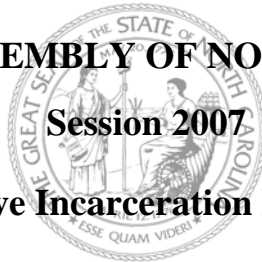


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 222 (Third Edition)

**SHORT TITLE:** Armed Robbery/Apparent Firearms.

**SPONSOR(S):** Senator Goodall

FISCAL IMPACT

Yes (xxx)	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>

**EXPENDITURES:** Impact cannot be determined because of an uncertainty over the number of first-time and repeat offenders. However, there will be fiscal impact.

For example, if there two Class G felony convictions for first-time offenders under this proposal, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. For second and subsequent offenders, if there was one additional conviction this would result in the need for one additional bed the first year and two additional beds the second year.

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Department of Correction; Judicial Branch

**EFFECTIVE DATE:** December 1, 2007

**BILL SUMMARY:** Senate Bill 222 proposes amending subsection (a) of GS 14-87 (robbery with firearms or other dangerous weapons), adds a new subsection (a1) to make it a Class D felony to commit or aid and abet robbery while possessing, using, or threatening to use anything that a reasonable person would believe to be a deadly weapon, so that a reasonable person would believe that his or her life was endangered or threatened.

The PCS under consideration makes the first offense covered under the proposed change to be a Class G felony, reduced from a Class D felony. The second or subsequent violations would still be considered Class D felonies (see page 4 for analysis of the changes).

Source: Bill Digest S.B. 222 (02/20/0200) and Proposed Committee Substitute

## **ASSUMPTIONS AND METHODOLOGY:**

### ***Previous Fiscal Impact Estimate***

Under the previous version, the Fiscal Research Division requested that the Sentencing and Policy Advisory Commission develop scenarios to gauge the potential impact of this change. The Commission observes that they “do not know how many offenders would move from Class G to D but we did find in looking at the data that about half of the offenders convicted of common law robbery were charged with armed robbery. That does not mean any of them had an apparent firearm.” The Commission developed three broad scenarios (see 5%, 10% and a 15% scenario). Using the minimum scenario of 5%, this proposed change would require a projected 127 additional beds by 2011-12, including a mix of medium and close custody beds because of the seriousness of Class D convictions. The minimum scenario would require capital costs of \$10.9 million to construct 64 medium and 63 close custody prison beds. In addition, the annual operating costs of 64 medium and 63 close custody beds would be \$9 million by 2011-12.

### **Department of Correction – Division of Prisons**

#### ***Robbery with a Firearm***

There were 591 convictions for robbery with a firearm or other dangerous weapons under G.S. 14-87, including 443 convictions for the completed offense, 62 convictions for attempts, and 86 convictions for conspiracies, and no convictions for aiding and abetting.

#### **First Violation**

It is also unknown as to how many of the 505 convictions for Class D robbery with a firearm (completed and attempted) involved an apparent firearm or other deadly weapon. If an offender (a) possessed an apparent firearm or other deadly weapon, (b) was convicted of robbery with a firearm or other dangerous weapon, and (c) was not previously convicted of robbery with an apparent firearm or other deadly weapon, the offender may be eligible for the proposed Class G offense. The Sentencing Commission does not have any historical data from which to estimate the number of offenders eligible for the Class G offense. As an example, if there were two Class D felony convictions that were reclassified as Class G felony convictions, this would result in the need for one less prison bed the first year and two less prison beds the second year.

According to the Sentencing Commission, it is unknown how many of the 86 convictions for the Class E offense of conspiracy to commit robbery with a firearm or other dangerous weapon involved an apparent firearm or other deadly weapon. If an offense (a) involved an apparent firearm or other deadly weapon, (b) resulted in a conviction for conspiracy to commit robbery with a firearm or other dangerous weapon, and (c) involved an offender who was not previously convicted of robbery with an apparent firearm or other deadly weapon, the offense may be sentenced as a Class H felony (one class lower than the completed offense). There is not any historical data from which to estimate the number of offenders eligible for the Class H offense. If, for example, there were three Class E felony convictions that were reclassified as Class H felony convictions, this would result in the need for one less prison bed the first year and two less prison beds the second year.

#### **Second or Subsequent Violations**

It is unknown as to how many of the 505 convictions for robbery with a firearm or other dangerous weapon (completed and attempts) involved an apparent firearm or other deadly weapon and an offender who had previously violated the proposed statute; however, since the proposed offense for repeat offenders is also a Class D felony, those convictions would not have an impact.

The Sentencing Commission also notes that it is also not known how many of the 86 convictions for conspiracy to commit robbery with a firearm or other dangerous weapon (a Class E felony) involved an apparent firearm or other deadly weapon and an offender who had previously violated the proposed statute. Since the proposed offense for second or subsequent violations of conspiracy to commit robbery with an apparent firearm or other deadly weapon would be a Class E felony (one class lower than the completed offense), those convictions would not have an impact.

### ***Common Law Robbery***

There were 885 convictions for common law robbery under G.S. 14-87.1, including 782 convictions for the completed offense and 103 convictions for the attempted offense.

#### First Violation

It is unknown how many of the 782 convictions for the Class G offense of common law robbery (completed) involved an apparent firearm or other deadly weapon. If an offender (a) possessed an apparent firearm or other deadly weapon, (b) was convicted of common law robbery, and (c) was not previously convicted of robbery with a firearm or other deadly weapon, the offender may be eligible for the proposed Class G offense. The Sentencing Commission does not have any historical data from which to estimate the number of offenders eligible for the Class G offense. Since the proposed offense for first offenders is also a Class G offense, those convictions would not have an impact.

In addition, the Sentencing Commission does not have any historical data from which to estimate the number of offenders eligible for the Class G offense. It is unknown how many of the 103 convictions for the Class H offense of attempted common law robbery involved an apparent firearm or other deadly weapon. If an offender (a) possessed an apparent firearm or other deadly weapon, (b) was convicted of attempted common law robbery, and (c) was not previously convicted attempted common law robbery with an apparent firearm or other deadly weapon, the offender may be eligible for the proposed Class G offense. As an example, if three Class H felony convictions that were reclassified as Class D convictions, this would result in the need for one additional prison bed the first year and one additional prison bed the second year.

#### Second or Subsequent Violations

It is also unknown as to how many of the 782 convictions for common law robbery (completed) involved an apparent firearm or other deadly weapon and an offender had previously violated the statute. Those convictions would be reclassified as Class D convictions under this proposal. As an example, if two Class G felony convictions were reclassified as Class D convictions, this would result in the need for one additional prison bed the first year and two additional prison beds in the second year.

It is also unknown as to how many of the 103 convictions for attempted common law robbery involved an apparent firearm or other deadly weapon and an offender who had previously violated the proposed statute. These convictions would be reclassified as Class D felonies under the proposed statute. As an example, if three Class H felony convictions were reclassified as Class D convictions, this would result in the need for two additional prison beds the first year and five additional prison beds in the second year.

### *Changes of Element Because of the PCS*

The Sentencing Commission notes that these offenders are being convicted of something right now, but it is unknown whether it is Armed Robbery (Class D) or Common Law Robbery (Class G). As a result, it is not known if the first offenders will go down or the repeat offenders will go up

### Attempted and Completed Offenses

Under the proposed bill, all convictions for attempted offenses and completed offenses would be sentenced as Class G felonies for the first violation. It is not known how many additional convictions may result from the proposed broadening of the current statute.

In FY 2005-06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. As an example, if there were two additional Class G convictions under this proposed bill per year as a result of the proposed expansion, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Under the proposal, all convictions for attempted offenses and completed offenses would be sentenced as Class D felonies for second or subsequent violations. It is not known how many additional convictions may result from the proposed broadening of the current statute, but currently all Class D offenders are required to receive an active sentence. In FY 2005-06 the average estimated time served for an offender convicted of a Class D offense was 75 months. If, for example, there was one additional conviction for this offense per year as a result of the proposed broadening of this statute, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year.

### Conspiracies

Conspiracies to commit the first violation would be sentenced as Class H felonies, one offense class lower than the completed offense. It is not known how many additional convictions may result from the proposed expansion. In FY 2005-06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. As an example, if there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Conspiracies to commit the second or subsequent violations would be sentenced as Class H felonies, one offense class lower than the completed offense. In FY 2005-06, 49% of Class E convictions resulted in active sentences, with an average estimated time served of 31 months. If, for example, there were two Class E convictions per year as a result of the proposed broadening of this statute, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

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

**TECHNICAL CONSIDERATIONS:** Under this new felony statute, it is not clear how the statute may be interpreted and thus it is not possible to estimate the full impact of the proposal.

**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:** John Poteat

**APPROVED BY:** Lynn Muchmore, Director  
Fiscal Research Division

**DATE:** July 30, 2007



**Signed Copy Located in the NCGA Principal Clerk's Offices**