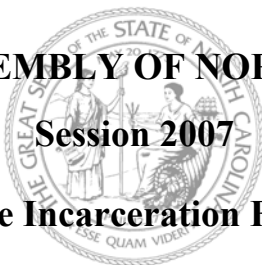


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 1270 (Second Edition)

**SHORT TITLE:** Amend Larceny Laws.

**SPONSOR(S):** Senator Snow

		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>						
		Assumes minimum prison capital and operating costs if 5% of FY 05-06 misdemeanor convictions (G.S. 14-72(a)) were elevated to felony convictions. See pp. 2-4 for assumptions and methodology.				
	<b>Correction: Prisons</b>					
	<b>Recurring*</b>	-	\$ 7,147,305	\$ 15,305,402	\$ 15,764,564	\$ 16,237,500
	<b>Nonrecurring*</b>	\$ 35,789,040	-	-	-	-
		<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 15% of FY 05-06 misdemeanor charges are elevated to felony charges. See pp. 5-6 for assumptions and methodology.				
	<b>Recurring</b>	\$ 643,833	\$ 1,159,562	\$ 1,217,540	\$ 1,278,417	\$ 1,342,338
<b>TOTAL EXPENDITURES:</b>		Exact amount cannot be determined. Based on scenario assumptions, total costs could approach \$36.4m for FY 2007-08, \$8.3m for FY 08-09, and \$16.5m for FY 09-10. Actual costs could vary from these examples.				
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>		-	252	523	-	-
<b>POSITIONS: (cumulative)</b>						
	<b>Correction: Prisons</b>	-	100	210	-	-
<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:** S.B. 1270 expands, revises, and creates several criminal offenses. A brief synopsis of each section is provided below.

**Section 1:** Amends G.S. 14-71 (receiving stolen goods) to provide that the offense of receiving stolen goods occurs *whether or not an item has been feloniously stolen or taken*. This change is assumed to expand the current offense, now including all persons who receive stolen goods, even if the goods are not stolen at all; however, the receiver must know or have “reasonable grounds” to believe the item has been *feloniously* stolen or taken.

**Section 2:** Rewrites G.S. 14-72 to lower the value thresholds for felony larceny, and receiving or possessing of stolen goods – from \$1,000 to \$500. Per G.S. 14-2.5, these changes also lower the value thresholds for felony attempted larceny, and receiving or possessing of stolen goods.

In effect, this threshold reduction enhances the larceny of goods, and receiving or possessing of goods, valued at more than \$500 to Class H felony offenses; it also enhances the attempted larceny of goods valued at more than \$500 to a Class I felony offense. Offenses involving goods valued \$500 or less remain at the Classes 1 and 2 misdemeanor levels, respectively.

**Section 3:** Amends G.S. 14-72.1 (“Concealment of merchandise in mercantile establishments;” Shoplifting) to broaden the offense in subsection (d), and to create three new offenses:

1. *Subsection (d).* The subsection currently provides that it is a misdemeanor offense to willfully, without authority, mark goods at a false, lower price, or to substitute a false price tag *and then present the falsely marked goods for purchase*. H.B. 1379 provides that this offense also includes placing a false “...product code used to identify the sales prices...” To the extent that violations of this type are not currently prosecuted, this change expands the pool of offenders and increases the likelihood of charge and conviction.
2. *New subsection (d2).* Makes it a Class H felony offense to violate G.S. 14-72.1(a) - willful concealment of goods/merchandise, not purchased, while upon the premises of a store – *by using an exit door* maintained in compliance with OSHA regulations (29 C.F.R. 1910, Subpart E). Because this new offense essentially amounts to larceny, it is assumed that some otherwise misdemeanor larceny offenses (Class 1) would be enhanced to Class H felonies (if an exit door is used). However, it is also possible that some charges and convictions could occur in addition to existing larceny and shoplifting offenses.
3. *New subsection (d3).* Makes it a Class H felony offense to violate G.S. 14-72.1(a) - willful concealment of goods/merchandise, not purchased, while upon the premises of a store – by “removing, destroying, or deactivating a component of an anti-shoplifting or inventory-control device to prevent activation...”
4. *New subsection (d4).* Makes it a Class H felony offense to violate G.S. 14-72.1(a) - willful concealment of goods/merchandise, not purchased, while upon the premises of a store – by “affixing a product code obtained or created by the person for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price...”

**Section 4:** New G.S. 14-72.7 makes it a Class H felony offense to take and carry away infant formula (as defined in 21 U.S.C. 321(z)) valued in excess of \$100. Larceny of formula valued \$100 or less remains a Class 1 misdemeanor offense under G.S. 14-72(a).

**Section 5:** Adds new Article 16A (“Organized Retail Theft”) to Chapter 14, which creates two new offenses under new G.S. 14-86.6:

1. Makes it a Class G felony for a person to conspire to commit the theft of retail property valued in excess of \$1,500 (aggregated) over a 90-day period, with the intent to sell that property, and

who takes or causes that property to be placed in the control of a retail property fence (as defined under new G.S. 14-86.5) or other person.

2. Makes it a Class G felony to receive or possess, with the intent to distribute, any retail property that has been taken/stolen in violation of G.S. 14-86.6.

G.S. 14-86.6 also provides that any person who violates the statute must forfeit any interest acquired or maintained, and that criminal actions may be initiated in any county in which at least one offense has occurred; however, it states the intent of the General Assembly is for one State court to have jurisdiction over all interrelated organized retail theft offenses.

**Section 6:** Provides that S.B. 1270 becomes effective December 1, 2007, and applies to offenses committed on or after that date.

*Source: Adapted from N.C. Sentencing and Policy Advisory Commission Analysis*

**ASSUMPTIONS AND METHODOLOGY:** The Sentencing and Policy Advisory Commission analyses each bill that creates or alters a criminal offense, and examines its impact relative to the Commission's annual prison population projections. The Commission assumes for such bills that expanding existing or creating new criminal offenses has no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.B. 1270 creates several new offenses, and revises some existing offenses to include new, unique elements. For such offenses (Sections 1 and 3-5), there is no historical data from which to estimate the number of additional violations, charges, convictions, and prosecutorial and/or sentencing changes. Accordingly, it is not known how the proposed offense expansions and new offenses may impact the criminal justice system. Nevertheless, based on current resources, any resultant, additional charge and/or conviction will generate some fiscal impact for the Courts and Corrections. *\*The potential impacts of sections 1, 3, 4, and 5 are discussed later in this note (see Part II).*

Similarly, due to the various elements of larceny offenses as provided by Article 16 ("Larceny"), and differing offender/offense characteristics (e.g. values of goods stolen/received, prior record levels, aggravating or mitigating factors, etc.), the exact impact of the proposed threshold reduction (Section 2) cannot be determined. However, the prevalence of offense (i.e. high numbers of prior year charges and convictions) suggests that a substantial number of otherwise misdemeanor cases will be enhanced to felony cases, thereby generating substantial costs for both the Courts and Corrections. *\*Part I of this note addresses the potential impact of Section 2.*

#### **PART I: PROPOSED VALUE THRESHOLD REDUCTION, G.S. 14-72 (SECTION 2 OF S.B. 1270)**

The proposed threshold reduction will enhance some portion of otherwise misdemeanor offenses to felony offenses – those involving the larceny, or receiving or possessing of stolen goods *valued above \$500 and below \$1,000* (become Class H felonies), and those involving the attempted larceny and receiving/possessing of stolen goods of the same value (become Class I felonies). For these cases, the penalty enhancement is expected to: 1) increase trial rates, court-time requirements, and Court personnel workloads; 2) increase active sentencing for convictions and length of imprisonment, thereby necessitating additional prison bed construction and operation; and 3) increase the demand for intermediate and community sanction resources. Overall, the primary fiscal impact of this proposal will be driven by the construction and operation of additional prison beds.

**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.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

The enhancement of otherwise Classes 1 or 2 misdemeanors to Class H or I felonies will: 1) increase the rate of active sentencing (incarceration) for affected offenses; 2) significantly lengthen the period of incarceration; and 3) necessitate imprisonment within a state facility, thereby increasing the demand for prison beds.<sup>1</sup> In FY 05/06, 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, 34% of Class H and 15% of Class I felony convictions received active sentences, with average estimated times served of approximately 11 and 7 months, respectively.<sup>2</sup>

In FY 05/06, there were 1,171 convictions for felony larceny (goods valued over \$1,000); 68 convictions for attempted felony larceny (Class I felony); 7 convictions for felony receiving of stolen goods (over \$1,000); and 713 convictions for felony possession of stolen goods (over \$1,000). Conversely, *there were 14,544 convictions for misdemeanor larceny (goods valued \$1,000 or less); 179 convictions for attempted misdemeanor larceny (Class 2 misdemeanor); 28 convictions for misdemeanor receiving of stolen goods (\$1,000 or less); and 2,080 convictions for misdemeanor possession of stolen goods (\$1,000 or less).* Data does not distinguish how many of these misdemeanor convictions involved goods valued above \$500. However, of the 16,831 misdemeanor convictions under G.S. 14-72(a), 4,403 (~26%, includes attempted larceny) showed an order to pay restitution; 1,338 (~30%) of these restitution orders were for more than \$500.

To illustrate the potential effect of this proposal on the prison population, Fiscal Research requested that the Sentencing Commission provide conviction and bed impact estimates based on provided scenarios. Each scenario assumes that a certain percentage of the FY 05/06 pool of misdemeanor convictions would constitute felony convictions under the new 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.

**Table I. Projected Convictions and Prison Bed Impact**

<b>Larceny, Receiving, and Possessing: (Class 1 misdemeanor to Class H felony)</b>				<b>Attempted Larceny: (Class 2 Misdemeanor to Class I Felony)</b>			
<i>Assumed Convictions</i>		<i>Required Prison Beds</i>		<i>Assumed Convictions</i>		<i>Required Prison Beds</i>	
<b>Scenarios</b>	<b># Convictions</b>	<b>FY 08/09</b>	<b>FY 09/10</b>	<b>Scenarios</b>	<b># Convictions</b>	<b>FY 08/09</b>	<b>FY 09/10</b>
<b>5%</b>	<b>842</b>	<b>252</b>	<b>523</b>	<b>5%</b>	<b>9</b>	<b>1</b>	<b>3</b>
<b>10%</b>	1,683	502	1,045	<b>10%</b>	18	2	6
<b>15%</b>	2,525	754	1,567	<b>15%</b>	27	3	8
<b>25%</b>	4,208	1,255	2,611	<b>25%</b>	45	4	13

<sup>1</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>2</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.

**Table II. Estimated Prison Bed Construction and Operation Costs**

<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>5%</b>	\$ 35,789,040	\$ 22,155,120	\$ 7,147,305	\$ 15,305,402
<b>10%</b>	\$ 71,510,040	\$ 44,267,120	\$ 14,238,109	\$ 30,581,707
<b>15%</b>	\$ 107,163,000	\$ 66,339,000	\$ 21,385,414	\$ 45,828,914
<b>25%</b>	\$ 178,536,960	\$ 110,522,880	\$ 35,567,023	\$ 76,352,425

➤ 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 (5% scenario) are depicted in the Fiscal Impact Table on page 1.**

As shown, should only 5% of the total misdemeanor convictions in FY 05/06 constitute felony convictions under this proposal, 252 additional prison beds would be required by FY 08/09; 523 by FY 09/10; and 210 new positions by FY 09/10.<sup>3</sup> Assuming inmate assignment to medium custody, the construction of the required beds within a new, stand alone facility could cost the State \$35,789,040 in FY 2007/08; bed construction within an add-on facility could cost approximately \$22,155,120. These costs are attributed to FY 2007/08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$7,147,305 in FY 2008/09, and \$15,305,402 in FY 09/10.

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

Although an increased rate of active sentencing is expected, the proposed penalty enhancement is also expected to increase the rate of intermediate sanctioning and length of offender supervision for affected convictions. Consequently, any increase in intermediate sanctioning and supervision length should necessitate additional supervisory officers. Presently, the estimated total position cost of an intermediate officer is approximately \$41,643.

However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long. In FY 2005-06, for all offenses and prior record levels, approximately 66% of Class H and 85% of Class I felony convictions resulted in either intermediate or community sentences, predominately special, intensive, or general supervision probation.<sup>4</sup> A brief summary of average DCC daily costs per offender is included below:

- 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.

<sup>3</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>4</sup> 80% of Class 1 and 83% of Class 2 misdemeanor convictions resulted in non-active sentences in FY 2005-06.

## Judicial Branch

The Administrative Office of the Courts expects that any penalty enhancement will be accompanied by more vigorous defense and prosecution, and will 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 Classes H and I felony penalties will be elevated to superior court, rather than disposed in district court).

Data for calendar year 2006 indicates that 29,221 defendants were charged with misdemeanor larceny under G.S. 14-72(a); 402 defendants were charged with misdemeanor attempted larceny.<sup>5</sup> Based on a survey of several District Attorneys, the AOC estimates that approximately 25% of all misdemeanor larceny cases involve goods valued between \$500 and \$1,000. However, given the limited sample, Fiscal Research more conservatively assumes that approximately 15% of all cases (both larceny and attempted larceny) involve such values.

Assuming that 15% - 4383 larceny (Class H) and 60 attempted larceny (Class I) - of these prior year cases occur annually for the enhanced offenses, the estimated difference in court-time, jury, and indigent defense costs could approach \$1,104,345 per year (adjusted for 5% annual inflation in Fiscal Impact Table, p.1). As shown, AOC estimates that a higher percentage of Classes H and I felony cases would result in trial (2%), relative to Classes 1 and 2 misdemeanor cases (1%); however, the rate of guilty plea is expected to decrease, from 38% to 37%. Actual costs may vary from these examples, contingent upon court-time and workload requirements, as well as the type of case disposition.

➤ *Original AOC cost estimates assume that 25% of all CY 2006 misdemeanor charges would become felony charges under the reduced value threshold. Fiscal Research has revised this estimate to a more conservative 15%. 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%. These costs represent estimated day-in-court costs; actual position costs may exceed or fall short of these examples.*

**Table III. Estimated Court-Time & Indigent Defense Costs**

<i>Larceny: Class 1 misdemeanor to Class H felony</i>							
<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.	44	\$ 1,440	\$ 994	\$ 0	\$ 107,096	15	\$ 19,020
Class H felony	88	\$ 3,721	\$ 1,590	\$ 640	\$ 523,688	60	\$ 122,040
<i>* Estimated costs per case</i>			<b><i>Difference: \$416,592</i></b>			<b><i>Difference: \$103,020</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.	1,666	\$ 60	\$ 99	-	\$ 264,894	583	\$ 48,972
Class H felony	1,622	\$ 135	\$ 99	-	\$ 379,548	1,119	\$ 101,829
<i>* Estimated costs per case</i>			<b><i>Difference: \$ 114,654</i></b>			<b><i>Difference: \$ 52,857</i></b>	
<i>Attempted Larceny: Class 2 misdemeanor to Class I felony</i>							
<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 2 misd.	4	\$ 1,026	\$ 795	\$ 0	\$ 7,284	1	\$ 78

<sup>5</sup> AOC does not maintain offense codes for the receiving or possessing of stolen goods under G.S. 14-72(a); nor are offense codes maintained for the attempted receiving or possessing of stolen goods. CY 2006 data also shows 7,163 defendants charged with felony larceny, and 368 charges with felony attempted larceny.

Class I felony	8	\$ 2,919	\$ 1,491	\$ 640	\$40,400	6	\$ 546
* Estimated costs per case			<b>Difference: \$33,116</b>			<b>Difference: \$468</b>	
<b>Plea</b>	<b>Court-Time, District Attorney Preparation, and Jury Costs</b>					<b>Indigent Defense Costs</b>	
<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 2 misd.	153	\$ 1,026	\$ 795	-	\$ 278,613	54	\$ 4,212
Class I felony	149	\$ 2,919	\$ 1,491	-	\$ 657,090	103	\$ 9,373
* Estimated costs per case			<b>Difference: \$378,477</b>			<b>Difference: \$5,161</b>	

## PART II: ADDITIONAL CRIMINAL OFFENSES (SECTIONS 1, 3, 4, AND 5 OF S.B. 1270)

S.B. 1270 also amends two existing offenses to include new elements, and creates six new offenses. Because these offenses and elements are new, there is no historical data from which to estimate the number of resultant charges and convictions. Therefore, the fiscal impact of these offenses cannot be determined. However, based on current resources, any resultant, additional charge and/or conviction will generate some fiscal impact for the Courts and Corrections. Table IV provides a brief summary of each offense, and its potential impact – for felony offenses, the table shows *the minimum number of convictions required to generate the need for an additional prison bed* (these bed needs and costs are not included in the Fiscal Impact Table, p.1).

Class	Active %	Avg. Time Served	Convictions	FY 08-09 Mini. Beds	FY 09-10 Min. Beds	Trial Cost	Plea Cost
<b>H</b>	<b>34%</b>	<b>≤ 11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>\$ 7,345</b>	<b>\$ 325</b>
Section 1. Amends G.S. 14-71 (receiving stolen goods) to provide that the offense of receiving stolen goods occurs <i>whether or not an item has been feloniously stolen or taken</i> . The proposed change is <u>assumed to expand the pool of offenders subject to the current Class H felony penalty.</u>							
<b>3,2,1</b>	<b>23,17, 20%</b>	<b>31 days</b>	<b>-</b>	<b>N/A<sup>6</sup></b>	<b>N/A</b>	<b>≤ \$3,702</b>	<b>≤ \$84</b>
Section 3. Amends G.S. 14-72.1(d) to include placing a false "...product code used to identify the sales prices..." within the misdemeanor offense of larceny by changing price tags/falsely marking goods (Classes 3, 2, or 1 misdemeanors, depending on prior offenses in a specified timeframe). Assuming current non-prosecution, this change expands the pool of offenders and increases the likelihood of charge and conviction.							
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>\$ 7,345</b>	<b>\$ 325</b>
Section 3. New G.S. 14-72.1(d2) makes it a Class H felony offense to violate G.S. 14-72.1(a) - willful concealment of goods/merchandise, not purchased, while upon the premises of a store – <i>by using an exit door</i> maintained in compliance with OSHA regulations (29 C.F.R. 1910, Subpart E). <u>Enhances otherwise misdemeanor larceny offenses (Class 1) to Class H felonies (if an exit door is used), and may result in charges and convictions occurring in addition to existing larceny and shoplifting offenses</u> (i.e. sentences could be served consecutively).							
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>\$ 7,345</b>	<b>\$ 325</b>
Section 3. New G.S. 14-72.1(d3) makes it a Class H felony offense to violate G.S. 14-72.1(a) - willful concealment of goods/merchandise, not purchased, while upon the premises of a store – by "removing, destroying, or deactivating a component of an anti-shoplifting or inventory-control device to prevent activation..."							
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>\$ 7,345</b>	<b>\$ 325</b>
Section 3. New G.S. 14-72.1(d4) makes it a Class H felony offense to violate G.S. 14-72.1(a) - willful concealment of goods/merchandise, not purchased, while upon the premises of a store – by "affixing a product code obtained or created by the person for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price..."							
<b>H, I</b>	<b>34%, 15%</b>	<b>≤ 11 mo.</b>	<b>3; 12</b>	<b>1</b>	<b>2; 4</b>	<b>≤ \$ 7,345</b>	<b>≤ \$ 325</b>

<sup>6</sup> In FY 05-06, 20% of Class 1, 17% of Class 2, and 23% of Class 3 misdemeanor convictions received active sentences, with average estimated times served of 31, 13, and 3 days, respectively.

\*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.

Section 4. New G.S. 14-72.7 makes it a Class H felony offense to take and carry away infant formula (as defined in 21 U.S.C. 321(z)) valued in excess of \$100. Larceny of formula valued \$100 or less remains a Class 1 misdemeanor offense under G.S. 14-72(a). Effectively enhances certain misdemeanors – larceny and attempted larceny – to felonies (Classes H and I).							
<b>G</b>	<b>42%</b>	<b>16 mo.</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>\$ 9,310</b>	<b>\$ 520</b>
Section 5. New G.S. 14-86.6 makes it a Class G felony for a person to conspire to commit the theft of retail property valued in excess of \$1,500 (aggregated) over a 90-day period, with the intent to sell that property, and who takes or causes that property to be placed in the control of a retail property fence (as defined under new G.S. 14-86.5) or other person.							
<b>G</b>	<b>42%</b>	<b>16 mo.</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>\$ 9,310</b>	<b>\$ 520</b>
Section 5. New G.S. 14-86.6 makes it a Class G felony to receive or possess, with the intent to distribute, any retail property that has been taken/stolen in violation of G.S. 14-86.6.							

**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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**APPROVED BY:** Lynn Muchmore, Director  
Fiscal Research Division

**DATE:** May 17, 2007



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