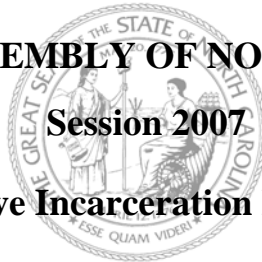


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 367 (Third Edition)

SHORT TITLE: Increase Criminal Penalty/Theft of Metals.

SPONSOR(S): Representatives Current, Neumann, and Moore

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction					
Judicial					
Law Enforcement					
TOTAL					
EXPENDITURES:					
ADDITIONAL PRISON BEDS:					
(cumulative)*					
POSITIONS:					
(cumulative)					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Law Enforcement – Departments of Justice and Crime Control and Public Safety; Local Government.					
EFFECTIVE DATE: 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. 367 rewrites G.S. 66-11 to: (1) expand the transaction reporting requirements for secondary metals recyclers; (2) to increase the penalty for second or subsequent violation of G.S. 66-11, from a Class 1 misdemeanor to a Class I felony; and, (3) to authorize the confiscation and impounding of vehicles used in the illegal sale of regulated metals. H.B. 367 also amends G.S. 14-154 to create the new Class I felony offense of injuring, destroying, or pulling down any telegraph, telephone, electric-power-transmission pole, or wire, insulator or other fixture

attached thereto, with the intent to sell or use the item for direct or indirect profit (formerly Class 1 misdemeanor). The bill becomes effective December 1, 2007.

The second edition of H.B. 367 completely revises section 1 of the first edition to require secondary metals recyclers to obtain the following additional information from sellers, solely for transactions involving copper, brass, or aluminum (other than beverage or food cans): 1) the source and physical address where the seller obtained the metals; and 2) a photocopy of the deliverer's identification, if a copy is not already on file. These recordkeeping changes expand the current Class 1 misdemeanor offense for violation of G.S. 66-11 (G.S. 66-11(f)). *The second edition does not include the penalty enhancement and vehicle confiscation provisions in the first edition. It also revises Section 2 of the first edition to expand the offense in G.S. 14-154 ("Injuring wires and other fixtures..."), including cable and any equipment related to wireless communications regulated by the FCC; it also enhances the penalty for violation, from a Class 1 misdemeanor to a Class I felony.*

The third edition of H.B. 367 revises section 1 to impose additional records and inspection requirements, purchase limitations, and holding requirements on secondary metals recyclers. These additional regulations further expand the scope of the current misdemeanor (Class 1) offense of violation of G.S. 66-11. Moreover, the third edition restores the Class I felony enhancement (first edition) for second or subsequent violation of G.S. 66-11 (first offense remains a Class 1 misdemeanor). The third edition also makes vehicles used (or so intended) to transport unlawfully obtained metals subject to forfeiture.

ASSUMPTIONS AND METHODOLOGY:

General

Given current resources, any new charge and/or conviction for these expanded and enhanced offenses will generate some additional fiscal impact for Corrections and the Courts. However, the Administrative Office of the Courts does not currently have a specific offense code for violation of G.S. 66-11 or G.S. 14-154, indicating that offenses under these statutes are infrequently charged and/or infrequently result in conviction. 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 typically serve the designated term of incarceration within a local jail. However, most active sentences for felony convictions are served in state prison.¹ Consequently, *the proposed penalty enhancements for second or subsequent violation of G.S. 66-11 (Class I felony) and violation of G.S. 14-154 (Class I felony) will not only lengthen time served for these offenses, but also necessitate imprisonment within a state facility.*

¹ Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are 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.

Because there are no specific offense codes for the affected offenses, it is not known how many future convictions might occur. Thus, the potential impacts on local jail and state prison populations cannot be determined. In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days; 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months.

For illustration, if twelve Class I convictions were to occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; four additional beds in the second year; and two new employees in the second year.* Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State \$272,160 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$168,480.² 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 \$116,390 by FY 2009-10.³

Department of Correction – Division of Community Corrections

In FY 2005-06, 80% of Class 1 misdemeanor and 85% of Class I felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. *Thus, assuming that future convictions for these offenses were to occur, the Division of Community Corrections could assume some additional costs for offenders placed under its supervision.* It is not known 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

There are presently no specific offense codes for violation of G.S. 66-11 or 14-154, and therefore no data from which to estimate the number of charges for the affected offenses. However, the Administrative Office of the Courts expects that any offense expansion or penalty enhancement will be accompanied by more vigorous defense and prosecution, and thereby increase court-time

² 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).

³ Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

requirements and the associated costs of case disposal. In particular, the proposed penalty enhancements (G.S. 66-11; G.S. 14-154), from Class 1 misdemeanors to Class I felonies, will elevate future cases to superior court, rather than district court. Such elevation will increase jury involvement, as well as workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

Table 1. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08				
<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

As shown, for affected cases, the proposed penalty enhancement is estimated to cost an additional \$3,278 per trial, and \$55 per plea. These cost estimates account for indigent defense.⁴ Actual costs may vary with time requirements and disposition.

Law Enforcement: Department of Justice; Crime Control and Public Safety; and Local Government

Some additional processing and enforcement costs could be incurred by the Departments of Justice and Crime Control and Public Safety (State Highway Patrol), as well as local law enforcement, should either take custody of forfeited vehicles. However, any associated increase in workload should prove minimal. It is not known how many vehicles might be forfeited due to this legislation; consequently, potential proceed amounts are indeterminate.

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 Jean Sandaire

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 9, 2007



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⁴ Cost estimates are based on projected court-time requirements for judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings.