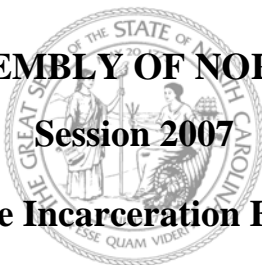


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** House Bill 946 (Second Edition)  
**SHORT TITLE:** Vandalism Damages More Than \$5,000/Felony  
**SPONSOR(S):** Representatives Grady, Sutton, Yongue, and Goforth

		FISCAL IMPACT				
		Yes (X)	No ( )	No Estimate Available ( )		
		<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
<b>GENERAL FUND</b>						
<b>Correction: Prisons</b>	Assumes minimum prison capital and operating costs if 2.5% of FY 05-06 Class 1 misdemeanor convictions under G.S. 14-127 were elevated to Class I felony convictions. See pp. 2-4 for assumptions and methodology.					
Recurring*	-	\$ 84,751	\$ 290,977	\$ 299,706	308,697	
Capital*	\$ 680,400	-	-	-	-	
<i>*Assumes prison bed construction within a stand-alone facility (p. 3-4). Additional prison population (bed) impact and minimum capital and operating costs cannot be projected beyond the two year window (p. 2-4).</i>						
<b>Correction: DCC</b>	Amount cannot be determined.					
<b>Judicial</b>	Assumes 2.5% of FY 05-06 charges for violation of G.S. 14-127. See pp. 4-5 for assumptions and methodology.					
Recurring	\$ 18,265	\$ 32,895	\$ 34,540	\$ 36,267	\$ 38,081	
Nonrecurring	-	-	-	-	-	
<b>TOTAL EXPENDITURES:</b>	Exact amount cannot be determined. Based on 2.5% scenario, total costs could approach \$698,665 for FY 2007-08 and \$117,646 for FY 08-09. Actual costs could vary from this scenario example.					
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>	-	3	10	-	-	
<b>POSITIONS: (cumulative)</b>						
<b>Correction: Prisons</b>	-	1	4	-	-	
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.						
<b>EFFECTIVE DATE:</b> December 1, 2007.						
<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 second edition of H.B. 946 amends G.S. 14-144 (Injuring houses, churches, fences and walls) to make the vandalism of homes, churches, fences, and walls, and certain other structures (any building type also mentioned in Article 15, “Arson and Other Burnings”) a Class I felony offense if the resultant damage exceeds \$5,000 in value.<sup>1</sup> The current Class 2 misdemeanor penalty is maintained for offenses resulting in damage equal to or less than \$5,000 in value.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The Administrative Office of the Courts does not maintain a specific offense code for violation of G.S. 14-144; therefore, *it is not known exactly how many offenses occur, or how many result in damage exceeding \$5,000 in value.* However, it is possible that offenses eligible for conviction under G.S. 14-144 are instead prosecuted as “willful and wanton injury to real property” under G.S. 14-127 (Class 1 misdemeanor offense; one offense class higher than G.S. 14-144). Specifically, this latter offense pertains to the willful and wanton damage, injury, or destruction of any real property whatsoever, “either of a public or private nature” (G.S. 14-127). Although AOC offense data for G.S. 14-127 does not distinguish the number of offenses that would otherwise be covered under G.S. 14-144, *the relative offense level (Class 1 vs. Class 2 misdemeanor), similar offense elements, and high frequency of violation of G.S. 14-127 (8,302 charges in CY 2006) suggest that some violations of G.S. 14-144 are instead prosecuted as willful/wanton injury to real property.*

Thus, to illustrate the potential impact of this felony threshold, Fiscal Research assumes that a certain percentage (2.5%) of prior year charges and convictions under G.S. 14-127 would fit the offense criteria set in G.S. 14-144, and would become subject to the proposed Class I felony penalty. *Since the actual number of offenses (G.S. 14-144) and damage values are unknown, FRD conservatively assumes that 2.5% of these charges and convictions could be affected (lowest assumed scenario, see pp. 3-4).* Based on this assumption, the minimum total cost of this proposal could approach \$698,665 in FY 2007-08 and \$117,646 in FY 08-09 - driven primarily by the construction of additional prison beds (Fiscal Impact Table, p.1).

### **Department of Correction – Division of Prisons**

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.*<sup>2</sup> Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

The proposed Class I felony threshold will have three primary effects on future convictions for violation of G.S. 14-144 – only those offenses for which the damage caused exceeds \$5,000 in value: 1) potentially increase the rate of active sentencing (incarceration); 2) significantly lengthen the period of incarceration; and 3) necessitate imprisonment within a state facility, thereby increasing the demand

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<sup>1</sup> Applicable structures, as identified in Article 15 of Chapter 14 of the General Statutes include, among others: houses (inclusive of manufactured-type homes and recreational trailers), public and private buildings, churches, bridges, boats/barges, and structures under construction.

<sup>2</sup> 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. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

for prison beds.<sup>3</sup> In FY 2005-06, 20% of Class 1 and 17% of Class 2 misdemeanor convictions received active sentences, with average estimated times served of 31 and 13 days, respectively. In contrast, 15% of Class I felony convictions received active sentences, with an average estimated time served of approximately 7 months.<sup>4</sup>

Though it is not known how many offenses will become subject to the proposed penalty enhancement, prior year conviction data for the similar offense of “willful and wanton injury to real property” (G.S. 14-127) may provide some indication of potential impact. In FY 2005-06, there were 1,251 Class 1 misdemeanor convictions for violation G.S. 14-127. Given this relatively high number of convictions, the Sentencing and Policy Advisory Commission was asked to estimate potential prison bed needs, based on several scenarios (Table 1).<sup>5</sup> Each scenario assumes that a certain percentage of the 1,251 Class 1 misdemeanor convictions would become Class I felony convictions under the proposed threshold. These estimates demonstrate only two-year impact, and assume FY 2005-06 sentencing and revocation patterns. Actual convictions, active sentencing rates, and revocation rates could exceed or fall short of these assumptions.

<b>Table 1. Projected Convictions and Prison Bed Impact</b>			
<i>Projected Convictions</i>		<i>Prison Beds Required</i>	
<b>Scenarios</b>	<b>Convictions</b>	<b>FY 08/09</b>	<b>FY 09/10</b>
<b>2.5%</b>	32	3	10
<b>5%</b>	63	6	19
<b>7.5%</b>	94	8	27

As shown, if only **2.5% (32)** of the Class 1 misdemeanor convictions (G.S. 14-127) were to become Class I felony convictions under this proposal, three additional prison beds would be required in the first applicable year; ten additional beds by the second; and four additional positions by the second year.<sup>6</sup> Assuming inmate assignment to medium custody, the construction of ten prison beds within a new, stand alone facility could cost the State \$680,400 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$421,200.<sup>7</sup> These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility,

<sup>3</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

<sup>4</sup> These FY 2005-06 statistics per offense class are total conviction averages across all prior record levels and sentencing ranges (mitigated, presumptive, and aggravated). The type of sentence imposed (active, intermediate, or community) and length of sentence imposed could vary for affected offenses.

<sup>5</sup> *Due to differing offense criteria, a more detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model. Threshold scenarios only represent potential two-year impact.*

<sup>6</sup> Position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

<sup>7</sup> New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

requires budgeting at least three years in advance. Potential operating costs for the required beds could total \$84,751 in FY 2008-09, and \$290,977 in FY 2009-10.<sup>8</sup>

➤ An annual inflation rate of 3% is applied to FY 2009-10 prison bed operating costs beyond the initial two-year window. **These construction and operating costs (2.5% scenario) are depicted in the Fiscal Impact Table on page 1.** However, it is not known exactly how bed demand and construction/operating costs might be distributed over the five-year note horizon.

<b>Table 2. Estimated Prison Bed Construction and Operation Costs</b>				
<i>Prison Bed Construction Alternatives &amp; Costs</i>			<i>Operating Costs</i>	
<b>Scenarios</b>	<b>Stand Alone: FY 07/08</b>	<b>Add-On: FY 07/08</b>	<b>FY 08/09</b>	<b>FY 09/10</b>
<b>2.5%</b>	\$ 680,400	\$ 421,200	\$ 84,751	\$ 290,977
<b>5%</b>	\$ 1,292,760	\$ 800,280	\$ 169,501	\$ 552,857
<b>7.5%</b>	\$ 1,837,080	\$ 1,137,240	\$ 226,002	\$ 785,639

**Department of Correction – Division of Community Corrections**

In FY 2005-06, 85% of Class I felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation.<sup>9</sup> Thus, *assuming that future felony convictions occur, the Division of Community Corrections could assume some additional costs for offenders placed under its jurisdiction.* It is not known how many offenders might be sentenced to intermediate or community punishments, to which type, or for how long. However, Fiscal Research anticipates that the majority of potential DCC costs will be incurred due to increased intermediate sanctioning.

- Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 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 is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

**Judicial Branch**

Though it is not known how many charges might occur for the enhanced offense, the Administrative Office of the Courts expects that any penalty enhancement would be accompanied by more vigorous defense and prosecution, and would thereby increase court-time requirements and the associated costs of case disposal. Specifically, the AOC estimates that more cases will be prosecuted and result in trial, increasing jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel (e.g. cases subject to the Class I felony penalty will be elevated to superior court, rather than disposed in district court).

Data for calendar year 2006 indicates that approximately 8,032 defendants were charged under G.S. 14-127. Assuming that 2.5% (approx. 200) of these prior year cases were to occur annually for the

<sup>8</sup> Impact on incarcerated population is assumed for FY 2008/09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

<sup>9</sup> 80% of Class 1 and 83% of Class 2 misdemeanor convictions resulted in non-active sentences in FY 2005-06.

enhanced offense, it is estimated that the difference in court-time, jury, and indigent defense costs for case disposal would approach \$31,329 per year (adjusted for 5% annual inflation in Fiscal Impact Table, p.1). As shown, AOC estimates that a higher percentage of Class I felony cases would result in trial (3%), relative to Class 1 misdemeanor cases (0.5%); however, the rate of guilty plea is expected to decrease. Actual costs may vary from this example, contingent upon court-time and workload requirements, as well as the type of case disposition.

➤ *Fiscal Research has revised AOC cost estimates (originally conducted for 5% scenario) to reflect the 2.5% percent illustration used for prison bed impact. As shown in the Fiscal Impact Table (p.1), estimated costs are adjusted for the 7 month effective period in FY 2007-08 and an assumed annual inflation rate of 5%.*

<b>Table 3. Estimated Court-Time &amp; Indigent Defense Costs</b>							
<i>Trial</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
<b>Offense Class</b>	<b># Cases</b>	<b>Court-Time*</b>	<b>DA Prep.*</b>	<b>Jury*</b>	<b>Court Costs</b>	<b># Cases</b>	<b>Defense Cost</b>
Class 1 misd.	1	\$ 1,440	\$ 994	\$ 0	\$ 2,434	1	\$ 1,266
Class I felony	6	\$ 2,919	\$ 1,491	\$ 640	\$30,300	3	\$ 5,796
<i>* Estimated costs per case</i>					<b><i>Difference: \$27,866</i></b>	<b><i>Difference: \$4,530</i></b>	
<i>Plea</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
<b>Offense Class</b>	<b># Cases</b>	<b>Court-Time*</b>	<b>DA Prep.*</b>	<b>Jury*</b>	<b>Court Costs</b>	<b># Cases</b>	<b>Defense Cost</b>
Class 1 misd.	94	\$ 60	\$ 99	-	\$ 14,946	33	\$ 2,739
Class I felony	62	\$ 108	\$ 99	-	\$ 12,834	43	\$ 3,784
<i>* Estimated costs per case</i>					<b><i>Difference: (\$2,112)</i></b>	<b><i>Difference: \$1,045</i></b>	

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

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** May 3, 2007



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