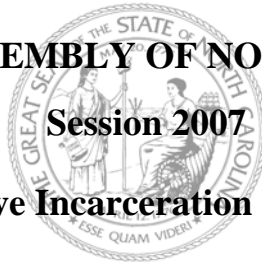


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

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

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

**SHORT TITLE:** Amend Larceny Laws.

**SPONSOR(S):** Senator Snow

		<b>FISCAL IMPACT</b>				
		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>	<b>Minimum prison capital and operating costs, based on conviction thresholds. See pp. 3-5, Assumptions and Methodology.</b>					
<b>Recurring*</b>	-	\$197,752	\$407,368	\$439,958	\$ 475,154	
<b>Nonrecurring*</b>	\$ 952,560	(14 prison beds)		-	-	-
<i>*Assumes prison bed construction within a stand-alone facility (p. 2-5). Additional prison population (bed) impact and minimum capital and operating costs cannot be projected beyond the initial, two-year window.</i>						
<b>Correction: DCC</b>	Amount cannot be determined; see Assumptions and Methodology (p. 5).					
<b>Judicial</b>						
<b>TOTAL EXPENDITURES:</b>	\$ 952,560	\$197,752	\$407,368	\$439,958	\$ 475,154	
Estimate represents minimum prison costs; additional impacts cannot be determined.						
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>	-	7	14	-	-	
<b>POSITIONS: (cumulative)</b>						
<b>Correction: Prisons</b>	-	3	6	-	-	
<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 fifth edition of S.B. 1270 amends Chapter 14 of the General Statutes to create several criminal offenses. A brief synopsis of each section is provided below:

**Section 1:** Adds G.S. 14-71(b) (receiving stolen goods) to make it a Class H felony for a person to knowingly receive or possess property that: 1) is in the custody of a law enforcement agency, and 2) is explicitly represented to the person, by a law enforcement agent, as having been stolen.

**Section 2:** Adds G.S. 14-72.11 to create four new Class H felony offenses, involving *larceny from a merchant*.

Subsection (1). Makes it a Class H felony offense to *commit larceny from a merchant by using an exit door maintained in compliance with OSHA regulations (29 C.F.R. 1910, Subpart E), on which has been placed a notice, sign, or poster that provides information about the felony offense and punishment.*

Subsection (2). Makes it a Class H felony offense to *commit larceny from a merchant by “removing, destroying, or deactivating any component of an anti-shoplifting or inventory-control device to prevent the activation of any anti-shoplifting or inventory control device.”*

Subsection (3). Makes it a Class H felony offense to *commit larceny from a merchant by “affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.”*

Subsection (4). Makes it a Class H felony offense to *commit larceny from a merchant when the property is infant formula (as defined in 21 U.S.C. 321(z)) valued in excess of \$100.*

**Section 3:** Adds 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 with another to commit theft of retail property from a retailer, 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 in exchange for consideration.*
2. Makes it a Class G felony to *receive or possess any retail property that has been taken/stolen in violation of G.S. 14-86.6(1), knowing or having reasonable grounds to believe that property is stolen.*

G.S. 14-86.6 also provides that any interest acquired or maintained in violation of the statute is subject to forfeiture, pursuant to the procedures in G.S. 18B-504.

**Section 4:** Provides that S.B. 1270 becomes effective December 1, 2007, and applies to offenses committed on or after that date.

***Sixth edition (House amendment) modifies proposed new G.S. 14-86.6 (Organized retail theft; Section 3) to decrease the charge for listed violations from a Class G felony to a Class H felony.***

**ASSUMPTIONS AND METHODOLOGY:** Since the proposed offenses are new, with unique elements, there is no historical data from which to estimate the number of additional violations, charges, and/or convictions. Accordingly, it is not known how these offenses might 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 these offenses are outlined in the following sections.*

**Department of Correction – Division of Prisons**

Due to the current and projected prison bed deficit, any new felony conviction that results in an active sentence will require an additional prison bed.<sup>1</sup> Therefore, while the numbers of potential convictions and active sentences for the proposed offenses are indeterminate, some additional bed provision (construction and operation) is expected. The extent of such impact is unknown; however, the high frequency of larceny offenses (as indicated by prior year charges and convictions) suggests that a significant number of new felony convictions could result.

The pool of persons eligible for conviction of the Class H felony offenses under proposed G.S. 14-72.11 (1) through (4) includes those who might otherwise be convicted of misdemeanor larceny under current law (G.S. 14-72(a); Class 1 misdemeanor). Similarly, the eligible pools for the proposed Class H felony offense (G.S. 14-86.6(b)) of receiving/possessing stolen goods, as well as the Class H felony offense of receiving goods represented as stolen by law enforcement (Section 1; G.S. 14-71(b)), could include a portion of those otherwise eligible for conviction of misdemeanor or felony receiving/possessing (G.S. 14-72; Class 1 misdemeanor and Class H felony, respectively).

Table I identifies the number of FY 2005-06 convictions for these current, related offenses.

<b>Table I. Larceny Offenses &amp; Potentially Eligible Conviction Pools</b>		
<b>Offense Description</b>	<b>Current Offense Class</b>	<b>FY 2005/06 Convictions</b>
Felony larceny Offenses	H	1,171
Attempted felony larceny	I	68
Felony receive stolen goods/property	H	7
Felony possess stolen goods/property	H	713
	Total felony convictions:	1,959
Misdemeanor larceny offenses	1	14,544
Aid & Abet misdemeanor larceny	1	58
Attempted misdemeanor larceny	2	179
Misdemeanor receive stolen goods/property	1	28
Misdemeanor possess stolen goods/property	1	2,080
	Total misdemeanor convictions:	16,889

No effect is assumed for offenses which would now qualify as felony (Class H) larceny, receiving, or possessing offenses under current law (G.S. 14-72; those involving property valued above \$1,000, or listed under subsection (b)). Rather, the proposed offenses would primarily enhance otherwise Class 1 misdemeanor larceny and receiving/possessing offenses to Class H felony offenses.<sup>2</sup> Furthermore, per

<sup>1</sup> 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.

<sup>2</sup> 20% of Class 1 misdemeanor convictions resulted in active sentences in FY 2005-06, with an average time served of 31 days.

*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.*

G.S. 14-2.5, offenses constituting the *attempted* commission of these Class H felony offenses could also be enhanced from the Class 2 misdemeanor to the Class I felony level (because attempted commission of these offenses could also constitute shoplifting, this impact is excluded from the analysis). Lastly, additional Class H convictions could occur for the proposed offense of receiving goods represented as stolen by law enforcement (Section 1; G.S. 14-71(b)) and the offense of conspiring to commit organized retail theft.

Table II provides a brief summary of each offense, and its *potential* impact – the table depicts the *minimum number of convictions required to generate the need for an additional prison bed*. *FY 09-10 bed requirements account for probation revocations and new offenses.*

<b>Table II. Proposed Criminal Offenses &amp; Minimum Prison Bed Requirements</b>					
<b>Class</b>	<b>Active %</b>	<b>Avg. Time Served</b>	<b>Convictions</b>	<b>FY 08-09 Min. Beds</b>	<b>FY 09-10 Min. Beds</b>
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>
Section 1. Amends G.S. 14-71 (receiving stolen goods) to make it a Class H felony for a person to knowingly receive or possess property that: 1) is in the custody of a law enforcement agency, and 2) is explicitly represented to the person, by a law enforcement agent, as having been stolen. <u>Anticipated to result in additional Class H felony convictions.</u>					
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>
Section 2. New G.S. 14-72.11(1) makes it a Class H felony offense to commit larceny <i>by using an exit door maintained in compliance with OSHA regulations</i> (29 C.F.R. 1910, Subpart E), when informational signage is present. <u>Enhances otherwise misdemeanor larceny offenses (Class 1) to Class H felonies.</u>					
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>
Section 2. New G.S. 14-72.11(2) makes it a Class H felony offense to <i>commit larceny from a merchant by “removing, destroying, or deactivating any component of an anti-shoplifting or inventory-control device to prevent the activation...”</i> <u>Enhances otherwise misdemeanor larceny offenses (Class 1) to Class H felonies.</u>					
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>
Section 2. New G.S. 14-72.11(3) makes it a Class H felony offense to <i>commit larceny from a merchant by “affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.”</i> <u>Enhances otherwise misdemeanor larceny offenses (Class 1) to Class H felonies.</u>					
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>
Section 2. New G.S. 14-72.11(4) makes it a Class H felony offense to <i>commit larceny from a merchant when the property is infant formula</i> (as defined in 21 U.S.C. 321(z)) <i>valued in excess of \$100.</i> <u>Enhances otherwise misdemeanor larceny offenses (Class 1) to Class H felonies.</u>					
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>
Section 3. New G.S. 14-86.6(a) makes it a Class H 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 in new G.S. 14-86.5) or other person. <u>Anticipated to result in additional Class H felony convictions.</u>					
<b>H</b>	<b>34%</b>	<b>11 mo.</b>	<b>3</b>	<b>1</b>	<b>2</b>
Section 3. New G.S. 14-86.6(b) makes it a Class H felony to receive or possess any retail property that has been taken/stolen in violation of G.S. 14-86.6(1), knowing or having reasonable grounds to believe that property is stolen. <u>Anticipated to result in additional Class H felony convictions.</u>					

As shown, assuming these conviction thresholds (21 total convictions), 7 additional prison beds would be required by FY 2008-09; 14 by FY 2009-10; and 6 new positions by FY 2009-10.<sup>3</sup> Assuming inmate assignment to medium custody, the construction of the required beds within a new, stand alone

<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.

facility could cost the State \$952,560 in FY 2007/08; whereas, bed construction within an add-on facility could cost approximately \$589,680.<sup>4</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, requires budgeting at least three years in advance. Potential operating costs could total \$197,752 in FY 2008/09, and \$407,368 in FY 2009-10.<sup>5</sup>

*\* Additional prison population (bed) impact and minimum capital and operating costs cannot be projected beyond the two year window. An annual inflation rate of 3% is applied to FY 2009-10 prison bed operating costs beyond the initial two years. Prison Bed construction and operating costs are depicted in the Fiscal Impact Table on page 1.*

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

Though an increased rate of active sentencing is expected for the enhanced offenses, the rate of intermediate sanctioning and length of offender supervision are also expected to increase. Any increase in intermediate sanctioning and supervision length could 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 convictions resulted in either intermediate or community sentences, predominately special, intensive, or general supervision probation. A brief summary of DCC supervisory costs (daily, 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.

### **Judicial Branch**

It is not known how many additional criminal charges might occur, or how prosecution tactics would differ in response to the proposed offenses. Accordingly, the potential fiscal impact on the Courts is indeterminate. However, the high frequency of prior year larceny-related charges suggests that a

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<sup>4</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).

<sup>5</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).

significant number of felony charges could result. Data for calendar year 2006 indicates that 29,221 defendants were charged with misdemeanor larceny under G.S. 14-72(a), and that 402 defendants were charged with misdemeanor attempted larceny.<sup>6</sup>

The Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. The table below illustrates the estimated costs for criminal cases, by trial and guilty plea, for the affected offense classes. Effectively enhancing otherwise Classes 1 or 2 misdemeanors to Classes H or I felonies will elevate future cases to superior court, rather than district court. This elevation will increase jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

<b>Offense Class</b>	<b>Trial</b>	<b>Plea</b>
Class 2 Misdemeanor	\$2,770	\$230
Class 1 Misdemeanor	\$3,702	\$243
Class I Felony	\$6,980	\$298
Class H Felony	\$7,345	\$325

**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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Fiscal Research Division

**DATE:** July 30, 2007



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

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<sup>6</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.