

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1392 (Third Edition)

SHORT TITLE: Failure to Return Hired Motor Vehicles.

SPONSOR(S): Representatives Kiser and Glazier

		FISCAL IMPACT				
		Yes (X)	No ()	No Estimate Available ()		
		<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND						
Correction		Exact amount cannot be determined; no substantial impact anticipated.				
Judicial		Exact amount cannot be determined; no substantial impact anticipated.				
LOCAL GOVERNMENTS		Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*		It is likely that most offenders receiving active sentences under this bill would be housed in local jails at a cost to the State of \$18 per day. The exception would be Class 1 misdemeanants in Prior Record Level III, who are eligible for active sentences long enough to be served in state prison.				
POSITIONS: (cumulative)		Exact number cannot be determined; no additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments						
EFFECTIVE DATE: 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 provides that failure to return hired property in violation of G.S. 14-167 is a class H felony (rather than a class 2 misdemeanor) if the property is a truck, automobile, or other motor vehicle valued in excess of \$4,000. The bill additionally enacts new G.S. 14-168.5 outlining prima facie evidence by which the intent to convert a truck, automobile, or other motor vehicle for one's own use can be established and new G.S. 20-102.2 requiring law enforcement officers to report the failure to return a leased motor vehicle to the National Crime Information Center.

The third edition would make the proposed offense for failure to return a hired motor vehicle a Class 1 misdemeanor rather than a Class H felony. As such, some current Class 2 misdemeanors would become Class 1 misdemeanors under this bill.

Source: Adapted from Bill Digest H.B. 1392 (04/21/2005).

ASSUMPTIONS AND METHODOLOGY:

General

Current Class 2 misdemeanor failure to return property offenses in which the property is a motor vehicle valued at more than \$4,000 would become Class 1 misdemeanors under the third edition of this bill. While there is data regarding the number of present charges and convictions for failure to return hired property, it is not known how many of the offenses were for a motor vehicle worth more than \$4,000 and would, therefore, be elevated to Class 1 misdemeanors due to this bill.

Convictions elevated from Class 2 to Class 1 misdemeanors would, on average, carry a longer sentence, are more likely to be active, but remain likely to be served in county jail. As the Department of Correction (DOC) reimburses county jails for housing offenders sentenced to between 30 and 90 days, some increase in these payments would be anticipated as a result of this bill. Additionally, 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. However, because no estimate of the number of offenses that would be elevated to Class 1 misdemeanors is available, the specific cost associated with the bill cannot be determined.

Changes in the General Statutes regarding prima facie evidence of intent to retain rented motor vehicles could also make it slightly easier to bring charges for the offense and, therefore, increase the pool of defendants. The second and third editions of the bill eliminate failure to pay as prima facie evidence, which would likely reduce the impact associated with these provisions.

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.*

In FY 2003-04, there were 404 Class 2 misdemeanor convictions for failure to return hired or rented property in violation of G.S. 14-167. Such property could be anything of value, including a motor vehicle, aircraft, appliance, tool, equipment, horse, or mule. It is not known how many of these 404 convictions were for failure to return a truck, automobile, or other motor vehicle and would therefore be elevated to Class 1 misdemeanors.

- Of these 404 convictions, 37 received an active sentence (9%), with an average active sentence length of 27 days. In contrast, of all Class 2 misdemeanor convictions in 2003-04, 15 percent resulted in an active sentence with an average estimated time served of 13 days.

- During FY 2003-04, 19 percent of Class 1 misdemeanors resulted in active sentences, with an average estimated time served of 31 days. Given the increase in average active sentence rate and length for Class 1 misdemeanors as compared to Class 2 misdemeanors, it is likely that offenders sentenced as Class 1 rather than Class 2 misdemeanants due to this bill would receive active punishments more frequently and longer sentences, on average.
- Due to the potential for longer sentences and increases in the number of active sentences exceeding thirty days, there would likely be increased costs to jails and to DOC, which reimburses counties for housing misdemeanants sentenced to between thirty and ninety days at a rate of \$18 per day per offender.
- As the active sentence rate would likely be higher for convictions elevated to Class 1 misdemeanors due to this bill, fewer non-active sentences would be expected. As such, some cost savings to the Division of Community Corrections (DCC) would be anticipated under this bill.

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: Elevate Penalty from Class 2 to Class 1 for Failure to Return a Hired Motor Vehicle

For calendar year 2004, AOC data indicates that 1,798 individuals were charged with a Class 2 misdemeanor for failure to return hired or rented property in violation of G.S. 14-167. No data is available with respect to how many of these charges involved failure to return a hired or rented truck, automobile, or other motor vehicle and would be elevated from Class 2 to Class 1 misdemeanors due to this bill. AOC anticipates that there would be additional court and preparation time needed to process these charges, thus increasing district court workload. The average estimated increase in cost *per charge* settled via trial or guilty plea as a Class 1 rather than Class 2 misdemeanor appears in the last row of Table 1 below.

Table 1: Average Estimated Per Charge Settlement Costs

Misdemeanor Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	
				-
Class 2	\$1,365	\$949	\$2,314	\$271
Class 1	\$1,891	\$1,333	\$3,224	\$284
Class 2 → Class 1	\$526	\$384	\$910	\$13

Section 3: Prima Facie Evidence of Intent to Convert Property

Under current G.S. 14-168.3, it is prima facie evidence of intent to violate G.S. 14-167 (failure to return hired property), when the person leasing or renting the property 1) fails or refuses to return the property 10 days after the lease or rental agreement has expired, and 48 hours after written demand has been made; or 2) presented identification that is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

This bill would modify the prima facie evidence provisions with respect to motor vehicles to eliminate the 10-day period and extend the 48-hour period to 72 hours. This provision may make it slightly easier to bring charges and would thus increase the pool of defendants who could be subject to prosecution under G.S. 14-167. However, no data is available from which to estimate the number of additional charges that would occur. The second and third editions of the bill eliminate the failure to pay provision, which would likely reduce the impact associated with the changes to prima facie evidence.

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

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices