

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 465 < 3rd Edition >
SHORT TITLE: Shoot Into Property/Felony
SPONSOR(S): Senators Robinson, Albertson, Ballance, et al

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>

REVENUES

EXPENDITURES

Department of Correction (A fiscal impact is expected, but no estimate is available)

Judicial Branch

Jury Fees	\$924	\$11,088	\$11,088	\$11,088	\$11,088
Indigent Defense	<u>\$1,634</u>	<u>\$21,570</u>	<u>\$23,727</u>	<u>\$26,099</u>	<u>\$28,709</u>
Total	\$2,558	\$32,658	\$34,815	\$37,187	\$39,797

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Judicial Branch and Dept. of Correction

EFFECTIVE DATE: This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

BILL SUMMARY:

Amends GS 14-34.1, making it a Class I felony to willfully or wantonly discharge, or attempt to discharge, a firearm into any building, structure, vehicle, aircraft, watercraft, or other conveyance that is not occupied. The bill exempts from the provision any person who owns or lawfully has control of the property, or has the express permission of the person who owns or lawfully has control of that property.

ASSUMPTIONS AND METHODOLOGY:

Phone interviews with two district attorneys indicate that the conduct the bill makes a Class I felony may currently result in convictions for damage to real property, which is a Class 1 misdemeanor. Thus, some cases currently disposed of as Class 1 misdemeanors would instead be disposed of as Class I felonies. As a result of this upgrade, convicted defendants would be more likely to serve longer sentences, and trials and pleas would demand more court time and cost in disposing of cases.

Judicial Branch

During calendar year 2000, 6,861 defendants were charged with the misdemeanor offense of damaging real property under G.S. 14-127. Based on DA estimates, AOC assumes that 6% of these defendants might be charged under the bill for using a firearm, or 412 defendants. Of these, AOC estimates that 5% go to trial (21 defendants) and that 30% would plead guilty (124 defendants) under current law. In addition, AOC estimates that the average in-court trial time for a Class I felony is 9 hours, or 5 hours longer than the Class 1 misdemeanor plea; the average in-court time for the Class I felony guilty plea is about 37 minutes, or 7 minutes longer than the Class 1 misdemeanor plea.

Trials

For 21 misdemeanor trials under current law, there would be 84 hours of court time required, or 14 days (assuming six hours of in-court time per day). At a cost of \$1,022 per day, the total cost would be \$14,308. For 21 felony trials under the bill, there would be 189 hours of court time required, or 32 days (assuming six hours of in-court time per day). At a cost of \$2,559 for each 1½ day of trial, the total cost for 21 trials would be \$53,739.

Fiscal Research excludes personnel costs for trials in its calculation if the workload increase is less than 3,600 hours. Thus, the only costs included for trials would be jury pool costs of \$528 per trial (\$360 for the 1st day and \$168 for the 2nd day), or \$11,088 for 21 trials.

Pleas

For 124 misdemeanor guilty pleas under current law, there would be 62 hours, or 10.3 days. At a cost of \$1,022 per day, the total cost would be \$10,526. AOC assumes that 50% of the defendants would plead guilty under the bill; for 206 guilty pleas, there would be 128 hours of court time required, or 21.3 days. At a cost of \$1,354 per day, the cost for pleas under the proposed bill would be \$28,822. However, Fiscal Research does not include the costs for guilty pleas in its calculation since the workload for pleas and trials is less than 3,600 hours.

Indigent Defense

In determining indigent defense costs, the Administrative Office of the Courts made the following assumptions:

1. Sixty-six percent of defendants (current indigency rate for defendants charged with occupied property) would be indigent under this bill, while 25.8% would be indigent under current law.
2. Under the proposed bill 50% of the defendants (current guilty pleas for felony offense for occupied property) would plead guilty, while under current law, 30% would plead guilty.
3. Under the bill, longer trials would be required due to the felony enhancement.

4. District court (misdemeanor offense under current law) indigent cost at \$50 per hour and superior court (felony offense under the bill) indigent cost at \$60 per hour.

AOC anticipates that 25.8% of these defendants would be indigent under current law, or 5 defendants with trials, and 32 defendants with guilty pleas. For trials, they estimate that 4 in-court hours and 1 hour for preparation time would be needed, for a total of 5 hours. For guilty pleas, they estimate that ½ hour in-court time and ½ hour of preparation time would be needed, for a total of 1 hour. At a cost of \$50 per hour, indigent costs for trials would be \$1,250 (5 trials x 5 hours x \$50) and guilty pleas at \$1,600 (32 pleas x 1 hour x \$50), for a total of \$2,850.

Further, AOC expects 66% of these defendants would be indigent under the bill, or 14 defendants with trials, and 136 defendants with guilty pleas. For trials, they estimate that 9 in-court hours and a minimum of 2 hours for preparation time would be needed, for a total of 11 hours. For guilty pleas, 37 minutes in-court time and 1 hour of preparation time would be needed. At a cost of \$60 per hour, indigent costs are estimated for trials at \$9,240 (14 trials x 11 hours x \$60) and guilty pleas at \$13,219 (136 pleas x 1 hour and 37 minutes x \$60). **Thus, the incremental increase in indigent costs would total \$7,990 for trials and \$11,619 for pleas, totaling \$19,609. Total indigent costs would increase by 10%, for a total of \$21,570 in the 2nd year and thereafter.**

Department of Correction

Since the proposed bill creates a new offense, it is not known how many offenders might be convicted of discharging a firearm into unoccupied property. As indicated earlier, discharging a firearm into unoccupied property may currently result in convictions (Misdemeanor 1) for damage to real property. The Sentencing Commission noted that in Fiscal Year 1999-2000, 95 offenders convicted for damage to real property received active sentences greater than 90 days (i.e., prison sentences).

Although it is not known how many of these convictions involved use of a firearm, Fiscal Research feels this data indicates some offenders are going to receive active sentences for firing into unoccupied property. As a Class I felony, on average each offender would receive an active sentence of 6 months. *If*, for example, there were 100 convictions for the proposed offense per year, approximately 13 offenders would receive an active sentence of about 6 months and would result in 7 additional prison beds the first year. By the second year, a combination of active sentences and probation revocations would result in the need for about 26 additional prison beds.

Because there are no surplus prison beds available for the five year Fiscal Note horizon and beyond, each active sentence would create the need for an additional prison bed and have a fiscal impact on the Department of Correction (DOC). However, because there is no accurate count of the number of offenses for shooting into unoccupied property, there is no estimate available of the fiscal impact on the DOC.

TECHNICAL CONSIDERATIONS: None

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DATE: May 21, 2001



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