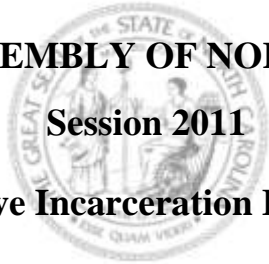


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 54 (Second Edition)

SHORT TITLE: Habitual Misdemeanor Larceny.

SPONSOR(S): Representatives Crawford and Wray

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
GENERAL FUND					
Correction					
Recurring	-	\$1.9 m	\$3.8 m	\$3.9 m	\$4 m
Nonrecurring	\$12.4 m	-	-	-	-
Probation	-	-	\$0.35	\$0.36	\$0.37
Judicial	\$1.8 m	\$3 m	\$3.3 m	\$3.5 m	\$3.65 m
TOTAL					
EXPENDITURES:	\$14.2 m	\$4.9 m	\$7.45 m	\$7.8 m	\$8 m
ADDITIONAL PRISON BEDS:					
(cumulative)*	0	84	168	168+	168+
POSITIONS:					
DOC	0	37	73	73	73
Judicial	26	26	26	26	26
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2011					
*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 proposed legislation would make a defendant's eighth conviction of larceny a felony, regardless of the amount stolen. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

As introduced, this bill was identical to Senate Bill 57.

ASSUMPTIONS AND METHODOLOGY:

Current Law

The State's larceny statute contains a list of conditions under which larceny is a felony, regardless of the value of the property that is stolen (*e.g.*, firearms, explosive or incendiary device).

Bill Analysis

The act provides that it will be a felony if the defendant commits a larceny (regardless of the value of the property) if the defendant has seven prior convictions. Convictions that occurred during the same week of district or superior court count as one conviction, and convictions where the defendant waived counsel are not included in the calculation.

Source: Adopted from Committee Counsel's bill summary dated March 7, 2011.

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The proposed bill creates a new Class H felony by amending G.S. 14-72, Larceny of property; receiving stolen goods or possessing stolen goods, to add subsection (b)(6).

New subsection (b)(6) of G.S. 14-72 would provide that if larceny is committed after the defendant has been convicted at least seven times in this State or another jurisdiction for any offense of larceny, or any offense deemed or punishable as larceny, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies or a combination thereof, the offender shall be guilty of a Class H felony. G.S. 14-72(a) states that larceny as provided in 14-72(b) is a Class H felony.

Under the proposed section, each misdemeanor larceny conviction must be obtained in a separate session of court, and convictions obtained where the defendant waived counsel shall not be

included in the seven prior convictions. Regarding whether convictions must be obtained in separate sessions of court, the bill does not mention felony larceny convictions.

For purposes of this analysis, it is assumed the bill includes felony larceny and any misdemeanor offense of larceny. Class I felony larcenies include attempted felony larceny (G.S. 14-72), larceny of motor vehicle parts (G.S. 14-72.8), and larceny from construction site (G.S. 14-72.6). Misdemeanor larceny offenses include misdemeanor larceny (G.S. 14-72(a)), larceny by changing price tag (G.S. 14-72.1), larceny by anti-inventory device (G.S. 14-72.1), unauthorized use of motor vehicle (G.S. 14-72.2), unauthorized taking of dairy case (G.S. 14-72.4), and larceny of motor fuel (G.S. 14-72.5).

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 county jails. During FY 2009-10, there were 22,411 misdemeanor larceny convictions, which includes convictions for aid and abet larceny (97), misdemeanor larceny (16,756), larceny by changing price tag (82), shoplifting by concealment of goods (4,067), attempted larceny (298), unauthorized use of motor vehicle (1,005), larceny of motor vehicle (24), and larceny of motor fuel (82). In addition, there were 77 Class I felony larceny convictions, which includes convictions for attempted larceny (75) and larceny from a construction site (2).

Of the 22,411 offenders with misdemeanor convictions, 5,555 had five or more prior convictions (Prior Conviction Level III). It is not possible to determine accurately the number of offenders with seven or more prior convictions because common practice in many jurisdictions is to stop searching for additional convictions once five prior convictions have been located. As a result, five prior convictions are typically recorded in the database to satisfy the requirements for assignment to Prior Conviction Level III. It is, therefore, unknown how many individuals have more than five prior convictions.

It is possible to estimate the number of misdemeanor larceny offenders with seven or more prior convictions based on examination of the distribution of offenders with zero to four prior convictions. In this group, there is a 47 percent average decrease in the number of offenders from one prior conviction point to the next. Using this approach, 5,165 of the 22,411 offenders are estimated to have seven or more prior convictions. Based on available data, it is not possible to determine how many of these prior convictions are for either misdemeanor or felony larceny.

Because this bill creates a new offense, the Sentencing Commission has no data to indicate what proportion of offenders would be convicted as Class H offenders under Article 2D of G.S. 14. Therefore, it is not known how many offenders might be sentenced under this bill. However, the Sentencing Commission did provide various scenarios (5%, 10%, 50%, and 100%) to illustrate the potential impact of the proposed statute. The following table illustrates the range of potential impacts:

Additional Prison Beds Needed

Number and Percentage of Misdemeanor Convictions Raised to Class H Felonies as a Result of Bill	Additional Prison Beds Needed	
	<u>FY 2012-2013</u>	<u>FY 2013-2014</u>
258 (5%)	84	168
517 (10%)	168	336
2,583 (50%)	837	1,681
5,165 (100%)	1,674	3,360

Since the Sentencing Commission cannot identify a specific number of offenders that would be convicted under this bill, the Fiscal Research Division has used the lowest estimate of the number of offenders to estimate the cost of this bill. As such, prison bed and Department of Correction (DOC) cost estimates throughout this fiscal note are formulated assuming 258 (five percent) of 5,165 offenders would receive an enhanced sentence under this bill. To the extent that there are more convictions, this estimate may be understated.

Assuming that 258 offenders would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 84 additional prison beds the first year and 168 additional prison beds the second year.

In FY 2009-10, 36 percent of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, three convictions moved from a Class 1 misdemeanor to a Class H felony, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Of the 77 offenders with a felony Class I larceny conviction, 28 had seven or more prior record points.¹ Impact on the prison population will also occur if Class I convictions become Class H convictions under the proposed statute because of the higher rate of active sentences (17 percent for Class I compared to 36 percent for Class H) and longer average estimated time served (7 months for Class I compared to 11 months for Class H).

Because this bill creates a new offense, the Sentencing Commission has no data to indicate what proportion of offenders would be convicted as Class H offenders under Article 2D of G.S. 14. Therefore, it is not known how many offenders might be sentenced under this bill. However, the Sentencing Commission did provide various scenarios (5%, 36% and 100%) to illustrate the potential impact of the proposed statute. A 36 percent scenario represents the threshold before

¹ While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses used to calculate the number of prior record/conviction points, nor does it contain information on when these prior convictions occurred.

additional prison beds would be required under the bill. The following table illustrates the range of potential impacts:

Additional Prison Beds Needed

Number and Percentage of Class I Felony Convictions Raised to Class H Felonies as a Result of Bill	Additional Prison Beds Needed	
	<u>FY 2012-2013</u>	<u>FY 2013-2014</u>
2 (5%)	0	0
10(36%)	2	4
28 (100%)	6	9

Since the Sentencing Commission cannot identify a specific number of offenders that would be convicted under this bill, the Fiscal Research Division has used the lowest estimate of the number of offenders for the purpose of estimating the potential cost of this bill. As such, prison bed and Department of Correction (DOC) cost estimates throughout this fiscal note are formulated assuming two (five percent) of 28 offenders would receive an enhanced sentence under this bill. This scenario would not result in additional prison beds. To the extent that there are more convictions, this estimate may be understated.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,² and represent the total number of beds in operation, or authorized for construction or operation as of December 2010.

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) is always equal to the projected number of additional inmates resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of HB 54. As shown, the Sentencing Commission estimates that this specific legislation will add at least 168 inmates to the prison system by the end of FY 2013-14.

² 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 Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Estimated Bed Capacity June 2012-June 2016

	June 30 <u>2012</u>	June 30 <u>2013</u>	June 30 <u>2014</u>	June 30 <u>2015</u>	June 30 <u>2016</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ³	41,987	42,013	42,267	42,562	42,898
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	41,168	41,924	41,924	41,924	41,924
3. Projected No. of Beds Over/Under Inmate Population	(819)	(89)	(343)	(638)	(974)
4. Projected No. of Additional Inmates Due to this Bill⁴	<i>N/A</i>	84	168	168+	168+
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	<i>N/A</i>	84	168	168+	168+

POSITIONS: Based on the five percent scenario, it is anticipated that by FY 2013-14, at least 73 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.3 inmates.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2015-16. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to HB 54 and, the estimated number of new beds required each year through FY 2019-20.

Estimated Bed Capacity June 2017-June 2020

	June 30 <u>2017</u>	June 30 <u>2018</u>	June 30 <u>2019</u>	June 30 <u>2020</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	(1,296)	(1,740)	(2,284)	(2,916)
2. Projected No. of Additional Inmates Resulting From HB 54	168+	168+	168+	168+
3. Estimated No. of New Beds Required Under HB 54	168+	168+	168+	168+

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2010-11) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

³ 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 2011.

⁴ Criminal penalty bills effective December 1, 2011, should not affect prison population and bed needs until FY 2012-13 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Estimated Construction Cost per Custody Level, FY 2010-11

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost EOC Per Bed	\$72,200	\$78,100	\$132,100

Construction costs are shown as non-recurring costs in the Fiscal Impact table (p.1). An annual inflation rate of 1.92% is applied to these costs. According to the Department of Correction, the majority of Class H offenders are held in minimum custody prisons. If the additional minimum custody level prisons are constructed in FY 2011-12, bed provision through construction could cost approximately \$12.4 million (168 additional beds x \$72,200 minimum custody level x 1.92%).

OPERATING: Operating costs are based on actual FY 2009-10 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. Fiscal Research applies an estimated inflation rate to these base costs.⁵ Operating costs are shown as recurring costs in the Fiscal Impact table (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2009-10

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$64.59	\$76.22	\$88.39	\$74.34

The chart below depicts the projected operating costs to implement the proposed legislation:

Estimated Operating Costs

	FY 2011-12	FY 2012-12	FY 2013-14	FY 2014-15	FY 2015-16
Minimum: \$64.59	0	\$66.56	\$68.55	\$70.24	\$71.99
Number of New Inmates	0	84	168	168	168
11 months (330 days)	0	330	330	330	330
Total:	0	\$1,845,043	\$3,800,412	\$3,894,106	\$3,991,126
Inflation	0.00%	3.05%	2.99%	2.47%	2.49%

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,

⁵ Estimates based on consumer price index projections provided by Moody's economy.com (January 2011)

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.⁶ General supervision of intermediate and community offenders by a probation officer costs DCC \$3.44 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. 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 2009-10, 36 percent of Class H offenders received active sentences with an average estimated time served of 11 months. Of those convicted of Class H offenses, 47 percent received intermediate sentences and 17 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 30 and 28 months, respectively. To estimate the cost to Community Corrections, these percentages were applied to the estimated number of total convictions calculated using the five percent scenario. The results were then multiplied by the respective number of claims. Next, the per day cost was applied. Due to the relatively small number of new Class I felony convictions (estimated to be two), additional offenders could be absorbed into existing caseloads across the State. Accordingly, potential costs to DCC could total \$348,429 in FY 2013-14, the first full fiscal year of applicability.⁷ For cost breakdown, see chart below:

**Impact on Community Corrections by Level of Punishment
(Assumes 168 Class H Convictions in full year of applicability)**

Level of Punishment:	Intermediate	Community
Number (Percentage) of Total Convictions	79 (47%)	29 (17%)
Number of Days	900 days (30 months)	840 days (28 months)
Cost Per Day (adjusted for inflation)	\$3.65 per day=\$3,285	\$3.65 per day=\$3,066
Total Cost:	\$259,515	\$88,914

⁶ DCC incurs costs of \$0.97 per day for each offender sentenced to the Community Service Work Program.

⁷ Due to the effective date of December 1, 2011, and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2011-12. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2011-12.

**Estimated Five Year Impact on Community Corrections
(Adjusted for Inflation)**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Cost Per Offender	\$3.44	\$3.54	\$3.65	\$3.74	\$3.83
Intermediate (47%)	\$0	\$0	\$259,515	\$265,914	\$272,313
Community (17%)	\$0	\$0	\$88,914	\$91,106	\$93,299
Total Cost:	\$0	\$0	\$348,429	\$357,020	\$365,612
Inflation	0.00%	3.05%	2.99%	2.47%	2.49%

Judicial Branch

The Administrative Office of the Courts (AOC) 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 the Class H felony under the bill for habitual misdemeanor larceny. Trials and pleas would demand more court time and preparation time due to the stiffer penalties under the bill, and would be handled primarily in superior court rather than district court. The enhanced penalty would require more vigorous defense and prosecution, and more time and cost in disposing of cases.

For calendar year 2010, AOC data show 62,824 defendants charged with misdemeanor larceny offenses under Chapter 14, Article 16, and an additional 732 offenders charged with felony larceny offenses. It should be noted that AOC data is charge and case-based, not defendant based. Using exact matches for first and last name and county of conviction, 103 defendants had seven or more prior convictions for felony or misdemeanor larceny offenses (not accompanied by a non-larceny felony charge), and another 83 defendants had five or six prior convictions.

However, it is likely that due to data limitations these figures underestimate the number of defendants with prior convictions for misdemeanor or felony larceny. Therefore, rather than attempt to collapse cases to defendants and match defendants by name to estimate prior record histories, AOC provided the Fiscal Research Division with a scenario in which five percent of misdemeanor larceny charges are elevated to Class H felony charges under the proposed legislation. Since the analysis below is a scenario rather than a specific projected impact, AOC only applied the five percent to the 62,824 misdemeanor charges. (Five percent of the Class I felony charges would be 37 charges elevated to Class H. While there would be some costs associated with an increase from a Class I to Class H felony, these costs would be minimal in

comparison to the impact of increasing offenses from misdemeanors to felonies.) To the extent that there are more defendants with prior convictions, this estimate may be understated.

At least 15 percent of defendants charged in 2010 with misdemeanor larceny waived counsel, thus reducing the pool of misdemeanor charges from 62,824 to 53,400. Therefore, the estimated total number of misdemeanor defendants that could be charged with the new Class H felony would be 2,670 (five percent of 53,400). Fifty percent of defendants were considered indigent and received appointed counsel (1,335), and one percent of felony larceny charges are currently disposed by trial (27).

New felony charges would impact superior court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff. As the Class H status offense in this bill will result in new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources, additional positions would be needed to implement the proposed legislation.

A 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class H felony case was \$540 per indigent defendant, as compared to an average of \$225 for indigent misdemeanants. Therefore, the net cost for indigent defense would be \$315 per case.

A five percent scenario would have the following impact in the first full year of implementation:

Five Percent Scenario - Assumes 2,670 Misdemeanor Defendants Charged with New Class H Felony

Position Type	Positions	Position Cost		FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
		R	NR	Total	Total	Total	Total	Total
Inflation					8.87%	8.68%	6.64%	5.24%
Superior Court Judge	4	\$183,654	\$6,553	\$454,738	\$799,776	\$869,197	\$926,912	\$975,482
Deputy Clerk	4	\$45,652	\$2,620	\$117,001	\$198,805	\$216,062	\$230,408	\$242,482
Court Reporter	4	\$68,625	\$4,857	\$179,553	\$298,848	\$324,788	\$346,354	\$364,503
Assistant District Attorney	7	\$108,523	\$3,739	\$469,309	\$827,043	\$898,830	\$958,513	\$1,008,739
Victim Witness Legal Assistant	7	\$57,481	\$5,155	\$270,799	\$438,057	\$476,080	\$507,692	\$534,295
Subtotal Court Personnel	26			\$1,491,400	\$2,562,530	\$2,784,957	\$2,969,879	\$3,125,500
Other Costs**	Cases	Cost per Case						
Jury Fees	27	\$920		\$14,490	\$24,840	\$24,840	\$24,840	\$24,840
Indigent Defense (net increase)	\$1,335	\$315		\$245,306	\$420,525	\$420,525	\$420,525	\$420,525
Total Costs				\$1,751,196	\$3,007,895	\$3,230,322	\$3,415,244	\$3,570,865

*Estimated average trial length for Class H felonies is 3 days, based on 2009 survey data. Therefore three days of jury fees are estimated. Jury costs are based on an estimated jury pool of 30 for the first day and, for subsequent days, the 12-person jury plus 2 alternates. Jury compensation, set in G.S. 7A-312, is \$12 for the first day, \$20 for days 2 to 5, and \$40 for additional days. For criminal cases, jury costs come to \$360 for the first day, \$280 for the days two to five, and \$560 for the days over five.

**Positions were inflated based on the Moody's economy.com (Jan. 2011) inflation rate estimates for salaries and wages. The jury fees and indigent defense costs were not inflated, as these amounts are set in the General Statutes.

In addition to the increased work for the Class H felonies, AOC expects an increase in workload, including the possibility of more trials for charges before the second conviction or third. The

stiffer penalties associated with the Class H felony could lead to a more vigorous defense of the second or third misdemeanor larceny charge, for example.

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay 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 14, 2011



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