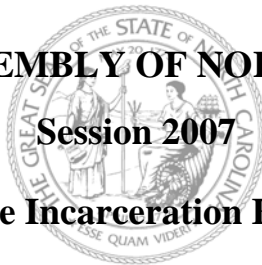


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 105 (First Edition)
SHORT TITLE: Modify Laws For Desecrating Graves.
SPONSOR(S): Representatives Justus, E. Warren, and Johnson

FISCAL IMPACT table with columns for Yes (X), No (), and No Estimate Available () across fiscal years FY 2007-08 to 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. 105 rewrites G.S. 14-148 and G.S. 14-149 to increase the penalties for:

- 1) Removing, disturbing, vandalizing, destroying, tampering with, or defacing certain markers or ornamentation that identify a grave or memorial; and,
- 2) Disturbing, destroying, removing, vandalizing, or desecrating any interred human remains.

The former offense increases from a possible Class 1 misdemeanor to a Class I felony, and the latter offense increases from a Class I to a Class H felony. These enhancements would apply to offenses committed on or after December 1, 2007.

ASSUMPTIONS AND METHODOLOGY:

General

Under current G.S. 14-148, it is a Class 1 misdemeanor to deface or desecrate a grave site if the damage caused is less than \$1,000, and the act is performed without legal authorization or consent of the deceased person's surviving spouse or next of kin; current G.S. 14-149 provides that such offense is a Class I felony when the resulting damage exceeds \$1,000.

However, H.B. 105 alters these offenses to specify that disturbing or defacing certain grave or memorial markers (i.e. tombstone, headstone, monument, ornamentation, grave artifact, etc.) is a Class I felony, regardless of the amount of damage. It also elevates the penalty for disturbing or desecrating interred human remains to a Class H felony.

Given these penalty enhancements, any future charge or conviction for either aforementioned offense would be expected to produce some fiscal impact. *However, prior year conviction data for offenses under current G.S. 14-148 and G.S. 14-149 suggest that few violations will occur. In fiscal years 2004-05 and 2005-06, there was only one conviction for any offense listed under G.S. 14-148 and G.S. 14-149. Accordingly, Fiscal Research does not anticipate a significant fiscal impact due to this proposal.*

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. Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.*

Class 1 misdemeanants sentenced to active punishment serve the designated term of incarceration within a local jail.¹ However, most active sentences for felony convictions are served in state prison.² *Thus, the enhanced penalty (Class I felony) for disturbing/defacing a grave or memorial would not only lengthen time served for the offense, but also require imprisonment within a state facility.*

Though it is not known exactly how many offenders might be convicted of the aforementioned, enhanced offenses, or how they might be sentenced, aggregate data for felony offense classes I and

¹ In FY 2004/05, 19% of Class 1 misdemeanants (for all crimes and prior record levels) received active sentences, with an average time served of 44 days.

² Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties for offenders 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.

H provide some indication of potential impact. In FY 2004-05, 10% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. In contrast, 38% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months.

Table 1. Type of Punishment Imposed & Average Minimum Term of Incarceration: FY 2004-05				
<i>Offense Class</i>	<i>Active</i>	<i>Intermediate</i>	<i>Community</i>	<i>Avg. Minimum Term of Incarceration</i>
Class I Misdemeanor	19%	2%	79%	44 days
Class I Felony	10%	41%	49%	7 months
Class H Felony	38%	49%	13%	9 months

Given the low incidence of conviction in previous years, it is unlikely that many future convictions will occur. However, for illustrative purposes, if three convictions were to occur for the more severe Class H offense (disturbing/desecrating interred human remains) per year, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; two additional beds in the second year; and 1 new employee in the second year.*

Assuming inmate assignment to medium custody, the construction of two prison beds within a new, stand alone facility could cost the State \$136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$84,240.³ 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 \$28,250 in FY 2008-09, and \$58,196 in FY 2009-10.⁴

Department of Correction – Division of Community Corrections

In FY 2004-05, 85% of Class I and 65% of Class H convictions resulted in either intermediate or community punishments, predominantly special, intensive, or general supervision probation. *Thus, assuming that future convictions for the enhanced offenses were to occur, the Division of Community Corrections (DCC) would likely assume additional costs for offenders placed under its jurisdiction.* It is not known exactly 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

³ 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).

⁴ Impact on incarcerated population is assumed to begin in FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

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

Although it is not known how many additional charges might occur for the enhanced offenses, the Administrative Office of the Courts anticipates that any penalty enhancement would be accompanied by more vigorous defense and prosecution, and would thereby increase court time and associated costs for case disposal. In particular, increasing the penalty for disturbing/defacing a grave or memorial, now a possible Class 1 misdemeanor, to a Class I felony 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 2. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2006-07				
<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	\$ 3,153	\$ 224	N/A	N/A
Class I Felony	\$ 6,028	\$ 274	\$ 2,875	\$ 50
Class H Felony	\$ 6,364	\$ 298	\$ 336	\$ 24

As shown, the proposed penalty enhancement for disturbing/defacing a grave or memorial is estimated to increase court-time costs per case by an additional \$2,875 per trial, and \$50 per plea. The estimated increase in court-time costs for the enhanced offense of disturbing/desecrating interred human remains is more marginal - \$336 per trial and \$24 per plea. However, actual costs may vary from these general estimates.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball and Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: February 26, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices