

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 690 (First Edition)
SHORT TITLE: Supervise RE Closings/Settlement Funds.
SPONSOR(S): Representatives T. Moore, Stevens, and Jordan

Table with 5 columns: FISCAL IMPACT, Yes (X), No (), No Estimate Available (), and fiscal years FY 2011-12 to FY 2015-16. Rows include EXPENDITURES (Correction, Probation, Judicial) and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

Section 1 of the proposed legislation enacts new G.S. 45A-9, requiring closings and settlements under the Good Funds Settlement Act to be supervised and conducted by a licensed attorney.

In addition, the proposed legislation enacts new G.S. 45A-10. The act directs a settlement agent who maintains a trust or escrow account to receive and disburse closing funds and loan funds to pay any interest earned to the North Carolina State Bar to support purposes authorized under the Interest on Lawyers Trust Account Program. The act directs the State Bar to adopt rules as necessary.

Section 2 amends G.S. 84-8, providing that a violation of G.S. 84-4 through G.S. 84-6 (relating to the unauthorized practice of law) is a Class I felony (currently, a Class 1 misdemeanor). The act adds that any person in violation of G.S. 84-4 through 84-6 due solely to an inactive license after failure to timely pay state bar dues or failure to comply with continuing legal education requirements will be guilty of a Class 1 misdemeanor. Also, the act specifies that no person is entitled to collect any fee for services performed in violation of G.S. 84-4 through 84-6.

Section 3 moves the provision exempting legal clinics of law schools, certain law students, and certain lawyers supervised by nonprofit corporations from the provisions of G.S. 84-4 through 84-6, to new G.S. 84-7-1.

Section 4 enacts new G.S. 84-10.1, providing any person with a cause of action to recover treble damages and reasonable attorneys' fees, if the person is damaged by a person's violation of any of the provisions in G.S. 84-4 through 84-6 or by a person fraudulently holding themselves out as a North Carolina certified paralegal.

Section 5 requires the Council to adopt the rules pursuant to G.S. 45A-9 and G.S. 45A-10.

Sections 1 and 5 of the proposed legislation become effective January 1, 2012. Sections 2 and 3 of the act become effective December 1, 2011, and apply to offenses committed on or after that date. The remainder of the act becomes effective October 1, 2011.

SOURCE: BILL DIGEST H.B. 690 (04/06/2011)

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 Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 84-8. Therefore, the number of convictions under G.S. 84-8 in FY 2009-10 is unknown. The lack of an AOC offense code indicates that this offense is infrequently charged and/or infrequently results in convictions.

It is not known (1) how many current Class 1 misdemeanor convictions would be eliminated through the bill's decriminalization of G.S. 84-7 violations; or (2) how many Class 1 misdemeanor convictions would be reclassified as Class I felonies under the bill's amendments to G.S. 84-8. The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. Using threshold data, if, for example, ten convictions were reclassified from Class 1 misdemeanor to Class I felony, this would result in the need for one additional prison bed the first year and three additional prison beds the second year.

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 \$3.44 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. 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.

According to AOC, it is not known how many additional or increased charges might arise as a result of the passage of the proposed legislation.

The elevation of the offense from a Class 1 misdemeanor to a Class I felony would result in a more vigorous defense and prosecution and more in-court and preparation time for trials and pleas. The creation of new Class I felony offenses would also result in increased court workload. While some

¹ DCC incurs costs of \$0.97 per day for each offender sentenced to the Community Service Work Program.

judicial districts handle pleas for Class H and I felonies in district court, all trials and many pleas would be shifted from district court to superior court under this bill or occur as new workload in superior court. Thus, even one new offense impacted by this legislation will result in a cost to the court system.

Overall, the monetary value of the average workload of a Class I 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 \$862. As the Class I felonies in this 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, the average fiscal impact of each case would be the full \$862. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class I felony case was \$480 per indigent defendant, as compared to an average of \$225 for indigent misdemeanants.

For those defendants who are charged with the Class 1 misdemeanor of the violation of G.S. 84-4 through G.S. 84-6, the cost of an average misdemeanor is \$131 (this includes workload costs for District Court Judge, District Attorney, and Deputy Clerk positions). The 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost is \$225 for indigent misdemeanants.

Cases arising from Section 4 of this bill, a new claim of relief against persons fraudulently holding themselves out to be an authorized attorney or paralegal, allowing the injured party to seek treble damages and attorney fees, are likely to be heard in Superior Court. It is not known how much in-court time each of these cases will require. For example, the total cost of one hour time for a Superior Court Judge and a Deputy Clerk is \$179. For cases that involve a jury, additional costs would occur.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Poteat Stone; Douglas Holbrook

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

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