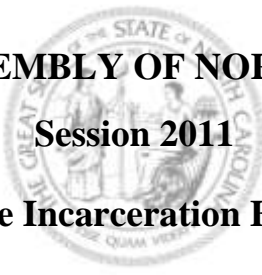


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 636 (First Edition)
SHORT TITLE: Amend Financial Transaction Card Theft.
SPONSOR(S): Representative Haire

FISCAL IMPACT table with columns: Yes (X), No (), No Estimate Available (), FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2015-16. Rows include EXPENDITURES (Correction, Probation, Judicial) and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

The proposed legislation amends G.S. 14-113.9(b) by expanding the Class I felony designation from just theft of credit cards to also include theft of financial transaction cards more generally, which includes plates, bank services cards, banking cards, check guarantee cards, debit cards, and other financial transaction cards by any other name. The act becomes effective September 1, 2011, and applies to offenses committed on or after that date.

SOURCE: BILL DIGEST H.B. 636 (04/05/201)

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 subsection (b) of G.S. 14-113.9, Financial Transaction Card Theft. Subsection 14-113.9(b) currently provides that credit card theft is punished under G.S. 14-113.17(b), making it a Class I felony. The credit card is one of several instruments or devices classified as financial transaction cards (FTC), as defined in G.S. 14-113.8(4). Although the statutes are ambiguous,¹ they could be construed to make all forms of FTC theft not involving a credit card punishable as Class 2 misdemeanors under G.S. 14-113.17(a), the general enforcement provision for G.S. Chapter 14, Article 19B (Financial Transaction Card Crime Act). The bill amends G.S. 14-113.9(b) to make all forms of FTC theft punished under the Class I felony in G.S. 14-113.9(b).

It is not clear that the bill will actually result in the reclassification of non-credit-card FTC theft offenses from Class 2 misdemeanors to Class I felonies. It may be that all FTC theft is already being punished as a Class I felony, notwithstanding the inherent ambiguities in G.S. 14-113.9 and 14-113.17. The only offense codes currently maintained by the Administrative Office of the Courts (AOC) for G.S. 14-113.9 correspond to Class I felonies. Moreover, there is no existing AOC Offense Code for a Class 2 misdemeanor violation of G.S. 14-113.9 or G.S. 14-113.17(a). A search of misdemeanor convictions by G.S. number did not indicate any Class 2 misdemeanor violations of G.S. 14-113.9 or G.S. 14-113.17(a). Therefore, it may be that the bill will simply amend G.S. 14-113.9(b) to accord to current practice.

In FY 2009-10, there were 156 Class I felony convictions for Financial Card Theft and one (1) Class I felony conviction for Card Theft with Scanning Device. It is not known how many of these convictions involved credit cards as opposed to other financial transaction cards.

The following threshold would apply if, in fact, the bill would result in additional Class I felony convictions: 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 as a result of the proposed change, 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.

¹ Subsection 14-113.17(a) provides that any “person who is subject to the punishment and penalties of this Article [19B] shall be guilty of a Class 2 misdemeanor. However, G.S. 14-113.17(b) then provides that any “crime punishable under this Article [19B] is punishable as a Class I felony.” Adding to the ambiguity, G.S. 14-113.9(b) specifically provides that “Credit card theft is punishable as provided in G.S. 14-113.17(b)[,]” thus appearing to imply that other forms of FTC theft are not punishable under G.S. 14-113.17(b), but are instead punishable under G.S. 14-113.17(a).

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.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 (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 calendar year 2010, there were 1,482 defendants charged with the existing Class I felony of Financial card theft (G.S. 14-113.9). The proposed legislation would officially expand the scope of the existing charge from the current narrow definition of a credit card to include additional types of cards that are used in financial transactions. It is possible that offenses involving cards of the latter category are already being charged under existing G.S. 14-113.9. AOC has no data upon which to estimate the number of new Class I felony charges, if any, that may result from the passage of the bill.

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

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.

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 this bill will represent new charges in superior court 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, as compared to an average of \$225 for indigent misdemeanants.

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; and North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

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