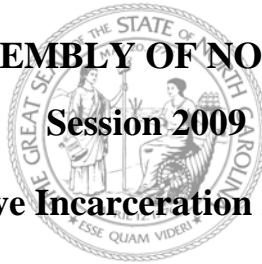


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 129 (First Edition)

SHORT TITLE: Habitual Misdemeanor Larceny/Felony

SPONSOR(S): Representative Moore

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
GENERAL FUND					
Correction					
Recurring	\$0	\$3,100,000	\$6,500,000	\$6,700,000+	\$6,700,000+
Nonrecurring	\$22,800,000	The State will need to construct new beds at a cost of \$106,903 per bed			
Probation	\$0	\$0	\$344,369	\$344,369+	\$344,369+
Judicial					
Recurring	\$186,490	\$335,683	\$352,467	\$370,091	\$388,595
TOTAL					
EXPENDITURES:	\$23,000,000	\$3,400,000+	\$7,000,000+	\$7,200,000 +	\$7,300,000 +
ADDITIONAL					
PRISON BEDS:					
(cumulative)*	0	106	215	215+	215+
POSITIONS:					
(cumulative) DOC					
Judicial	2.0	2.0	2.0	2.0	2.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2009					
<p><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></p>					

BILL SUMMARY:

Enacts a new GS 14-86.2 to create the offense of habitual misdemeanor larceny. Establishes definitions for (1) *convicted* to mean the person has been adjudged guilty of or has entered a plea of guilty or no contest to the misdemeanor larceny charge, and the judgment has been entered by the time the action occurred, and (2) *misdemeanor larceny* to include misdemeanor larceny pursuant to GS 14-72(a), any repealed or superseded offense substantially equivalent to misdemeanor larceny under GS 14-72(a) committed within the last ten (10) years, and any offense committed in another jurisdiction substantially similar to misdemeanor larceny under GS 14-72(a). Provides that a person is committing habitual misdemeanor larceny if that person (1) is 18 years of age or older, (2) commits misdemeanor larceny under GS 14-72(a), and (3) has been convicted of five (5) or more prior misdemeanor larceny convictions. Makes a person convicted of violating this section guilty of a Class H felony. Provides that, if an offender is convicted of more than one misdemeanor larceny offense in a single district court session, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used to establish habitual misdemeanor larceny. Clarifies that a violation of this section does not constitute commission of a felony for purposes of GS 14-7.6. Effective December 1, 2009, and applies to offenses committed on or after that date.

Source: Bill Digest

ASSUMPTIONS AND METHODOLOGY:

General

Convictions elevated from Class 1 misdemeanors to Class H felonies would, on average, carry a longer sentence, are more likely to be active, and, if active, would be served in state prisons rather than county jails. Data collected from a database maintained by the Administrative Office of the Courts (AOC) shows that during FY 2007-08 there were 14,799 misdemeanor convictions under G.S. 14-72(a), which includes convictions for misdemeanor larceny (14,458), attempted misdemeanor larceny (236), aid and abet misdemeanor larceny (77), and misdemeanor larceny of motor vehicle (28). Of these convictions, 1,203 were for offenders 16-17 years of age at the time of the offense and 13,333 were for offenders 18 years of age or older at the time of the offense. In addition, of these convictions, 3,406 fell in Prior Conviction Level III.¹ Thus, if a large number of offenders would be convicted as Class H offenders instead of Class 1 offenders, *the impact could be substantial*.

Because this bill creates a new offense, data is not available that indicates what proportion of offenders would be convicted as Class H offenders under G.S. 14-86.2.² Therefore, *it is not known how many offenders might be sentenced under this bill*. As such, prison bed and Department of Correction (DOC) cost estimates throughout this fiscal note are formulated assuming that ten (10) percent of 3,406 eligible offenders (those in Prior Conviction Level III with five (5) prior convictions for any offense) that were convicted of misdemeanor larceny in FY 2007-08) would receive an enhanced sentence under this bill.

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.

¹ Prior Conviction Level III requires five or more prior convictions. Under current law only one offense in a single session of District Court or a week of Superior Court may be counted when determining prior conviction level.

² While the AOC database contains information on the number of prior record/conviction points, it does not contain information about specific offenses that are used to calculate the number of prior record/conviction points.

Department of Correction – Division of Prisons

As the offense of habitual misdemeanor larceny would be new, the Sentencing and Policy Advisory Commission does not have historical data from which to project the impact on prison population. AOC data reveals that approximately 3,400 defendants were convicted of a Class 1 Misdemeanor in FY 2007-08, however, there is no data to indicate how many of these defendants had five (5) or more prior misdemeanor larceny convictions and thus would presumably be charged with habitual misdemeanor larceny under this bill.

Data is available concerning the number of convictions for misdemeanor larceny as well as the number of convicted offenders falling in Misdemeanor Prior Conviction Level III (five (5) or more prior convictions). In FY 2007-08, there were 14,799 convictions for misdemeanor larceny under G.S. 14-72(a), which includes convictions for misdemeanor larceny (14,458), attempted misdemeanor larceny (236), aid and abet misdemeanor larceny (77), and misdemeanor larceny of motor vehicle (28). Of these convictions, 1,203 were for offenders 16-17 years of age at the time of the offense and 13,333 were for offenders 18 years of age or older at the time of the offense. In addition, of these convictions, 3,406 fell in Prior Conviction Level III.³ If the prior convictions were for offenses falling under the scope of this bill, these offenders could be convicted of Class H felonies.

For every three (3) convictions for Class H felonies, the combination of active sentences and probation revocations would result in the need for one (1) additional prison bed the first year and two (2) additional prison beds the second year. If a large number of offenders were convicted of Class H felonies rather than Class 1 misdemeanors, the impact on prison population could be substantial. The following table illustrates the range of potential impacts.

Table 1: Additional Prison Beds Needed – Habitual Misdemeanor Larceny/Felony⁴

Number and Percentage of Convictions Raised to Class H Felonies as a Result of Bill	Additional Prison Beds Needed	
	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
171 (5%)	54	108
341 (10%)	106	215
1,703 (50%)	530	1,073
3,406 (100%)	1,059	2,145

Of the offenders convicted for misdemeanor larceny in FY 2007-08, there were 3,406 offenders with at least five prior convictions for any crime. It is not reasonable to assume that all 3,406 offenders, or even a high percentage of these offenders, had been found guilty of five (5) misdemeanor larceny charges under G.S. 14-72., thus qualifying for conviction under the new charge of habitual misdemeanor larceny. *However, given that court officials indicate larceny offenders are likely to have previous convictions for larceny and related crimes under G.S. 14-72, this bill will clearly have a fiscal impact.*

³ Prior Conviction Level III requires five or more prior convictions. Under current law only one offense in a single session of District Court or a week of Superior Court may be counted when determining prior conviction level.

⁴ While the NC Sentencing and Policy Advisory Commission has provided these scenarios, it cannot project the actual number of prison beds needed as a result of this bill.

Because we cannot identify a specific number of offenders that would be convicted under this bill, we have used a low-end estimate of the potential number of offenders for the purpose of estimating the potential cost of this bill. We can reasonably assume that at least ten percent (10%) of the 3,406 convicted offenders had at least five prior convictions under G.S. 14-72 (341 offenders as shown in Table 1). This ten percent (10%) figure was used as the basis for estimating prison operating costs as well as position and bed counts for FY 2009-10 through 2014. *Fiscal Research believes this is the minimum cost and that the actual cost could be greater.*

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,⁵ and represent the total number of beds in operation, or authorized for construction or operation as of January 2009.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of *additional beds needed* (row five (5)) is *always equal* to the projected number of *additional inmates* resulting from a bill (row four (4)). Rows four (4) and five (5) in the chart demonstrate the impact of HB 129. As shown, *the Sentencing Commission's ten percent (10%) scenario estimates that this specific legislation will add 215+ inmates to the prison system by the end of FY 2013-14.*

	June 30 2010	June 30 2011	June 30 2012	June 30 2013	June 30 2014
1. Projected No. of Inmates Under Current Structured Sentencing Act ⁶	42,296	43,165	44,024	44,987	45,998
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	40,014	42,022	42,282	42,282	42,282
3. Projected No. of Beds Over/Under Inmate Population	-2,282	-1,143	-1,742	-2,705	-3,716
4. Projected No. of Additional Inmates Due to this Bill ⁷	<i>N/A</i>	106	215	215+	215+
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	<i>N/A</i>	106	215	215+	215+

While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. (Active sentences between 1 – 90 days are served in local jails; the DOC reimburses counties for active sentences between 30 – 90 days.) In contrast, felony Class H offenders serve active time in state prison, or if given a non-active punishment, are more likely to receive an intermediate rather than community sentence. In FY 2007-08, 38% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. On the whole, convictions elevated from Class 1 misdemeanors to Class H felonies would carry a longer sentence, are more likely to be active, and, if active, would be served in state prison rather than county jail.

POSITIONS: It is anticipated that by FY 2013-14, approximately 86+ positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and

⁵ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

⁶ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in January 2009.

⁷ Criminal penalty bills effective December 1, 2009, should not affect prison population and bed needs until FY 2010-11 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

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.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2013-14. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Because the Sentencing and Policy Advisory Commission does not have historical data from which to project the impact on prison population, they provided scenario estimates of the possible additional prison beds needed as a result of this bill. However, these scenarios only project for a two-year period, thus, the projections shown in the chart below are equal to the reasonable minimum number of needed beds that can be expected to occur during FY 2011-12.

The chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to HB 129 and, the estimated number of new beds required each year through FY 2017-18.

	June 30 <u>2015</u>	June 30 <u>2016</u>	June 30 <u>2017</u>	June 30 <u>2018</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,655	-5,600	-6,541	-7,488
2. <i>Projected No. of Additional Inmates Resulting From HB 129</i>	215+	215+	215+	215+
3. <i>Estimated No. of New Beds Required Under HB 129</i>	215+	215+	215+	215+

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2007-08) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;⁸ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”⁹ Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

Estimated Construction Cost per Custody Level, FY 2007-08

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$80,250	\$90,400	\$136,500
Cost Per Bed: EOC “Add-On”	\$63,500	\$49,600	\$89,000

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.¹⁰ As illustrated (p.1), these costs also assume that

⁸ New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

⁹ Close and medium custody “add-on” facilities 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 built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

¹⁰ Office of State Construction, March 24, 2006.

funds to construct beds at a “stand alone” facility should be budgeted four (4) years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three (3) years in advance.

Accordingly, given an increase of 215+ inmates, bed provision through construction of a “stand alone” facility could cost approximately \$34.9 million by FY 2013-14; provision through “add-on” could cost approximately \$22.8 million.

OPERATING: Operating costs are based on actual FY 2007-08 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$60.87	\$79.27	\$89.17	\$74.77

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2007-08, 36% of Class H offenders received active sentences with an average estimated time served of 11 months. Of those convicted of Class H offenses, 46% received intermediate sentences; and 19% received community punishments (all figures rounded). The average lengths of intermediate and community punishment imposed for this offense class were 31 and 29 months, respectively. Accordingly, potential costs to DCC could total \$344,369 in FY 2010-11, the first full fiscal year of applicability.¹² For cost breakdown, see chart below.

¹¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

¹² Due to the effective date of December 1, 2009, and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2009-10. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2010-11.

**Impact on Community Corrections by Level of Punishment
(Assumes 341 Convictions in full year of applicability)**

Level of Punishment:	Intermediate	Community
Percentage (Number) of Total Convictions:	46% (157)	19% (65)
Cost Breakdown Per Person:	180 days (6 months) at \$16.71 per day 750 days (25 months) at \$2.09 per day = \$4,574	870 days (29 months) at \$2.37 per day = \$2,061
Total Cost:	\$210,404	\$133,965

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Under current G.S. 14-72(a), misdemeanor larceny is a Class 1 misdemeanor, except for attempted misdemeanor larceny, which is a Class 2 misdemeanor. Thus, some defendants currently charged with Class 1 or Class 2 misdemeanors could be charged with Class H felonies under this bill. Trials and pleas would demand more court time and preparation time due to the stiffer penalties under this bill. Trials, once there have been five (5) prior convictions, would be jury trials in Superior Court rather than misdemeanor cases in District Court. *AOC assumes that the enhanced penalty would require more vigorous defense and prosecution, and more time and cost in disposing cases.*

For Calendar Year 2008, AOC data show 38,906 defendants charged with Class 1 misdemeanor larceny offenses under G.S. 14-72(a) and 681 defendants charged with attempted misdemeanor larceny (Class 2 misdemeanor) under G.S. 14-72, to total 39,587 defendants. An analysis of court data for the four-year period from 2000 to 2004, indicated that 433 defendants, eighteen years of age or older, had five (5) or more prior convictions for misdemeanor larceny offenses (not accompanied by any felony charge) when charged with a subsequent larceny violation proscribed under this bill. AOC data indicates that overall, case filings increased 22.6% during the four year period 2004 to 2008. If we multiply the number of defendants charged with misdemeanor larceny in 2004, 433, by 22.6%, *AOC assumes that 531 would be charged under this bill.*

Total costs for these cases are shown in the chart below, and include 2.0 new Assistant District Attorney Positions. These costs are shown, with a five percent (5%) adjustment for annual increases in filings, as recurring costs in the “Fiscal Impact” table (p.1).

	FY 2009-10 (eff. Dec.1)	FY 2010-11
In-Court Time and ADA Prep Time	\$140,849	\$253,528
Jury Fees	\$5,903	\$10,626
Indigent Defense	\$39,738	\$71,529
Total	\$186,490	\$335,683

From the projected 531 cases resulting from this bill during FY 2009-10 and the out years, AOC estimates the need for additional courtroom staff as follows: Superior Court Judges, 210 hours or 0.2 FTE; Deputy Clerks, 164 hours or 0.1 FTE; Assistant District Attorneys, 1,948 hours or 2.0 FTE; Court Reporters, 210 hours or 0.2 FTE.

These estimates do not factor in the effect of convictions for similar offenses in other jurisdictions (outside of North Carolina) that would also be counted as prior convictions under this bill. Since the bill would also apply to such offenses, more than 531 defendants would have five (5) or more prior convictions for misdemeanor larceny. Data are not readily available on defendants convicted of similar offenses under other jurisdictions.

In addition to the increased work for the Class H felonies, *AOC would expect an increase in workload, including the possibility of more trials for charges before the sixth conviction, particularly as a defendant approaches the threshold of five (5) or more convictions. The stiffer penalties associated with the Class H felony could lead to a more vigorous defense of the fourth or fifth misdemeanor larceny charge, for example. AOC data for Calendar Year 2004 – the most recent data available at this time – show 4,335 defendants who had one or more prior misdemeanor convictions for larceny (not accompanied by a felony charge).*

In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. A typical misdemeanor case took approximately 87 days to dispose in District Court. *Any increase in judicial caseload due to this elevated offense without accompanying resources could be expected to extend the overall time period for the disposition of cases.*

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: March 10, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices