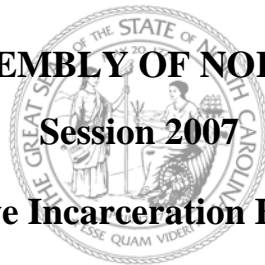


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 367 (First Edition)
SHORT TITLE: Increase Criminal Penalty/Theft of Metals.
SPONSOR(S): Representatives Moore, Current, and Neumann

Table with columns: FISCAL IMPACT, Yes (X), No ( ), No Estimate Available ( ), FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12. Rows include GENERAL FUND (Correction, Judicial), TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS, POSITIONS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY: H.B. 367 rewrites G.S. 66-11 to: (1) expand the transaction reporting requirements for secondary metals recyclers; (2) to increase the penalty for second or subsequent violation of G.S. 66-11, from a Class 1 misdemeanor to a Class I felony; and, (3) to authorize the confiscation and impounding of vehicles used in the illegal sale of regulated metals. H.B. 367 also amends G.S. 14-154 to create the new Class I felony offense of injuring, destroying, or pulling

down any telegraph, telephone, electric-power-transmission pole, or wire, insulator or other fixture attached thereto, with the intent to sell or use the item for direct or indirect profit (formerly Class 1 misdemeanor). The bill becomes effective December 1, 2007.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

Given the proposed offense expansion, penalty enhancement, and new offense, any new charge and/or conviction would generate some additional fiscal impact. However, the Administrative Office of the Courts does not currently have a specific offense code for violation of G.S. 66-11 or G.S. 14-154, indicating that offenses under these statutes are infrequently charged and/or infrequently result in conviction. Thus, *Fiscal Research does not anticipate a significant fiscal impact due to these proposed offenses.*

### **Department of Correction – Division of Prisons**

Based on the most recent prison population projections and estimated available bed capacity, there are no surplus prison beds available over the immediate five-year horizon or beyond. Consequently, any new felony conviction that results in an active sentence will require an additional prison bed.

Class 1 misdemeanants sentenced to active punishment typically serve the designated term of incarceration within a local jail. However, most active sentences for felony convictions are served in state prison.<sup>1</sup> *Thus, the proposed felony penalties (Class I felony) - for second/subsequent violation of G.S. 66-11 and violation of G.S. 14-154(b) - will not only lengthen time served for these offenses, but also necessitate imprisonment within a state facility.*

Because there are no specific offense codes for the affected offenses, it is not known how many future convictions might occur. Thus, the potential impacts on local jail and state prison populations cannot be determined. In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days; 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months.

For illustration, if twelve Class I convictions were to occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; four additional beds in the second year; and 2 new employees in the second year.* Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State \$272,160 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$168,480.<sup>2</sup>

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<sup>1</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

<sup>2</sup> New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$116,390 by FY 2009-10.<sup>3</sup>

**Department of Correction – Division of Community Corrections**

In FY 2005-06, 80% of Class 1 misdemeanor and 85% of Class I felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. *Thus, assuming that future convictions for the proposed offenses were to occur, the Division of Community Corrections could assume some additional costs for offenders placed under its jurisdiction.* It is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

**Judicial Branch**

There are presently no specific offense codes for violation of G.S. 66-11 or 14-154, and therefore no data from which to estimate the number of charges for the affected offenses. However, the Administrative Office of the Courts expects that any new offense, offense expansion, or penalty enhancement will be accompanied by more vigorous defense and prosecution, and will thereby increase court-time requirements and the associated costs of case disposal. In particular, the enhancement of current Class 1 misdemeanor offenses to Class I felonies would elevate future cases to superior court, rather than district court. Such elevation would likely increase jury involvement, as well as workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

**Table 1. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08**

<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>	<i>Change in Cost: Trial</i>	<i>Change in Cost: Plea</i>
Class 1 Misdemeanor	\$ 3,702	\$ 243	N/A	N/A
Class I Felony	\$ 6,980	\$ 298	\$ 3,278	\$55

As shown, for affected cases, the proposed penalty enhancement is estimated to cost an additional \$3,278 per trial, and \$55 per plea. These cost estimates account for indigent defense.<sup>4</sup> Actual costs may vary with time requirements and disposition.

Furthermore, although no significant impact is assumed, any additional case that involves the seizure and impounding of a vehicle used to violate G.S. 66-11 would be expected to increase

<sup>3</sup> Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

<sup>4</sup> Cost estimates are based on projected court-time requirements for judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings.

magistrate workload, and potentially increase the number of pretrial release (motor vehicle) determinations conducted by the Court. It is assumed that the majority of costs for impoundment/storage are incurred by the defendant (payment to commercial entity); however, local law enforcement and the Division of Motor Vehicles may experience a small increase in processing workload.

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

**TECHNICAL CONSIDERATIONS:** None

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