

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2005**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 935 (Second Edition)

**SHORT TITLE:** Expand Felony for Construction Site Theft.

**SPONSOR(S):** Representatives Goforth and Harrell

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>
<b>GENERAL FUND</b>	<b><u>Exact amount cannot be determined; impact could be substantial.</u> Costs, beds, and positions are calculated if, for example, 1% of all Class 1 misdemeanor larceny convictions were to become Class H felonies.</b>				
<b>Correction (recurring)</b>		<b>\$1,212,260</b>	<b>\$2,522,776</b>	Unable to determine beyond FY 2007-08.	
<b>Judicial (recurring)</b>	<b>\$53,404</b>	<b>\$91,550</b>	<b>\$96,128</b>	<b>\$100,934</b>	<b>\$105,981</b>
<b>ADDITIONAL PRISON BEDS*</b>		<b>49</b>	<b>99</b>	Unable to determine beyond FY 2007-08.	
<b>POSITIONS: (cumulative)</b>		<b>20</b>	<b>40</b>	Unable to determine beyond FY 2007-08.	
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> December 1, 2005					
<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>					

**BILL SUMMARY:** This bill would enact new G.S. 14-72.6 to provide that theft from a permitted construction site is a Class H felony if the value of the goods stolen is \$300 or more, and that possessing or receiving goods stolen from a permitted construction site is a Class H felony without regard to the value of the goods. Under current law, larceny of goods (including those taken from a construction site) is a Class H felony if the goods stolen are of a value greater than \$1,000. If the goods are of a value less than or equal to \$1,000, the offense is presently a Class 1 misdemeanor.

The second edition provides that possessing or receiving goods stolen from a permitted construction site is a Class H felony only if the value of the goods is \$300 or more.

*Source: Adapted from Bill Digest H.B. 935 (03/14/2005).*

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

This bill would elevate the following offenses from Class 1 misdemeanors to Class H felonies:

- 1) *Larceny of goods with a value between \$300 and \$1,000 from a permitted construction site.*
- 2) *Receiving or possessing goods stolen from a permitted construction site valued between \$300 and \$1,000.*

Class 1 misdemeanor convictions elevated to Class H felonies would be expected to increase prison bed needs and therefore prison costs. In addition, increased court workload and costs would be anticipated due to the more vigorous defense and prosecution in these cases resulting from the more severe penalty. Because no data is available with respect to the number of present misdemeanor larceny offenses involving the theft of goods valued between \$300 and \$1,000 from permitted construction sites, we cannot provide a specific estimate of the number of charges and convictions that would be elevated to Class H felonies due to this bill. As such, the specific cost of this bill cannot be determined.

However, given the high number of Class 1 misdemeanor larceny-related convictions (16,459 in 2003-04) and the level of permitted construction activity in North Carolina, Fiscal Research believes this bill could have substantial fiscal impact. A cost estimate and our methodology for making this estimate are explained beginning on Page 3.

Charges and convictions for Class 2 misdemeanors for *attempted* larceny of such goods would be elevated to Class I felonies as a result of this bill. However, given the small number of charges and convictions for attempted misdemeanor larceny in FY 2003-04 (314 and 129, respectively), and presuming that only some proportion of these offenses involved the attempted larceny of goods valued between \$300 and \$1,000 from permitted construction sites, Fiscal Research does not anticipate that the number of charges and convictions elevated to Class I felonies due to this bill would be substantial.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

### **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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.*

Table 1 below outlines the number of convictions for larceny during FY 2003-04. Any of the 16,459 Class 1 misdemeanor convictions that involved the theft of goods valued between \$300 and \$1,000 from a permitted construction site would be elevated to Class H felonies due to this bill.

**Table 1: FY 2003-04 Convictions for Felony and Misdemeanor Larceny**

Offense Class	Offense	Convictions
Class H Felony	Felony Larceny.	944
Class I Felony	Attempted Felony Larceny.	57
Class 1 Misdemeanor	Misdemeanor Larceny.	14,467
Class 1 Misdemeanor	Misdemeanor Possessing or Receiving Stolen Goods.	1,992
Class 2 Misdemeanor	Attempted Misdemeanor Larceny.	129

**Misdemeanor Class 1 → Felony Class H:** While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. (Active sentences between 1-90 days are served in local jails; the Department of Correction (DOC) reimburses counties for active sentences between 30-90 days.) In contrast, felony Class H offenders serve active time in state prison, or if given a non-active punishment, are more likely to receive intermediate rather than community sanctions. In FY 2003-04, 37 percent of Class H convictions resulted in active sentences, 50 percent in intermediate sanctions, and the remaining 13 percent in community sentences. On average, the minimum active sentence for felony Class H offenders in FY 2003-04 was 10 months with a corresponding maximum of 12 months. On the whole, convictions elevated from Class 1 misdemeanors to Class H felonies would carry a longer sentence, are more likely to be active, and, if active, would be served in state prison rather than county jail.

No data is available with respect to how many of the 14,467 Class 1 misdemeanor larceny convictions or the 1,992 possessing or receiving stolen goods convictions in FY 2003-04 involved the theft of goods valued between \$300 and \$1,000 from a permitted construction site, and we are therefore unable to estimate the precise number of convictions that would be elevated to Class H felonies due to this bill. As such, the Sentencing Commission is unable to project the specific number of additional prison beds that would be needed as a result of this bill.

For every three convictions for Class H felonies rather than Class 1 misdemeanors, one additional prison bed would be needed in the first year and two additional beds in the second year. If a large number of offenders were convicted of Class H felonies rather than Class 1 misdemeanors, the impact on prison population could be substantial. If, for example, one percent (165) of the misdemeanor larceny-related convictions (16,459) were elevated to Class H felonies due to this bill, the combination of active sentences and probation revocations would result in the need for 49 additional prison beds in the first year and 99 additional beds in the second year.<sup>1</sup>

**OPERATING:** Operating costs are based on actual FY 2003-04 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division

<sup>1</sup> While the North Carolina Sentencing and Policy Advisory Commission provided this scenario, it cannot project the actual number of prison beds that would be needed due to this bill.

of Prisons. A three percent annual inflation rate will be added each year to the base costs for FY 2003-04 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

**Daily Inmate Operating Cost FY 2003-04**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2003-04)	\$49.34	\$65.59	\$82.46	\$62.03

By FY 2006-07, the statewide average operating cost for one inmate will be an estimated \$67.78 per day (\$24,740 per year) due to inflation. Based on the one-percent scenario outlined above, if 49 additional beds were needed in FY 2006-07, operating costs would equal \$1.2 million per year, and if 99 beds were needed in FY 2007-08, operating costs would equal \$2.5 million per year.

**Department of Correction – Division of Community Corrections (DCC)**

Convictions elevated from Class 1 misdemeanors to Class H felonies are less likely to result in non-active sentences, but if non-active, a greater proportion of sentences are likely to be intermediate rather than community sanctions. Probation officers in DCC supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter (based on the cost of intensive probation, the most common intermediate sanction). In contrast, community sanctions range from no cost to \$1.87 per offender per day.

**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.

For calendar year 2004, AOC data indicates that 31,287 defendants were charged with misdemeanor larceny, 335 with aiding and abetting misdemeanor larceny, and 314 with attempted misdemeanor larceny. No data is available with respect to how many of these charges involved theft of goods valued between \$300 and \$1,000 from a permitted construction site and would be elevated from Class 1 misdemeanors to Class H felonies due to this bill. AOC anticipates that there would be additional court and preparation time needed to process these charges, thus increasing superior court workload. The estimated average increase in cost *per charge* settled via trial or guilty plea as a Class H felony rather than Class 1 misdemeanor appears in the last row of Table 2 below.

**Table 2: Average Estimated Per Charge Settlement Costs**

<b>Offense Class</b>	<b>Settled via Trial</b>			<b>Settled via Guilty Plea</b>
	<i>Court/Attorney Costs</i>	<i>Indigent Defense</i>	<i>Total</i>	
<i>Class 1 Misdemeanor</i>	\$1,880	\$1,333	\$3,213	\$284
<i>Class H Felony</i>	\$4,096	\$2,100	\$6,196	\$359
<i>Class 1 → Class H</i>	\$2,216	\$767	<b>\$2,983</b>	<b>\$75</b>

If, for example, one percent of the 31,622 defendants charged with misdemeanor larceny were instead prosecuted for Class H felonies, court costs would equal \$91,550 in the first full year. The increase in cost to process these cases as Class H felonies reflects presumed increases in trial rates, trial length, and attorney preparation time, and time to handle pleas. Based on the costs of attorney preparation and court time, the cost to dispose of these cases as Class 1 misdemeanors would be an estimated \$29,376, with an additional \$9,841 for indigent defense. As Class H felonies, the cost would be an estimated \$93,512 for attorney and court costs and an additional \$37,255 for indigent defense. The figures in the box on the front page reflect the difference in total cost (\$91,550), inflated at a rate of five percent annually, and adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective.

**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:** Aaron Paul and Jim Mills

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



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