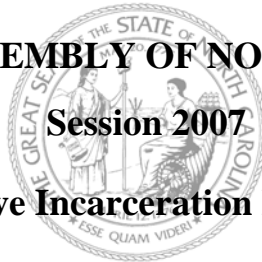


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1354 (Third Edition)

SHORT TITLE: Motor Vehicle Chop Shop Act.

SPONSOR(S): Representatives Tillis, Saunders, R. Warren, and Kiser

	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		Possible significant fiscal impact; amount cannot be determined.			
Judicial		See Assumptions and Methodology.			
DOJ		No significant impact is assumed.			
CCPS		No significant impact is assumed.			
Law Enforcement		No significant impact is assumed.			
TOTAL					
EXPENDITURES:		Amount cannot be determined.			
ADDITIONAL PRISON BEDS: (cumulative)*		Some expected increase in bed needs; however, the prison population impact is indeterminate.			
POSITIONS: (cumulative)		Amount cannot be determined.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch; Department of Justice; Department of Crime Control and Public Safety; Local law enforcement.				
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: Section 1 of H.B. 1354 (second edition) enacts new Article 18 of G.S. Chapter 20, entitled the “Motor Vehicle Chop Shop Act.”

- New G.S. 20-400 defines a “chop shop” as any premises where a person is “knowingly engaged in altering, destroying, disassembling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud...” with the intent to misrepresent the vehicle or part, or to sell/dispose of the vehicle or part.
- New G.S. 20-401(a) creates four new Class H felony offenses for any person to:
 - 1) own, operate, or conduct a chop shop;
 - 2) transport a motor vehicle or part to or from a known chop shop;
 - 3) sell, transfer, purchase, or receive a motor vehicle or part to or from a known chop shop; and
 - 4) buy, dispose of, sell, transfer, or possess a motor vehicle or part, knowing the vehicle identification number of the vehicle or part has been altered or counterfeited (offense does not apply to motor vehicle scrap processors acting in good faith during normal business).

G.S. 20-401(b) requires an offender to make restitution to the lawful owner of the stolen property or to the owner’s insurer, and to any other person for financial loss sustained.

Section 2 amends G.S. 14-86.1(a) to provide for the forfeiture of any conveyance used to violate new G.S. 20-401. Specifies that the term “conveyance” includes any “instrumentality” as defined in new G.S. 20-400(2) – “motor vehicle, part, other conveyance, tool, implement or other instrumentality.”

Section 3 amends G.S. 19-1 to add new subsection (b2), including as a nuisance the building, use, ownership, etc. of a place for violation of G.S. 20-401.

Section 4 amends G.S. 19-6.1 to provide for the forfeiture of real property in nuisance abatement actions, where the nuisance consists of, or includes, two prior occurrences of violation of G.S. 20-401 within five years.

Section 5 provides for the severability of the Act.

Section 6 provides that the Act becomes effective December 1, 2007 and applies to offenses committed on or after that date.

The third edition of H.B. 1354 (senate committee substitute) makes the following changes to the second edition:

Section 1: Deletes proposed new Article 18 of Chapter 14 (Motor Vehicle Chop Shop Act).

Enacts new G.S. 14-72.7 to create four new Class H felony offenses, pertaining to the known engagement in chop-shop related activities:

- a. Altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or motor vehicle part the person knows to be illegally obtained by theft, fraud, or other illegal means.
- b. Permitting a place to be used for any activity prohibited by proposed G.S. 14-72.7, where the person either owns or has legal possession of the place, and knows that the place is being used for such prohibited acts.

- c. Purchasing, disposing of, selling, transferring, receiving, or possessing a motor vehicle or motor vehicle part, knowing that the identification number of either has been altered, counterfeited, defaced, destroyed, disguised, etc.
- d. Purchasing, disposing of, selling, transferring, receiving, or possessing a motor vehicle or part to or from a person known to be engaging in acts prohibited by proposed G.S. 14-72.7.

Exempts certain listed activities 1) if the person does not have knowledge of previous illegal activity concerning the vehicle or part, as long as the person does not remove a vehicle identification number or part number; and 2) activities occurring after law enforcement proceedings are complete or as a part of the proceedings, if the activity does not conflict with the proceedings.

Authorizes any court with jurisdiction in a criminal prosecution to also assess a civil penalty, not to exceed three times the assets obtained by the defendant, which must be remitted to the Civil Penalty and Forfeiture Fund.

Allows victims of violations of chop shop activities to obtain appropriate relief in a civil action.

Provides that any instrumentality possessed or used to engage in the prohibited activities is subject to seizure and forfeiture under G.S. 14-86.1.

Defines instrumentality, vehicle identification number, and vehicle part identification number.

Section 2: Makes a conforming change to G.S. 14-86.1(a).

Section 3: Amends G.S. 19-1 to include as a nuisance the erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conduction, or engaging in activities in violation of G.S. 14-72.7 (was, wherein or where on chop shop activities are carried on, conducted, or permitted).

Section 4: Amends G.S. 19-6.1 to provide that for forfeiture to be based on two prior convictions of G.S. 14-72.7, the convictions must not come out of the same transaction or occurrence.

Source: Adapted from Bill Digest H.B. 1354 (04/05/0200).

ASSUMPTIONS AND METHODOLOGY:

The proposed offenses include a wide range of currently unlawful acts related to motor vehicles and their parts. Consequently, these offenses may encompass elements of several existing offenses.¹ However, it is not known how prosecution of these existing offenses might change under this bill, or how many violations might occur for the proposed offenses. Nor is it known how many “chop shops” currently exist within the state.

Although the relatively high charge and conviction frequencies for similar, existing offenses indicate that this proposal *could* have a significant fiscal impact, the extent of such impact is indeterminate at this time. Nevertheless, based on current resources, Fiscal Research expects that any resultant charge and/or conviction for the new offenses, or resultant abatement action, will generate some additional fiscal impact.

¹ North Carolina Sentencing and Policy Advisory Commission.

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission analyzes each bill that proposes or alters a criminal penalty, and assesses its impact on the projected prison population (relative to SPAC annual population projections). 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.

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

As previously noted, the proposed offenses encompass elements of several existing offenses. However, due to imperfect matches between these elements, the Sentencing Commission cannot estimate how many existing convictions might instead become eligible for conviction under H.B. 1354, or how many new convictions might occur. A general discussion of each proposed offense, and its potential impact on the prison population is included below.

a. Altering, destroying, disassembling, dismantling, or storing a motor vehicle or part obtained illegally.

Persons eligible for conviction of this offense also include an unknown portion of those who could be convicted of the following offenses. It is not known how many of the convictions in the table below may instead be convicted as Class H felonies under the proposed bill, or how sentencing practices may differ for the proposed offenses.

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-160	Injury to personal property	2,1	2,175
G.S. 14-71.1	Possession of stolen goods (F)	H	713
G.S. 14-71.1	Possession of stolen goods (M)	1	2,080
G.S. 20-106	Possess stolen motor vehicle	H	355
G.S. 20-107	Tampering with vehicle	2	1
G.S. 20-107(a)	Tampering with vehicle parts	2	0
G.S. 20-109(b)	Altering serial numbers	I	3

b. Knowingly permitting a place to be used for activities prohibited by G.S. 14-72.7, where the person owns for has legal possession of the place.

Persons eligible for conviction of this offense may also include an unknown portion of those convicted of offenses listed above. It is not known how many of the convictions in the table below may instead be convicted as Class H felonies under the proposed bill, how many new convictions might result, or how sentencing practices could differ.

c. Purchase, dispose of, sell, transfer, receive, or possess a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered or counterfeited.

According to the Sentencing Commission, this is a new offense with unique elements. Thus, there is no historical data from which to estimate its impact. It is not known how many violations might occur.

d. Purchase, dispose of, sell, transfer, receive, or possess a motor vehicle or motor vehicle part to or from a person known to be engaged in a prohibited activity under G.S. 14-72.7.

Those eligible for conviction of “transporting” a motor vehicle to a chop shop include an unknown portion of those convicted for possessing a stolen motor vehicle (Class H felony) under G.S. 20-106. In FY 2005/06, there were 355 convictions for possession of a stolen motor vehicle. It is probable that conviction for this proposed offense would occur in addition to conviction for larceny of a motor vehicle, if a theft involves delivery of the stolen vehicle to a chop shop. In FY 2005/06, there were 339 convictions for felony larceny of a motor vehicle (Class H) and 19 convictions for misdemeanor larceny of a motor vehicle (Class 1). In addition, there were 826 convictions for felony larceny, but it is not known whether any of these convictions were for larceny of a motor vehicle. Consequently, some additional prison bed impact is likely to occur as a result of consecutive sentencing. However, it is not known how many offenses would be affected.

Moreover, those eligible for conviction of “transporting” or “trading” a motor vehicle or part to a chop shop include an unknown portion of those currently convicted of the following offenses. It is not known how many of the convictions in the table below may instead be convicted as Class H felonies under the proposed bill, or how sentencing practices may differ for the proposed offenses.

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-71	Receiving stolen goods (M)	1	28
G.S. 14-71	Receiving stolen goods (F)	H	7
G.S. 20-106	Possess stolen motor vehicle	H	355

As implied, the potential impact on the state prison population would be driven by: 1) existing misdemeanor offenses being prosecuted as Class H felony offenses, and resulting in active sentences;² 2) separate convictions and active sentences occurring for the proposed Class H felony offenses, in addition to convictions for existing offenses – resulting in consecutive active sentences; and 3) new Class H felony convictions and active sentences for these new offenses, apart from any association to an existing offense. Accordingly, FRD expects that any combination of these effects would increase prison bed demand, requiring the construction of additional beds.

In FY 2005/06, 34% of all Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Although the potential impact on the prison population is indeterminate, assuming that at least three Class H convictions occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; two additional beds in the second year; and one new employee in the second year.*

² Misdemeanor active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders 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.

Assuming these thresholds and inmate assignment to medium custody, the construction of two additional prison beds within a new, stand alone facility could cost the State \$136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$84,240.³ These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$58,196 by FY 2009-10.⁴

Department of Correction – Division of Community Corrections

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. Thus, *assuming that future convictions for the proposed offense occur, the Division of Community Corrections could assume some additional costs for offenders placed under its supervision.* It is not known how non-active sentencing practices might differ for the proposed offenses (e.g. how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long).

General supervision of intermediate and community offenders by a probation officer costs \$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 additional criminal charges or abatement actions might occur, or how prosecution tactics would differ in response to the proposed offenses. Accordingly, the potential fiscal impact on the Courts is indeterminate.

Nonetheless, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. The table below illustrates the potential difference in estimated costs for criminal cases, by trial and guilty plea, assuming that some existing misdemeanor offenses are instead prosecuted as felonies under this proposal. Effectively enhancing the penalties from Classes 1 or 2 misdemeanors to Class H felonies will elevate future cases to superior court, rather than district court. This elevation will increase jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

³ 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).

⁴ 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).

Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08				
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>	<i>Change in Cost: Trial*</i>	<i>Change in Cost: Plea*</i>
Class 2 Misdemeanor	\$2,770	\$230	\$4,575	\$95
Class 1 Misdemeanor	\$3,702	\$243	\$3,643	\$82
Class I Felony	\$6,980	\$298	\$365	\$27
Class H Felony	\$7,345	\$325	N/A	N/A
<i>* Change in cost, relative to prosecution at Class H felony level.</i>				

Similarly, although it is not known how many civil abatement actions might occur, any additional case brought by the Attorney General, any district attorney, or any aggrieved party against persons violating G.S. 14-72.7 is expected to increase superior court workload.

Law Enforcement: Department of Justice; Crime Control and Public Safety; and Local Government

Current G.S. 19-2.1 authorizes the Attorney General to bring a civil action for nuisance abatement. Accordingly, some slight increase in workload could be incurred for actions brought against alleged chop shops. Likewise, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety could experience an increase in workload for the investigation of nuisances, contingent upon the number of requests made the Attorney General, district attorneys, counties, or municipalities (G.S. 19-2.1). In addition, some additional processing and enforcement costs could be incurred by the Department of Justice and Crime Control, should local law enforcement request (G.S. 14-86.1(a)) that either take custody of forfeited conveyances. Furthermore, local law enforcement could also incur some additional processing and enforcement costs.

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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