

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 18 (Second Edition)

**SHORT TITLE:** Amend Locksmith License Act/Raise Fee Ceiling.

**SPONSOR(S):** Senator Bingham

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Department of Public Safety, Administrative Office of the Courts, Indigent Defense Services					
<b>EFFECTIVE DATE</b> December 1, 2013					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address the new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$31 - \$365 per disposition
- Indigent Defense Services: \$166 - \$221 in district court  
   \$321 - \$396 in superior court without a trial  
   \$420 - \$2,460 in superior court with a trial

- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$0 – \$2,381

Please see the Assumptions and Methodology section for additional information.

### **BILL SUMMARY:**

Currently, G.S. 74F-3 provides that it shall be a Class 3 misdemeanor for any person to perform or offer to perform locksmith services in this State without being licensed under Chapter 74F of the General Statutes, the Locksmith Licensing Act. The bill amends G.S. 74F-3, Licenses required; violation, by expanding the existing offense contained therein, reclassifying it, and adding a new offense. It adds a provision that requires every person providing locksmith services as defined under amended G.S. 74F-4(5) to buildings containing medical, pharmaceutical, educational, criminal, voting, tax, legal or personnel records, including any person providing locksmith services who is employed by or working for a school, college, university, hospital, company, institution or government facility shall be licensed as a locksmith under the provisions of this Chapter. This bill also creates a new offense. G.S. 74F-3 is amended to provide that it shall be unlawful for any person to possess any locksmith tools unless the person is licensed as a locksmith under this Chapter or exempted from the provisions of this Chapter. Violation of this offense is a Class 1 misdemeanor for the first offense and a Class I felony for any subsequent violations. This provision reclassifies some conduct which may already be charged as a Class I felony under G.S. 14-55, Preparation to commit burglary or other housebreakings. G.S. 14-55 provides that it shall be a Class I felony for any person to be in possession, without lawful excuse, of any picklock, key, bit or other implement of housebreaking.

### **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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

#### **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.

The changes in Section 1 and Section 3 that will become effective October 1, 2013, increase the scope of the definition of allowed locksmith services and thus will potentially expand the pool of Class 3 misdemeanor offenses for violation of G.S. 74F-3. AOC does not currently have an offense code for violations of G.S. 74F-3, which may be some indication that this offense is infrequently charged. It is not possible to estimate the number of new charges that may arise from the expansion of this offense.

New Class 3 misdemeanor charges would impact the court system. On average, the monetary value of court personnel time to process a Class 3 misdemeanor is estimated at \$31.

The changes in Section 2 in subsection (b), which would become effective December 1, 2013, add possessing locksmith tools by a person who is not licensed as a locksmith to the list of violations that could result in charges of the Class 1 misdemeanor or Class I felony offenses laid out in new subsection (c). It is not possible to estimate the number of new or elevated charges that may arise from the expansion of this offense. These new Class 1 misdemeanor charges would impact the court system. On average, the monetary value of court personnel time to process a misdemeanor is estimated to be \$165. For any existing Class 3 misdemeanor charge that would now be a Class 1 misdemeanor, the courts will see a fiscal impact of \$134 per case (\$165 for a Class 1 misdemeanor minus \$31 for a Class 3 misdemeanor equals \$134).

While pleas to Class I felonies are sometimes handled in district court, many pleas and all trials for Class I felonies are handled in superior court. Overall, the monetary value of the average workload of a Class I felony case for those positions typically involved in felony cases is \$365. For any existing Class 3 misdemeanor charge that would now be a Class I felony, the courts will see a fiscal impact of \$334 per case (\$365 for a Class I felony minus \$31 for a Class 3 misdemeanor equals \$334).

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. The cost to IDS of the proposed change from a Class 3 to a Class 1 misdemeanor is not quantifiable. IDS estimates that the cost of a new Class I Felony will result in an increased cost of \$55 per case for a private appointed counsel (PAC) attorney (\$221 for a Class I felony minus \$166 for a non-traffic misdemeanor equals \$55) and an increase of \$160 per case for a contracted defense attorney (\$314 for a Class I Felony minus \$154 for a Class 3 misdemeanor equals \$160). In superior court, IDS estimates that the cost of a PAC attorney per case for a Class I felony would be increased by \$75 (from \$321 to \$396) if the case does not go to trial and by \$199 (from \$847 to \$1,046) if it does.

### **Department of Public Safety –Prison Section**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. The Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders may be repeat offenders under the proposed statute.

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<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2013</b>	<b>June 30 2014</b>	<b>June 30 2015</b>	<b>June 30 2016</b>	<b>June 30 2017</b>
1. Inmates <sup>2</sup>	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2011-12, 30% of Class 3 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 3 convictions was 8 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, additional convictions that result from the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

This bill also creates a new offense. G.S. 74F-3 is amended to provide that it shall be unlawful for any person to possess any locksmith tools unless the person is licensed as a locksmith under this Chapter or exempted from the provisions of this Chapter. Violation of this offense is a Class 1 misdemeanor for the first offense and a Class I felony for any subsequent violations. This provision reclassifies some conduct which may already be charged as a Class I felony under G.S. 14-55, Preparation to commit burglary or other housebreakings. G.S. 14-55 provides that it shall be a Class I felony for any person to be in possession, without lawful excuse, of any picklock, key, bit or other implement of housebreaking.

In FY 2011-12, there were 27 convictions for possession of burglary tools. It is not known how many current convictions for this offense would qualify for the new Class I felony in G.S. 74F-3. Given that possession of burglary tools is currently a Class I felony offense, however, convictions under the proposed G.S. 74F-3 would not be expected to affect the prison population because the two offenses are in the same felony offense class.

**Department of Public Safety – Community Correction Section**

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

<sup>3</sup> Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.<sup>4</sup> General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is \$1,960 (540 days times \$3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is \$1,634 (450 days times \$3.63 per day).

In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup> The average lengths of intermediate and community punishment imposed for this offense class were 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is \$2,831 (780 days times \$3.63 per day). Of those convicted to a community sentence, almost all received supervised sentences. The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is \$2,396 (660 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced to intermediate or supervised community sentences under the proposed bill.

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** None

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<sup>4</sup> CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

<sup>5</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.