of an aggravating factor may cause an increase in the time claimed by appointed counsel, IDS is unable to quantify that impact.

Section 13 of this bill would amend G.S. 7B-101 to create additional grounds for finding a juvenile to be abused. Because IDS provides counsel for parents in abuse/neglect/dependency (A/N/D) cases and the bill expands the grounds for finding a juvenile to be abused, it could result in more A/N/D cases and, thus, greater IDS expenditures. However, IDS is unable to quantify the potential impact.

Department of Public Safety –Prison Section

Since the bill creates new offenses and expands existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new and expanded statutes.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). The cost to add one additional inmate to the prison system is \$11.23 per day, which includes the cost of food, clothing, and health care.

Population Projections and Bed Capacity					
Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

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

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

¹ 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.

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

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

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

Sections 1, 2, and 3 expand the potential pool of defendants. These sections also increase the offense classes, if they involve adults, from the current Class F felony to a Class E felony. The Class C felony offenses for violations involving minors are unchanged. In FY 2011-12, 57% of Class E felony offenders received active sentences; 43% received intermediate sentences. All active sentences result in twelve months of post-release supervision (PRS). The cost of twelve months of PRS is \$1,325 per offender (\$3.63 per day times 365 days).⁵ All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average cost to the community corrections for any individual convicted of a Class E felony who receives an active sentence is \$365 (\$1,345 minus \$980). The average length of intermediate punishment imposed for a Class E felony offense was 34 months. The average lengths of intermediate punishment imposed for a Class F felony offense was 33 months. The average cost to community corrections for any individual convicted of a Class E felony who receives an intermediate sentence is \$3,344 (the difference between the Class F cost of \$3,594 and the Class E cost of \$3,703). It is not known how many additional Class E convictions may result from the proposed broadening of the current statute.

Section 1 also creates a new offense if a person knowingly or in reckless disregard of the fact causes a minor to be held in involuntary servitude or sexual servitude. This would be a Class C felony. In addition, Sections 2 and 3 expand the potential pool of defendants who could be convicted of Class C felonies. In FY 2011-12, 100% of Class C felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is \$1,325 per offender (\$3.63 per day times 365 days).⁵ Since the proposed section creates a new offense; it is not known how many offenders might be convicted and sentenced for the proposed offense.

Section 4 repeals eight statutes from Chapter 14 of the General Statutes. The Administrative Office of the Courts (AOC) currently does not have specific offense codes for violations of G.S. 14-190.18 and G.S. 14-190.19. The lack of AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions.

In FY 2011-12, there were a total of 232 convictions under G.S. 14-204:4 convictions for maintaining a place for prostitution under subsection (1), 2 convictions for transporting for prostitution under subsection (4), 178 convictions for soliciting prostitution under subsection (5), 46 convictions for engaging in prostitution under subsection (7), and 2 convictions for aiding and abetting prostitution under subsection (7). The AOC currently does not have specific offense codes for the remaining subsections. There were 51 convictions for loitering for prostitution under G.S. 14-204.1. Violation of these statutes is a Class 1 misdemeanor offense. Most of the conduct covered in the statutes that are being repealed is covered in the new statutes that are enacted in Section 5 of this bill.

Section 5 of this bill enacts six new statutes related to prostitution. G.S. 14-203.3, Prostitution, broadens the conduct covered by the existing offense. Violation is a Class 1 misdemeanor. Some of this conduct is currently covered by subsection (7) of G.S. 14-204, Prostitution (repealed in section 4). If the offender has not previously been convicted of or placed on probation for misdemeanor prostitution, the court must place him or her on probation without conviction (conditional discharge). If the offender is a minor, he or she is immune from prosecution. It is not known how many additional convictions may result from the proposed broadening of the conduct covered. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor

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

were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanor sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is \$1,960 (540 days times \$3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is \$1,634 (450 days times \$3.63 per day).

G.S. 14-203.2, Solicitation of a sexual act, G.S. 14-203.4, Promoting prostitution, and G.S. 14-203.6, Patronizing a prostitute are all Class F felony offenses. Since the proposed statutes create new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. In FY 2011-12, 53% of Class F felony offenders received active sentences; 47% received intermediate sentences. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average length of intermediate punishment imposed for this offense class was 33 months. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence is \$3,594 (990 days times \$3.63 per day).

G.S. 14-203.2, Solicitation of a sexual act when the act is solicited from a minor or a person who is severely or profoundly mentally disabled, G.S. 14-203.4, Promoting prostitution when the violation occurs within 1,000 feet of real property comprising a school, G.S. 14-203.4(a)(1) or (a)(2)c when a second or subsequent violation has been committed, G.S. 14-203.6, Patronizing a prostitute when the violation occurs within 1,000 feet of real property comprising a school, when there is a second or subsequent violation, when the violation occurs in combination with convictions under G.S. 14-203.2, G.S. 14-203.3, or G.S. 14-203, and G.S. 14-203.7, Patronizing a minor engaged in prostitution, are all Class C felonies. It is not known how many offenders may be convicted under the proposed statutes. In FY 2011-12, 100% of Class C felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is \$1,325 per offender (\$3.63 per day times 365 days).⁶

G.S. 14-203, Promoting prostitution of a minor, and G.S. 14-203.7, Patronizing a minor engaged in prostitution when the violation occurs within 1,000 feet of real property comprising a school, is the sequent or subsequent violation, or is a combination with convictions under G.S. 14-203.2, G.S. 14-203.3, G.S. 14-203.4, G.S. 14-203.5, or G.S. 14-203.6 is a Class B2 felony. It is not known how many offenders might be convicted and sentenced for the proposed offense. In FY 2011-12, 100% of Class B2 felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is \$1,325 per offender (\$3.63 per day times 365 days).⁶

G.S. 14-203.5, Promoting prostitution of a minor, when a violation occurs within 1,000 feet of real property comprising a school, is a Class B1 felony. It is not known how many offenders might be convicted and sentenced for the proposed offense. In FY 2011-12, 100% of Class B1 felony offenders received active

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sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is \$1325 per offender (\$3.63 per day times 365 days).⁶

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:

AOC has raised the following issues:

1. In Sections 1, 2, and 3 the insertion of “reckless disregard of the fact” as an alternate state of mind by which a person can commit an offense is ambiguous. It’s not clear what “fact” the defendant must disregard recklessly.
2. In G.S. 14-203.2, Prostitution, in subsection (c), p. 3, line 16, the reference to deferred prosecution should be “conditional discharge” instead of “deferred prosecution” in order to remain consistent with the terminology in existing statutes for deferred criminal proceedings.
3. In subdivision (c)(2), p. 3, line 2: it is unclear if the sponsors intend that the period of probation be exactly 12 months. Probation under a conditional discharge normally is governed by the usual probation statutes.
4. Subdivision (c)(8), p. 4, line 9, requires a conforming change in G.S. 15A-150 to report all successful discharges and dismissals under 14-203.2 to the AOC, so that AOC will have records of the prior discharges. Without a conforming change, there will be no way to give effect to subdivision (8), because some prior discharges will be expunged. For those cases, only AOC will have a record from which to inform the court that a defendant had a prior discharge.
5. G.S. 14-203.3, pg. 4, line 27, includes those that are “severely or profoundly mentally disabled.” The definition for “severely or profoundly mentally disabled” does not appear anywhere in the General Statutes and could result in ambiguity and disparate application among N.C. courts.
6. In Section 6, Vehicle impoundment, the seizure of a vehicle would be triggered only by an “arrest” for an offense under Chapter 14, Article 27, as opposed to an actual charge for that offense. It is unclear if an individual is arrested but not charged if that individual will have to pay \$1,000.
 - a. The seizure of a vehicle also appears to be within a law enforcement officer’s discretion. The statute provides no guidance (or limitations on) the exercise of that discretion.
 - b. There is some question as to what offenses the seizure would apply.
 - c. The procedures for towing and storage of the vehicle are unclear.
 - d. The procedures for the recovery fee in subsection (a) are unclear.
7. The proposed MAR procedure in 15A-1416.1 is unclear.
 - a. It is unclear if the procedure before the Court of Appeals is intended to be the exclusive forum for this sub-set of MARs.
 - b. The proposed G.S. 15A-1416.1 places an evidentiary hearing before the Court of Appeals. The appellate division normally does not review issues of fact.
8. On pg. 8, lines 30-32, the proposed definition of a “violent” offense for the expunction statute is significantly different from the definitions of “violent” offenses in the General Statutes.

The Sentencing Commission has raised one issue. Under the proposed G.S. 14-203, the new definition of “Prostitution” would exclude vaginal intercourse. For purposes of this analysis, it is assumed that the new definition of prostitution includes vaginal intercourse.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:

Maggie Morrissey

Kristine Leggett

APPROVED BY:

Mark Trogon, Director
Fiscal Research Division

DATE: May 7, 2013



Signed Copy Located in the NCGA Principal Clerk's Offices