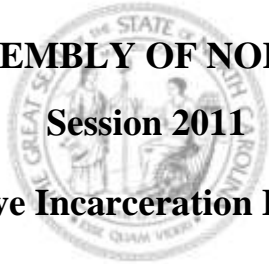


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 690 (Third Edition)

SHORT TITLE: R/E Closing Interest/Civil Penalty UPL.

SPONSOR(S): Representatives Stevens, Jordan, and T. Moore

	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		No significant impact anticipated			
Probation		Exact amount cannot be determined*			
Judicial		Exact amount cannot be determined*			
<i>*See Assumptions and Methodology</i>					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: Sections 1 and 6 of the act become effective January 1, 2012. Sections 2, 3, and 4 of the act become effective December 1, 2011, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2011.					
<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 House amendment amends proposed G.S. 84-10.1 to clarify that there is a private cause of action for a person damaged by any person who knowingly violates any of the provisions of G.S. 84-4 through 84-6, or 84-9.

Sections 1 and 6 of the act become effective January 1, 2012. Sections 2, 3, and 4 of the act become effective December 1, 2011, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2011.

SOURCE: BILL DIGEST H.B. 690 (05/19/0201)

ASSUMPTIONS AND METHODOLOGY:

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

Section 2 expands the reach of the Class 1 misdemeanor offense in G.S. 84-8, Punishment for violations. Currently, G.S. 84-8 makes it a Class 1 misdemeanor to violate any of the following statutes governing the unlicensed practice of law:

- G.S. 84-4. Persons other than members of State Bar prohibited from practicing law.
- G.S. 84-4.1. Limited practice of out-of-state attorneys.
- G.S. 84-4.2. Summary revocation of permission granted out-of-state attorneys to practice.
- G.S. 84-5. Prohibition as to practice of law by corporation.
- G.S. 84-5.1. Rendering of legal services by certain nonprofit corporations.
- G.S. 84-6. Exacting fee for conducting foreclosures prohibited to all except licensed attorneys.

The proposed legislation extends the Class 1 misdemeanor in G.S. 84-8 to include violations of G.S. 84-9, Unlawful for anyone except attorney to appear for creditor in insolvency and certain other proceedings.¹ The Administrative Office of the Courts (AOC) currently has no specific offense code for violations of G.S. 84-8. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions under the proposed bill would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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

¹Section 84-9 makes it unlawful for a corporation, association of persons other than a law firm, or individual other than a duly licensed attorney to appear for another in any bankruptcy or insolvency proceeding, in any action or proceeding involving the appointment of a receiver, or in any matter involving an assignment for the benefit of creditors, or to present or vote any claim of another.

requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.²

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 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 \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 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.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

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.

Section 2 of the proposed legislation expands the scope of an existing Class 1 misdemeanor (G.S. 84- 8), by adding that it is unlawful for anyone except an attorney to appear for a creditor in insolvency and certain other proceedings. Because this is a new offense, AOC has no data upon which to base an estimate of how many charges might arise from the passage of this bill.

Also, there is not currently a charge code for violations of 84-8. New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff. In addition, superior court personnel could be impacted due to appeals. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (three hours at \$75 per hour) per indigent defendant.

Cases arising from Section 4 of the bill, a new claim of relief against persons fraudulently holding themselves out to be an authorized attorney or paralegal, allowing the injured party to seek treble damages and attorney fees, are likely to be heard in Superior Court. It is not known how much in-court time each of these cases will require. For example, the total cost of one hour time for a superior court judge and a deputy clerk is \$179. For cases that involve a jury, additional costs would occur.

² 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.

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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Signed Copy Located in the NCGA Principal Clerk's Offices