

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1351 (Second Edition)

SHORT TITLE: Threaten Persons in Certain Gov'tal Activity.

SPONSOR(S): Representatives Goodwin and Almond

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction	The Class I felonies created by this bill could lead to an increase in prison population and therefore bed needs, but the exact number of beds needed and, thus, the cost cannot be determined (see pg. 2 for details).				
Judicial	Exact amount cannot be determined (see pg. 2 for details).				
LOCAL GOVERNMENTS					
	Exact amount cannot be determined (see pg. 2 for details).				
ADDITIONAL PRISON BEDS*					
	Exact amount cannot be determined. For every ten Class I felony convictions, one prison bed would be needed in the first year and three beds in the second year.				
POSITIONS: (cumulative)					
	Exact amount cannot be determined (see pg. 2 for details).				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments					
EFFECTIVE DATE: December 1, 2005					
*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.					

BILL SUMMARY: The second edition of the bill eliminates three offenses as proposed in the first edition relating to threats against school employees and personnel and continues to include two offenses as proposed in the first edition: 1) a Class I felony for threatening to damage school

property by use of fire, explosives, or a firearm; and, 2) a Class 1 Misdemeanor for threatening to damage school property by means other than fire, explosives, or a firearm.

ASSUMPTIONS AND METHODOLOGY:

Summary

It is possible that the offenses created by this bill would currently be prosecuted under G.S. 14-277.1, which provides that it is a Class 1 misdemeanor to communicate a threat to another person if that person believes the threat will be carried out and the threat is made in such a way that a reasonable person would believe it is likely to be carried out. However, under G.S. 14-16.8, threats made under this bill would neither require that the person actually received the threat nor believe that it would be carried out. As such, this bill could lead to new Class I felony or Class 1 misdemeanor charges and convictions that would not presently be prosecuted as Class 1 misdemeanors.

New Class I felony convictions and present misdemeanor convictions elevated to Class I felonies could increase prison bed needs and therefore prison costs. New Class 1 misdemeanor convictions would likely impact local jails, though a short prison sentence could result. In addition, increased court workload and costs would be anticipated to dispose of the additional charges. Because the offenses created by this bill are new, no historical data is available from which to estimate the numbers of charges and convictions that might occur. As such, the specific prison bed impact and cost to the Department of Correction and Courts cannot be determined.

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Because this bill would create new criminal offenses, the Sentencing Commission has no historical data from which to project the potential impact on prison population. This bill could impact incarceration rates through two means: 1) by resulting in new Class 1 misdemeanor and Class I felony convictions, and 2) by elevating some current convictions from Class 1 misdemeanors to Class I felonies. Although the number of offenders that would be convicted under this bill cannot be determined, there would be an impact on prison population if a significant number of Class I felony convictions were to result from this bill.

In FY 2003-04, there were 2,709 Class 1 misdemeanor convictions for communicating threats in violation of G.S. 14-277.1. Of these convictions, it is not known how many involved threats to damage school property through the use of fire, explosives, or a firearm, and would otherwise meet the elements of the proposed offense, and would, thus, become Class I felonies under this bill.

Class I Felonies: In FY 2003-04, eleven percent of Class I felony convictions resulted in active sentences with an average estimated time served of 7 to 9 months. If, for example, there were ten Class I convictions due to this 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 three additional prison beds the second year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

Class 1 Misdemeanors: In FY 2003-04, 19 percent of Class 1 misdemeanants received active sentences, and the average estimated time served was 31 days. DOC reimburses the counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per offender per day. Because active sentences of less than ninety days are served in county jails, Class 1 misdemeanor convictions resulting from this legislation are not expected to significantly impact prison population.

Non-Active Sentences: In FY 2003-04, 49 percent of Class I convictions resulted in intermediate sanctions and 40 percent in community sanctions; two percent of Class 1 misdemeanants received intermediate sanctions and 79 percent received community punishment. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

Judicial Branch

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

As this bill would create new criminal offenses, AOC has no historical data from which to estimate the number of new Class I felony and Class 1 misdemeanor charges that would occur. For calendar year 2004, AOC data indicates that 24,281 defendants were charged under G.S. 14-277.1 for communicating threats, a Class 1 misdemeanor. However, it is not known how many of these charges involved threats to damage school property through the use of a firearm, explosives, or fire, and would otherwise meet the elements of the proposed offense, and would, thus, become Class I felonies under this bill.

For any additional Class I felony or Class 1 misdemeanor charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior and district court workload, respectively. AOC estimates the costs to process one Class I felony or one Class 1 misdemeanor charge as shown in Table 1 on the next page. Based on prior-year data, the majority of charges that are not dismissed are likely to be settled via guilty plea.

Table 1: Estimated Per Charge Settlement Costs

Offense Class	Settled via Trial			Settled via Guilty Plea
	<i>Court/Attorney Costs</i>	<i>Indigent Defense</i>	<i>Total</i>	-
<i>Class I Felony</i>	\$3,877	\$1,931	\$5,808	\$329
<i>Class 1 Misdemeanor</i>	\$1,880	\$1,333	\$3,213	\$284

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

TECHNICAL CONSIDERATIONS: None

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