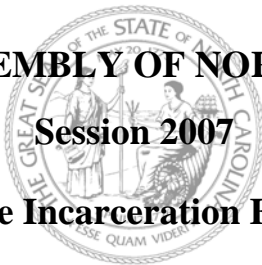


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1430 (Second Edition)
SHORT TITLE: Amend Crim. Offenses/Injury to Property.
SPONSOR(S): Senator Atwater

	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: Prisons	Assumes minimum prison capital and operating costs if 0.7% of FY 05-06 misdemeanor convictions under G.S. 14-127 and G.S. 14-160 were elevated to Class I felony convictions. See pp. 2-5 for assumptions and methodology.				
Recurring*	-	\$ 56,500	\$ 174,586	\$ 179,824	\$ 185,218
Capital*	\$ 408,240	-	-	-	-
<i>*Assumes prison bed construction within a stand-alone facility. Additional prison population (bed) impact and minimum capital and operating costs cannot be projected beyond the two year window (p. 2-5).</i>					
Correction: DCC	Amount cannot be determined.				
Judicial	Assumes 1% of FY 05-06 charges for violation of G.S. 14-127 and G.S. 14-160. See pp. 5-6 for assumptions and methodology.				
Recurring	\$ 22,264	\$ 40,075	\$ 42,079	\$ 44,183	\$ 46,392
TOTAL EXPENDITURES:	\$ 430,504	\$ 96,575	\$ 216,665	\$ 224,007	\$ 231,610
ADDITIONAL PRISON BEDS: (cumulative)*	-	2	6	6	6
POSITIONS: (cumulative)					
Correction: Prisons	-	1	2	2	2
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
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: The second edition of S.B. 1430 amends G.S. 14-127 (Injury to real property) and G.S. 14-160 (injury to personal property) to alter the offense classes, based on the value of damaged

property. Current G.S. 14-127 provides that willful/wanton injury to real property is a Class 1 misdemeanor offense. *Amended G.S. 14-127 (Section 1) provides for the following punishments:*

1. Class 1 misdemeanor if the damage caused is \$25,000 or less in value.
2. Class I felony if the damage exceeds \$25,000 in value, but does not exceed \$100,000.
3. Class H felony if the damage exceeds \$100,000 in value.

Similarly, current G.S. 14-160 provides that willful/wanton injury to personal property is a Class 2 misdemeanor if the resulting damage is \$200 or less in value; a Class 1 misdemeanor if the resulting damage exceeds \$200 in value. Amended G.S. 14-160 provides for the following punishments:

1. Class 2 misdemeanor if the damage caused is \$200 or less in value.
2. Class 1 misdemeanor if the damage exceeds \$200 in value, but does not exceed \$25,000.
3. Class I felony if the damage exceeds \$25,000 in value, but does not exceed \$100,000.
4. Class H felony if the damage exceeds \$100,000 in value.

Effective December 1, 2007, the proposed reclassifications enhance otherwise misdemeanor offenses that result in damage valued above \$25,000, as specified above.

ASSUMPTIONS AND METHODOLOGY:

General

The Administrative Office of the Court's ACIS (Automated Criminal and Infraction System) currently does not capture value determinations for the affected offenses (G.S. 14-127 and 14-160). Restitution orders provide some indication of the underlying property values associated with prior convictions, but the reliability and consistency of such data is unknown. Consequently, based on available data, Fiscal Research cannot reliably project future charge and conviction frequencies for the proposed value thresholds.

Nonetheless, of the 1,284 recorded convictions for offenses involving injury to real property (see Table I; next section), 496 (39%) showed an order to pay restitution; 494 (99.6%) showed an amount of \$25,000 or less, while 2 (0.4%) showed an amount between \$25,000 and \$100,000 (no restitution orders involving values in excess of \$100,000). Similarly, of the 1,531 recorded Class 1 and A1 misdemeanor convictions (see Table I, 755 (49%) showed an order to pay restitution; 144 (19%) showed an amount of \$200 or less, and 611 (81%) showed an amount between \$200 and \$25,000 (no restitution orders involving values in excess of \$25,000).

The above restitution data *suggest* that few offenses result in property damage valued at the proposed felony levels, and that few additional felony charges and/or convictions would result from this legislation - particularly at the Class H felony level. *However, values associated with restitution orders may not be commensurate with property damage values.* Moreover, the high frequency of violation (as indicated by prior year charges and convictions) and relevant offense types suggest that some portion of otherwise misdemeanor offenses would meet the proposed felony value levels.

Fiscal Impact: *Based on restitution values*, it is assumed that conviction at the Class H level is unlikely; and, that most convictions will remain at misdemeanor levels. However, it is likely some misdemeanors will be enhanced to Class I felonies. To illustrate the ***potential*** impact of the felony thresholds, Fiscal Research conservatively assumes that 20 misdemeanor convictions would be enhanced to the Class I felony level annually, 10 for each section of the property statutes amended in SB 1430. Overall, these 20 convictions comprise 0.7% of the total number of relevant misdemeanor convictions in FY 2005-06 (2,816 totals). Given this conviction assumption, the minimum total cost of this proposal could approach \$408,240 in FY 2007-08 and \$174,586 in FY 09-10 - driven primarily by the construction and operation of additional prison beds (Fiscal Impact Table, p.1).

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.*¹ Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

The proposed Class I felony threshold could have three primary effects on convictions for offenses involving property damage above \$25,000 and less than \$100,000 in value: 1) potentially increase the rate of active sentencing (incarceration); 2) significantly lengthen the period of incarceration; and 3) necessitate imprisonment within a state facility, thereby increasing the demand for prison beds.² In FY 2005-06, 20% of Class 1 and 17% of Class 2 misdemeanor convictions received active sentences, with average estimated times served of 31 and 13 days, respectively. In contrast, 15% of Class I felony convictions received active sentences, with an average estimated time served of approximately 7 months.³

As shown below, there were 1,284 total misdemeanor convictions recorded for relevant injury to real property offenses in FY 2005-06; there were 1,531 total misdemeanor convictions recorded for relevant injury to personal property offenses.

Table I. FY 2005-06 Convictions for Injury to Property Offenses			
Section 1: Injury to real property.			
G.S.	Description	Class	FY 2005/06 Convictions
14-127	Willful and wanton injury to real property	1	1,251
14-132(a)	Disorderly conduct in and injuries to public buildings and facilities	2	17
14-137	Willfully or negligently setting fire to woods and fields	2	9
14-138.1	Setting fire to grassland, brushland, or woodland [fail to extinguish]	3	7
		Total	1,284
Section 2: Injury to personal property.			
G.S.	Description	Class	FY 2005/06 Convictions
20-107	Injuring or tampering with vehicle	2	1
14-160	Willful and wanton injury to personal property ⁴	1	1,319
14-160.1(a)	Alter/remove serial number	1	16

¹ 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. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

² 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.

³ These FY 2005-06 statistics per offense class are total conviction averages across all prior record levels and sentencing ranges (mitigated, presumptive, and aggravated). The type of sentence imposed (active, intermediate, or community) and length of sentence imposed could vary for affected offenses.

⁴ The current offense of injury to personal property has a \$200 threshold below which the offense is a Class 2 misdemeanor and above which it is a Class 1 misdemeanor. The proposed bill would elevate Class 1 convictions for damage greater than \$25,000 to felonies. Damage up to \$25,000 would remain Class 2 or Class 1, based on the \$200 threshold. AOC's code for G.S. 14-160 does not differentiate between Class 2 and Class 1 versions of the offense. The 1,319 convictions in the table represent Class 1 convictions for this offense only.

Table I. FY 2005-06 Convictions for Injury to Property Offenses			
Section 1: Injury to real property.			
G.S.	Description	Class	FY 2005/06 Convictions
14-360(a)	Cruelty to animals; construction of section [wound, injure, kill, etc.] ⁵	1	196
Total			1,532

Table II illustrates the *potential* prison bed impact, assuming that 10 misdemeanor convictions (of all relevant classes) would be enhanced to the Class I felony level. Bed estimates are calculated by factoring the general active sentencing rate observed for the relevant offense classes, average time served, and probation revocation rates.

Table II. Estimated Prison Bed Impact - Class I Felony Enhancement*							
Section 1: Injury to real property.							
Current			Proposed			Additional Prison Beds	
Class	Active Rate	Average Estimated Time Served	Class	Active Rate	Average Estimated Time Served	Year 1	Year 2
Class 1	20%	26 days	I	15%	7 months	1	3
Section 2: Injury to personal property.							
A1	26%	50 days	I	15%	7 months	1	3
1	20%	26 days					
2	17%	13 days					
3	23%	3 days					

As shown, if only .7% (20) of the total number of relevant misdemeanor convictions in FY 2005-06 (2,816) are enhanced to Class I felonies under this proposal, two additional prison beds would be required in the first applicable year; six additional beds by the second; and two additional positions by the second year.⁶ Assuming inmate assignment to medium custody, the construction of six prison beds within a new, stand alone facility could cost the State \$408,240 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$252,720.⁷ These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-

⁵ Not all acts prohibited under G.S. 14-360(a) would be eligible for conviction under the proposed bill; although 14-360(a) prohibits injuring or killing an animal, other prohibited acts such as overdriving or overloading an animal do not necessarily result in damage for which a dollar value can be determined.

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).

alone facility, requires budgeting at least three years in advance. Potential operating costs for the required beds could total \$56,500 in FY 2008-09, and \$174,586 in FY 2009-10.⁸

- *Additional prison population (bed) impact and minimum capital and operating costs cannot be projected beyond the two year window. An annual inflation rate of 3% is applied to FY 2009-10 prison bed operating costs beyond the initial two years. Prison Bed construction and operating costs are depicted in the Fiscal Impact Table on page 1.*

Department of Correction – Division of Community Corrections

Though an increased rate of active sentencing is expected for enhanced offenses, the rate of intermediate sanctioning and length of offender supervision are also expected to increase. Consequently, DCC supervisory officers could assume some additional workload due to the proposed threshold changes (effective enhancement).

In FY 2005-06, for all offenses and prior record levels, approximately 85% of Class I felony convictions resulted in either intermediate or community sentences, predominately special, intensive, or general supervision probation. A brief summary of DCC supervisory costs (daily, per offender) is included below:

- 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.
- 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

It is not known how many Class I felony charges might result; however, the Administrative Office of the Courts expects that any enhancement will increase court-time requirements and the associated costs of case disposal. Specifically, the AOC expects more cases to be prosecuted and result in trial, increasing jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel (e.g. cases subject to the Class I felony penalty will be elevated to superior court, rather than disposed in district court).

Data for calendar year 2006 indicates that approximately 8,032 defendants were charged under G.S. 14-127; 14,525 were charged under G.S. 14-160 (22,557 total; includes Class 2 charges). Assuming 1% (approx. 225) of these prior year cases were to occur annually for the enhanced, Class I felony offense, it is estimated that the difference in court-time, jury, and indigent defense costs for case disposal would approach \$38,167 per year (adjusted for 5% annual inflation in Fiscal Impact Table, p.1). As shown, AOC estimates that a higher percentage of Class I felony cases would result in trial (3%), relative to Class 1 misdemeanor cases (0.5%); however, the rate of guilty plea is expected to decrease. Actual costs may vary from this example, contingent upon court-time and workload requirements, as well as the type of case disposition.

⁸ 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).

- As shown in the Fiscal Impact Table (p.1), estimated costs are adjusted for the 7 month effective period in FY 2007-08 and an assumed annual inflation rate of 5%.

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 1 misd.	1	\$ 1,440	\$ 994	\$ 0	\$ 2,434	1	\$ 1,266
Class I felony	7	\$ 2,919	\$ 1,491	\$ 640	\$35,350	4	\$ 7,728
<i>* Estimated costs per case</i>			<i>Difference: \$32,916</i>			<i>Difference: \$6,462</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 1 misd.	106	\$ 60	\$ 99	-	\$ 16,854	37	\$ 3,071
Class I felony	70	\$ 108	\$ 99	-	\$ 14,490	48	\$ 4,224
<i>* Estimated costs per case</i>			<i>Difference: (\$2,364)</i>			<i>Difference: \$1,153</i>	

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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