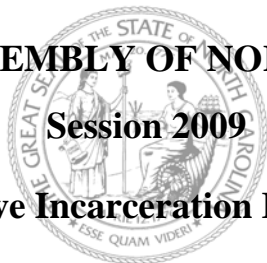


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 616 (Third Edition)

SHORT TITLE: Offense for Portable Toilets/Pumper Trucks.

SPONSOR(S): Representative Allen

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
EXPENDITURES					
GENERAL FUND					
Correction			Indeterminate fiscal impact		
Probation			Indeterminate fiscal impact		
Judicial			Indeterminate fiscal impact		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2009					
<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:

Enacts new G.S. 14-82.6 making it a Class 1 misdemeanor to steal, take from its temporary location or from any person having the lawful custody thereof, or destroy, deface, or vandalize a chemical or portable toilet as defined in G.S. 130A-290 or a pumper truck operated by a septage management firm permitted by the Department of Environment and Natural Resources under G.S. 130A-291.1 (septage management program; permit fees). Effective for offenses committed on or after December 1, 2009. Source: Bill Digest H.B. 616 (03/16/0200).

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating

new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

Because the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed bill.* In FY 2007-08, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 misdemeanor convictions was 30 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, *convictions for this proposed offense would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 1 and Class 2 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

This conduct could currently be charged under the statutes listed in the following table. As also shown in the table, in FY 2007-08 there were 20,388 convictions (2,191 felonies and 18,197 misdemeanors) under these statutes. Because the AOC’s Automated Criminal Infractions System does not contain data on the specific type of property affected, it is not known whether any of the 20,388 convictions were for conduct covered under the proposed offense. Impact could occur where the proposed offense is more serious than the current offense.

CITATION (N.C.G.S.)	TITLE	CLASS	FY 2007-08 CONVICTIONS
14-66	Burning of personal property	H Felony	45
14-72	Larceny of property (\$1,000 or less)	H Felony	1,083
14-72	Larceny of a motor vehicle	H Felony	361
14-56	Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft	I Felony	696
14-72.6	Felonious larceny, possession or receiving of stolen goods from a permitted construction site	I Felony	6
14-72	Larceny of property (more than \$1,000)	1 Misdemeanor	14,771
14-72	Larceny of a motor vehicle	1 Misdemeanor	28
14-72.2	Unauthorized use of a motor-propelled conveyance	1 Misdemeanor	1,378
14-160(b)	Willful and wanton injury to personal property, damage more than \$200; punishments	1 Misdemeanor	1,271
14-160(a)	Willful and wanton injury to personal property; punishments	2 Misdemeanor	749
Total Convictions			20,388

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.* Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC's analysis shows that this bill would cover a range of items, from small portable toilets sold in retail stores and used by recreational campers, to those installed in recreational vehicles, to portable restrooms at construction sites and special events, to large pumper trucks. For the most part, *it appears that the offenses outlined in the bill are covered under existing laws:*

G.S. 14-56 Break or Enter Motor Vehicle: a Class I felony offense; 4,108 defendants were charged in 2008 and 150 defendants charged with attempting the offense, a Class 1 misdemeanor.

G.S. 14-66 Burning Personal Property: a Class H felony offense; 247 defendants were charged in 2009.

G.S. 14-72(a) Larceny: larceny of items valued at \$1,000 or less is a Class 1 misdemeanor. Larceny of items valued at more than \$1,000 is a Class H felony. In 2008, there were 38,249 defendants charged with misdemeanor non-motor vehicle larceny and 8,341 defendants charged with felony non-motor vehicle larceny. Another 201 defendants were charged with misdemeanor larceny of a motor vehicle and 2,971 defendants were charged with felony larceny of a motor vehicle.

G.S. 14-72.2 Unauthorized Use of a Motor Vehicle: a Class 1 misdemeanor offense; 4,235 defendants were charged in 2008.

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

G.S. 14-72.6 Larceny, Possessing, or Receiving Stolen Goods from a Construction Site: a Class I felony offense; 105 defendants were charged with larceny in 2008 and three (3) were charged with possessing/receiving stolen goods.

G.S. 14-160 Willful and Wanton Injury to Personal Property: a Class 1 misdemeanor offense if damage is greater than \$200, otherwise it is a Class 2 misdemeanor offense. In 2008, there were 15,220 defendants charged with either the Class 1 or Class 2 misdemeanor.

As shown above, most of these offenses are at least as high as the Class 1 misdemeanor offense proposed in this bill. Therefore, *it is unlikely that this bill would pose a significant fiscal impact to the court system.* The most likely cause for a fiscal impact would be for offenses that are currently charged as Class 2 misdemeanors under G.S. 14-160, and would be charged as Class 1 misdemeanors under this bill. The difference in cost for a Class 1 misdemeanor trial rather than a Class 2 misdemeanor trial is \$119. The difference between the two in the cost for a plea is \$57.

If there are any activities that are not covered under current law and would be criminalized under this bill, the cost for any new Class 1 misdemeanor charges would be \$279 for each case disposed by trial and \$148 for each case disposed by plea. Indigent defense costs for misdemeanor cases average \$225 per indigent defendant (3 hours x \$75/hr).

In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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

TECHNICAL CONSIDERATIONS: None

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DATE: May 20, 2009



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