

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: — SB 707 — 1st Edition

SHORT TITLE: Repeat Misd. Larceny

SPONSOR(S): Senator Shubert

	<u>FISCAL IMPACT¹</u>				
	<u>Yes (X)</u>	<u>No ()</u>		<u>No Estimate Available ()</u>	
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
<u>GENERAL FUND</u>					
<u>Correction</u>		<u>\$843,117</u>	<u>\$1,731,808</u>		
<u>Recurring)</u>					
	<u>Annual operating costs could equal or exceed \$1,731,808 by FY 2005-2006 and beyond. Cost is dependent on the number of defendants convicted within three years of a fifth or subsequent offense described under this bill.</u>				
<u>Judicial</u>	<u>\$14,347 - \$19,001</u>	<u>\$28,695 - \$38,001</u>			
<u>Recurring)</u>					
	<u>Annual costs could equal or exceed a range of \$28,695- \$38,001 by FY 2005-2006 and beyond. Cost is dependent on the number of defendants charged with misdemeanor larceny or misdemeanor shoplifting within three years of a fifth or subsequent offense described under this bill.</u>				
<u>TOTAL</u>	<u>Annual costs could equal or exceed a range of \$1,760,503 - \$1,769,809 by FY 2005-2006 and beyond. - Cost is dependent on the number of defendants and convicted offenders with five or more previous convictions within three years of a subsequent offense described under this bill.</u>				
<u>EXPENDITURES:</u>					
<u>ADDITIONAL</u>					
<u>PRISON BEDS*¹</u>	<u>0</u>	<u>37</u>	<u>76</u>	<u>76</u>	<u>76</u>
<u>(cumulative)</u>					
<u>POSITIONS¹:</u>	<u>0</u>	<u>15</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>(cumulative)</u>					
<u>PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:</u> Department of Correction; Judicial Branch					
<u>EFFECTIVE DATE:</u> December 1, 2003					
<i><u>*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.</u></i>					

¹ Fiscal impact reflects cost if five percent of larceny and ten percent of shoplifting defendants and convicted offenders were prosecuted for a Class H felony rather than a Class 1 misdemeanor under the scope of this bill. If more than five percent of larceny and ten percent of shoplifting defendants and offenders have more than five convictions for misdemeanor larceny or misdemeanor shoplifting, the fiscal impact could rise significantly.

BILL SUMMARY:² The bill amends G.S. 14-72 and G.S. 14-72.1 to make misdemeanor larceny or misdemeanor shoplifting a Class H felony for persons convicted within three years of a fifth or subsequent offense for larceny of property valued at not more than \$1,000 and for shoplifting by unlawful concealment or shoplifting by substituting price tags.

Under current G.S. 14-72, misdemeanor larceny is a Class 1 misdemeanor. Currently, G.S. 14-72.1 makes various shoplifting offenses Class 3 misdemeanors for first convictions, Class 2 misdemeanors for second offenses committed within three years, and Class 1 misdemeanors for third or subsequent offenses committed within five years. Thus, some defendants currently charged with Class 1 misdemeanor shoplifting offenses would be charged with Class H felony offenses under the bill.

ASSUMPTIONS AND METHODOLOGY:

General

For SB 707, some criminal justice professionals have indicated that they believe making habitual larceny and shoplifting a felony will have a deterrent effect. While deterring crime is a possible outcome, there is little research available to confirm this, especially for specific criminal penalty changes.

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 (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Judicial Branch

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal ResearchFRDh with an analysis of the fiscal impact of a 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.

For calendar year 2002, AOC data show that 29,360 defendants were charged with misdemeanor larceny under G.S. 14-72 and 6,847 defendants were charged with misdemeanor shoplifting (concealment/price tag transfers) under G.S. 14-72.1.

AOC is unable to provide an exact estimate concerning the number of defendants charged with misdemeanor larceny or misdemeanor shoplifting who have been convicted within three years of a fifth or subsequent offense described under the bill. Given the large pool of defendants (36,207) currently charged with various misdemeanor offenses, *there could be a substantial impact on the courts.* AOC anticipates that trials and pleas would demand more court time, and preparation time would increase due to the stiffer penalties under the bill. In addition, trials would be jury trials in superior court rather than misdemeanor cases in district court. For offenses that are brought to trial as Class H felonies, the estimated court cost per trial is \$4,986. For Class H felony offenses not

² AOC Research and Planning

brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$248. For example, if five (5) percent of defendants for misdemeanor larceny and ten (10) percent of defendants for misdemeanor shoplifting were prosecuted for Class H felonies rather than Class 1 misdemeanors, court costs could range from \$28,695- \$38,001,³ and AOC also states that the total processing and position costs would also increase.

BILL SUMMARY:

³ Assumes that nine percent of larceny ~~defendants~~ and one percent of shoplifting defendants fall in Prior Conviction Level III. This mirrors the percentage of misdemeanor larceny and shoplifting convicted offenders that fall under this conviction level. Also assumes a low number of offenders falling under Prior Conviction Level III charged with misdemeanor larceny (5%) and charged with misdemeanor shoplifting (10%) have been convicted within three years of a fifth or subsequent larceny or shoplifting offense. The number of offenders eligible to be charged under a Class H felony mirrors a low but reasonable estimate of the number of offenders who are likely to have had more than five convictions for misdemeanor larceny and misdemeanor shoplifting in a three-year window. Regarding the cost estimate, the lower end of the range assumes 33% of defendants charged with a class H felony would accept a plea for ~~m~~misdemeanor larceny or shoplifting and 2.5% of defendants will go to trial. This plea estimate is based on AOC trends in the disposition of misdemeanor cases in District Court. The higher end of the range assumes 60% of defendants charged with a Class H felony for larceny or shoplifting will plead guilty to a Class H felony and 2.5% of defendants will go to trial. This estimate mirrors AOC trends in the disposition of felony cases in Superior Court.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days.) In contrast, Class H felons serve active prison sentences or receive intermediate sanctions. In FY 2000-2001, 55 percent of offenders were sentenced to intermediate punishment while 45 percent of offenders were sentenced to active punishment. On average, offenders served between 9 and 11 months. Convictions that increase Class 1 misdemeanors to Class H felonies will result in more frequent, longer active sentences served in state prisons rather than local jails.

Section 1 – Misdemeanor Larceny (G.S. 14-72 (a1))

While the AOC database contains information on the number of prior record/conviction points, it does not contain information about specific offenses that are used to calculate the number of prior record/conviction points. Thus, the Sentencing and Policy Advisory Commission does not have any data to indicate what proportion of offenders would be convicted as Class H offenders as a result of a fifth or subsequent offense of misdemeanor larceny.

However, data is available concerning the number of convictions for misdemeanor larceny as well as the number of convicted offenders falling in Prior Conviction Level III (five or more prior convictions). In FY 2001-2002, there were 15,246 convictions for misdemeanor larceny, with 2,610 falling in Prior Conviction Level III (five or more prior convictions). If the prior convictions were for offenses falling under the scope of this bill, these offenders could be convicted of Class H felonies under this bill.

For every 3 convictions of a Class H felony rather than a Class 1 misdemeanor, there will be the need for one additional prison bed in the first year and two additional beds in the second year. If a large number of offenders were convicted as Class H felons instead of Class 1 misdemeanants, the impact could be substantial. The following table illustrates the range of potential impacts.

Table 1: Additional Prison Beds Needed – Larceny⁴

Number and Percentage of Convictions Raised to Class H Felonies as a Result of Bill	Additional Prison Beds Needed	
	<u>FY 2003-2004</u>	<u>FY 2004-2004</u>
3 (0.001%)	<u>1</u>	<u>2</u>
131 (5%)⁵ (See Foot Note 5)	<u>36</u>	<u>74</u>
1305 (50%)	<u>359</u>	<u>730</u>
2610 (100%)	<u>718</u>	<u>1460</u>

Section 2 – Misdemeanor Shoplifting (concealment/price tag transfers) (G.S. 14-42(d2))

As previously mentioned, the Sentencing and Policy Advisory Commission does not have any data to indicate what proportion of offenders would be convicted as Class H offenders as a result of a fifth or subsequent offense of shoplifting by unlawful concealment or shoplifting by substituting price tags.

However, data is available concerning the number of convictions for misdemeanor shoplifting as well as the number of convicted offenders falling in Prior Conviction Level III (five or more prior convictions). Of the 3,097 convictions for shoplifting by unlawful concealment during FY 2001-2002, 3,039 were convicted of Class 3 misdemeanors, 28 were convicted as Class 2 misdemeanors (second offense within three years), and 30 were convicted as Class 1 misdemeanors (third or subsequent offense within five years). Of the 66 convictions for shoplifting by substituting price tags in FY 2001-2002, 64 were convicted as a Class 3 misdemeanor and two were convicted as Class 1 misdemeanors (third or subsequent offense within 5 years).

If a large number of offenders were convicted as Class H offenders instead of Class 1 offenders, the impact could be substantial. **The following table illustrates the range of potential impacts; 100% assumes 30 convictions for shoplifting at Class 1 misdemeanor level and two at Class 1 level for shoplifting by substituting price tags. Fiscal Research is assuming 10% for purposes of this fiscal note.**

Table 2: Additional Prison Beds Needed –Shoplifting (Unlawful Concealment or Substituting Price Tags)⁴

Number and Percentage of Convictions Raised to Class H Felonies as a Result of Bill	Additional Prison Beds Needed	
	<u>FY 2003-2004</u>	<u>FY 2004-2004</u>
3 (10%)⁶ (See Footnote 6)	<u>1</u>	<u>2</u>
16 (50%)	<u>5</u>	<u>9</u>
32 (100%)	<u>9</u>	<u>18</u>

Of the offenders convicted of misdemeanor larceny in FY 2001-02, there were 2,610 offenders with at least five prior convictions for *any* crime. It is not reasonable to assume that all 2,610

⁴ While the NC Sentencing and Policy Advisory Commission has provided these scenarios, it cannot project the actual number of prison beds created by this bill.

⁵ The estimated number of convicted offenders (5%) eligible to be charged under a Class H felony mirrors a low but reasonable estimate of the number of offenders who are likely to have had more than five convictions for misdemeanor larceny within a three-year window.

⁶ The estimated number of convicted offenders (10%) eligible to be charged under a Class H felony mirrors a low but reasonable estimate of the number of offenders who are likely to have had more than five convictions for misdemeanor shoplifting within a three-year window.

offenders, or even a high percentage of these offenders, have been found guilty of five or more counts of misdemeanor larceny within three years. Similarly, of the 32 offenders convicted of Class 1 misdemeanor shoplifting with at least three offenses within five years, it is not reasonable to assume all 32 offenders, or even a high percentage of these offenders, have been found guilty of five or more counts of misdemeanor shoplifting within three years. However, given that court officials indicate larceny and shoplifting offenders are likely to have previous convictions, the bill will clearly have a fiscal impact. Since we cannot identify a specific number of offenders affected, we have used a low-end estimate of the number of offenders for cost purposes. We can reasonably assume that at least five percent of the 2,610 misdemeanor larceny offenders falling in Prior Record Level III had at least five prior convictions for misdemeanor larceny within three years and that at least 10 percent of the misdemeanor shoplifting offenders with three or more subsequent convictions within five years had at least five prior convictions within three years (131 offenders for misdemeanor larceny and 3 offenders for misdemeanor shoplifting as shown in Tables 1& 2). These percentages were used as basis for *prison operating costs as well position and prison bed counts for FY 2003-2004 through 2007-2008. Fiscal Research believes this is the minimum cost and the actual cost could well be much higher.* ~~*In addition, because incarceration notes do not assume deterrent or incapacitative effects, we are not assuming any cost savings as a result of an increased criminal penalty for this bill or any other criminal penalty bill.*~~

The chart ~~below~~ compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. 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.* That means the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific ~~Bill~~ bill. As shown in bold in the chart ~~below~~, the Sentencing Commission estimates this specific legislation will add 76 inmates to the prison system by the end of FY 2007-08.

	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008
1. Projected No. Of Inmates Under Current Structured Sentencing Act ⁷	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) ⁸	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,290	-2,058	-3,010	-3,958	-4,828
4. No. of Projected Additional Inmates Due to this Bill ⁹	--	<u>37</u>	<u>76</u>	<u>76</u>	<u>76</u>
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill <u>Bill</u> ³⁻⁶	--	<u>15</u>	<u>30</u>	<u>30</u>	<u>30</u>

⁷ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. The Sentencing and Policy Advisory Commission projections do not assume deterrent or incapacitative effects.

⁸ Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. *These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.*

⁹ Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

POSITIONS: It is anticipated that approximately ~~—30~~ positions would be needed to supervise the additional inmates housed under this bill by ~~2007-08~~. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

~~**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal Notes look at the impact of a bill through the year FY 2008. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.~~

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Inmates Due to —This Bill				
Available Beds (over/under)	-5,616	-6,339	-7,039	-7,684
New Beds Needed				

~~**DISTRIBUTION OF BEDS:** After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:~~

- ~~_____ Close Custody _____~~
- ~~_____ Medium Custody _____~~
- ~~_____ Minimum Custody _____~~

~~**CONSTRUCTION:** Construction costs for new prison beds, as listed in the following chart, are based on estimated ~~2002-03~~ costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.~~

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2002-0203	\$38,595	\$73,494	\$85,444

~~Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on Page 1 of this note. These costs assume that funds to construct prison beds should be budgeted in advance. Based on previous prison construction projects we are assuming it will typically require three years for planning, design and construction of new beds.~~

OPERATING: Operating costs are based on actual 2001-02 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate will be added each year to the base costs for FY 2002 shown ~~below on the next page~~ and included in the recurring costs estimated in the Fiscal Impact Table on Page 1.

Daily Inmate Operating Cost 2001-02

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2001-02)	\$50.04	\$65.17	\$80.19	\$62.43

The fiscal impact as illustrated in the fiscal impact table on page 1 was calculated as follows. In 2001-2002, the statewide average operating cost for one inmate was \$62.43/day or \$22,786.95/year. Using the same five (5) percent estimate for larceny and ten (10) percent estimate for shoplifting, if a total of 37 beds are created in Year 1, operating costs could equal \$2,310/day or \$843,117/year, and DOC would require 15 new positions.

If 76 beds are created in Year 2, operating costs could equal \$4,745/day or \$1,731,808/year, and DOC would require 30 new positions. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2004 and 2005, this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2005-06 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

~~For most criminal penalty bills, the Administrative Office of the Courts 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.~~

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

TECHNICAL CONSIDERATIONS:

Legal staff needs to determine if this bill would also apply to juveniles “adjudicated” for misdemeanor larceny if they have five prior “adjudications” for misdemeanor larceny. If so, there could be additional fiscal impact on the juvenile system.

The bill should also be reviewed for consistency. In effect, the bill could result in punishing offenders with a current misdemeanor conviction and a prior misdemeanor larceny conviction as a felon while punishing a person with a current misdemeanor conviction and prior felony larceny convictions as a misdemeanant. For example, a person charged with a larceny misdemeanor with five prior convictions that are a mix of felonies and misdemeanors would have to be convicted of the current crime—misdemeanor larceny, while someone with a history of larceny misdemeanor convictions would be convicted of a felony.

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