

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 741

SHORT TITLE: Redefine Burglary

SPONSOR(S): Representative Lee

FISCAL IMPACT: Expenditures: Increase (X) Decrease ()
 Revenues: Increase () Decrease ()
 No Impact ()
 No Estimate Available ()

FUND AFFECTED: General Fund (X) Highway Fund () Local Fund ()
 Other Fund (X) (Indigent Persons Attorney Fee Fund)

BILL SUMMARY: At present, G.S. 14-51 adopts the common law definition of burglary. This bill would replace the reference to the common law definition with the following phrase: "If any person enters at any time (a dwelling...) with the intent to commit any larceny or felony therein..." As a result, the common law elements of burglary, requiring the crime to be committed at night and requiring a breaking-in (not just an entering) are eliminated. The new definition applies to both degrees of burglary defined (without change) in G.S. 14-51. First degree burglary is when the dwelling is occupied at the time of the crime, and second degree burglary is if the dwelling is not occupied, but also includes any house within the curtilage (i.e., enclosed surroundings) of a dwelling. The bill also repeals G.S. 14-53 (which created a class D felony for breaking out of a dwelling house at night after entering the house with the intent to commit any felony or larceny therein or after committing any felony or larceny in the house).

EFFECTIVE DATE: December 1, 1993; applicable to offenses committed on or after that date.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department; Department of Correction

JUDICIAL DEPARTMENT

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES	\$394,089	\$675,996	\$675,996	\$675,996	\$675,996
INDIGENT DEFEN.	109,313	187,500	187,500	187,500	187,500
REVENUES/RECEIPTS	0	0	0	0	0
RECURRING					
NON-RECURRING					

POSITIONS: The Administrative Office of the Courts (AOC) has not itemized the needs for specific new positions since the additional

workload resulting from this bill would be spread across the state. The AOC notes, however, that the additional workload represents a significant increase and may translate into the need for additional superior court judges, assistant district attorneys, and assistant public defenders following enactment of this legislation.

ASSUMPTIONS AND METHODOLOGY: It is estimated that this bill would result in a substantial increase in burglary filings. The new filings would consist of offenses committed during the day that are currently being prosecuted as felony breaking or entering. It is estimated that there would be an additional 6,054 burglary filings annually (breaking or entering filings would be reduced by the same amount). Of these new cases, approximately 2,543 (42%) are expected to be filings for first degree burglary and approximately 3,511 (58%) for second degree burglary. Additional costs will include \$97,900 for assigned counsel in cases disposed by guilty plea during a one-year period; \$488,466 for the additional days of court for cases tried by jury (approximately 242 new felony trials), and of \$89,600 for assigned counsel in cases tried by jury would be expected to result.

The following analysis (for the Judicial Department) was conducted by the AOC and is the basis for the above cost estimates:

"New Burglary Cases We are predicting the number of new burglary cases by estimating the percentage of breaking or entering cases that involve breaking or entering of a dwelling during the daytime. AOC data indicate that during calendar year 1992, there were approximately 25,979 breaking or entering offenses charged throughout North Carolina. According to SBI data for 1991, 63.2% of "burglaries" are of residential structures. Data on the frequency of offenses reported by the State Bureau of Investigation's Division of Criminal Information (DCI) categorize as "burglary" any offenses involving unlawful entry of a structure to commit a felony or theft, and thus does not restrict "burglary" to the technical definition.

"Although the percentage of residential "burglaries" in the SBI data does not precisely correspond to breaking or entering charges in AOC data, the SBI figure provides the best available estimate and conforms with estimates provided in our discussions with two district attorneys. Applying this percentage to the statewide number of felony breaking or entering charges results in an estimated 16,419 residential breaking or entering. DCI data also indicate that 59% of "burglaries" are committed during the day. Applying this percentage results in an estimated 9,687 felony breaking or entering filings that would be chargeable under the proposed bill as burglary. Assuming an estimated 1.6 cases per defendant, we estimate that 6,054 defendants would be charged with burglary rather than felony breaking or entering. AOC data indicate that of the total number of first and second degree burglary charges, 52% are for first degree burglary and 48% are for second degree burglary. However, it seems likely that such offenses committed during the day would less often involve occupied dwellings, and therefore would be somewhat less

likely to be first degree offenses. We estimate that for the daytime offenses, the percentages should be inverted, resulting in percentages of 42% for first degree and 58% for second degree. These figures result in estimates of 2,543 (6,054 x .42) first degree cases and 3,511 (6,054 x .58) second degree cases.

Additional Trials The district attorneys we interviewed indicated that there would be a substantial increase in the trial rate (i.e., # of filings v. # of trials) over what would be expected under felony breaking or entering. They indicated that it would be somewhat higher than the trial rate for burglary as currently defined, mainly because first offenders with no aggravating factors would be less likely to negotiate a plea. The trial rate during 1991-92 was 4.7% for burglary, but only 1% for breaking or entering. Therefore, we assume a trial rate of 5% in the additional burglary cases, or a net incremental increase in the trial rate (over what would be expected if these cases remained breaking or entering) of 4%. This incremental trial rate suggests an additional 242 felony trials in superior court.

Additional Costs The following analyses estimate the additional costs of the 6,054 new burglary cases, with different costs associated with different manners of disposition. We anticipate that the dismissal rate for these cases would be 25%, a figure between the rates for current felony breaking or entering cases (21%) and for current burglary cases (28%). **We identify no additional costs for these estimated 1,514 cases.**

"We assume that 70% of the new burglary cases, or 4,238 cases, would be disposed by guilty plea (somewhat more than the 67% rate during 1991-92 for burglary as now defined as somewhat less than the 78% for breaking or entering cases). For these estimated 4,238 cases, we assume that all would have had guilty pleas had they been prosecuted as breaking or entering, but that attorneys would devote at least an additional hour or preparation time due to the more serious charge, especially in light of the seven-year mandatory minimum it carries. Assuming that 70% of the defendants in these cases are indigent, for a total of 2,967 indigent cases, and that the court would appoint private assigned counsel (as opposed to the public defender) in 66% of the indigent cases, there would be an estimated 1,958 guilty pleas handled by private assigned counsel. One additional hour for these 1,958 cases, at \$50 per hour, yields \$97,900 in additional costs for private assigned counsel for the guilty pleas.

"As stated above, we predict that there would be an additional 242 felony trials in superior court for these cases. Based on district attorney estimates, we assume that in 20%, or 48 cases, defendants would not be indigent or would otherwise not require court-appointed counsel. We estimate that in the remaining 80%, or 194 cases, defendants would be indigent and receive court-appointed counsel. AOC data on appointment of counsel in indigent cases suggests that 66% of these 194 cases, or 128 cases, would involve private assigned counsel, and the remaining

34%, or 66 cases, would involve the public defender as defense counsel. The cost estimates below detail the anticipated costs for the additional trials, broken down as follows: (a) costs for the additional days in court (excluding costs of private assigned counsel), and (b) additional costs for assigned counsel.

(a) Days in court: The district attorneys estimated that trials in these cases would take 1.5 to 2 days, and our cost estimates are based on the lower figure, 1.5 days of court time per trial. For the estimated 48 trial cases involving retained counsel and for the 128 cases involving assigned counsel, we estimate the cost for court time (including for the judge, jury, assistant district attorney, clerk, and court reporter) in each trial to be \$1,926 (\$1,292 for the first day, and \$634 for the second half-day). Thus, we would predict that these 176 trials would cost approximately \$338,976. For the 66 trial cases involving the public defender, costs for the first day are estimated at \$1,518, and costs for the second half-day are estimated at \$747, for a total per trial of \$2,265. Thus, we would predict that these 66 trials would cost approximately \$149,490. The total costs for court time are estimated at \$488,466.

(b) Costs for assigned counsel: For the 128 trials involving assigned counsel, we estimate that an additional 5 hours in preparation time would be required, as compared to that for the less severe breaking or entering charge. Including the 9 hours of trial time spent in court, the estimated additional 14 hours of assigned counsel time in each case yields an additional 1,792 hours of assigned counsel time. At \$50 per hour, the estimated additional cost for assigned counsel in these cases is \$89,600.

"Additional Considerations The proposed bill, in removing the common law definition of burglary, not only removes the nighttime limitation, but also appears to remove the element of 'breaking-in.' Thus, this bill could affect the handling of some cases that are currently charged as burglary. That is, where there is a factual dispute as to the time of the offense (i.e., daytime or nighttime) and/or whether an actual breaking into a dwelling was involved, this bill could result in some simplification in the proof of disputed facts, in that neither of these elements would need to be proved. However, district attorneys estimated that these factual issues are only rarely in serious dispute."

DEPARTMENT OF CORRECTION

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES *	\$9,895,882	\$37,546,493	\$69,554,463	\$98,806,871	\$1
RECURRING **	3,425,818	20,990,741	44,149,947	70,214,897	
NON-RECURRING	6,470,064	16,555,752	25,404,516	28,591,974	
REVENUES/RECEIPTS	0	0	0	0	0
RECURRING					

NON-RECURRING

* Expenditures would not be realized unless the current prison cap is removed. Under the existing prison cap, no additional expenditures would result within the Department of Correction.

** The recurring expenditures do not include inflationary or salary increases.

NOTE: The projected expenditures are shown each year as expansion needs beyond the current operating and capital budget of the Department of Correction (DOC). As required, this note projects fiscal impact for the next five fiscal years. However, the full impact of this bill would not be realized until FY 2002-2003.

POSITIONS: 886 New Positions

ASSUMPTIONS AND METHODOLOGY: The above cost estimates are calculated from the projected increase in prison populations that would result with the enactment of this bill. Projections apply to all relevant offenses committed on or after 12/1/93.

Added Inmate Population: The additional Burglary I and Burglary II convicted offenders expected to be admitted to the DOC were estimated by Rob Lubitz, Executive Director of the N.C. Sentencing and Policy Advisory Commission using the Commission's correctional population simulation model. (See Appendix IV of the Commission's "1993 Report to the General Assembly" for further explanation.) The above cost estimates are based on the following assumptions:

- 1) 15.7% of the offenders currently convicted of Breaking and Entering (B&E) will instead be convicted of Burglary I.
- 2) 21.6% of the offenders currently convicted of B&E will instead be convicted of Burglary II.

[Note: the above percentages were derived from information provided by the AOC. Of the 25,979 B&E offenses charged in 1992, 4,069 or 15.7% would be Burglary I, 5,618 or 21.6% would be Burglary II, and 16,292 or 62.7% would remain B&E under the proposed bill. These projections assume that individuals convicted of these crimes will follow this same distribution.]

- 3) On average, sentencing patterns for new offenders convicted of Burglary I and Burglary II will approximate sentencing patterns for offenders currently convicted of these crimes (i.e., overall incarceration rates and average sentence lengths will be the same). An average length of incarceration for Burglary I offenders is calculated to be 80.5 months whereas Burglary II offenders are expected to serve 73.1 months. (Note that these averages compare to 15.1 months that a convicted B&E offender would be expected to serve.)

4) The growth rate for these crimes will match the growth rate used in the Commission's correctional population simulation model.

Based on the above assumptions, the following table illustrates the projected increase in prison populations for the next five fiscal years.

Fiscal Year	Added Inmate Population
1993/94	272
1994/95	968
1995/96	2036
1996/97	3238
1997/98	4431

Additional Costs: Additional costs are realized only if it is assumed that the current prison cap is removed.

Recurring Expenditures - Recurring or operating costs have been estimated according to the expected classification (i.e., minimum, medium or close custody) of the new Burglary I and Burglary II offenders. A survey of field staff operating the prison diagnostic centers responsible for inmate assignment indicates that approximately 98% of the new offenders would be assigned to a medium custody status and 2% to close custody. For purpose of this fiscal note, it is assumed that 100% of the new offenders would be placed in medium custody. Although Class C (Burglary I) and Class D (Burglary II) felons are eligible to be promoted to minimum custody after 24 months, the Division of Prisons notes that the bulk of both the new Burglary I and Burglary II offenders would not be promoted until they have served 48 months of incarceration.

Based on this classification information, additional recurring expenditures are figured as follows:

- For FY 93-94, 272 new inmates x \$59.41 (operating cost per medium security bed per day) x 7 months (relevant period from bill's 12/1/93 effective date) or 212 days = \$3,425,818.
- Costs for fiscal years 94-95 through 96-97 are calculated in the same manner except that a full twelve months or 365 days are used.
- Costs for FY 97-98 are calculated in a slightly different manner since the first offenders added in FY 93-94 would be likely to be promoted to minimum custody after serving the first 5 months of FY 97-98 in medium custody. Costs calculated for those offenders are based on \$44.53 (cost per minimum security bed per day) for the last 7 months of that fiscal year.

Non-Recurring Expenditures - Non-recurring or capital costs are estimated to total \$102,123,413 over the five year period. As noted from the table on the preceding page, 272 new medium security beds will be required in FY 93-94. Costs to construct these beds are

calculated according to the average cost per medium security bed (averages are based on costs for both beds constructed in a new facility and in an expanded facility) taken from page VI of the DOC Master Plan. For FY 93-94, 272 new medium security beds x \$23,787 (average cost per bed) yields an expenditure of \$6,470,064. Costs for the remaining years are calculated based on the number of beds required minus the number of new beds already constructed in the preceding year(s). Capital costs for FY 97-98 take into consideration that some minimum security beds (figured at an average cost of \$11,740) and fewer medium security beds will be needed as inmates are promoted into the minimum custody level.

As noted above, the full impact of this bill will not be realized until FY 2002-2003. At that time the Sentencing and Policy Advisory Commission estimates that a total of 7,514 beds will be necessary as a result of this bill.

Additional Positions: Based on the 1992 recommendation of the Government Performance Audit Committee (GPAC), approximately 886 new positions would be required if the prison cap was removed and 4,431 additional beds were built. Page 8.15 of the Public Safety Section of the GPAC report entitled "Our State Our Future" recommends a staffing ratio of 1 to 5. The above noted operating costs could be lower if this ratio were in effect. (Note that the above GPAC recommendation/ratio has been used to calculate the number of additional positions because the Division of Prisons is unable to provide relevant information to otherwise calculate said positions.)

SOURCES OF DATA: Administrative Office of the Courts - DCI data on frequency of offenses during 1991, reported in Crime in North Carolina; Interviews with two District Attorneys; AOC data on frequency of offenses charged; AOC data on indigent defense; AOC Statistical Management Reports and other data from the AOC Statistical Reporting System for 1991-92; Department of Correction - Research and Planning Division; N.C. Sentencing and Policy Advisory Commission; N.C. General Statutes.

TECHNICAL CONSIDERATIONS: None.

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733-4910

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