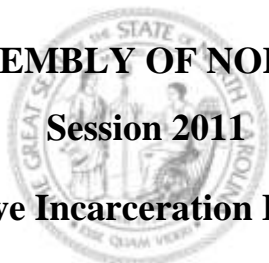


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 144 (Second Edition)

SHORT TITLE: Cash Converters Must Keep Purchase Records.

SPONSOR(S): Senator Meredith

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:					
Correction					
Probation					
Judicial					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.					
<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:

The proposed legislation expands the Pawnbrokers Modernization Act of 1989 to also include cash converters, renaming G.S. Chapter 91A the Pawnbrokers and Cash Converters Modernization Act. The act amends G.S. 91A-3 to define a cash converter as a person engaged in the business of purchasing merchandise from the public at a permanently located retail store who presents to the public by signs, advertising, or other methods as such. The term does not include pawnbrokers or persons who purchased directly from manufacturers or wholesalers for their inventories.

In addition, the proposed legislation enacts new G.S. 91A-7.1 to set forth record keeping requirements for cash converters. The act requires every cash converter to keep consecutively numbered records of each purchase, including the listed information. The act also provides

additional recording and reporting procedures, requires that the reports be available for inspection by local law enforcement, and exempts purchases directly from a manufacturer or wholesaler from the provision's application.

The act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.

SOURCE: BILL DIGEST S.B. 144 (02/24/0201)

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 proposed legislation amends Chapter 91A, Pawnbrokers and Cash Converters Modernization Act, of the General Statutes, by expanding the scope of conduct subject to the existing Class 2 misdemeanor offense found in G.S. 91A-11, Penalties. It also expands the scope of conduct subject to the existing Class H felony offenses found in G.S. 14-71, Receiving stolen goods; receiving or possessing goods represented as stolen, G.S. 14-71.1, Possessing stolen goods, and G.S. 14-72(b) (receiving stolen goods).

Section 6:

The proposed legislation amends Chapter 91A, Pawnbrokers and Cash Converters Act, by adding “cash converter” to the group subject to regulation under Chapter 91A. Proposed G.S. 91A-7.1, Record-keeping requirements for cash converters, provides that every cash converter shall keep consecutively numbered records of each cash purchase, which shall include certain information. Further, proposed G.S. 91A-7.1(b) provides that the seller shall sign the record and shall receive an exact copy which shall be signed or initialed by the cash converter or employee of the cash converter. The records shall be available for inspection and pickup by the sheriff, sheriff's designee, chief of police or chief's designee. The records shall be a correct copy of the entries made of the purchase transaction, shall be carefully preserved without alteration, and shall be available during regular business hours. Existing G.S. 91A-11, Penalties, provides that a violation of any provision of Chapter 91A shall be a Class 2 misdemeanor. By amending Chapter 91A to add G.S. 91A-7.1, this bill expands the scope of the conduct subject to the existing Class 2 misdemeanor offense found in G.S. 91A-11.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 91A-11. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Section 7:

The proposed legislation also expands the scope of several Class H felonies, by amending existing G.S. 91A-10, Prohibitions. Proposed G.S. 91A-10(b) provides that a cash converter shall not purchase from any person property which is known to the cash converter to be stolen, unless there is a written agreement with local or State police. Existing G.S. 91A-11, Penalties, is also amended to provide that a violation of G.S. 91A-10(b) shall be prosecuted under the North Carolina criminal statutes. Thus, a violation of G.S. 91A-10(b) is punishable as a Class H felony under G.S. 14-71, Receiving stolen goods; receiving or possessing goods represented as stolen, G.S. 14-71.1, Possessing stolen goods, and G.S. 14-72(b) (receiving stolen goods). By adding G.S. 91A-10(b) to the offenses punishable by G.S. 14-71, G.S. 14-71.1, and G.S. 14-72, the act expands the scope of the conduct subject to the existing Class H felony offenses found in the North Carolina criminal statutes.

It is not known how many additional convictions may result from violations of the proposed G.S. 91A-10(b). In FY 2009-10, 36 percent 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.

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 \$2.49 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

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.

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.

It is not known how many additional or increased charges might arise as a result of the passage of the proposed legislation. The broadened scope of the Class 2 misdemeanor of knowingly violating any of the provisions of the Chapter would likely result in an increase in the number of charges and thus an increase in court workload. The cost of an average misdemeanor is \$131 (this includes workload costs for District Court Judge, Assistant District Attorney, Victim Witness Legal Assistant 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.

Section 91A-11(b) of the proposed legislation, which requires that violations of G.S. 91A-10(a)(6) or (b) be prosecuted under the North Carolina criminal statutes, will likely be charged with a Class H felony or Class 1 misdemeanor under G.S. 14A-71, 14-17.1 and/or 14-72(b) as applicable. This penalty currently exists but only applies to pawnbrokers who take an article knowing it to be stolen without written agreement with local or State police. The proposed legislation expands the penalty to include the same actions taken by cash converters. It is not currently known how many of these applicable Class H felony or Class 1 misdemeanor charges are made against pawnbrokers in a typical year. Because the scope of the current penalty is broadened, it is likely that there will be an increase in the number of related charges.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for Class H felonies are handled in superior court. Overall, the monetary value of the 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. 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. The cost of an average misdemeanor is \$131 (this includes workload costs for District Court Judge, Assistant District Attorney, Victim Witness Legal Assistant 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.

Overall, 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: North Carolina Sentencing and Policy Advisory Commission; Judicial Branch

TECHNICAL CONSIDERATIONS: None

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