

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: —HB 108 — —2nd Edition

SHORT TITLE: Habitual Misd. Larceny/Felony

SPONSOR(S): Representative Moore

	FISCAL IMPACT¹				
	<u>Yes (X)</u>	<u>No ()</u>		<u>No Estimate Available ()</u>	
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
<u>Correction (Recurring)</u>		<u>\$1,595,087</u>	<u>\$3,235,747</u>		
	<u>Annual operating costs could equal or exceed \$3,234,747 by FY 2005-2006 and beyond. Cost is dependent on the number of convicted offenders with five or more previous convictions for misdemeanor larceny.</u>				
<u>Judicial (Recurring)</u>	<u>\$51,960-\$68,809</u>	<u>\$103,920 - \$137,619</u>			
	<u>Annual costs could equal or exceed a range of \$103,920 - \$137,619 by FY 2005-2006 and beyond. Cost is dependent on the number of defendants with five or more previous convictions for misdemeanor larceny.</u>				
TOTAL EXPENDITURES:	<u>Annual costs could equal or exceed a range of \$3,339,667 - \$3,373,366 by FY 2005-2006 and beyond. Cost is dependent on the number of defendants and convicted offenders with five or more previous convictions for</u> <u>misdemeanor larceny.</u>				
ADDITIONAL PRISON BEDS*¹					
<u>(cumulative)</u>	<u>0</u>	<u>70</u>	<u>142</u>	<u>142</u>	<u>142</u>
POSITIONS¹					
<u>(cumulative)</u>	<u>0</u>	<u>28</u>	<u>57</u>	<u>57</u>	<u>57</u>
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch					
EFFECTIVE DATE: December 1, 2003					
<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: BILL SUMMARY: The bill adds a new section to Article 16 of Chapter 14 of the General Statutes to create a Class H felony offense for a person, eighteen years of age or older, who has five or more prior larceny misdemeanor convictions. Under current G.S. 14-72, such larceny is a Class 1 misdemeanor. Thus some defendants currently charged with Class 1

¹ Fiscal impact reflects cost if ten percent of defendants and convicted offenders were prosecuted for a Class H felony rather than a Class 1 misdemeanor under the scope of this bill. If more than ten percent of defendants and offenders have more than five convictions for misdemeanor larceny, the fiscal impact could rise significantly.

misdemeanors would be charged with Class H felonies under the bill for habitual misdemeanor larceny. The bill clarifies that violations shall not constitute commission of a felony for purposes of G.S. 14-7.6.

ASSUMPTIONS AND METHODOLOGY:

General

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 (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Department of Correction

~~The chart~~ Table 1, on the next page, below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for 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 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add **142** inmates to the prison system by the end of FY 2007-08.

Table 1: Projected Inmate Population to Prison Bed Capacity

	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008
<u>1. Projected No. Of</u>					
<u>Inmates Under Current</u>					
<u>Structured Sentencing Act</u> ²	35,851	36,787	37,739	38,687	39,557
<u>2. Projected No. of Prison Beds</u>					
<u>(DOC Expanded Capacity)</u> ³	34,561	34,729	34,729	34,729	34,729
<u>3. No. of Beds</u>					
<u>Over/Under No. of</u>					
<u>Inmates Under</u>					
<u>Current Structured</u>					
<u>Sentencing Act</u>	-1,290	-2,058	-3,010	-3,958	-4,828
<u>4. No. of Projected</u>					
<u>Additional Inmates</u>					
<u>Due to this Bill</u> ⁴ (Cumulative)	0	70	142	142	142
<u>5. No. of Additional Beds</u>					
<u>Needed Each Fiscal Year</u>					
<u>Due to this Bill</u> ³ (Cumulative)	0	70	142	142	142

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, 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 or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. ***These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.*** If more than 10% of convicted offenders were prosecuted for a Class H felony rather than a Class I misdemeanor, the number of projected additional inmates would rise significantly.

⁴ Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add ___ inmates to the prison system by the end of FY 2007-08.

	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008
1. Projected No. Of Inmates Under Current Structured Sentencing Act ⁵	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) ⁶	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	1,290	2,058	3,010	3,958	4,828
4. No. of Projected Additional Inmates Due to this Bill⁷					
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill⁷					

⁵ While the NC Sentencing and Policy Advisory Commission has provided these scenarios, it cannot project the actual number of prison beds created by this bill.⁵ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

⁶ Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.**

⁷ Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

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, Class H felons serve active state prison sentences or receive intermediate sanctions. In FY 2000-2001, 55 percent of Class H offenders were sentenced to intermediate punishment while 45 percent of offenders were sentenced to active punishment. On average, offenders served between 9-nine and 11-eleven months. Convictions that increase Class 1 misdemeanors to Class H felonies will result in more frequent, longer active sentences served in state prisons rather than local jails.

While the Administrative Office of the Courts (AOC) database contains information on the number of prior record/conviction points, it does not contain information about specific offenses that are used to calculate the number of prior record/conviction points. Thus, the Sentencing and Policy Advisory Commission does not have any data to indicate what proportion of offenders would be convicted as Class H offenders as a result of a fifth or subsequent offense of misdemeanor larceny.

However, 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 2001-2002, there were 15,246 convictions for misdemeanor larceny. Of these convictions, 1,266 were for offenders 16-17 years of age at sentencing, 13,616 were for offenders 18 years of age or older at sentencing, 2,525 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 3 convictions of a Class H felony rather than a Class 1 misdemeanor, there will be the need for one additional bed in the first year and two additional beds in the second year. If a large number of offenders were convicted as Class H felons instead of Class 1 misdemeanants, the impact could be substantial. The following table illustrates the range of potential impacts.

Table 2: Additional Prison Beds Needed – Habitual Misdemeanor Larceny/Felony⁵

<u>Number and Percentage of Convictions Raised to Class H Felonies as a Result of Bill</u>	<u>Additional Prison Beds Needed</u>	
	<u>FY 2004-2005</u>	<u>FY 2005-2006</u>
<u>3 (0.001%)</u>	<u>1</u>	<u>2</u>
<u>253 (10%)----</u>	<u>70</u>	<u>142</u>
<u>1,262 (50%)----</u>	<u>347</u>	<u>706</u>
<u>2,525 (100%)--</u>	<u>694</u>	<u>1,413</u>

~~**POSITIONS:** It is anticipated that approximately ___ positions would be needed to supervise the additional inmates housed under this bill by 2007-08. These position totals include 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 three prisons opened by DOC and the three new prisons under construction.~~

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal Notes look at the impact of a bill through the year FY 2008. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Inmates Due to —This Bill				
Available Beds (over/under)	-5,616	-6,339	-7,039	-7,684
New Beds Needed				

Of the offenders convicted of misdemeanor larceny in FY 2001-02, there were 2,525 offenders with at least five prior convictions for any crime. It is not reasonable to assume that all 2,525 offenders, or even a high percentage of these offenders, have 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, HB 108 will clearly have a fiscal impact. Since we cannot identify a specific number of offenders affected, we have used a low-end estimate of the number of offenders for cost purposes. We can reasonably assume that at least 10 percent of the 2,525 offenders had at least five prior convictions under G.S. 14-72 (253 offenders as shown in Table 1). This 10% figure was used as basis for prison operating costs as well position and prison bed counts for FY 2004-2005 through 2007-2008. Fiscal Research believes this is the minimum cost and the actual cost could well be much higher.

POSITIONS: It is anticipated that approximately 57 positions would be needed to supervise the additional inmates housed under this bill by 2007-08. These position totals include 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 three prisons opened by DOC and the three new prisons under construction

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

- _____ Close Custody _____
- _____ Medium Custody _____
- _____ Minimum Custody _____

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2002-03 costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed <u>2002-0203</u>	\$38,595	\$73,494	\$85,444

~~Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on Page 1 of this note. These costs assume that funds to construct prison beds should be budgeted in advance. Based on previous prison construction projects we are assuming it will typically require three years for planning, design and construction of new beds.~~

OPERATING: Operating costs are based on actual 2001-02 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 3% annual inflation rate will be added each year to the base costs for FY 2002 shown below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1.

Table 3: Daily Inmate Operating Cost 2001-02

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2001-02)	\$50.04	\$65.17	\$80.19	\$62.43

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2004 and 2005, ~~this is based on the assumption~~ assumes that Correction cannot build prisons quickly enough to house additional offenders before 2005-06 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

In 2001-2002, the statewide average operating cost for one inmate was \$62.43/day or \$22,786.95/year. Using the same 10% estimate, if 70 beds are created in year 1, operating costs could equal \$4,370/ day or \$ 1,595,087/year. If 142 beds are created in year 2, operating costs would equal \$8,865.06/day or \$3,235,747/year.

ASSUMPTIONS AND METHODOLOGY:

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 most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of a 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.

AOC is unable to provide an exact estimate concerning the number of defendants charged with misdemeanor larceny who have been convicted of five or more counts of misdemeanor larceny in the past. For calendar year 2002, AOC data show that 29,360 defendants were charged with misdemeanor larceny and 244 defendants were charged with aiding and abetting larceny under GS 14-72. Since the bill also applies to similar offenses under GS 14-72, the likelihood of defendants having five or more prior convictions for misdemeanor larceny is increased.

Given the large pool of defendants (29,604) currently charged with various misdemeanor offenses, there could be a substantial impact on the courts. AOC anticipates that trials and pleas would demand more court time and preparation time would increase due to the stiffer penalties under the bill. In addition, AOC expects an increase in the number of trials for prior convictions because of the stiffer penalties associated with the Class H felony. Trials would be jury trials in superior court rather than misdemeanor cases in district court. For offenses that are brought to trial as Class H felonies, the estimated court cost per trial is \$ 4,986. For Class H felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$248. For example, if ten (10) percent of defendants for misdemeanor larceny were prosecuted for Class H felonies rather than Class 1 misdemeanors, court costs could range from \$103,920 to \$137,619⁶ and AOC also states that the total processing and position costs would also increase.

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

This bill would only apply the increased penalty to offenders 18 years of age or older. In the North Carolina criminal justice system, criminal offenders under 16 are considered juvenile offenders while criminal offenders 16 and older are considered adults. Legal staff needs to verify whether

⁶ Assumes that 17% (5,033) of defendants charged with misdemeanor larceny fall in Prior Conviction Level III. Also assumes that 10% (503) of offenders charged with misdemeanor larceny falling in Prior Conviction Level III have been convicted of a fifth or subsequent larceny offense. The number of offenders eligible to be charged under a Class H felony mirrors a low but reasonable estimate of the number of offenders who are likely to have had more than five convictions for misdemeanor larceny. Regarding the cost estimate, the lower end of the range assumes 33% of defendants charged with a class H felony would accept a plea for misdemeanor larceny and 2.5% of defendants will go to trial. This plea estimate is based on AOC trends in the disposition of misdemeanor cases in District Court. The higher end of the range assumes 60% of defendants charged with a Class H felony for larceny will plead guilty to a Class H felony and 2.5% of defendants will go to trial. This estimate mirrors AOC trends in the disposition of felony cases in Superior Court.

this was the intent of the member to exclude 16 and 17 year olds and, if so, whether legislation can exclude offenders aged 16 and 17. 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 a prior misdemeanor larceny conviction 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 larceny misdemeanor convictions would be convicted of a felony.

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