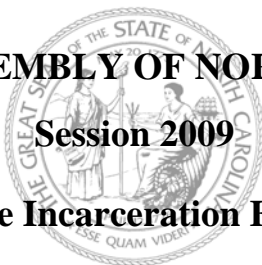


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 709 (First Edition)

SHORT TITLE: Home Improvement Fraud.

SPONSOR(S): Senator Allran

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<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>
EXPENDITURES					
GENERAL FUND					
Correction			Indeterminate fiscal impact		
Probation			Indeterminate fiscal impact		
Judicial			Indeterminate fiscal impact		
ADDITIONAL PRISON BEDS:					
(cumulative)*			Indeterminate prison bed impact		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2009					
<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:

Enacts new GS 14-104.1 creating the crime of home improvement fraud. Provides that home improvement fraud is committed when a contractor knowingly engages in any of the following, when committed by the contractor, or by an agent or employee of a contractor: (1) use of any deception, false pretense, or false promise to cause any person to enter into a contract for home improvements, or (2) damaging of any property of any person with the intent to induce that person to enter into a contract for home improvements. Makes the crime punishable as follows: (1) Class H felony for a first offense, (2) Class F felony for a second offense, and (3) Class C felony for a third or subsequent offense. Allows the court to also order restitution. Defines contractor and home improvement. Effective for offenses committed on or after December 1, 2009.

Source: Bill Digest S.B. 709 (03/19/0200)

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

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 section.* The following estimate of the impact is provided for violations of the proposed section:

- *First Offense:* In FY 2007-08, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H 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 two additional prison beds the second year.
- *Second Offense:* In FY 2007-08, 55% of Class F convictions resulted in active sentences, with an average estimated time served of 19 months. If, for example, there were two Class F convictions for this proposed offense per year, the combinations 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.
- *Third or Subsequent Offense:* 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.

Currently, violations of the proposed bill could qualify for punishment under G.S. 14-100, obtaining property by false pretenses. In FY 2007-08, there were as follows:

- Seven Class C felony convictions for obtaining property that was valued at \$100,000 or more;
- 1,478 Class H felony convictions for obtaining property that was valued at less than \$100,000;
- 105 Class H felony convictions for attempted obtain property by false pretenses;
- Eight Class H felony convictions to aid and abet obtain property by false pretenses;
- 14 Class I felony convictions for conspiracy to obtain property by false pretenses.

It is unknown how many of these convictions would meet the elements of the proposed offense and how many offenders may be repeat offenders. Impact would occur if any of the Class H (obtaining property by false pretenses valued at less than \$100,000) felony convictions or the related offenses met the elements of the proposed Class F (second offense) or Class C (third or subsequent offense) felony offenses.

Violations of the proposed bill could also qualify for punishment as a Class 2 misdemeanor offense under G.S. 14-104, obtaining advances under promise to work and pay for same. In FY 2007-08, there were 108 convictions for obtaining advances under promise to work and pay for same. It is unknown how many of these convictions would meet the elements of the proposed offense and how many offenders may be repeat offenders. Impact would occur if any of the Class 2 misdemeanors met the elements of the proposed Class H (first offense), Class F (second offense), or Class C (third or subsequent offense) felony offenses.

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.

Because this bill creates a new offense, *AOC is unable to project the number of new charges that would arise under this bill.* Currently, the activities outlawed under this bill could be charged under several different statutes.

G.S. 14-100: Obtaining property under false pretenses

This is a Class H felony offense if the property value is under \$100,000 and a Class C felony if valued at \$100,000 or more. In 2008, there were 8,891 defendants charged with the Class H offense and 20 defendants charged with the Class C offense.

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.

G.S. 14-127: Injury to real property

This is a Class 1 misdemeanor offense. In 2008, there were 8,702 defendants charged with this offense.

G.S. 14-104: Obtaining advances under promise to work and pay for same

This is a Class 2 misdemeanor offense. In 2008, there were 265 defendants charged with this offense.

For each new charge, costs would vary depending on the level of the offense, whether another lower offense would have been charged instead under existing law, the mode of disposition of the case (trial, plea, etc.) and indigency (Office of Indigent Defense – IDS).

	Per Case Costs to the Judicial Branch	
	AOC	IDS
New Class H Felony Charge	\$555 to \$7,577	\$540
Elevate Class 1 Misdemeanor (injury to property) to Class H Felony	\$418 to \$7,296	\$315
Elevate Class 2 Misdemeanor (fail to work) to Class H felony	\$472 to \$7,417	\$315
New Class F Felony Charge	\$1,135 to \$10,995	\$885
Elevate Class 1 Misdemeanor (injury to property) to Class F Felony	\$997 to \$10,714	\$660
Elevate Class 2 Misdemeanor (fail to work) to Class F Felony	\$1,052 to \$10,835	\$660
New Class C Felony Charge	\$2,261 to \$17,218	\$1,245
Elevate Class 1 Misdemeanor (injury to property) to Class C Felony	\$2,124 to \$16,937	\$1,020
Elevate Class 1 Misdemeanor (fail to work) to Class C Felony	\$2,179 to \$17,058	\$1,020

Source: Administrative Office of the Courts

The low end of the AOC cost range is for a disposition by plea; the high end is for a disposition by trial, indigent defense costs are based on the average hours billed for indigent defendants in an offense class, regardless of how the case was disposed, at \$75 per hour.

New felony charges, particularly Class C felonies, require significant time and resources on the part of judges, clerks, district attorneys, and indigent defense. In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior 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

TECHNICAL CONSIDERATIONS: None

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