

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 889 (First Edition)
SHORT TITLE: Amend Locksmith Licensing Act/Increase Fees.
SPONSOR(S): Representatives Lewis, Steen, Burr, and Collins

Table with 5 columns: FISCAL IMPACT (Yes (X), No (), No Estimate Available ()), and 5 fiscal years (FY 2011-12 to FY 2015-16). Rows include REVENUES (NC Locksmith Licensing Board) and EXPENDITURES (Correction, Probation, Judicial).

BILL SUMMARY:

The proposed legislation amends G.S. 74F-3 by forbidding any person from possessing any locksmith tools, as defined by G.S. 74F-4(6), unless the person is licensed as a locksmith under G.S. Chapter 74F or exempted from the provisions of G.S. Chapter 74F. The act makes the first violation of the provision a Class 1 misdemeanor, and provides that any subsequent offense of the provision is a Class I felony (currently, all violations considered Class 3 misdemeanor).

The act also rewrites G.S. 74F-4 to include the term safes in the definition of Locksmith services, and further expands the definition of Locksmith services to include any method of bypassing a locking mechanism of any kind, whether in a commercial, residential, or automotive setting, for compensation.

In addition, the proposed legislation amends G.S. 74F-6 by allowing the NC Locksmith Licensing Board to obtain certain records of a person or company offering locksmith services, including employees, contractors, and subcontractors.

The bill also increases various fees under G.S. 74F-9. The act adds a provision to G.S. 74F-10(b) allowing the Board, in its discretion, to adjust renewal and reinstatement fees if an applicant whose license has expired can show good cause for such license expiration. The bill rewrites G.S. 74F-12(b) to require that all advertisements for locksmith services include a valid license number issued by the Board, and rewrites G.S. 74F-15 by adding a new subsection which grants the Board power to assess the costs of disciplinary action, including attorneys' fees, against an applicant or licensee found to be in violation of G.S. Chapter 74F or rules adopted by the Board. Amends G.S. 74F-16 by rewriting, adding, or clarifying various entities exempted from G.S. Chapter 74F.

SOURCE: BILL DIGEST H.B. 889 (05/04/201)

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

The bill amends G.S. 74F-3, Licenses required; use of locksmith tools, by reclassifying the existing offense contained therein and adding one new offense.

Currently, G.S. 74F-3 provides that it shall be a Class 3 misdemeanor for any person to perform or offer to perform locksmith services in this State without being licensed under Chapter 74F of the General Statutes, the Locksmith Licensing Act. The bill reclassifies the existing offense as a Class 1 misdemeanor for first violations of the section and as a Class I felony for any subsequent violations.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 74F-3. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

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 for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

This bill also creates a new offense. G.S. 74F-3 is amended to provide that it shall be unlawful for any person to possess any locksmith tools unless the person is licensed as a locksmith under this Chapter or exempted from the provisions of this Chapter. Violation of this offense is a Class 1 misdemeanor for the first offense and a Class I felony for any subsequent violations. This provision reclassifies some conduct which may already be charged as a Class I felony under G.S. 14-55, Preparation to commit burglary or other housebreakings. G.S. 14-55 provides that it shall be a Class I felony for any person to be in possession, without lawful excuse, of any picklock, key, bit or other implement of housebreaking.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill.

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 for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2009/10, 17 percent of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

In FY 2009-10, there were 34 convictions for possession of burglary tools. It is not known how many current convictions for this offense would qualify for the new Class I felony in G.S. 74F-3. Given that possession of burglary tools is currently a Class I offense, however, convictions under the proposed G.S. 74F-3 would not be expected to affect the prison population because the two offenses are in the same felony offense class.

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.¹

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 (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.

There is currently a Class 3 misdemeanor offense of performing or offering to perform locksmith services in the State unless the person has been properly licensed. AOC does not have a charge code for this offense, possibly indicating that it is not used on a regular basis. The bill increases the penalty of violating G.S. 74F-3 to a Class 1 misdemeanor for the first offense and a Class I felony for any subsequent offense(s). Because the bill (1) expands the definition of locksmith services (to include any method of bypassing a locking mechanism of any kind, whether in a commercial, residential, or automotive setting, for compensation), and (2) adds the offense of possession of any locksmith tools as defined under G.S. 74F-4(6) unless the person is licensed as a locksmith or is exempt from the regulations, AOC is unable to estimate how many new charges may arise from the passage of this legislation.

New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff; 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.

¹ 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.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. Overall, the monetary value of the average workload of a lower level (Class I through F) felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$945. As the Class I felonies in the bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for those offenses increased from Class 3 misdemeanors to Class I felonies, the average fiscal impact of each case would be the full \$945. In addition, 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.

NC Locksmith Licensing Board

House Bill 889 establishes fee increases in the following amounts:

Fee	Current Amount	Proposed Amount
Issuance of a license	\$100.00	\$300.00
Renewal of a license	\$100.00	\$300.00
Reinstatement	\$150.00	\$250.00
Late Fees	\$150.00	\$300.00
Apprentice License Fee	\$100.00	\$300.00

The NC Locksmith Licensing Board estimates that there are currently 725 licensed members. Based on historical data, we’ve assumed an average of 50 new locksmith and apprentice licenses issued per fiscal year. We’ve also assumed that all licensees submit payment on time; meaning late fees and reinstatement fees have not been included in this estimate. By increasing the license renewal fee by \$200.00 (from \$100.00 to \$300.00), the NC Locksmith Licensing Board would collect approximately \$145,000 in additional FY 2011-12 revenue.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and NC Locksmith Licensing Board.

TECHNICAL CONSIDERATIONS: None

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