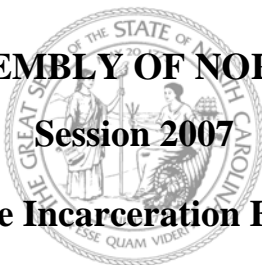


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1094 (First Edition)
SHORT TITLE: Increase Penalties for Audiovisual Piracy.
SPONSOR(S): Representatives McComas, Goforth, Steen, and Thomas

FISCAL IMPACT table with columns for Yes (X), No (), and No Estimate Available () across fiscal years FY 2007-08 to FY 2011-12. Rows include GENERAL FUND (Correction, Judicial), TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS, POSITIONS, and EFFECTIVE DATE.

BILL SUMMARY: H.B. 1094 rewrites G.S. 14-440.1 to increase the penalties for knowingly operating, or attempting to operate, an audiovisual recording device in a motion picture theater for the purpose of transmitting, recording, or otherwise copying any part of a motion picture without the written consent of the theater owner. Under current G.S. 14-440.1(c), a first offense is a Class

1 misdemeanor; a second or subsequent offense is a Class I felony. The proposed reclassification would increase the penalty for first offense to a Class I felony, with a requisite minimum fine of \$2,500; the bill maintains the current Class I felony penalty for second or subsequent offense, but adds a requisite minimum fine of \$5,000.

ASSUMPTIONS AND METHODOLOGY

General

Any new charge and/or conviction subject to the proposed penalty enhancements will generate some fiscal impact. However, the Administrative Office of the Courts does not currently have a specific offense code for the unlawful operation of an audiovisual recording device – a relatively new offense having taken effect December 1, 2005. The absence of offense code often indicates that such offense is infrequently charged, and/or infrequently results in conviction. Accordingly, *although Fiscal Research expects this proposal to generate some fiscal impact, the lack of charge and conviction data suggests that it will not be significant.*

Department of Correction: Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Class 1 misdemeanants sentenced to active punishment serve the designated term of incarceration within a local jail.¹ However, most active sentences for felony convictions are served in state prison.² *Consequently, the proposed penalty enhancement for first offense will not only lengthen time served, but also require imprisonment within a state facility.* Any fine imposed upon conviction will be credited to the Civil Penalty and Forfeiture Fund.

Because there is no specific offense code for violation of G.S. 14-440.1, it is not known how many future convictions would occur. Thus, the potential impact on the prison population is unknown. In FY 2005-06, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. For illustrative purposes, if twelve Class I convictions were to occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; four additional beds in the second year; and 2 new employees in the second year.*

Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State \$272,160 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$168,480.³

¹ In FY 2005-06, 20% of Class 1 misdemeanor (for all crimes and prior record levels) convictions resulted in active sentences, with an average estimated time served of 31 days.

² Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

³ New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the

These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$116,390 by FY 2009-10.⁴

Department of Correction – Division of Community Corrections

In FY 2005-06, 85% of Class I felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. *Thus, assuming that future convictions for violation of G.S. 14-440.1 were to occur, the Division of Community Corrections could assume some additional costs for offenders placed under its supervision.* It is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

There is no offense code for violation of G.S. 14-440.1, and therefore no data from which to estimate the number of charges (first offense) that would be subject to the proposed felony penalty. However, the Administrative Office of the Courts expects that any proposed penalty enhancement will be accompanied by more vigorous defense and prosecution, and will thereby increase court-time requirements and the associated costs of case disposal. Specifically, increasing the penalty from a Class 1 misdemeanor to a Class I felony will elevate future cases to superior court, rather than district court. This elevation will increase jury involvement and, potentially, workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

Table 1. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08

<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>	<i>Change in Cost: Trial</i>	<i>Change in Cost: Plea</i>
Class 1 Misdemeanor	\$ 3,702	\$ 243	N/A	N/A
Class I Felony	\$ 6,980	\$ 298	\$ 3,278	\$55

As shown, for affected cases, the proposed penalty enhancement is estimated to cost an additional \$3,278 per trial, and \$55 per plea. These cost estimates account for indigent defense.⁵ Actual costs may vary with time requirements and disposition.

same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁴ Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

⁵ Cost estimates are based on projected court-time requirements for judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings.

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

TECHNICAL CONSIDERATIONS: None

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