

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

BILL NUMBER: SB 867 (5th Edition)
SHORT TITLE: Arson-Firefighter Injury/New Bomb Offense/Mounted Horse Caisson Patrol Unit
SPONSOR(S): Senator Hagan

	FISCAL IMPACT				
	Yes (X)	No ()		No Estimate Available ()	
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
Correction (R)		Unable to determine exact amount.			
Judicial (R)		Unable to determine exact amount.			
HIGHWAY FUND					
Crime Control (NR)	\$1,985	0	0	0	0
ADDITIONAL PRISON BEDS*					
		Unable to determine exact amount.			
POSITIONS:					
		Unable to determine exact amount.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction (DOC); Judicial Branch; Dept. of Crime Control & Public Safety, State Highway Patrol Division					
EFFECTIVE DATE: Sections 1 and 2 are effective December 1, 2003. Sections 3 and 4 are effective when the bill becomes law.					
*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: This proposal would create two new Class E felony offenses and establish a new Caisson Patrol Unit in the State Highway Patrol. **Section 1** creates the offense of arson or other unlawful burnings that result in serious injury to a firefighter, punishable by a Class E felony. Under current law, all arson and other burning offenses under Article 15 are punishable as Class H, G, F, E, or D felonies. (See technical considerations.) *The 5th edition of the bill adds language to clarify that the offense will be applicable if the firefighter is injured “on the property or proximate to the property that is the subject of the firefighter’s discharge or attempt to discharge his or her duties.”*

Section 2 amends G.S. 14-49 to make it a Class E felony for any person to willfully and maliciously damage, aid, counsel, or procure the damage by use of any explosive or incendiary device or material of the State Capitol, the Legislative Building, the Justice Building or any building owned or occupied by the State or any of its agencies, institutions or subdivisions or by any county, incorporated city or town or other governmental entity. Under current G.S. 14-49, it is a Class G felony for any person to willfully and maliciously damage any real or personal property of any kind or nature belonging to another by use of any explosive or incendiary device or material. Thus, some defendants who are currently charged with Class G felonies could be charged with Class E felonies under the bill.

Section 3 establishes within the Special Operations Section of the State Highway Patrol Division, the Honorary Liston B. Ramsey Mounted Horse/Caisson Patrol Unit to be located in Marshall, North Carolina. The Unit shall function as a horse-drawn caisson procession at the funeral services of certain law enforcement personnel and other fallen heroes and heroines. Authorizes the Department of Crime Control and Public Safety to accept grants, contributions, devises, bequests, and gifts, which shall be kept in a separate fund and used to fund the operations of the Unit. Specifies that the Unit shall not operate until the State Highway Patrol has acquired all of the resources, equipment, supplies, and funds needed to implement this Act. Authorizes the Department to adopt rules to govern the use and priority of assignment of the Unit.

Section 4 sets effective dates.

ASSUMPTIONS AND METHODOLOGY:

General

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 (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

NOTE: Changes to the 5th edition do not change the fiscal impact of SB 867 for any of the departments referenced in this note.

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.

Section 1: New Class E Arson Offense – Serious Injury to Firefighter

Since the section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. In FY 2001-02, there were 172 convictions under relevant arson statutes. The Sentencing Commission notes that it is not known whether any firefighters suffered bodily injury while discharging or attempting to discharge their duties in relation to the offenses for these convictions.

It is not known how many offenders might be sentenced for this offense. If, for example, there were two Class E convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. If offenders are convicted of this offense *in addition to* another arson offense, it is possible that a judge might order the sentences to run concurrently, thus reducing the need for new prison beds. It is also possible, however, that a judge would order the Class E felony conviction to run consecutively with another Class D through H arson conviction. If offenders are convicted of this offense *instead of* a Class F, G, or H felony offense, there will be the need for additional beds due to longer prison sentences and more offenders serving active sentences.

Under Structured Sentencing, offenders falling under Prior Record Levels I and II may receive intermediate or active sentences, while offenders falling under the remaining prior record levels receive only active sentences. In FY 2001-02, 49 percent of Class E felons received intermediate punishment and 51 percent received active sentences. In 2001-02, costs for intermediate sanctions ranged from \$1.83 to \$11.47 per offender per day, and the statewide average operating cost for one prison inmate was \$62.43/day (\$22,787/year). In addition, offenders who would have been convicted of felonies no greater than Class F, who serve active prison time for a Class E felony under this legislation, would now be supervised for nine months upon release from prison, at a cost of \$1.83 to \$11.47 per offender per day.

Section 2: New Class E Bomb Offense – Governmental Buildings

In FY 2001-02 there was one conviction under G.S. 14-49(b), willful or malicious damage to real or personal property belonging to another by use of an explosive or incendiary device or material. If, for example, there were five convictions each year that would be reclassified from Class G to Class E offenses, there would be the need for one additional prison bed the first year and two additional prison beds the second year. In FY 2001-02, 49 percent of Class E felony offenders received intermediate punishment and 51 percent received an active sentence. The average sentence imposed ranged from a minimum of 31 to a maximum of 47 months. In 2001-02, the statewide average operating cost for one inmate was \$62.43/day or \$22,786.95/year.

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.

Section 1: New Class E Arson Offense – Serious Injury to Firefighter

Because the section creates a new offense, the AOC has no data from which to estimate the number of charges that may arise as a result of this bill. However, data are available regarding the number of arson charges and other burning offenses as the AOC has offense codes for thirteen of the arson and other burning offenses under Article 15. AOC data for calendar year 2002 reveal that 756 defendants were charged with offenses under Article 15 (106 with first degree arson and 650 with other arson offenses). Currently, the only Class E felony offense under Article 15 (arson and other burnings) is for burning churches and certain other religious buildings. All the other arson and burning offenses under current law are punished as Class H, G, F, or D felonies. Data are not available on the number of defendants charged with these offenses who could be charged with the Class E felony offense involving serious injury to a firefighter under the bill.

Because the section creates a Class E felony, the AOC anticipates that the defense would be vigorous and the litigation more time consuming, compared to Class H, G, or F felony cases. Trials and pleas would demand more court time and preparation time due to the stiffer or additional penalties under the bill. For offenses that are brought to trial as Class E felonies, the estimated court cost per trial is \$8,532. For Class E felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$403.

Section 2: New Class E Explosive/Incendiary Device Offense

AOC data reveal 41 defendants were charged with the Class G felony under G.S. 14-49. Although data are not available on the number of these defendants who could be charged for using explosive devices to damage governmental buildings as proscribed under the bill, it is plausible that some of these charges involved damage to governmental buildings. As a result, some of the 41 defendants charged with a Class G felony would be subject to the enhanced penalty (Class E felony). The AOC anticipates that some court workload would increase under this bill. Trials and pleas would demand more court time and preparation time due to the stiffer penalties under the bill.

Department of Crime Control and Public Safety

Section 3 of the bill specifies that the new Mounted Horse/Caisson Patrol Unit is to be supported by gifts, bequests, contributions, etc. and shall not operate until the State Highway Patrol has acquired all of the necessary resources. Therefore, no state General Fund or Highway Fund support is required to operate the Unit. However, the bill does specify that the Department shall adopt rules to govern the use and priority of assignment of the Unit. Department of Crime Control and Public Safety staff estimates that this will require 48 hours of work by a staff attorney, whose annual salary is \$75,083. The total staff cost is \$1,985, including salary and benefits. These costs would be incurred in the Highway Fund, which is the source of the State Highway Patrol's budget.

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

TECHNICAL CONSIDERATIONS: It is unclear whether the intent of the bill is that persons be charged with the offense under the bill in addition to other arson and burning offenses under Article 15. The data from the Sentencing Commission assumes that the Class E felony charge is in addition to any charges under existing law.

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