

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 944 (Second Edition)
SHORT TITLE: Change Penalty for Hit and Run Violations.
SPONSOR(S): Senator Dalton

		FISCAL IMPACT				
		Yes (X)	No ()	No Estimate Available ()		
		<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
GENERAL FUND						
Correction: Prisons	Assumes minimum prison capital and operating costs if 15% of FY 2005-06 Class H convictions increased to Class F.					
Recurring*	-	\$ 115,719	\$ 268,180	\$ 268,180	\$ 268,180	\$ 268,180
Capital*	\$ 661,349	-	-	-	-	-
<i>*Assumes prison bed construction within a stand-alone facility (p. 3). Prison population (bed) impact and minimum capital and operating costs cannot be projected beyond initial two-year window (pp. 2-3).</i>						
Correction: DCC	Amount cannot be determined.					
Judicial	Assumes 15% of CY 2007 Class H charges. See p. 5. No estimate available for proposed change in larceny offenses pursuant to Section 2.					
Recurring	\$ 27,284	\$ 46,772	\$ 46,772	\$ 46,772	\$ 46,772	\$ 46,772
Nonrecurring	-	-	-	-	-	-
TOTAL EXPENDITURES:	Exact amount cannot be determined. Based on 15% scenario and 3 Class H Larceny convictions, total costs could approach \$688,633 for FY 2008-09; \$162,491 for FY 09-10; and \$314,952 for FY 10-11.					
ADDITIONAL PRISON BEDS: (cumulative)*	-	4	9	-	-	-
POSITIONS: (cumulative)	-	2	4	-	-	-
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.						
EFFECTIVE DATE: December 1, 2008.						
<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:

Section 1

Current G.S. 20-166 prohibits the driver of a vehicle, who knows or reasonably should know that his or her vehicle has been involved in an “accident or collision” *and* that the accident has resulted in *injury or death* to any person, from willfully leaving the scene before a law enforcement officer so authorizes, or before an investigation is completed. The driver is also prohibited from removing or facilitating/attempting to remove the involved vehicle from the scene, prior to completion of the investigation. A driver is permitted to temporarily leave the scene to secure emergency assistance and/or to promote his personal and others’ safety; however, he must return the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by law enforcement. *Willful violation of current G.S. 20-166 is a Class H felony offense.*

S.B. 944 rewrites G.S. 20-166(a) to create the enhanced Class F felony offense of fleeing/failing to remain at the scene of a “crash” that results in death or “serious bodily injury” to any person, as defined by G.S. 14-32.4. The bill also adds new subsection (a1) to clarify that the offense of fleeing/failing to remain at the scene of a “crash” that results in only “injury” remains a Class H felony. S.B. 944 makes other technical and conforming changes to the statute.

Section 2

The 2nd edition of the bill adds the new language found in section 2. This section creates a new statute (G.S. 14-83A. Fixtures subject to larceny) that abolishes all common law distinctions that provide that personal property that has become affixed to real property is not subject to a charge of larceny. As a result, any person who shall remove or take and carry away, or shall aid another in removing, taking or carrying away, any property that is affixed to real property, with the intent to steal the property, shall be guilty of larceny and shall be punished as provided by statute. The bill becomes effective December 1, 2008, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of January 2008.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of SB 944. As shown, the Sentencing Commission estimates that this specific legislation will add 9 inmates to the prison system by the end of FY 2010-11.

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

	June 30 2009	June 30 2010	June 30 2011	June 30 2012	June 30 2013
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	40,402	41,073	41,698	42,698	42,518
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	39,908	39,908	40,664	40,664	40,664
3. Projected No. of Beds Over/Under Inmate Population	-494	-1,165	-1,034	-1,854	-2,759
4. Projected No. of Additional Inmates Due to this Bill ³	N/A	4	9	9	9
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	N/A	4	9	9	9

Methodology for Prison bed Impact Section 1

Assuming that additional violations of G.S. 20-166 were to fit the criteria of this enhanced offense, any resultant charge and/or conviction would generate some additional fiscal impact. However, present data does not distinguish the number of offenses involving “serious bodily injury” (G.S. 14-32.4(a)); therefore, there is no reliable basis from which to project the number of charges and/or convictions that would become subject to this enhancement. Nevertheless, the relatively high prior year charge and conviction frequencies for felony (current Class H offense) violation of G.S. 20-166 suggest that the potential fiscal impact of this proposal could be significant.

Fiscal Research expects the proposed penalty enhancement to increase both the rate of active sentencing (incarceration) and length of incarceration for affected convictions – those meeting the “serious bodily injury” criterion.⁴ Combined, these two effects will increase the need for additional prison beds. In FY 2006-07, 35% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months; *conversely, 51% of Class F felony convictions resulted in active sentences, with an average estimated time served of 20 months.*

Though the number of future convictions for the enhanced offense is unknown, prior year conviction data provides some indication of potential impact. In FY 2006-07, there were 98 Class H felony convictions for violation G.S. 20-166(a). From this total, the Sentencing and Policy Advisory Commission was asked to estimate bed needs based on several scenarios (Table 1).⁵ Each scenario assumes that a certain percentage of the FY 2006-07 Class H convictions would become Class F convictions under this proposal. These estimates demonstrate only two-year impacts, and assume FY 2006-07 sentencing and revocation patterns for Classes F and H felonies. Actual convictions, active sentencing rates, and revocation rates could exceed or fall short of these assumptions.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2008.

³ Criminal penalty bills effective December 1, 2008, should not affect prison population and bed needs until FY 2009-10 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

⁴ Because the current penalty levels are maintained for other offenses within G.S. 20-166, no other change in sentencing practices is assumed (e.g. for offenses resulting in “injury” only).

⁵ *Because the proposed offense criteria are new, a more detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model. Threshold scenarios only represent potential two-year impact.*

Table 1. Projected Convictions and Prison Bed Impact			
<i>Projected Convictions</i>		<i>Prison Beds Required</i>	
Scenarios	Convictions	FY 09/10	FY 10/11
10%	10	3	5
15%	15	3	7
20%	20	5	10

Table 2 (below) illustrates the capital and operating costs associated with each scenario and as above, only demonstrates the fiscal impact through FY 2010-11 due to the nature of the Sentencing Commission's Simulation model.

Table 2. Estimated Prison Bed Construction and Operation Costs for Class F Increase				
<i>Prison Bed Construction Alternatives & Costs</i>			<i>Operating Costs</i>	
Scenarios	Stand Alone: FY 08/09	Add-On: FY 08/09	FY 09/10	FY 10/11
10%	\$367,416	\$227,448	\$86,790	\$148,989
15%	\$514,382	\$318,427	\$86,790	\$208,584
20%	\$734,832	\$454,896	\$144,649	\$297,977

Section 2

This section creates a new statute (G.S. 14-83A. Fixtures subject to larceny) that abolishes all common law distinctions that provide that personal property that has become affixed to real property is not subject to a charge of larceny. As a result, any person who shall remove or take and carry away, or shall aid another in removing, taking or carrying away, any property that is affixed to real property, with the intent to steal the property, shall be guilty of larceny and shall be punished as provided by statute.

Currently, this conduct might be punished under any number of offenses involving damage to real property. The most common one would be G.S. 14-127, Willful and wanton injury to real property, which is a Class 1 misdemeanor. In FY 2006/07, there were 1,284 convictions under G.S. 14-127. If the conduct met the conditions stated in the new statute, the offender would be punished under G.S. 14-72, Larceny of property. Larceny of property valued over \$1,000 is a Class H felony; larceny of property valued at \$1,000 or less is a Class 1 misdemeanor. There will be no prison impact if the offense remains a Class 1 misdemeanor under the proposed bill. However, prison impact will occur for any Class 1 misdemeanor convictions that would become Class H felonies under the proposed bill. It is not known how many Class 1 misdemeanor convictions would become Class H felony convictions under the proposed bill. In FY 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H 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 two additional prison beds the second year.

Table 3. Estimated Prison Bed Construction and Operation Costs for Class H Larceny				
<i>Prison Bed Construction Alternatives & Costs</i>			<i>Operating Costs</i>	
Convictions	Stand Alone: FY 08/09	Add-On: FY 08/09	FY 08/09	FY 09/10
3	\$146,966	\$90,979	\$28,930	\$59,595

As shown, if 15% (15) of the 98 Class H felony hit and run convictions moved to Class F and there were three increases to Class H felony for larceny, *four additional prison beds would be required in the*

first applicable year nine additional beds by the second; and four additional positions by the second year.⁶ Assuming inmate assignment to medium custody, the construction of nine prison beds within a new, stand alone facility could cost the State \$661,349 in FY 2007-08; bed construction within an add-on facility could cost approximately \$409,406.⁷ These costs are attributed to FY 2008-09 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 \$115,719 in FY 2009-10, and \$268,180 in FY 2010-11.⁸

- *An annual inflation rate of 3% is applied to FY 2010-11 bed operating costs beyond the initial two-year window. Construction and operating costs are shown in the Fiscal Impact Table (p. 1). However, it is not known exactly how bed demand and construction/operating costs might be distributed over the five-year note horizon.*

Department of Correction – Division of Community Corrections

Per structured sentencing, Classes F and H felony offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). For Class H felons, community sentencing is authorized only for those without a prior record, whereas intermediate punishment is authorized up to prior record level V. In contrast, *only intermediate punishment is authorized (prior record levels I-III) for non-active, Class F felony sentences.* Accordingly, resultant non-active sentences for the enhanced offense could potentially increase the demand for DCC intermediate sanction resources; however, given the higher rate of active sentencing for Class F felony convictions, no significant impact is assumed.⁹

In FY 2006-07, 48% of Class F felony convictions resulted in intermediate punishments, predominantly intensive supervision and special probation; 63% of Class H felony convictions resulted in non-active, intermediate or community sentences. It is not known how many additional or fewer offenders would be sentenced to intermediate or community punishments under this proposal, nor is it known to which type, or for how long. Thus, the potential fiscal impact for DCC is indeterminate.

Judicial Branch

Though it is not known how many charges might occur for the enhanced offenses, the Administrative Office of the Courts expects that any penalty enhancement would be accompanied by more vigorous defense and prosecution, and would thereby increase court-time requirements and the associated costs

⁶ Position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

⁷ 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).

⁸ Impact on incarcerated population is assumed for FY 2009/10, given the presumed effective date of December 1, 2008 and typical lag time between charge and conviction (6 months). * Also see technical consideration, p. 5.

⁹ Intermediate sanctions include intensive supervision probation, special probation, and house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court.

of case disposal. Specifically, the AOC anticipates that more cases would be prosecuted, resulting in increased jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

Section 1

AOC data for CY 2007 indicate that approximately 632 defendants were charged with a Class H felony offense under G.S. 20-166(a). Again, assuming that 15% (approx. 95) of these 632 prior year charges were to occur annually for the enhanced offense, the estimated difference in court-time, jury, and indigent defense costs would be approximately \$46,772 per year. As shown, it is assumed that a higher percentage of Class F felony cases would result in trial (4%) and guilty plea (54%), relative to Class H felony cases – 1% trial and 50% plea. Actual costs may vary from this example, contingent upon court-time and workload requirements, as well as the type of case disposition.

Table 3. Estimated Court-Time & Indigent Defense Costs							
<i>Trial</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
Offense Class	# Cases	Court-Time *	DA Prep. *	Jury *	Court Costs	# Cases	Defense Cost
Class H felony	1	\$3,288	\$1,658	\$640	\$5,586	1	\$2,345
Class F felony	4	\$4,365	\$2,279	\$920	\$30,256	3	\$9,363
<i>* Estimated costs per case</i>			<i>Difference: \$24,670</i>			<i>Difference: \$7,018</i>	
<i>Plea</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
Offense Class	# Cases	Court-Time *	DA Prep. *	Jury *	Court Costs	# Cases	Defense Cost
Class H felony	47	\$144	\$104	0	\$11,656	35	\$2,726
Class F felony	51	\$183	\$207	0	\$19,890	38	\$9,576
<i>* Estimated costs per case</i>			<i>Difference: \$8,234</i>			<i>Difference: \$6,850</i>	

- *AOC cost estimates assume that all 632 cases would occur annually for the enhanced offense. Fiscal research assumes that this scenario is unlikely, and has revised AOC cost estimates to reflect the 15% percent illustration used for prison bed impact. As shown in the Fiscal Impact Table (p.1), estimated costs are adjusted for the assumed 7 month effective period in FY 2008/09.*

Section 2

AOC has no data that would reveal how often personal property that is affixed to real property is taken and carried away in circumstances where larceny would not be charged under current law, but would be charged under this bill. It seems likely that most often the conduct now would result in some charge under current law, and if so, the principal effect of this bill would be to add new or different charges to existing cases. The additional charges would add complexity, time and cost to the litigation, but we have no basis to offer an estimate.

In general, larceny is punished under G.S. 14-72 as a Class 1 misdemeanor or Class H felony depending on the value of the property taken. AOC data for calendar 2007 show 31,893 defendants charged under G.S. 14-72(a) with misdemeanor larceny and 7,332 with felony larceny (not including motor vehicle larcenies), plus 7,890 with larceny after breaking and entering, a Class H felony under G.S. 14-72(b)(2). There were 14,558 charges of injury to personal property, a Class 1 or 2 misdemeanor under G.S. 14- 160.

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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