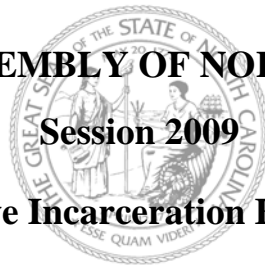


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1334 (First Edition)
SHORT TITLE: Create Criminal Offense/Home Invasion.
SPONSOR(S): Representatives Barnhart, Stiller, and Steen

FISCAL IMPACT table with columns for Yes (X), No (), and No Estimate Available (X) across fiscal years 2009-10 to 2013-14. Includes rows for EXPENDITURES (Correction, Probation, Judicial), ADDITIONAL PRISON BEDS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

Amends Article 14 of GS Chapter 14 by enacting GS 14-52.1, which makes it a Class D felony for a person possessing a firearm to break or enter into by force and with violence an occupied dwelling house or sleeping apartment in any building with the intent to commit any felony or larceny therein, and makes it a Class C felony to do so at night. Effective December 1, 2009.

Source: Bill Digest H.B. 1334 (04/09/0200)

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

This bill creates two new felony offenses. Since the proposed bill creates new offenses, 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.*

§ 14-52.1. First- and second-degree home invasion.

Subsection (a) creates the offense of first-degree home invasion. A person is guilty of the offense if that person possesses a firearm and, by force and with violence, breaks or enters the occupied dwelling house of another or an occupied sleeping apartment in any building at night with intent to commit any felony or larceny therein. Violation is a Class C felony.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2007-08 the average estimated time served for an offender convicted of a Class C offense was 95 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

This conduct is currently prosecuted under one of the following offenses:

Offense	Offense Class	# of Convictions in FY 2007/08
First degree burglary. (14-51)	D	90
Attempted first degree burglary. (14-51)	E	31
Breaking out of dwelling house burglary. (14-53)	D	No AOC code

It is not known how many of these convictions included the additional elements of possessing a firearm and committing the offense by force and with violence and would, therefore, meet the elements of the proposed Class C felony offense.

If, for example, at least one Class D felony conviction would become a Class C felony, impact on the prison population would begin at the end of year five and would continue over the ten-year projection period as a result of the difference in average estimated time served for Class C and Class D felonies (95 months and 71 months, respectively).

If, for example, 1% (or 3) of the Class E convictions would become Class D felonies, this would result in the need for one additional prison bed the first year and three additional prison beds the second year.

The new offense requires that the person possess a firearm. It should be noted that under G.S. 15A-1340.16A, Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm of deadly weapon during the commission of the felony, the current Class D and E offenses (listed in the above table) could be enhanced if the defendant used, displayed, or threatened to use or display that firearm. The enhancement is an increase of sixty months to the minimum sentence. In FY 2007-08, the firearm enhancement was not applied to any convictions.

Subsection (b) creates the offense of second-degree home invasion. A person is guilty of the offense if that person possesses a firearm and, by force and with violence, breaks or enters the occupied dwelling house of another or an occupied sleeping apartment in any building with intent to commit any felony or larceny therein (it does not require that the offense occur at night). Violation is a Class D felony.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2007-08 the average estimated time served for an offender convicted of a Class D offense was 71 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

This conduct currently may be prosecuted under one of the following offenses:

Offense	Offense Class	# of Convictions in FY 2007/08
Breaking out of dwelling house burglary. (14-53)	D	No AOC code
Breaking or entering buildings generally. (14-54(a))	H	3,140
Attempt breaking or entering buildings generally. (14-54(a))	I	70
Larceny after breaking or entering. (14-72(b)(2))	H	188
Robbery with dangerous weapon. (14-87)	D	511
Attempted robbery with dangerous weapon. (14-87)	D	65

It is not known how many of these convictions would meet the elements of the proposed Class D felony offense.

If, for example, 1% (or 33) of the Class H convictions would become Class D felonies, this would result in the need for twenty-two additional prison beds the first year and forty-six additional prison beds the second year.

If, for example, 1% (or 7) of the Class I convictions would become Class E felonies, this would result in the need for three additional prison beds the first year and seven additional prison beds the second year.

It is important to note that 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 and beyond*. Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

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 \$2.37 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.

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.

In general, AOC expects an increase in penalty to lead to a more vigorous defense and to require more court resources.

The Class C felony offense proposed in this bill is most likely charged under the current Class D felony offense of first degree burglary. The proposed offense appears to contain all of the same elements as first degree burglary, including an occurrence at night, plus the possession of a firearm and the entry *with force and violence*. Current G.S. 15A-1340.16A provides that, if a defendant is convicted of a Class A through E felony and used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony, an additional 60 months may be added to the minimum active sentence. This provision does not apply if the use, etc. of the firearm is necessary to prove an element of the felony or if the offender is not given an active sentence. The proposed offense, in contrast, requires only *possessing* the firearm. Therefore, it is possible that under this proposed bill an offender could be charged in three different ways:

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.

1. Class D first degree burglary plus 60 months for using/displaying a firearm (current law).
2. Class C home invasion (proposed law) instead of first degree burglary.
3. Class C home invasion plus 60 months for using/displaying a firearm, so long as the elements of force and violence are met without the use of the firearm.

In 2008, there were 1,567 defendants charged with first degree burglary (Class D) and 269 defendants charged with attempted first degree burglary (Class E).

Changes to Minimum Sentence Lengths by Offense					
Offense	Class	Minimum Sentence	New Class	New Min.*	Charges
First Degree Burglary (14-51)	D	51 mos OR 51 mos + 60 mos for firearm** = 111 mos	C	58 mos	1,567 (# with firearm unknown)
Attempted First Degree Burglary (14-51)	E	20 mos + OR 20 mos + 60 mos for firearm** = 80 mos (or intermediate)	C	58 mos	129 (# with firearm unknown)
*In some cases, it is possible that the Class C plus 60 months enhancement will be charged					
**In some cases, the firearm may be possessed but not used/displayed/threatened, therefore the 60-month enhancement could not be charged but the new home invasion offense could be charged					

If, for example, 1 percent of the first degree burglary charges were elevated to Class C felonies, the cost would approximately \$13,000 annually.

The new Class D felony offense proposed in this bill does not require a nighttime occurrence. Therefore, a subset of offenses currently charged as Class H felony breaking and entering (G.S. 14-54) could be charged as Class D home invasion under this bill. Compared to felony breaking and entering, the new home invasion offense requires that the building be a residence, that entry be with force and violence, and that the offender possess a firearm.

Changes to Minimum Sentence Lengths by Offense					
Offense	Class	Minimum Sentence	New Class	New Min.*	Charges
Felony Breaking & Entering (14-54(a))	H	5 mos (or intermediate)	D	51 mos	11,913 (# with firearm unknown)
*In some cases, it is possible that the Class D plus 60 months enhancement will be charged					

The most significant impact from this bill would be for any offenses elevated from breaking and entering (Class H) to Class D felonies under this bill. **If, for example, 1 percent of the breaking and entering (Class H) felony charges were elevated to Class D felonies, the annual cost would be approximately \$238,000 for 119 charges.**

It should be noted that the new home invasion offense, like felony breaking and entering, may be charged with accompanying felonies, such as felony larceny, armed robbery, or a sex offense. To the extent that these defendants are already charged with more serious felonies, the cost of increasing the Class H breaking and entering felony to a Class D felony will be somewhat diminished.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

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