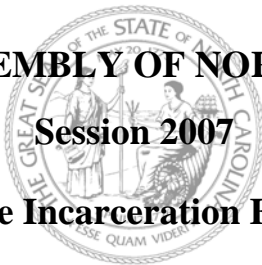


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1632 (Third Edition)

SHORT TITLE: 2008 Technical Corrections Act.

SPONSOR(S): Senator Hartsell

<b>FISCAL IMPACT</b>					
	<b>Yes ( X )</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>
<b>GENERAL FUND</b>					
Correction	<b>Fiscal impact anticipated; amount cannot be determined</b>				
Judicial	<b>Fiscal impact anticipated; amount cannot be determined</b>				
<b>TOTAL EXPENDITURES:</b>					
<b>ADDITIONAL PRISON BEDS:</b> (cumulative)*	<b>Cannot be determined</b>				
<b>POSITIONS:</b> (cumulative)					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> This bill is effective when it becomes law.					
<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:**

The bill as a whole makes technical and clarifying changes to passed legislation. Specifically, section 34.(c) amends GS14-86.6, Organized retail theft, to include persons who conspire to commit theft from more than one retail establishment with a value exceeding \$1,500 aggregated over a 90 day period.. The change between this bill and current law is the inclusion of more than one retail establishment. Please see technical consideration.

## **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**

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 or beyond. Therefore, the number of additional inmates created from this bill will result in the need for the same number of new prison beds.**

G.S. 14-86.6(a), Conspiracy to commit retail theft, is a Class H felony. This Section amends the offense to include persons who conspire to commit theft of retail property from multiple retail establishments; currently the offense is limited to persons who conspire to commit theft of retail property from a single retail establishment. This amendment would expand the eligible pool of offenders.

Persons eligible for conviction of this offense currently may be convicted of larceny and related offenses, but the long combination of elements of this offense (*e.g.*, the proposed offense requires both a conspiracy and a taking incident to that conspiracy, with an additional element of transferring the goods for consideration) make it difficult to assess what combinations of current convictions would represent the eligible pool of offenders under the proposed statute.

G.S. 14-86.6(a) became effective December 1, 2007; therefore, 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 sentenced under the proposed bill. In FY 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, 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.<sup>1</sup>

### **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

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<sup>1</sup> The Class H threshold accounts for only active sentences in the first year and does not include technical probation revocations until the second year impact. Since the proposed bill would be effective when it becomes law, the Class H threshold provided may reflect a conservative estimate of the impact.

restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.<sup>2</sup>

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 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 \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 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.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

### **Judicial Branch**

The Administrative Office of the Courts 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.

Due to the nature and specific elements of the offense, AOC has no data from which to estimate the number of additional Class H felony charges that would arise under this bill. For any additional charges, there would be an increase in the workload of superior court judges, district attorneys, clerks, and court reporters. There would also be an increase in expenditures for jury fees and indigent defense.

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

**TECHNICAL CONSIDERATIONS:** The language of the bill has been changed to reflect offenses involving more than one establishment. It may be suggested that the standard, more inclusive wording of “one or more retail establishments” be used to incorporate one establishment in the legislation. As currently written, this bill may only apply if multiple establishments are involved.

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<sup>2</sup> 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.

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Fiscal Research Division

**DATE:** July 17, 2008



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