

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 54 (Fifth Edition)
SHORT TITLE: Habitual Misdemeanor Larceny.
SPONSOR(S): Representatives Crawford and Wray

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
GENERAL FUND					
Prison					
Recurring					
Nonrecurring					
Probation					
Judicial					
Recurring					
Nonrecurring					
TOTAL					
EXPENDITURES:					
ADDITIONAL PRISON BEDS:					
(cumulative)*					
FTE POSITIONS:					
(cumulative)					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Public Safety; Judicial Branch				
EFFECTIVE DATE:	December 1, 2012				
*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.					

BILL SUMMARY:

The proposed bill creates a new Class H felony by adding a new subsection to G.S. 14-72(b) to define the offense of Habitual Misdemeanor Larceny. Current law provides certain instances in which the crime of larceny is a Class H felony regardless of the value of the property in question. In addition, the crime of attempted larceny is punishable as a Class I felony if the crime was attempted but not accomplished. The proposed bill provides that the crime of larceny is a Class H felony, without regard to the value of the property in question, if the larceny is committed after the defendant has been convicted for any offense of larceny, or any offense deemed or punishable as larceny under this section, or of any substantially similar offense at least seven times. The bill treats habitual larceny as a new substantive offense. The proposed bill also provides that only one of the convictions of more than one offense of misdemeanor larceny in a single session of district court or a single week of Superior Court or of a court in another jurisdiction may be used as a prior conviction under this subdivision, except that convictions based upon offenses which occurred in separate counties shall each count as a separate prior conviction under this subdivision.

ASSUMPTIONS AND METHODOLOGY:

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.

Five prior convictions place the defendant in Prior Conviction Level III (the maximum). Consequently, prosecutors usually search for only five prior convictions. There may be some cost associated with the additional time required to search for the additional two prior convictions required under this bill, however, AOC cannot provide a monetary estimate for this additional workload requirement. Due to the stiffer penalties associated with a Class H versus a Class 1 misdemeanor, these cases may require more vigorous defense and prosecution, and thus trials and pleas would demand more court time and preparation time. In addition, these cases will be handled primarily in superior court rather than district court.

It is not known how many Class H or Class I charges will arise from the passage of this bill. For calendar year 2011, AOC data show 42,160 defendants with Class 1 misdemeanor larceny offenses under G.S. 14-72, and an additional 636 offenders charged with Class 2 attempted misdemeanor larceny under G.S. 14-72. It should be noted that AOC data is charge and case-based, not defendant-based. The NC Sentencing and Policy Advisory Commission's data show that there were 17,197 misdemeanor larceny convictions in FY 2010-11. Of these, they estimated that 4,129 (24%) have seven or more prior convictions. AOC has provided a scenario below in which 24% percent of those charged with the Class 1 misdemeanor larceny could be charged with the elevated Class H felony offense and 24% of those charged with the Class 2 attempted misdemeanor larceny could be charged with an elevated Class I felony under this proposed legislation.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. Overall, the monetary value of the average workload of a Class H felony case is \$50; a Class I felony is \$365. When the existing Class 1 misdemeanor charges are elevated to the Class H felony level, the cost differential is \$336 per case (\$501-\$165, the cost of a Class 1 misdemeanor disposition). Similarly, when the existing Class 2 misdemeanor charges are elevated to the Class I felony level, the cost differential is \$277 per case (\$365-\$88, the cost of a Class 2 misdemeanor

disposition). The total cost differential is estimated to be \$3,442,029 in the first full year of implementation (see detail below).

Current Charges per Year		24% Enhanced Charge Scenario		Additional Cost per Case	Total Additional Cost in FY 2012-13 (eff. Dec. 1 st)	Total Additional Cost in Subsequent Years
Class 1 Misdemeanor	42,160	Class H Felony	10,118	\$336	\$1,699,824	\$3,399,648
Class 2 Misdemeanor	636	Class I Felony	153	\$277	\$21,191	\$42,381
					\$1,721,015	\$3,442,029

This estimate includes costs for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness/Legal Assistant – as well as operating and infrastructure costs. The positions associated with this estimated cost would be placed in areas/districts in accordance with workload calculations and demonstrated need.

Because the new Class H and Class I felony offenses will be handled in superior court, a trial by jury will now be an option available to the defendants. Jury costs are based on an estimated jury pool of 30 for the first day and, for subsequent days, the 12-person jury plus 2 alternates. Jury compensation, set in G.S. 7A-312, is \$12 for the first day, \$20 for days 2 to 5, and \$40 for additional days. For criminal cases, jury costs come to \$360 for the first day, \$280 for the days two to five, and \$560 for the days over five.

In addition to the increased work for the Class H and I felonies, AOC would expect an increase in workload, including the possibility of more trials for charges before the fourth conviction. The stiffer penalties associated with the Class H and I felonies could lead to a more vigorous defense of the fourth misdemeanor larceny charge, for example. AOC is unable to project the cost of this workload.

Department of Public Safety –Prison Section

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), makes changes to North Carolina’s court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also creates 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. In addition, all F-I felons are subject to nine months of post-release supervision (PRS). B1-E felony PRS is 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 would be needed as a result of revocations that may occur during the new PRS period.

The Sentencing Commission has no data to indicate what proportion of offenders would be convicted as Class H offenders under proposed G.S. 14-72(b)(6).¹ Therefore, it is not known how many offenders might be sentenced under this bill.

During FY 2010-11, there were 17,197 misdemeanors and 73 Class I felony larceny convictions G.S. 14-72. It is not known how many of the 17,197 misdemeanor larceny convictions under G.S. 14-72 would be reclassified as Class H convictions under the proposed bill. Based on FY 2010-11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 36 percent of Class H convictions will result in active sentences, with an average estimated time served of ten months. If, for example, three convictions were reclassified from a misdemeanor to a Class H felony, active sentences would result in one additional inmate the first year and one additional inmate the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class H felonies, there will be some impact on PRS caseloads and the prison population due to revocations (the length of revocation period may vary).

Of the 17,197 offenders with misdemeanor convictions, 4,519 had five or more prior convictions. It is not possible to determine accurately the number of offenders with seven or more prior convictions because common practice in many jurisdictions is to stop searching for additional convictions once five prior convictions have been located.² Therefore, the exact number of prior convictions beyond five is unknown.

However, Sentencing Commission estimates that 4,129 of the 17,197 offenders have seven or more prior convictions.³ These figures are based on convictions for an individual on a single day of court in one county. (It is not known how many convictions resulted from offenses that occurred in multiple counties.) To the extent that convictions are based on offenses that occurred in multiple counties, the estimate of the number of offenders with seven or more prior convictions may exceed 4,129. If so, the impact on the prison population would exceed that discussed below. Based on available data, it is not possible to determine how many of these prior convictions are either for misdemeanor or felony larceny offenses under G.S. 14-72.

Scenarios were prepared to illustrate the potential impact of additional Class H felony convictions resulting from the proposed legislation. Estimates were prepared for 5, 50, and 100 percent of the 4,129 misdemeanor convictions described above and are shown in the table below.

Percent Convicted	Number of Convictions	Additional Beds*
5%	206	60
50%	2,056	603
100%	4,129	1,205

** Due to lack of historical data under JRA, these scenarios do not include the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation.*

¹ While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses used to calculate the number of prior record/conviction points.

² This estimate is based on the progression of offenders with zero to four prior convictions. For example, of the 17,197 offenders with misdemeanor larceny convictions, 25.0% (4,302) had five prior convictions, 0.2% (41) had six prior convictions, and 0.2% (30) had seven prior convictions recorded in the AOC database.

³ In this group, there is a 45% average decrease in the number of offenders from one prior conviction point to the next.

Based on the most recent population projections and estimated bed capacity, there are 1,791 surplus prison beds available through 2017. Taken in isolation, the impact of the proposed legislation is not expected to exceed current prison bed vacancies. To the extent that further legislation increases prison populations beyond the projected vacancies, additional beds would be needed.

Department of Public Safety – Community Correction Section

For felony offense classes E through I and all misdemeanor classes, 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 \$3.57 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.

In FY 2010-11, 38 percent of Class H offenders received active sentences; 49 percent received intermediate sentences; and 13 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 30 and 27 months, respectively. The estimated cost of an additional 12 months of intermediate or community punishment is \$1,303 (\$3.57 x 365). Accordingly, the table below applies this annual cost to the five, ten, and one hundred percent conviction scenarios.⁵

Scenario	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
5%	\$169,421	\$347,246	\$446,862	\$458,123	\$468,247
50%	\$1,698,324	\$3,480,885	\$4,479,463	\$4,592,346	\$4,693,837
100%	\$3,395,826	\$6,960,085	\$8,956,760	\$9,182,470	\$9,385,403

*Total cost shown is sum of intermediate and community sentence costs. Intermediate sentence cost: 49% of the projected number of convictions under the applicable scenario (i.e. 5%, 10%, or 100% x Annual cost to CCS). Community sentence cost: 13% of the projected number of convictions under the applicable scenario (i.e. 5%, 10%, or 100% x Annual cost to CCS).

**Annual cost estimates have been inflated based on consumer price index projections provided by Moody's economy.com (March 2012).

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

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

⁵ Due to the effective date of December 1, 2012, and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2011-12. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2012-13.

TECHNICAL CONSIDERATIONS:

There is no provision in this bill providing that a conviction under G.S. 14-72(b)(6) shall not constitute the commission of a felony for purposes of sentencing habitual felons.

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