

**NORTH CAROLINA GENERAL ASSEMBLY  
LEGISLATIVE FISCAL NOTE  
(INCARCERATION NOTE G.S. 120-36.7)**

**BILL NUMBER:** HB 353 1st Edition  
**SHORT TITLE:** Explosive Devices Offenses - AB  
**SPONSOR(S):** Representative Haire

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring</b>	Unable to determine exact amount; possible long-term impact on prison system due to an increase in sentence lengths resulting from a change in criminal penalties for offenses listed in bill.				
<b>Judicial</b>					
<b>Recurring (a minimum of)</b>	\$14,900	\$26,312	\$27,102	\$27,915	\$28,752
<b>TOTAL EXPENDITURES:</b>			Unable to determine exact amount.		
<b>ADDITIONAL PRISON BEDS*</b>			Unable to determine exact amount.		
<b>POSITIONS: (cumulative)</b>			Unable to determine exact amount.		
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction (DOC); Judicial Branch					
<b>EFFECTIVE DATE:</b> December 1, 2003					
<p><i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i></p>					

**BILL SUMMARY:** HB 353 amends G.S. 14-49 and 14.49.1 to elevate the punishment for various explosive device offenses. The bill makes any person who willfully and maliciously uses any explosive or incendiary device or material to injure another guilty of a Class B1 felony (presently a Class D); to damage property of any kind belonging to another guilty of a Class D felony (presently a Class G); to damage any building of worship guilty of a Class C felony (presently a Class E); and to damage occupied property of any kind of nature guilty of a Class B1 felony (presently a Class D).

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

In FY 2001-2002, there was only one conviction for willful or malicious damage of real or personal property belonging to another by use of an explosive or incendiary device (G.S. 14-49b). If there were one conviction for this offense each year that would be classified as a Class D felony, this would result in the need for no additional prison beds the first year and one additional prison beds the second year. Under Structured Sentencing, all Class D felons serve an active sentence. In FY 2001-2002, Class D felons served an average sentence between 71 and 95 months.

There were no convictions in FY 2001-2002 for the willful and malicious injury of another by use of an explosive or incendiary device or material (G.S. 14-49(a)). The average estimated time served for a Class D felony offense was 6.1 years in FY 2001-2002, while the average estimated time served for a Class B1 felony offense was 22.8 years. As a result, while there would not be a *short-term* impact on the prison system since an active sentence is already mandatory under current law, there would be a *long-term* impact due to the longer Class B1 sentence length. As a result of longer sentences, overall prison operating costs would likely increase. In 2001-2002, the statewide average operating cost for one inmate was \$62.43/day or \$22,786.95/year.

In addition, there were no convictions in FY 2001-2002 for the willful and malicious damage, or aid, counsel, or procurement of damage of any building of worship by use of an explosive device or material (G.S. 14-49(b1)). If, for example, there were two convictions for this offense each year that would be reclassified as a Class C, this would result in the need for one additional prison bed the first year and one additional bed the second year. Like Class D felons, Class C felons are required to serve active sentences. In FY 2001-2002, the average estimated time served for a Class C felony offense was a minimum of 93 months and a maximum of 120 months.

Finally, it is not known how many offenders were convicted of willful or malicious damage of real or personal property occupied by another by use of an explosive or incendiary device because the Administrative Office of the Courts (AOC) does not have a specific offense code for this offense. The lack of an offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. The average estimated time served for Class D felony offenses was 6.1 years in FY 2001-2002, while the estimated time served for a Class B1 felony offense was 22.8 years. As a result, there would be no *short-term* impact on the prison sentence since an active sentence is already mandatory under current law. However, depending on the number of convictions, there could be a *long-term* impact due to the longer sentence lengths B1 felons serve. Again, longer sentences would likely increase overall prison operating costs.

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC data reveal that during calendar year 2002, six defendants were charged with a Class D felony offense for use of an explosive or incendiary device or material to injure another, 41 defendants were charged with a Class G felony offense for use of explosives to damage property of any kind belonging to another, and no defendants were charged with a Class E felony offense (damage to any building of worship as a result of explosive or incendiary devices). The AOC does not have an offense code for G.S. 14-49.1 (malicious damage of occupied property by use of explosive or incendiary while at the time occupied by another), thus data is unavailable for this offense.

Based on Superior Court disposition activity by offense class for 2002, the AOC estimates some increase in trials and pleas as a result of the bill. Any increase in trials and pleas as a result of the bill will result in higher costs for felony trials and guilty pleas. *AOC anticipates that the bill will create one additional trial and one additional guilty plea for violations of G.S. 14-49(a).* For offenses that are brought to trial as a Class B1 felony instead of as a Class D felony under current law, the estimated court cost per trial increases by \$13,636. For Class B1 felony offenses not brought to trial, and where a guilty plea is entered, the estimated cost per guilty plea increases by \$812. *Furthermore, AOC anticipates that the bill will create one additional trial and two additional guilty please for violations of G.S. 14-49(b).* For offenses that are brought to trial as a Class D felony instead of as a Class G felony under current law, the estimated court cost per trial increases approximately by \$7,200. For Class D offenses that are not brought to trial, and where a guilty plea is entered, the estimated cost per guilty plea increases by \$4,800.

Because no defendants were charged with a Class G felony for violation of G.S. 14-49 in 2002, and because there is no offense code for G.S. 14-49.1, we are limited to a partial cost estimate for the change of nature in trials and pleas that would result from this bill. *It is anticipated that overall court costs, based on in-court time, attorney preparation, and indigent defense, will*

*increase by at least \$14,900 in 2003-2004, \$26,312 in 2004-2005, and by an additional three percent a year in 2005-2006 and subsequent years.*

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

**TECHNICAL CONSIDERATIONS:** None

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

**PREPARED BY:** Nicole Kreiser and Douglas R. Holbrook, Jr.

**APPROVED BY:** James D. Johnson, Director Fiscal Research Division

**DATE:** March 26, 2003



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