

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 26 (First Edition)

SHORT TITLE: Strengthen Laws/Vehicle Theft.

SPONSOR(S): Representative T. Moore

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Department of Public Safety, Administrative Office of the Courts, Office of Indigent Defense Services					
EFFECTIVE DATE December 1, 2013					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact. However, since it expands the scope of an existing offense, we lack historical data about how many individuals may be charged under the broadened statute. Therefore, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following are the *increased* costs that may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$200-\$251 per disposition
- Indigent Defense Services: \$37-\$55 in district court
\$75-\$88 in superior court without a trial
\$199-\$344 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$980 for nine months of post-release supervision

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill generally strengthens the laws and penalties associated with trade in stolen vehicle parts. Section 1 amends section (a) of existing G.S. 14-72.7, entitled “Chop shop activity,” by increasing the penalty for engaging in certain activities listed in subsections 1-4 from the current Class H felony to a Class G felony offense. It also changes the language requiring that the prohibited conduct in these subsections be committed “knowingly” to the broader standard of “knowing or having reasonable grounds to believe” that the activity is illegal. Section 2 changes a time-frame requirement in subsection (a), G.S. 20-62.1, entitled “Purchase of vehicles for purposes of scrap or parts only,” to allow that a secondary metals recycler or salvage yard may purchase a motor vehicle without a certificate of title under certain conditions, if the motor vehicle is 20 model years (was 10 model years) old or older. Section 3 increases the penalty for first-time violations of existing G.S. 20-62.1, from the current Class 1 misdemeanor for a first offense and a Class I felony for second or subsequent offenses, to require that all offenses shall be Class I felonies.

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina’s court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

The bill changes the level of knowledge or intentionality (known as *mens rea*) required to be convicted under this statute. To be prosecuted under the existing statute, an individual had to know they were participating in some part of chop shop activities (selling, buying, or receiving stolen auto parts). The proposed bill now expands this to “knows or has reasonable grounds to believe.” The Sentencing Commission does not have any historical data from which to estimate the impact of this change on the prison population. It is not known how many offenders might be convicted and sentenced under the broadened definition of foreknowledge or intent.

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.

Section 1 of the bill increases the penalty of engaging in certain activities listed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) from the current Class H felony to a Class G felony offense. It also broadens the *mens rea* requirements for the charge, thereby broadening the pool of potential defendants. There is no data available upon which to base an estimate of a potential increase in charges due to the broadening of these offenses. AOC currently does not have offense codes for these specific offenses, which may be some indication that they are not frequently charged.

The increase of these charges from a Class H to a Class G felony removes the possibility of pleas for these offenses to be handled in district court. As the Class G felonies in this bill will represent higher existing charges in superior court, the average fiscal impact of each case would be the difference between the current Class H felony and the new Class G felony: \$251 per offense. Section 3 of this bill increases the penalty for a first-time violation of the statute, from a Class 1 misdemeanor to a Class I felony. While pleas to Class I felonies are sometimes handled in district court, many pleas and all trials for Class I felonies are handled in superior court. Overall, the cost for the higher offense level is estimated at \$365, an increase of \$200 over the lower charge.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. In superior court, IDS estimates that the increased cost of a PAC attorney per case for a Class G felony would be \$88 if the case does not go to trial and \$344 if it does. Section 3 of this bill increases the penalty for an initial violation of G.S. 20-62.1 from a Class 1 misdemeanor to a Class I felony. IDS estimates that this will result in an increased cost of \$55 for a PAC in district court. In superior court, IDS estimates that the increased cost of a Class I felony over a Class 1 misdemeanor will be \$75 if the case does not go to trial and \$199 if it does.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill³	No estimate available				

Since the proposed bill relaxes the *mens rea* requirement for Subparts (a)(1), (a)(3) and (a)(4), persons eligible for conviction of this offense include an unknown portion of those currently convicted under the following statutes:

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

³ Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Section 1, Subpart (a)(1)

G.S. §	Offense	Offense Class	FY 2011/12 Convictions
14-71(a), 72(a)	Receive stolen goods (F)	H	16
14-71.1	Possess stolen goods (F)	H	530
14-71.1	Possess stolen goods (M)	1	2,097
14-72(a)	Receive stolen goods (M)	1	43
14-86.6(a)(2)	Receive/Possess stolen retail property	H	0
14-160	Injury to personal property	2,1	1,708
20-106	Possess stolen motor vehicle	H	195
20-107	Tamper with vehicle	2	1
20-107(a)	Tamper with vehicle parts	2	0
20-108	Vehicles/Parts without manufacturer numbers	2	0
20-109	Alter serial numbers	I	0

Section 1, Subpart (a)(3)

G.S. §	Offense	Offense Class	FY 2011/12 Convictions
14-71(a), 72(a)	Receive stolen goods (F)	H	16
14-71.1	Possess stolen goods (F)	H	533
14-71.1	Possess stolen goods (M)	1	2,097
14-72(a)	Receive stolen goods (M)	1	43
14-86.6(a)(2)	Receive/Possess stolen retail property	H	0
20-106	Possess stolen motor vehicle	H	195
20-108	Vehicles/Parts without manufacturer numbers	2	0

Section 1, Subpart (a)(4)

G.S. §	Offense	Offense Class	FY 2011/12 Convictions
14-71(a), 72(a)	Receive stolen goods (F)	H	16
14-71.1	Possess stolen goods (F)	H	533
14-71.1	Possess stolen goods (M)	1	2,097
14-72(a)	Receive stolen goods (M)	1	43
14-86.6(a)(2)	Receive/Possess stolen retail property	H	0
20-106	Possess stolen motor vehicle	H	195
20-108	Vehicles/Parts without manufacturer numbers	2	0

Source for all tables: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

It is not known how many of the above Class H felony convictions would be eligible for conviction as a Class G felony under the proposed Subparts due to the relaxed *mens rea* requirement, nor is it known how many of the above misdemeanor convictions would be eligible for conviction as a Class G felony for the same reason. Impact on the prison population will occur if Class H offenses become Class G offenses under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 42% for Class G) and longer average estimated time served (10 months for Class H compared to 14 months for Class G).

Section 3 of the bill amends subsection (c) of G.S. 20-62.1, Purchase of vehicles for purposes of scrap or parts only, to reclassify a first violation of this statute from a Class 1 misdemeanor to a Class I felony. Based on FY 2011-12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 6 months. Due to lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Department of Public Safety – Community Corrections Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, 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). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

Section 1: Changes to Subpart (a)(1) It is not anticipated that there will be any additional impact on Post-Release Supervision (PRS) caseloads or on PRS revocation, because convictions under both Class H and Class G require nine months of PRS. The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵

Section 1: Changes to Subparts (a)(2), (a)(3) and (a)(4) It is not known how many individuals will be convicted of a Class G felony under the expanded *mens rea* requirements proposed in this bill for these subsections. However, anyone so convicted would be subject to the minimum nine-month period of PRS mandated by JRA. The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁶

Section 3: Changes to G.S. 20-62.1(c) Since this section of the bill changes a first offense under this statute from a misdemeanor to a felony, there will be some impact on community corrections. Following JRA, all individuals convicted of a felony who serve an active sentence must have a minimum of nine months of post-release supervision.

⁴ CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

⁵ Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

⁶ Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

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