

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 423 (Second Edition)
SHORT TITLE: Habitual Misdemeanor Larceny/Felony.
SPONSOR(S): Representative Moore

	FISCAL IMPACT				
	Yes (X)	No ()		No Estimate Available ()	
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction (recurring) ¹		\$2,053,395	\$4,306,440	Annual operating costs could equal or exceed \$4.3 million by FY 2008-09.	
Correction (non-recurring)	There are no available prison beds during this timeframe. To accommodate an additional 169 inmates in the long term, the State would need to construct new beds at an estimated average cost per bed of \$73,500.				
Judicial (recurring)	\$74,213	\$127,223	\$133,584	\$140,263	\$147,276
TOTAL EXPENDITURES:	Annual costs could equal or exceed \$4,440,024 by FY 2007-08 and beyond. Cost is dependent on the number of convicted offenders with five or more prior convictions for misdemeanor larceny.				
ADDITIONAL PRISON BEDS*	0	83	169	The prison beds needed could equal or exceed 169 by FY 2007-08 and beyond.	
POSITIONS: (cumulative)	0	34	68	Positions could equal or exceed 68 by FY 2007-08 and beyond.	
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: December 1, 2005					
<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 enacts new G.S. 14-86.2, creating the Class H felony offense of habitual misdemeanor larceny. An individual, eighteen years of age or older, who is convicted of misdemeanor larceny and has five or more prior misdemeanor larceny convictions would be guilty of this offense. Under current G.S. 14-72, such larceny is a Class 1 misdemeanor. Thus, some

¹ Department of Correction costs reflect the estimated cost if ten percent of convicted offenders were prosecuted as Class H felons rather than Class 1 misdemeanants for committing a sixth or subsequent misdemeanor larceny offense. If more than ten percent of offenders have more than five convictions for misdemeanor larceny, the fiscal impact could rise significantly.

defendants currently charged with Class 1 misdemeanors for larceny would be charged with Class H felonies for habitual misdemeanor larceny due to this bill. A violation of the provisions of this bill would not constitute commission of a felony for purposes of G.S. 14-7.6, which provides for conviction as a habitual felon.

The second edition of the bill specifies that offenses substantially equivalent to misdemeanor larceny under G.S. 14-72(a), which have been repealed or superseded, would only count as a prior conviction if the offense were committed within the previous ten years.

ASSUMPTIONS AND METHODOLOGY:

General

Convictions elevated from Class 1 misdemeanors to Class H felonies would, on average, carry a longer sentence, are more likely to be active, and, if active, would be served in state prison rather than county jail. Administrative Office of the Courts data indicates that 433 defendants, when charged with misdemeanor larceny during 2004, had accumulated five previous convictions for misdemeanor larceny since 2000. This figure represents only those offenders that were charged with a sixth or subsequent misdemeanor larceny offense, after having been convicted of misdemeanor larceny five or more times between 2000 and 2004. As this legislation would elevate the penalty for offenders who had accumulated five prior convictions for misdemeanor larceny at any time (except for repealed or superseded offenses), there would likely be additional defendants with five prior convictions, some of which occurred before 2000.

Because the offense would be new, data is not available on how many of these 433 charges would result in a conviction for habitual misdemeanor larceny. As such, prison bed and DOC cost estimates throughout the fiscal note are formulated assuming that ten percent of a 2,810 eligible offenders (those with five prior convictions for *any* offense that were convicted of misdemeanor larceny in FY 2003-04) would receive an enhanced sentence under this bill. This estimate has not been revised from the previous fiscal analysis of this bill, as the data on charges above suggests that a ten percent scenario is a reasonable approximation of the potential number of convictions for this new offense.

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 does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction – Division of Prisons

The chart on the next page compares the projected inmate population to available prison bed capacity system-wide and shows 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 five) is always equal to the projected additional inmates due to a bill (row four).

Rows four and five in the chart show the impact of this specific bill if ten percent of the potentially eligible offenders received enhanced sentences. As shown in bold in the chart below, the Sentencing Commission estimates that, under this scenario, this specific legislation would add **169 inmates** to the prison system by the end of FY 2007-08.

	<u>June 30</u> <u>2006</u>	<u>June 30</u> <u>2007</u>	<u>June 30</u> <u>2008</u>	<u>June 30</u> <u>2009</u>	<u>June 30</u> <u>2010</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ²	38,106	39,021	39,864	40,750	41,668
2. Projected No. of Prison Beds (DOC Expanded Capacity) ³	37,015	37,911	38,807	38,807	38,807
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,091	-1,110	-1,057	1,943	-2,861
4. No. of Projected Additional Inmates <u>Due to this Bill</u>⁴	0	83	169	169+	169+
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³	0	83	169	169+	169+

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 Department of Correction (DOC) reimburses counties for active sentences between 30 – 90 days.) In contrast, felony Class H offenders serve active time in state prison, or if given a non-active punishment, are more likely to receive an intermediate rather than community sentence. In FY 2003-04, 37 percent of Class H convictions resulted in active sentences, 50 percent in intermediate sanctions, and the remaining 13 percent in community sentences. On average, the minimum active sentence for felony Class H offenders in FY 2003-04 was 10 months with a corresponding maximum of 12 months. On the whole, convictions elevated from Class 1 misdemeanors to Class H felonies would carry a longer sentence, are more likely to be active, and, if active, would be served in state prison rather than county jail.

As the offense of habitual misdemeanor larceny would be new, the Sentencing and Policy Advisory Commission does not have historical data from which to project the impact on prison population. Although AOC data reveals that at least 433 defendants would likely be charged with habitual misdemeanor larceny under this bill, there is no data to indicate how many of these

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

³ Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 2004. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

⁴ Criminal penalty bills effective December 1, 2005 will not affect prison population and bed needs until FY 2006-07 due to the lag time between when an offense is committed and an offender is sentenced.

defendants were convicted of a sixth or subsequent misdemeanor larceny offense and would presumably be convicted of habitual misdemeanor larceny under this bill.

Data is available concerning the number of convictions for misdemeanor larceny as well as the number of convicted offenders falling in Misdemeanor Prior Conviction Level III (five or more prior convictions). In FY 2003-2004, there were 14,487 convictions for misdemeanor larceny. Of these convictions, 992 were for offenders 16 and 17 years of age at sentencing and would not be affected by this bill. Of the remaining 13,495 convictions, which were for offenders 18 years of age or older at sentencing, 2,810 fell 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.

For every three convictions for Class H felonies rather than Class 1 misdemeanors, one additional prison bed would be needed in the first year and two additional beds in the second year. If a large number of offenders were convicted of Class H felonies rather than Class 1 misdemeanors, the impact on prison population could be substantial. The following table illustrates the range of potential impacts.

Table 1: Additional Prison Beds Needed – Habitual Misdemeanor Larceny/Felony⁵

Number and Percentage of Convictions Raised to Class H Felonies as a Result of Bill	Additional Prison Beds Needed	
	<u>FY 2006-2007</u>	<u>FY 2007-2008</u>
3 (0.001%)	1	2
281 (10%)	83	169
1,405 (50%)	413	841
2,810 (100%)	825	1,683

Of the offenders convicted of misdemeanor larceny in FY 2003-04, there were 2,810 offenders with at least five prior convictions for *any* crime. It is not reasonable to assume that all 2,810 offenders, or even a high percentage of these offenders, had been found guilty of five or more counts of misdemeanor larceny under G.S. 14-72. However, given that court officials indicate larceny offenders are likely to have previous convictions for larceny and related crimes under G.S. 14-72, this bill will clearly have a fiscal impact.

Because we cannot identify a specific number of offenders that would be convicted under this bill, we have used a low-end estimate of the potential number of offenders for the purpose of estimating the potential cost of this bill. We can reasonably assume that at least ten percent of the 2,810 convicted offenders had at least five prior convictions under G.S. 14-72 (281 offenders as shown in Table 1). This ten percent figure was used as the basis for estimating *prison operating costs as well position and prison bed counts for FY 2006-2007 through 2009-2010*. *Fiscal Research believes this is the minimum cost and that the actual cost could be greater.*

⁵ While the NC Sentencing and Policy Advisory Commission has provided these scenarios, it cannot project the actual number of prison beds needed as a result of this bill.

POSITIONS: It is anticipated that approximately **68 positions** would be needed to supervise the additional inmates housed under this bill by 2007-08. This position total includes 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 five prisons opened by DOC and two prisons under construction. Two of the prisons were medium custody and five were close custody

OPERATING: Operating costs are based on actual FY 2003-04 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 three percent annual inflation rate will be added each year to the base costs for FY 2003-04 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

Daily Inmate Operating Cost FY 2003-04

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2003-04)	\$49.34	\$65.59	\$82.46	\$62.03

By FY 2006-07, the statewide average operating cost for one inmate will be an estimated \$67.78 per day (\$24,740 per year) due to inflation. Using the same 10 percent estimate, if 83 additional beds were needed in FY 2006-07, operating costs would equal \$2.1 million per year. If 169 beds were needed in FY 2007-08, operating costs would equal \$4.3 million per year.

Department of Correction – Division of Community Corrections (DCC)

Convictions with non-active punishments that are elevated from Class 1 misdemeanors in Prior Conviction Level III to Class H felonies are likely to result in a greater proportion of intermediate rather than community sentences, leading to increased costs to DCC. Probation officers in DCC supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter (based on the cost of intensive probation, the most common intermediate sanction). In contrast, community sanctions could range from no cost to \$1.87 per offender per day.

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.

For calendar year 2004, AOC data show 31,730 defendants charged with Class 1 misdemeanor larceny offenses under G.S. 14-72(a) and 314 defendants charged with attempted misdemeanor larceny (Class 2 misdemeanor) under G.S. 14-72. While a precise estimate of the number of defendants charged with misdemeanor larceny who had been convicted of five or more counts of misdemeanor larceny is unavailable, AOC data shows some 433 defendants, eighteen years of age or

older, who had accumulated five or more prior convictions for misdemeanor larceny since 2000 when charged with another misdemeanor larceny violation during 2004.

AOC estimates that it would cost the courts an additional \$127,223 to dispose of these 433 charges as Class H felonies for habitual misdemeanor larceny rather than Class 1 misdemeanors for misdemeanor larceny. The increase in cost to process these cases as Class H felonies reflects presumed increases in trial rates, trial length, attorney preparation time, and time to handle pleas. Based on the costs of attorney preparation and court time, AOC estimates the cost to dispose of these cases as Class 1 misdemeanors at \$39,566, with an additional \$13,449 for indigent defense. As Class H felonies, AOC estimates the cost would be \$127,548 for jury fees, attorney, and court costs and an additional \$52,690 for indigent defense. The figures in the box on the front page reflect the difference in total cost (\$127,223), inflated at a rate of five percent annually, and adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective.

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

TECHNICAL CONSIDERATIONS:

1) *Age Limit:* The increased penalty under this bill would only apply to offenders 18 years of age or older. In the North Carolina criminal justice system, offenders under the age of 16 are considered juvenile offenders while offenders age 16 and older are considered adults. Legal staff should verify that this bill was intended to exclude 16 and 17 year-olds and, if so, whether this exclusion is consistent with other provisions of law. A practical effect of confining the bill to adult offenders, whether 16 and older or 18 and older, is to exclude juvenile offenders. Without an age limitation, it is possible this bill could affect the juvenile system.

2) *Sentencing Consistency:* The bill should also be reviewed for consistency. In effect, the bill could result in punishing offenders with a current misdemeanor conviction and five prior misdemeanor larceny convictions 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 only misdemeanor larceny convictions would be convicted of a felony.

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