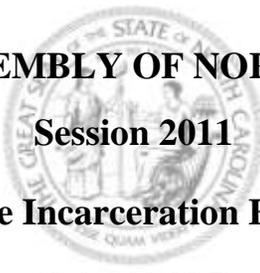


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 199 (Fourth Edition)

SHORT TITLE: Metal Theft Prevention Act of 2012.

SPONSOR(S): Representative Rhyne

| | FISCAL IMPACT | | | | |
|--|--------------------------|--------------------------|----------------------------------|--------------------------|--------------------------------|
| | Yes () | No () | No Estimate Available (X) | | |
| | <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 | | | | | <i>* No Estimate Available</i> |
| Recurring | | | | | |
| Nonrecurring | | | | | |
| Probation | | | | | <i>* No Estimate Available</i> |
| Judicial | | | | | <i>* No Estimate Available</i> |
| Recurring | | | | | |
| Nonrecurring | | | | | |
| TOTAL | | | | | |
| EXPENDITURES: | | | | | <i>* No Estimate Available</i> |
| ADDITIONAL PRISON BEDS: | | | | | |
| (cumulative)* | | | | | <i>* No Estimate Available</i> |
| FTE POSITIONS: | | | | | |
| (cumulative) | | | | | <i>* No Estimate Available</i> |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Safety; Judicial Branch | | | | | |
| EFFECTIVE DATE: December 1, 2012 | | | | | |
| <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:

The proposed legislation strengthens nonferrous metals theft prevention by (1) requiring permitting of nonferrous metals sellers and purchasers and (2) making it a crime to cut, mutilate, deface, or otherwise injure the property of another to obtain nonferrous metals. The bill requires that receipts and records be kept by secondary metals recyclers, which the bill defines as any firm or corporation that collects used ferrous or nonferrous metals for the purpose of reusing them, converts such metals into raw materials, or has the necessary equipment to convert such metals into raw materials. The bill also provides criminal penalties for various offenses related to the sale, purchase, transport, and possession of nonferrous metals. The proposed legislation defines nonferrous metal as metals not containing significant quantities of iron or steel, such as copper, aluminum other than aluminum cans, catalytic converters, or stainless steel beer kegs or containers.

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), 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 fewer than 90 days. 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 would occur during the PRS period.

Judicial Branch

The Administrative Office of the Courts (AOC) 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.

The proposed legislation's creation of new criminal offenses will create increased criminal filings. Because these are new offenses, AOC is unable to anticipate the number of persons that will be charged with these new offenses created by the proposed G.S. 66-397 and is therefore unable to predict the fiscal impact of these provisions.

Department of Public Safety – Prison Section

The proposed legislation would impact the need for prison beds and Post-Release Supervision (PRS) caseloads. Due to the lack of historical data under Justice Reinvestment Act (JRA), it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations. It is also not known how many offenders may be repeat offenders under the proposed statute.

The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Therefore, the repeal of G.S. 66-11 is not expected to have an impact on the prison population.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. Since Part 1 of Article 45 is substantially similar to G.S. 66-11, it is not expected to have a significant impact on the prison population.

Violations of Part 1 of Article 45 of the proposed legislation are punishable as Class 2 misdemeanors. In addition, commissions of perjury in order to obtain a nonferrous metals permit are punishable as Class 2 misdemeanors. In FY 2010-11, 27 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 22 days. In FY 2010-11, 25 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. The impact on local jails is unknown.

Violations of Part 3 of Article 45 and certain amendments to Section 31 are punishable as Class 1 misdemeanors. In FY 2010-11, 25 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have any significant impact on the prison population. The impact on local jail populations is not known.

The amendments to Section 31 made by the proposed bill makes mutilating or defacing property in an attempt to take nonferrous metal from that property a Class A1 misdemeanor if such actions result in injury to another person. In FY 2010-11, 33 percent of Class A1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class A1 convictions was 70 days.

Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in county. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Subsequent violations of certain provisions of the proposed legislation are punishable as Class I felonies. It is not known how many offenders may be repeat offenders under the proposed statute and would be sentenced as Class I felons. Based on FY 2010-11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18 percent of Class I convictions will result in active sentences, with an average estimated time served of 7 months. If, for example, there were 11 Class I convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year.

The amendments to Section 31 made by the proposed bill makes mutilating or defacing property in an attempt to take nonferrous metal from that property a Class H felony if such actions result in injury to property in a value between \$1,000 and \$10,000. Based on FY 2010-11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 38 percent of Class H convictions will result in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed 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 prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

The amendments to Section 31 made by the proposed bill makes mutilating or defacing property in an attempt to take nonferrous metal from that property a Class F felony if such actions result in serious bodily injury to another person or if such actions result in injury to property worth a value that exceeds \$10,000. Based on FY 2010-11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 54 percent of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year.

The amendments to Section 31 made by the proposed bill makes mutilating or defacing property in an attempt to take nonferrous metal from that property a Class D felony if such actions result in the death of another person. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2010-11 the average estimated time served for an offender convicted of a Class D offense was 70 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary).

Department of Public Safety – Community Corrections 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.¹ 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.

In FY 2010-11, one percent of Class 2 misdemeanants received intermediate sentences; and 72 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 17 and 13 months, respectively. Although there is no available estimate for the number of additional Class 2 misdemeanor convictions from the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is \$1,846 and \$1,412, respectively.

In FY 2010-11, three percent of Class 1 misdemeanants received intermediate sentences; and 72 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 19 and 15 months, respectively. Although there is no available estimate for the number of additional Class 1 misdemeanor convictions from the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is \$2,063 and \$1,629, respectively.

In FY 2010-11, six percent of Class A1 misdemeanants received intermediate sentences; and 61 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 20 and 17 months, respectively. Although there is no available estimate for the number of additional Class A1 misdemeanor convictions from the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is \$2,172 and \$1,846, respectively.

In FY 2010-11, 40 percent of Class I felons received intermediate sentences; and 47 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 27 and 22 months, respectively. Although there is no estimate available of the number of additional Class I felony convictions from subsequent offenses under the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is \$2,932 and \$2,389, respectively.

¹ DCC incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

In FY 2010-11, 49 percent of Class H felons 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. Although there is no available estimate for the number of additional Class H felony convictions from the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is \$3,258 and \$2,932, respectively.

In FY 2010-11, 46 percent of Class F felons received intermediate sentences. The average length of intermediate punishment imposed for this offense class was 34 months. Although there is no available estimate for the number of additional Class F felony convictions from the proposed legislation, the annual cost of one additional intermediate sentence is \$3,692.

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

TECHNICAL CONSIDERATIONS: None

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DATE: June 13, 2012.

Signed Copy Located in the NCGA Principal Clerk's Offices