

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1392 (Fifth Edition)

SHORT TITLE: Failure to Return Hired Motor Vehicles.

SPONSOR(S):

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>
<u>Exact amount cannot be determined.</u> Costs, prison beds, and positions are calculated if, for example, 5% of all failure to return hired property offenses involved motor vehicles and were elevated to Class H felonies due to this bill.					
GENERAL FUND					
Correction (recurring)	-	\$148,440	\$305,786	Unable to determine beyond FY 2007-08.	
Judicial (recurring)	\$5,781	\$9,911	\$10,407	\$10,927	\$11,473
ADDITIONAL PRISON BEDS*	-	6	12	Unable to determine beyond FY 2007-08.	
POSITIONS: (cumulative)	-	2	5	Unable to determine beyond FY 2007-08.	
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 provides that failure to return hired property in violation of G.S. 14-167 is a class H felony (rather than a class 2 misdemeanor) if the property is a truck, automobile, or other motor vehicle valued in excess of \$4,000. The bill additionally enacts new G.S. 14-168.5 outlining prima facie evidence by which the intent to convert a truck, automobile, or other motor vehicle for one's own use can be established and new G.S. 20-102.2 requiring law enforcement officers to report the failure to return a leased motor vehicle to the National Crime Information Center.

The third edition reduced the proposed offense for failure to return a hired motor vehicle to a Class 1 misdemeanor rather than a Class H felony.

The fourth edition restored the proposed offense for failure to return a hired motor vehicle to a Class H felony, as proposed in the first and second editions of the bill.

The fifth edition clarifies that the value of the vehicle is determined at the time of rental or hiring.¹

ASSUMPTIONS AND METHODOLOGY:

General

Current Class 2 misdemeanor failure to return property offenses in which the property is a motor vehicle valued at more than \$4,000 would become Class H felonies due to this bill. While there is data regarding the number of present charges and convictions for failure to return hired property, it is not known how many of the offenses were for a motor vehicle worth more than \$4,000 and would, therefore, be elevated to Class H felonies due to this bill.

Convictions elevated from Class 2 misdemeanors to Class H felonies would, on average, carry a longer sentence (10-12 months), are more likely to be active (37%) and, if active, would be served in state prison rather than county jail. As such, Class H felony convictions resulting from this bill would be expected to increase prison bed needs and therefore prison costs. In addition, increased court workload and costs would be anticipated due to the more vigorous defense and prosecution in these cases resulting from the more severe penalty. However, because no estimate of the number of offenses that would be elevated to Class H felonies is available, the specific cost associated with the bill cannot be determined. The box on the front page illustrates the cost if a low-end estimate—(5%) of charges and convictions—were to become Class H felonies.

Changes in the General Statutes regarding prima facie evidence of intent to retain rented motor vehicles could also make it slightly easier to bring charges for the offense and, therefore, increase the pool of defendants. The second and subsequent editions of the bill eliminated failure to pay as prima facie evidence, which would likely reduce the impact associated with these provisions.

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

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. 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.*

In FY 2003-04, there were 404 Class 2 misdemeanor convictions for failure to return hired or rented property in violation of G.S. 14-167. Such property could be anything of value, including a

¹ The clarifying change made in the fifth edition does not affect the estimates presented in the fourth edition fiscal note.

motor vehicle, aircraft, appliance, tool, equipment, horse, or mule. It is not known how many of these 404 convictions were for failure to return a truck, automobile, or other motor vehicle and would therefore be elevated to Class H felonies. Of these 404 convictions, 37 received an active sentence (9%), with an average active sentence length of 27 days.

Misdemeanor Class 2 → Felony Class H: Class 2 misdemeanors typically result in non-active sentences and any active sentence is served in local jail. (Class 2 misdemeanors carry a maximum sentence of 60 days; 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, Class H felons serve active time in state prison, or if given a non-active punishment, are more likely to receive intermediate rather than community sanctions. 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 2 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.

For every three convictions for Class H felonies rather than Class 2 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 2 misdemeanors, the impact on prison population could be substantial. If, for example, 5 percent of the failure to return hired property offenses (20) were elevated to Class H felonies due to this bill, the combination of active sentences and probation revocations would result in the need for 6 additional prison beds in the first year and 12 additional beds in the second year.²

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. Based on the five-percent scenario outlined above, if 6 additional beds were needed in FY 2006-07, operating costs would equal \$148,440 per year, and if 12 beds were needed in FY 2007-08, operating costs would equal \$305,786 per year.

² While the North Carolina Sentencing and Policy Advisory Commission provided this scenario, it cannot project the actual number of prison beds that would be needed due to this bill.

Non-Active Sentences: Convictions elevated from Class 2 misdemeanors to Class H felonies are less likely to result in non-active sentences, but if non-active, a greater proportion of sentences are likely to be intermediate rather than community sanctions. Probation officers in the Division of Community Corrections (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 range from no cost to \$1.87 per offender per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) 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.

Section 1: Elevate Penalty from Class 2 to Class H for Failure to Return Hired Motor Vehicle

For calendar year 2004, AOC data indicates that 1,798 individuals were charged with a Class 2 misdemeanor for failure to return hired or rented property in violation of G.S. 14-167. No data is available with respect to how many of these charges involved failure to return a hired or rented truck, automobile, or other motor vehicle and would be elevated from Class 2 misdemeanors to Class H felonies due to this bill. AOC anticipates that there would be additional court and preparation time needed to process these charges, thus increasing superior court workload. The estimated average increase in cost *per charge* settled via trial or guilty plea as a Class H felony rather than Class 2 misdemeanor appears in the last row of Table 1 below.

Table 1: Estimated Per Charge Settlement Costs

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	
Class 2 Misdemeanor	\$1,365	\$949	\$2,314	\$271
Class H Felony	\$4,096	\$2,100	\$6,196	\$359
Class 2 → Class H	\$2,731	\$1,151	\$3,882	\$88

If, for example, five percent (90) of the 1,798 charges for failure to return hired property involved motor vehicles and would thus become Class H felonies under this bill, court costs would equal \$9,911 in the first full year. The increase in cost to process these cases as Class H felonies reflects anticipated increases in trial rates, trial length, attorney preparation time, and time to handle pleas. Based on the costs of attorney preparation and court time, the cost to dispose of these cases as Class 2 misdemeanors would be an estimated \$5,115, with an additional \$740 for indigent defense. As Class H felonies, the cost would be an estimated \$13,409 for jury fees, attorney preparation, and court costs and an additional \$2,357 for indigent defense. The figures in the box on the front page reflect the difference in total cost (\$9,911), 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.

Section 3: Prima Facie Evidence of Intent to Convert Property

Under current G.S. 14-168.3, it is prima facie evidence of intent to violate G.S. 14-167 (failure to return hired property), when the person leasing or renting the property 1) fails or refuses to return the property 10 days after the lease or rental agreement has expired, and 48 hours after written

demand has been made; or 2) presented identification that is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

This bill would modify the prima facie evidence provisions with respect to motor vehicles to eliminate the 10-day period and extend the 48-hour period to 72 hours. This provision may make it slightly easier to bring charges and would thus increase the pool of defendants who could be subject to prosecution under G.S. 14-167. However, no data is available from which to estimate the number of additional charges that would occur. The second, third, and fourth editions of the bill eliminate the failure to pay provision, which would likely reduce the impact associated with the changes to prima facie evidence.

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

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices