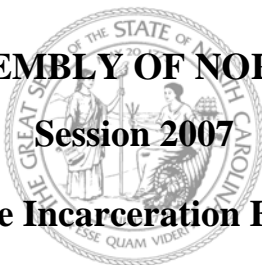


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

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

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>	No significant impact is anticipated; exact amount cannot be determined.				
<b>Judicial</b>	No significant impact is anticipated; exact amount cannot be determined.				
<b>TOTAL EXPENDITURES:</b>		Amount cannot be determined.			
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>		Amount cannot be determined.			
<b>POSITIONS: (cumulative)</b>		Amount cannot be determined.			
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch.				
<b>EFFECTIVE DATE:</b>	December 1, 2007.				
<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:** 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 (e.g. “tombstone, headstone, monument, grave marker, grave ornamentation, grave artifact”); and,
- 2) Disturbing, destroying, removing, vandalizing, or desecrating any interred human remains.

The former offense increases from a possible Class 1 misdemeanor (formerly, if resultant damage was less than \$1,000) 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.

***The second edition of H.B. 105 makes the following changes:***

**Section 1.**

- Amends G.S. 14-148 to remove the provisions limiting the statute to actions causing damage of less than \$1,000.
- Provides that the section also does not apply to: 1) the ordinary maintenance and care of a cemetery by the owner, caretaker, or other person keeping the cemetery free from debris and signs of neglect; or, 2) conduct punishable under G.S. 14-149 (“Desecrating, plowing over, or covering up graves; desecrating human remains”)
- Makes violation of G.S. 14-148 a Class I felony if the damage caused is \$1,000 or more. Retains Class 1 misdemeanor penalty for violation resulting in damage less than \$1,000. Corrects the statutory reference to restitution or reparation as a condition of probation.

**Section 2.**

- Amends G.S. 14-149 to reorganize the statute and make conforming changes.
- Provides that the prohibition against taking away, disturbing, vandalizing, destroying, tampering with, or defacing any tombstone, monument, ornamentation, or artifacts does not apply to the maintenance and care of a cemetery.
- Makes technical changes to the effective date.

*Source: Bill Digest H.B. 105 (02/07/0200).*

**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.

The second edition of H.B. 105 alters these offenses to: 1) 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; 2) eliminate the \$1,000 damage threshold for felony removal/disturbance of shrubbery, flowers, or plants that designate graves (becomes a Class 1 misdemeanor solely); and, 3) elevate the penalty for disturbing/desecrating interred human remains to a Class H felony.

Based on current Courts and Corrections resources, any future charge and/or conviction subject to the proposed penalty enhancements will generate some additional 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.<sup>1</sup> However, most active sentences for felony convictions are served in state prison.<sup>2</sup> Thus, the enhanced penalty (Class I felony) for disturbing/defacing certain grave or memorial markers 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 would be convicted of the aforementioned, enhanced offenses, or how they might be sentenced, aggregate data for felony offense classes I and H provide some indication of potential impact. In FY 2005-06, 11% of Class I felony convictions resulted in active sentences, with an average minimum term imposed of 7 months. In contrast, 37% of Class H felony convictions resulted in active sentences, with an average minimum term imposed of 9 months.

<i>Offense Class</i>	<i>Active</i>	<i>Intermediate</i>	<i>Community</i>	<i>Avg. Minimum Term of Incarceration</i>
Class 1 Misdemeanor	20%	2%	78%	45 days
Class I Felony	11%	39%	50%	7 months
Class H Felony	37%	48%	15%	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.<sup>3</sup> 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.<sup>4</sup>

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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).

<sup>4</sup> 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).

**Department of Correction – Division of Community Corrections**

In FY 2005-06, 89% of Class I and 63% 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) could assume additional costs for offenders placed under its supervision. 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 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 certain grave or memorial markers, 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.

<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	\$ 3,702	\$ 243	N/A	N/A
Class I Felony	\$ 6,980	\$ 298	\$ 3,278	\$ 55
Class H Felony	\$ 7,345	\$ 325	\$ 365	\$ 27

As shown, the proposed penalty enhancement for disturbing/defacing certain grave or memorial markers is estimated to cost an additional \$3,278 per trial, and \$55 per plea. The estimated increase in court-time costs for the enhanced offense of disturbing/desecrating interred human remains is more marginal - \$365 per trial and \$27 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

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Fiscal Research Division

**DATE:** April 25, 2007



**Signed Copy Located in the NCGA Principal Clerk's Offices**