

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 687 (Third Edition)

SHORT TITLE: Pirating Movies.

SPONSOR(S): Representatives Brubaker, McComas, Wright, and Gibson

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
LOCAL GOVERNMENTS					
	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*					
	Exact number cannot be determined; no substantial impact anticipated.				
POSITIONS: (cumulative)					
	Exact number cannot be determined; no additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments					
EFFECTIVE DATE: December 1, 2005					
<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: This bill would enact new G.S. 14-440.1 to provide that it is a criminal offense for a person to operate the audiovisual recording function of any device in a motion picture theater while a motion picture is being shown without the theater owner's consent. A first conviction for this offense would be a Class 1 misdemeanor; a second, and any subsequent conviction would be a Class I felony.

The third edition rephrases the offense as the operation of any audiovisual recording device rather than the operation of the audiovisual recording function of a device and specifies that an attempt is punishable at the same level as the actual offense. Under the first and second editions, attempts would have been punishable one offense class lower than the actual offense (i.e. a Class 2 misdemeanor for a first offense and Class 1 misdemeanor for a second offense).

ASSUMPTIONS AND METHODOLOGY:

General

An empirical analysis of unauthorized copies of movies available on the Internet between January of 2002 and June of 2003 conducted by AT&T and the University of Pennsylvania indicated that the majority of these movies did not originate from through-the-air recordings captured in movie theaters.¹ According to the study, through-the-air recordings of higher quality typically must be made by movie theater employees with access to the projection equipment and direct audio input. Furthermore, once a single unauthorized copy of a movie has been leaked to the Internet, there is a reduced demand for additional copies, inherently limiting the likelihood that an unauthorized recording will be made to a small number per movie released. Given these limitations upon the number of offenses likely to be committed and the class of individuals likely to commit an offense under this bill, the number of charges and convictions resulting from this legislation are not expected to be substantial.

As the number of charges and convictions is not expected to be substantial, elevating attempts one offense class as proposed by the third edition of the bill would not significantly increase the anticipated impact of this bill.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Because this bill would create a new criminal offense (operating an audiovisual recording device while in a motion picture theater), the Sentencing Commission has no historical data from which to estimate the impact on prison population. A first conviction for the offense would be a Class 1 misdemeanor, which would likely be served in a county jail if the sentence were active. A second conviction would be a Class I felony, which, if active, would be served in state prison.

Class 1 Misdemeanors: In FY 2003-04, 19 percent of Class 1 misdemeanants received active sentences, and the average estimated sentence length was 43 days. DOC reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per offender per day. Because active sentences of less than ninety days are served in county jails, Class 1 misdemeanor convictions resulting from this legislation are not expected to significantly impact prison population.

Class I Felonies: In FY 2003-04, eleven percent of Class I felony convictions resulted in active sentences. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one

¹ Byers, Simon, et. al. "Analysis of Security Vulnerabilities in the Movie Production and Distribution Process." October, 2003 <<http://www.research.att.com/~pdmcdan/drm03.pdf>>.

additional prison bed the first year and three additional prison beds the second year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

Non-Active Sentences: In FY 2003-04, 49 percent of Class I convictions resulted in intermediate sanctions and 40 percent in community sanctions; two percent of Class 1 misdemeanants received intermediate sanctions and 79 percent received community punishment. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

As this bill would create a new offense, no data is available to estimate the number of charges that might result from this bill. For any additional Class 1 misdemeanor or Class I felony charges due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing district and superior court workload, respectively. AOC estimates the costs to process one Class 1 misdemeanor or one Class I felony charge as shown in Table 1 below. Based on prior-year data, the majority of charges that are not dismissed are likely to be settled via guilty plea.

Table 1: Average Estimated Per Charge Settlement Costs

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	
				-
<i>Class 1 Misdemeanor</i>	\$1,880	\$1,333	\$3,213	\$284
<i>Class I Felony</i>	\$3,877	\$1,931	\$5,808	\$329

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; AT&T Research.

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices