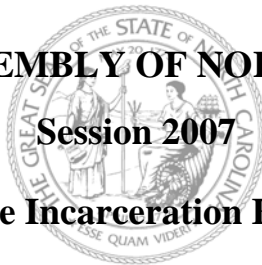


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1988 (Third Edition)
SHORT TITLE: Unlawful to Burn Cross/Hang Noose.
SPONSOR(S): Senator Berger of Franklin

FISCAL IMPACT table with columns for Yes (X), No (), and No Estimate Available () across fiscal years FY 2008-09 to FY 2012-13. Includes sections for GENERAL FUND, ADDITIONAL PRISON BEDS, POSITIONS, and EFFECTIVE DATE.

BILL SUMMARY:

Senate Bill 1988 enacts new GS 14-401.14A making it a Class H felony offense to burn a cross or hang a noose with the expectation and the probability that another person will view the cross or noose with the intent of intimidating another person because of race, color, religion, nationality, or country of origin. Wording in this bill is narrower than that of current statutes in that the proposed statute specifies ethnic intimidation as an element of the offense. Under current GS 14-12.12(b) and GS14-12.13, burning a cross with the intention of intimidating another or placing any exhibit of any kind with the intention of intimidating another is a Class I felony. In effect, this bill increases the punishments of burning a cross and hanging a noose by one classification if ethnic intimidation is an element of the act.

The bill also directs the Legislative Research Commission to conduct a study of recent cross burnings and noose hangings in the state to determine if any modifications should be made to existing statutes to lawfully deter this type of conduct. The Commission is to report to the 2009 General Assembly. This bill applies to offenses committed on or after December 1, 2008.

Note: There are two changes in the 3rd edition. On page 1, lines 13-14, the words “with the expectation and the probability that another person will view the cross or noose” have been added. Also, the \$20,000 appropriation has been dropped from section 2.

ASSUMPTIONS AND METHODOLOGY:

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

For new GS 14-401.14A, the Sentencing Commission has no data from which to estimate the impact of this proposed bill on the prison population. The conduct covered by the proposed offense may currently be punished under G.S. 14-12.12(b), 14-12.13, 14-12.14, and 14.401.14(a) (see table below). The Administrative Office of the Courts (AOC) currently does not have specific offense codes for these violations. The lack of an AOC offense code is some indication that these offenses are infrequently charged and/or infrequently result in convictions. In FY 2006/07, there were 6 convictions under 14-401.14(a). It is not known how many of these convictions involved the conduct covered under the proposed offense. Fiscal Research does not anticipate a significant impact due to this bill.

Citation	Offense	Class
14-12.12.(b)	Placing burning or flaming cross on property of another or on public street or highway.	Class I felony.
14-12.13.	Placing exhibit with intention of intimidating, etc., another.	Class I felony.
14-12.14.	Placing exhibit while wearing mask, hood, or other disguise.	Class I felony.
14-401.14.(a)	Ethnic intimidation; teaching any technique to be used for ethnic intimidation.	Class 1 misdemeanor.

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 \$2.09 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 \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 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.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

Judicial Branch

The Administrative Office of the Courts 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.

To the extent that burning a cross for ethnic intimidation is being punished under current GS 14-12.12(b) or that hanging a noose for ethnic intimidation is being punished under current GS 14-12.13, Fiscal Research does not expect a large number of new charges to arise from this bill. This bill, however, would enhance the punishment for these charges. The fact that AOC does not have an offense code for current GS 14-12.12(b) or GS 14-12.13 indicates that relatively few charges occur. There is no data from which to estimate the number of charges that would be subject to the increased penalty. Any increase in punishment would be accompanied by more vigorous defense and prosecution, resulting in increased court time and costs to dispose of these cases. On average, the difference in the cost per trial between a Class H and a Class I felony is approximately \$400. AOC cost estimates account for indigent defense.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

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.

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Signed Copy Located in the NCGA Principal Clerk's Offices

