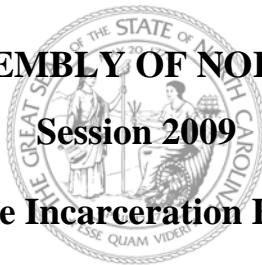


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1360 (Second Edition)

SHORT TITLE: Amend Habitual Offender Law.

SPONSOR(S): Representative Haire

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
EXPENDITURES					
GENERAL FUND					
Correction					
Recurring	(\$3,258,629)	(\$18,714,360)	(\$41,820,371)	(\$64,376,083)	(\$88,797,050)
Judicial	Indeterminate fiscal impact				
ADDITIONAL PRISON BEDS:					
(cumulative)*	(182)	(660)	(1,272)	(1,926)	(2,595)
POSITIONS:					
(cumulative)	(73)	(264)	(509)	(770)	(1,038)
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2009					
<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:

This bill is entitled “An act to amend the habitual felon law by redefining an habitual felon as a person who has been convicted of three prior felony offenses that were Class G felonies or higher and by changing the sentence imposed on a person convicted as a habitual felon to be one felony class higher than the underlying felony for which the person is convicted, and to direct the Post-Release Supervision and Parole

Commission to study the feasibility of reducing the sentence for certain habitual felons who are currently in prison and to study other possible modifications to the habitual felon law.”

- Amends G.S. 14-7.1 through G.S. 14-7.6 as the title indicates.
- Amends proposed amended G.S. 14-7.6 by adding that intermediate punishment is not authorized for anyone sentenced as a habitual felon.
- Provides that the Post-Release Supervision and Parole Commission must (1) evaluate the current prison population and identify prisoners who are habitual offenders but whose felony offenses consist solely of Class I and Class H felonies and (2) study the feasibility of reducing the sentence for each prisoner in that particular habitual offender category.
- Specifies issues to be considered.
- Effective December 1, 2009.

ASSUMPTIONS AND METHODOLOGY:

General

The North Carolina 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

Under current law, an offender convicted of three felonies is eligible to be charged as a habitual felon, which is a Class C felony, carrying a minimum penalty of five years in prison. Under this bill, no Class H or I felons, the least serious felony classes, are eligible for the habitual felon status offense. For offenders convicted of the third felony at Class G or higher, the habitual felon conviction would be at one class higher than their current offense. Thus, for all offenders convicted of Class E, F, or G felonies, the minimum term of imprisonment would be less than if they had been sentenced under the current law.

In FY 2007-08, there were 736 offenders sentenced as habitual felons. Of these 736 convictions, 313 (42.5%) had a most serious underlying conviction for a Class A – G felony. The remaining 423 convictions (57.5%) had a most serious underlying conviction for a Class H or I felony.

The Administrative Office of the Courts’ (AOC) Automated Criminal Infractions System only contains automated data on the total number of prior record points; it does not contain automated information on offenses used to determine prior record points. As a result, *it is not known how many of the existing habitual felons convicted would meet the requirements under the proposed bill.* Table 1 provides the projected impact on the prison population based on two scenarios:

- **Scenario A** is based on the assumption that all of the FY 2007-08 habitual felons with a most serious conviction for a Class G or higher felony would remain habitual felon convictions. Those with a most serious underlying conviction for a Class H or I felony would be sentenced according to the Felony Punishment Chart.
- **Scenario B** is based on the assumption that none of the FY 2007-08 habitual felons with a most serious underlying conviction for a Class G or higher felony would remain habitual felon convictions. All convictions would be sentenced according to the Felony Punishment Chart.

Table 1
Estimated Impact on the Prison Population

Fiscal Year	Estimated Impact	
	Scenario A	Scenario B
2009-10	-182	-202
2010-11	-660	-700
2011-12	-1,272	-1,343
2012-13	-1,926	-2,027
2013-14	-2,595	-2,719
2014-15	-3,191	-3,334
2015-16	-3,692	-3,785
2016-17	-3,944	-4,099
2017-18	-4,162	-4,317
2018-19	-4,339	-4,492

Source: NC Sentencing and Policy Advisory Commission,
FY 2007-08 Felony and Misdemeanor Simulation Data

Fiscal Research accepts the Sentencing Commission’s “Scenario A” figures as the minimum impact that would result from the passage of this proposed bill. These figures are used to calculate the anticipated costs and costs savings, shown in the Fiscal Impact Table on page one of this incarceration note.

It is important to note that the projections in Table 1 do not include an estimate of impact regarding the potential application of the proposed change to the current prison population. Under Section 7, the Post-Release Supervision and Parole Commission is required to evaluate the current prison population and identify the prisoners who are habitual offenders, but whose underlying offenses consist only of Class H and I felonies, and to study the feasibility of reducing the sentence for each prisoner in that particular habitual offender category by reducing the prisoner’s sentence equal to the active time required by the sentencing grid for the highest level of the highest underlying felony on the indictment by which the prison was charged as a habitual felon and giving credit to the prisoner for time served. On March 31, 2009, the prison population included 5,061 inmates sentenced as habitual felons, representing 12.5% of the prison population (NC Department of Correction, Automated System Query). The Sentencing Commission does not have data on the underlying convictions or current time served in prison for these inmates. *The Post-Release Supervision and Parole Commission’s decisions regarding the release of these inmates are not possible to predict. As a result, the impact of this provision cannot be determined.*

The data shown above was formulated with the following assumptions: the estimate of impact assumes an effective date of December 1, 2009, with FY 2010-11 as the first full year of implementation due to the gap between the time a felony offense is committed and the offender is sentenced. The data assumes no changes in judicial or prosecutorial behavior and no deterrent or incapacitative effects.

Prior Record Points: The data assumes that offenders who would no longer be sentenced as habitual felons would have six points (the minimum number of prior record points for three prior felony offenses) added to their prior record.

Disposition: The data also assumes mandatory active sentences for offenders sentenced as habitual felons and assumes the same rates for active sentences and probation revocations as found in FY 2007-08 for offenders who would no longer be sentenced as habitual felons and, as such, would be

sentenced according to the Felony Punishment Chart based on the offense class of their most serious underlying felony conviction and prior record level.

Estimated Sentence Length: Based on offense class and prior record level using the Felony Punishment Chart, the sentence length at the midpoint of the presumptive range was used as the basis for determining the estimated time to be served for offenders who would be re-sentenced under the scenarios.

These projections do not include an estimate of impact regarding the potential application of the proposed change to the current prison population under Section 7 of this bill.

Table 2 provides background statistical information on the application of the habitual felon law under current law, Scenario A, and Scenario B.

Table 2
Distribution of Habitual Felons Under Current Law and Under the Proposed Bill

Offense Class	Underlying Offense	Current law	Scenario A	Scenario B
A	1	1	1	1
B1	0	0	0	0
B2	4	4	4	4
C	15	731	59	15
D	44		24	44
E	24		46	24
F	46		179	46
G	179		0	179
H	298		298	298
I	125		125	125
Total	736	736	736	736
Average Estimated Time Served (months)		94.3	29.8	28.0

Source: NC Sentencing and Policy Advisory Commission, FY 2007-08 Felony and Misdemeanor Simulation Data

Note: Shaded cells represent offenders who would no longer be convicted as habitual felons.

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 2009.

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.* Rows four and five in the chart demonstrate the impact of HB 1360. As shown, the Sentencing Commission estimates that this specific legislation will cause 2,595 fewer inmates to be added to the prison system by the end of FY 2013-14.

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 2010	June 30 2011	June 30 2012	June 30 2013	June 30 2014
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	42,296	43,165	44,024	44,987	45,998
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	40,014	42,022	42,282	42,282	42,282
3. Projected No. of Beds Over/Under Inmate Population	-2,282	-1,143	-1,742	-2,705	-3,716
4. Projected No. of Additional Inmates Due to this Bill ³	<i>N/A</i>	<i>-660</i>	<i>-1,272</i>	<i>-1,926</i>	<i>-2,595</i>
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	<i>N/A</i>	<i>-483</i>	<i>-470</i>	<i>-779</i>	<i>-1,121</i>

POSITIONS: It is anticipated that by FY 2013-14, approximately -1,038 fewer positions would be needed under this bill. This 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.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2013-14. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to HB 1360 and, the estimated number of new beds required each year through FY 2017-18.

	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,655	-5,600	-6,541	-7,488
2. <i>Projected No. of Additional Inmates Resulting From HB 1360</i>	-3,191	-3,692	-3,944	-4,162
3. <i>Estimated No. of New Beds Required Under HB 1360</i>	<i>-1,464</i>	<i>-1,908</i>	<i>-2,597</i>	<i>-3,326</i>

DISTRIBUTION OF BEDS: Fiscal Research asked DOC’s Office of Research and Planning to project the impact of proposed SB 1360 on inmate custody levels. Research and Planning staff used the information provided by the Sentencing Commission to prepare the following estimates.

To prepare these estimates, Research and Planning staff applied the distribution of current custody assignments for each crime class to the projected populations by crime class. Current custody assignment practice is the basis for this projection, therefore any changes to current Division of Prisons’ inmate custody assignment practices will affect these estimates.

Table 1 contains an estimate of the net change allocated to each custody level for FY 2010-11 through FY 2019-20 using Scenario A. Table 2 contains an estimate of the net change allocated to each custody level if

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 January 2009.

³ Criminal penalty bills effective December 1, 2009, should not affect prison population and bed needs until FY 2010-11 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

Scenario B is adopted. Any difference between the Sentencing Commission’s population projections and those shown in the tables below are due to rounding.

Scenario A is based on the assumption that all of the FY 2007-08 habitual felons with a most serious underlying conviction for a Class G or higher felony offense would remain habitual felon convictions. Those with a most serious underlying conviction for a Class H or I felony would be sentenced according to the Felony Punishment Chart.

Table 1 (Scenario A)

Fiscal Year	Close	Medium	Minimum	Total Beds
2009-10	-109	-145	72	-182
2010-11	-237	-411	-12	-660
2011-12	-376	-743	-154	-1,272
2012-13	-520	-1,097	-309	-1,926
2013-14	-666	-1,461	-469	-2,596
2014-15	-795	-1,785	-611	-3,191
2015-16	-891	-2,024	-714	-3,629
2016-17	-961	-2,196	-786	-3,943
2017-18	-1,011	-2,316	-835	-4,162
2018-19	-1,052	-2,414	-873	-4,339

Source: NC Department of Correction, Office of Research and Planning

Scenario B is based on the assumption that none of the FY 2007-08 habitual felons with a most serious underlying conviction for a Class G or higher felony offense would remain habitual felon convictions. All convictions would be sentenced according to the Felony Punishment Chart.

Table 2 (Scenario B)

Fiscal Year	Close	Medium	Minimum	Total Beds
2009-10	-113	-182	93	-202
2010-11	-247	-473	20	-700
2011-12	-391	-825	-127	-1,343
2012-13	-539	-1,198	-288	-2,025
2013-14	-688	-1,577	-453	-2,718
2014-15	-821	-1,914	-599	-3,334
2015-16	-918	-2,163	-704	-3,785
2016-17	-986	-2,337	-776	-4,099
2017-18	-1,034	-2,459	-824	-4,317
2018-19	-1,073	-2,558	-861	-4,492

Source: NC Department of Correction, Office of Research and Planning

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The habitual felon statute provides that an offense used to qualify an offender as a habitual felon cannot also be counted to determine prior record level. The table below illustrates the impact of the proposed bill

on each underlying offense class. (Note: This is a low estimate of the minimum sentences, assuming only three prior offenses, and that all prior offenses are Class E through G, which each receive four prior record points. For Class H and I felonies, the assumption is again that there were only three prior offenses, and that all prior offenses and also Class H or I felonies, which each receive two prior record points.)

Compared to current habitual felon law, offenders charged with a Class G felony or above and previously convicted of at least three Class G or higher offenses could receive less time if their current charge is a Class I through D felony. Offenders charged with Class B1, B2 or C offenses could receive more time. (Offenders charged with Class B2 offenses could still receive more time based on their underlying B2 offense than under the proposed habitual felon statute due to prior record points.)

Changes to Sentence Length with Proposed Habitual Felon Law				
Underlying Offense	Current Habitual Felon Charge/Minimum Sentence	New Charge	Minimum Sentence Base Offense	Minimum Sentence Proposed Habitual Felon Law
B1	C (58 months)	A	307 months	Life without parole
B2	C (58 months)	B1	201 months	192 months
C	C (58 months)	B2	107 months	125 months
D	C (58 months)	C	94 months	58 months
E	C (58 months)	D	37 months	51 months
F	C (58 months)	E	20 months (active only)	20 (intermediate/active)
G	C (58 months)	F	16 months (active only)	13 (intermediate/active)
H	C (58 months)	H	8 months	8 months
I	C (58 months)	I	5 months	5 months

In addition, some offenders currently charged as habitual felons could not be so charged under the proposed bill, either because (i) their current charge is for a Class H or I felony, or (ii) while they are charged with a Class G or higher felony and have three prior felony convictions, they do not have three prior convictions for Class G or higher felonies. Particularly for defendants charged with Class H and I felonies, this legislation has the potential to substantially reduce their minimum sentence, for example from 58 months to 8 months for a Class H felon with three prior Class H or I convictions.

In 2008, there were 2,673 defendants charged with habitual felon, and 793 convictions for habitual felon. Of the habitual felon charges disposed in 2008, 2% were disposed by trial, 29% by plea, and the remainder by other means.

According to the Sentencing and Policy Advisory Commission, in FY 2007-08 there were 736 offenders sentenced as habitual felons, of whom 313 (42.5%) had a most serious underlying offense of Class G or higher. Thus, at a minimum, 423 convictions for habitual felon would not have occurred under this bill. If, for example, the 2,673 charges in 2008 were all equally likely to be disposed as habitual felon convictions, then 1,524 habitual felon charges would not have occurred under this bill. However, it is possible that some offenders – particularly high level felons – who were not charged as habitual felons under current law would have been charged as habitual felons under the proposed legislation.

In general, AOC would anticipate that decreasing a criminal penalty would lead to a reduction in the resources required to dispose of cases. For example, the difference in costs between a Class C trial and a Class H trial is nearly \$10,000, and the difference in costs for a plea is approximately \$1,700. However, without the threat of a Class C habitual felon charge, it is possible that fewer cases would be resolved by plea or that such pleas would take longer, thus, mitigating the cost savings. It is also possible that offenders facing their third or subsequent conviction would be more willing to plea to a Class H or I felony because it

will not affect their habitual status; however, for that very reason prosecutors may be less willing to accept pleas to H or I felonies when a higher felony has been charged.

If the overall effect was to substantially reduce Class C habitual felon charges, and if the reduction in court time was not offset by an increase in trial rates for lesser felonies and an increase in offense classes charged for the highest felonies, then there would be an overall savings to the court system. However, *AOC cannot project the impact of this proposed legislation on prosecutorial or defense behavior, and therefore AOC cannot project the net impact.* The result of any net reduction in resources required in habitual felon cases would be to somewhat reduce the current average of 220 days for disposition of a felony case in Superior Court.

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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