

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: HB 1100 (2nd Edition)
SHORT TITLE: Counterfeiting/Negotiable Instruments
SPONSOR(S):

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
GENERAL FUND					
Correction					
Recurring (<u>min.</u>)	-	\$ 2.8 mill. ⁺	\$ 3.7 mill. ⁺	\$ 4.0 mill. ⁺	\$ 4.2 mill. ⁺
Judicial					
Recurring (<u>min.</u>)	\$ 91,702 ⁺	\$ 159,624 ⁺	\$ 162,167 ⁺	\$ 164,836 ⁺	\$ 167,639 ⁺
TOTAL EXPENDITURES:[^]	\$ 91,702⁺	\$ 3.0 mill.⁺	\$ 3.8 mill.⁺	\$ 4.2 mill.⁺	\$ 4.4 mill.⁺
ADDITIONAL PRISON BEDS^{^*}	-	115⁺	146⁺	154⁺	159⁺
POSITIONS:	-	46⁺	58⁺	62⁺	64⁺
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: Criminal penalties are effective December 1, 2002; the remainder of the bill is effective October 1, 2002.					
<i>[^]This analysis can only project a partial impact from HB 1100. There will be additional prison beds and Correction expenditures of an undetermined amount. These are indicated by a (+).</i>					
<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: (Provided by the Research Division of the General Assembly)

This bill would make several changes and additions to the criminal law statutes:

- The forgery and counterfeiting statute would be amended to make possession of counterfeit currency unlawful. The penalty for forging or counterfeiting an instrument would be a Class H felony. The offense of trafficking in counterfeit instruments would be created, and would be punishable as a Class G felony. The offense would be applicable to the forgery or counterfeiting of foreign or domestic instruments. Obtaining encoded information from another person's financial transaction card would be included in the financial transaction card theft statute.
- Financial identity fraud would include the theft of the identity of a deceased person, and a violation would be punishable as a Class G Felony. If the perpetrator possessed three or more separate identities, or if the victim suffered arrest, detention, or conviction, the offense would be a Class F Felony. The offense of trafficking in stolen identities would be created, and would be punishable as a Class E felony. Restitution would be added as a court-ordered remedy.
- The statute providing for the right of a victim of identity fraud to bring an action for civil damages would be recodified into Chapter 1. The action may be filed regardless of whether criminal prosecution occurs. The statute would be amended to add venue provisions.

Specifically:

Section 1 states that a person who either forges an instrument, or counterfeits (manufactures) an instrument, with the intent to defraud, would be guilty of a Class H felony. "Currency" would be added to the instruments or documents that are subject to the forgery and counterfeiting statute. Any person possessing or transporting five or more counterfeit instruments would be guilty of a Class G felony. The applicable terms are defined.

Section 2 would amend the financial transaction card theft statute to add the definition of "scanning device."

Section 3 would make it a criminal offense to use a scanning device to obtain, without authorization and with the intent to defraud, the encoded information from another person's financial transaction card. Receiving encoded information with the intent to defraud would also be an offense under the statute. A violation of this statute is a Class I felony.

Section 4 amends the financial identity fraud statutes to add the taking of the identity of a deceased person as a violation. The section also adds additional numbers or information to the definitional list of "identifying information." The taking of an identity for the purpose of obtaining any thing of value, benefit or advantage has been added to the statute. *Section 7* of this bill increases the offense class of the offenses affected by these amendments.

Section 5 adds the new offense of "trafficking" in stolen identities. Any person who possesses another person's identifying information, with the intent to sell or transfer it, would be guilty of a

trafficking. The purchase, sale, or transfer of identifying information, with the intent to commit or assist another in committing financial identity fraud, would constitute trafficking

Section 6 would be effective October 1, 2002, and provides that notwithstanding any criminal provisions applicable to the financial identity theft, the perpetrator would be subject to civil damages under a new statutory provision.

Section 7 would enhance the penalty for financial identity fraud by changing it from a Class H to a Class G felony. The offense is a Class F felony when a victim suffers arrest, detention, or conviction, or the perpetrator has identifying information relating to more than three separate identities. Trafficking in stolen identities is defined and would be classified as a Class E felony.

This section would also allow a court the discretion to order the offender to pay restitution to the victim for financial loss, in addition to any other penalty authorized by law. Financial loss could include any lost wages, or attorneys' fees incurred by the victim.

Section 8 would add a new provision in Chapter 1 of the General Statutes. It would provide for a civil action against any person who committed an act that is unlawful under the financial identity fraud statutes. Damages would be the greater of \$5,000 for each incident, or three times the amount of actual damages. Venue would be where the plaintiff resides, or where any of the unlawful acts occurred, regardless of whether the civil defendant was ever actually present in that county. The action would have to be brought within three years from the date of the discovery of the identity of the perpetrator, or when it should have reasonably been discovered. The section states that the victim would have an action for damages whether the perpetrator was ever criminally prosecuted for the acts.

Section 9 states that the new civil law provisions would be effective on October 1, 2002, and would apply to acts committed on or after that date. The criminal law provisions in the act would be effective on December 1, 2002, and would apply to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY: The following table provides a brief overview of the criminal penalty costs associated with the proposed legislation. Many of the provisions involve new or expanded offenses, and costs for those provisions cannot be determined.

Section	Description	Offense Effect	Impact in FY 2002-03 & 2003-04 <i>Correction*</i>	<i>Judicial</i>
1	Expands counterfeiting currency definition	Potential increase in Class H felonies	unknown; example: 3 convictions = 1 bed in FY 03-04, 2 beds in FY 04-05	unknown
	Creates a new offense, possessing 5 or more counterfeited instruments	Class G offense for new subgroup	unknown; example: 2 convictions = 1 bed in FY 03-04, 2 beds in FY 04-05	unknown
	Increase in penalty for counterfeiting instrument	Increase from Class I to Class H offense	FY 03-04: \$2.4 mill. 101 beds 40 positions	FY 02-03: \$ 92,000 FY 03-04: \$160,000
3	Adds "using a scanning device" to financial transaction card theft	Potential increase in Class I felonies	unknown; example: 5 convictions = 1 bed in FY 03-04, 2 beds in FY 04-05	unknown
	Adds receiving encoded information from another's card to financial transaction card theft	New Class I offense	unknown; example: 5 convictions = 1 bed in FY 03-04, 2 beds in FY 04-05	unknown
4	Adds use of a deceased person's identifying information to financial identity fraud	Potential (small) increase in Class G and Class F felonies	unknown; example: 2 convictions = 1 bed in FY 03-04, 2 beds in FY 04-05	unknown (small)
	Expands definition of identifying information	Potential increase in violations of this section	unknown	unknown
5	Creates a new offense, trafficking in stolen identities	Potential increase in Class E felonies	unknown; example: 2 convictions = 1 bed in FY 03-04, 3 beds in FY 04-05	unknown
7	Increase in penalty for financial identity fraud and for financial identity fraud if victim suffers arrest, detention, or conviction	Increase from Class H to Class G; from Class G to Class F	FY 03-04: \$346,000 14 beds 6 positions (assumes no Class F)	FY 02-03: \$13,000 FY 03-04: \$23,000
	Creates a new Class F felony for possessing the identifying information of 3 or more persons	Potential increase in Class F felonies	unknown; example: 2 convictions = 1 bed in FY 03-04, 2 beds in FY 04-05	unknown
6, 7, 8	Civil remedies	none	none	unknown

*Correction costs in this chart are for active sentences only. There will be additional costs associated with community and intermediate sentences for Class E – I felons.

Department of Correction

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for population increases caused by a specific bill. 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.* Thus the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add at least 159 inmates to the prison system by the end of FY 2006-07. Additional inmates may be added due to provisions in this bill that create new offenses or expand the definitions for existing offenses, but the number of new inmates resulting from those provisions cannot be quantified.

	June 30 <u>2003</u>	June 30 <u>2004</u>	June 30 <u>2005</u>	June 30 <u>2006</u>	June 30 <u>2007</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	34,129	34,840	35,647	36,485	37,405
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	32,087	34,679	34,847	34,847	34,847
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-2,042	-161	-800	-1,638	-2,558
4. No. of Projected Additional Inmates Due to this Bill³	0	115⁺	146⁺	154⁺	159⁺
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill³</u>	0	115 ⁺	146 ⁺	154 ⁺	159 ⁺

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on December 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

² Projected number of prison beds is based on beds completed or funded and under construction as of 12/13/01. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2002 Session to eliminate prison beds or close prisons.**

³ Criminal Penalty bills effective December 1, 2002 will only affect inmate population for one month of FY 2002-03, June 2003, due to the lag time between when an offense is committed and an offender is sentenced. This analysis can only project a partial impact from HB 1100. There will be additional prison beds needed due to the expansion of existing offenses and the creation of a new Class E felony.

PROJECTIONS BY OFFENSE: The Sentencing Commission uses historical data and AOC offense codes to project the impact on the prison population. The Commission cannot estimate the potential impact of new offenses or of changes in prosecutorial behavior. This bill, HB 1100, has the potential to increase the number of prison beds needed by two different means, only one of which is quantifiable. The potential for additional, unquantifiable beds is signified by the (+) following each prison bed estimate.

In addition to prison beds, some offenders convicted of Class I through E felons may be given intermediate sentences rather than active sentences, and some Class I and H felons may be given community sentences. As the offense class increases, the percentage of offenders receiving non-active sentences decreases. Thus, provisions that increase an offense class will result in greater expenditures on prison sentences but a reduction in the size of the population receiving intermediate and/or community sentences. Provisions that expand or create new offenses may result in additional expenditures for intermediate and community sentences, as well as for active sentences. In FY 2000-01, the average daily cost per inmate was \$65.29 for active sentences, \$12.69 for intermediate sentences, and \$1.87 for community sentences.

In FY 2000-01, approximately 54 percent of all Class I felons received community sanctions, compared to 16 percent of all Class H felons and no Class G felons. Similarly, 37 percent of Class I felons received intermediate sanctions and only 9 percent received active sentences, compared to 51 percent (intermediate) and 33 percent (active) for Class H felons and 58 percent (intermediate) and 42 percent (active) for Class G felons. The average sentence length is also greater at higher offense classes, which further increases costs per conviction.

Increased offense classes. Violations of G.S. 14-119 are raised from Class I to Class H felonies, and to Class G felonies for the possession or transport of at least five counterfeited instruments with the intent to injure or defraud. In FY 2000-01 there were 598 convictions under G.S. 14-119; 19 percent of the convicted offenders received active sentences, 31 percent received intermediate sentences, and 50 percent received community sentences. Based on violations of the current statute, increasing the penalty from a Class I to a Class H felony would result in the need for an **additional 101 prison beds in FY 2003-04 at a total cost of \$2.4 million**; another 37 beds would be required by FY 2011-12. It is not known how many additional prison beds would result from the increase to a Class G felony.

Section 7 increases the penalty for violating G.S. 14-113.20(a) from a Class H felony to a Class G felony, and from a Class G felony to a Class F felony if the person who commits financial identity fraud is in possession of the identities of at least three other people. In FY 2000-01 there were 21 Class H convictions and no Class G convictions for Financial Identity Fraud under G.S. 14-113.20. There was one Class I conviction, which may have been for Attempt to Commit Financial Identity Fraud. Of the offenders convicted under G.S. 14-113.20, 18 percent received active sentences, 41 percent received intermediate sentences, and 41 percent received community sentences. The effect of increasing the offense classes from Class H to Class G and from Class G to Class F would be a need for **14 additional prison beds by FY 2003-04 at a cost of \$346,000**; another 23 beds would be needed by FY 2011-12.

Expansion or creation of offenses. Several sections are expanded to include new definitions or actions that constitute violations. The Sentencing Commission cannot predict how many additional convictions might occur as the result of the proposed amendment. The chart on the following page illustrates the number of convictions that would result in the need for an additional prison bed in the first year. The third column illustrates the second-year impact of the number of convictions in the second column. For example, 2 convictions of Class E felonies would lead to 1 new bed in Year 1 and 3 new beds in Year 2.

Felony Class	Convictions Needed for 1 Bed in Year 1	Second-Year Beds Resulting from Those Convictions
Class E	2 convictions = 1 bed	3 beds
Class F	2 convictions = 1 bed	2 beds
Class G	2 convictions = 1 bed	2 beds
Class H	3 convictions = 1 bed	2 beds
Class I	5 convictions = 1 bed	2 beds

Section 1 amends G.S. 14-119, which makes it a felony to forge or counterfeit an instrument, by adding possessing a counterfeit instrument with the intent to injure or defraud any person, and adding “currency” to the list of instruments covered. There may be additional prison beds required due to new violations in G.S. 14-119. If, for example, there are 3 additional Class H felony convictions for this offense each year, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and post-release sentencing revocations.

New subsection (c) increases the penalty to a Class G felony if a person transports or possesses 5 or more counterfeited instruments with the intent to defraud. The Sentencing Commission does not have data on the number of convictions that involved possession of 5 or more instruments. Thus, it cannot estimate the number of convictions that would fall under the new Class G felony. If, for example, 2 of the convictions were raised to Class G felonies, there would be the need for 1 additional prison bed in the first year and 2 additional prison beds in the second year.

Sections 2 and 3 define and add the use of a “scanning device” to the actions that constitute financial transaction card theft. In FY 2000-01 there were 115 convictions of financial transaction card theft under G.S. 14-113.9(a). It is assumed that adding the use of a scanning device would increase the number of violations and convictions. However, the Sentencing Commission cannot estimate the frequency with which scanning devices are used in this manner and therefore it cannot predict the number of additional convictions that might occur. If, for example, there are 5 additional Class I felony convictions for this offense each year, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and post-release sentencing revocations.

Section 4 redefines the statute (G.S. 14-113.20) to include the use of a *deceased person’s* identifying information, and expands the list of “identifying information” which another person may not obtain, possess, or use. *Section 7* of this bill also increases the punishment for violating G.S. 114-113.20(a); violations would be punishable as Class G felonies, or as Class F felonies if

the victim suffered arrest, detention, or conviction as a result of the offense. The AOC does not anticipate that many new charges or convictions will result from the inclusion of “deceased person.” The impact of expanding the list of identifying information is unknown. If, for example, this bill resulted in 2 additional convictions each year, there would be the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and post-release sentencing revocations.

Section 5 creates a new offense, “trafficking in stolen identities,” punishable as a Class E felony. The Sentencing Commission does not have any historical data from which to estimate the potential impact on the prison population. If, for example, there were 2 Class E convictions for this offense each year, this would result in the need for 1 additional prison bed the first year and 3 additional prison beds the second year due to active sentences and post-release sentencing revocations.

POSITIONS: It is anticipated that by FY 2006-07 at least 64 positions would be needed to supervise the additional inmates housed as a result of the increase in offense classes under this bill. There may be the need for additional positions to supervise inmates who are convicted of new violations under this bill. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal Notes look at the impact of a bill through the year 2007. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Inmates Due to This Bill*	162 ⁺	165 ⁺	167 ⁺	173 ⁺
Available Beds	-3,459	-4,356	-5,230	-6,205
New Beds Needed (minimum)*	-3,621	-4,521	-5,397	-6,378

*Only part of the impact is quantifiable. Additional potential impact is indicated by the (+).

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under the quantifiable portion of this bill:

- 6% Close Custody
- 36% Medium Custody
- 58% Minimum Custody

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2000-01 costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2001-02	\$36,757	\$69,994	\$81,375

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on Page 1 of this note. These costs assume that funds to construct prison beds should be budgeted in advance. Based on previous prison construction projects we are assuming it will typically require three years for planning, design and construction of new beds.

OPERATING: Operating costs are based on actual 2000-01 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate will be added each year to the base costs for FY 2001 shown below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1. Only operating costs are shown for this bill.

Daily Inmate Operating Cost 2000-01

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2000-01)	\$54.02	\$67.43	\$84.21	\$65.29

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2003 and 2004; this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2004-05 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

Operating costs for the two quantifiable elements of this legislation are estimated to be \$2.8 million in FY 2003-04, and will increase gradually to approximately \$5 million by FY 2010-11. There will be additional expenditures for non-active sentences and for convictions resulting from new or expanded offenses.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts 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.

The AOC estimates expenditures of at least \$105,000 in FY 2002-03, and increased expenditures in later years. This analysis does not take into account all of the potential violations under the proposed legislation. The AOC cannot estimate the impact of all or part of sections 1, 3, 5 or 7, which would create new offenses or expand existing offenses. Violations of the new offenses, and increased violations due to expanded offenses, would create additional workload and expenditures for the court system.

Section 1: Forgery of instrument

(1) Counterfeiting currency

AOC data for calendar 2001 indicate that 3,491 defendants were charged with forging instruments under G.S. 14-119. There is no data from which to estimate the additional defendants who would be charged with making, forging, or counterfeiting currency under the amended G.S. 14-119. Depending on the number of such charges, this amendment could have a substantial impact on the court system. However, some of the charges of counterfeiting currency may be currently prosecuted under existing fraud-related criminal provisions.

(2) Possessing counterfeited instruments

The AOC has no data from which to estimate the number of defendants who would be charged with transporting or possessing five or more counterfeited instruments with the intent to defraud. Depending on the number of such charges, this amendment could have a substantial impact on the court system. These new Class G felony charges would be disposed relatively severe in punishment and therefore costly to the court system.

(3) Increase in penalty for counterfeiting instrument

This bill increases the penalty for forging or counterfeiting an instrument with the intent to defraud from a Class I felony to a Class H felony. AOC data indicate that for the 8,959 charges for all fraud activity in FY 99-00, 39 of them (0.4%) were disposed by trial, 5,704 (63.7%) by plea, and 3,216 (35.9%) by dismissal. Applying these percentages to the 3,491 charges above yields 14 trials, 2,224 pleas, and 1,253 dismissals.

Processing 14 trials as Class H felonies instead of Class I felonies would cost an additional **\$1,722** in in-court disposition time. This does not take into account the costs of appealing convictions to superior court. It is estimated that 10 of these trials would require indigent defense, at an additional cost of **\$1,651**. Processing 2,224 pleas as Class H felonies instead of Class I felonies would cost an additional **\$46,704** in non-jury disposition time. The AOC estimates that 68 percent of these pleas will require indigent defense, for an additional cost of **\$107,126**. The AOC does not anticipate a substantial increase in dismissal costs. The costs for FY 2002-03 in the front-page box reflect expenditures for seven months (effective date is December 1, 2002). Base costs in subsequent years are adjusted for inflation at a rate of 5 percent. Indigent defense costs are set at a specific rate and thus are not adjusted for inflation.

Generally, an enhancement in penalty would be accompanied by a more rigorous defense and prosecution, and would result in increased court time and costs to dispose of cases. District

attorneys may be less likely to accept pleas or dismiss a case, which would modify the percentages of disposition methods used above.

Section 3: Financial transaction card theft

(1) Using a scanning device to obtain encoded information

This bill expands G.S. 14-113.9(a) by adding subdivision (5)(i), prohibiting the use of a scanning device to access, obtain, or store information encoded on a financial transaction card with or without the permission of the user of the card and with intent to defraud. Per current G.S. 14-113.17(b), violation of this provision is a Class I felony. AOC data for calendar 2000 indicate that there were 1,022 defendants charged under G.S.14-113.9. The AOC has no data from which to estimate of the additional number of defendants who would be charged with this new offense.

(2) Receiving encoded information from another's card

Under new subdivision (5)(ii) of G.S. 14-113.9(a), it is a Class I felony to receive the encoded information from another person's financial transaction card. The AOC has no data from which to estimate the number of defendants who would be charged with this new offense.

Sections 4 and 7: Financial identity fraud

(1) Using a deceased person's identifying information

The AOC has no data from which to estimate the number of additional charges that would occur under G.S. 14-113.20 as a result of this new offense. A member of the SBI's Financial Crimes Investigation Unit believes that the number of charges would be very low.

(2) Increase in penalty for financial identity fraud

Under current law, financial identity fraud is punishable as a Class H felony; if the victim suffers arrest or conviction as a result of the defendant's acts, it is a Class G felony. Section 7 of this bill increases the penalty in the first instance to a Class G felony; it is a Class F felony if the victim suffers arrest or conviction, or if the defendant possesses the identifying information of 3 or more persons. The AOC cannot estimate the number of charges that would be enhanced to a Class F felony; the following analysis assumes that all of these charges are for Class G felonies and thus provides conservative cost estimates.

AOC data for calendar 2001 indicate that there were 499 defendants charged under G.S. 14-113.20. For the 8,959 charges for all fraud activity in FY 99-00, 0.4% were disposed by trial, 63.7% by plea, and 35.9% by dismissal. Applying these percentages to the 499 charges yields 2 trials, 318 pleas, and 179 dismissals. AOC data for FY 99-00 indicate indigent defendants are involved in approximately 72% of the trials for all fraud charges and 68% of the pleas for all fraud charges. Thus, the incremental costs of indigent defense must be added to one Class G felony trial and 216 Class G pleas. Processing 2 trials as Class G felonies instead of Class H felonies would cost an additional **\$1,540** of in-court disposition time and **\$302** in indigent defense costs. Processing 318 pleas as Class G felonies instead of Class H felonies would cost an additional **\$5,724** in non-jury disposition time and **\$15,163** in indigent defense costs. Base costs in subsequent years are adjusted for inflation at a rate of 5 percent. Indigent defense costs are set at a specific rate and thus are not adjusted for inflation.

Section 5: Trafficking in stolen identities

The AOC has no data from which to estimate the number of additional charges that would occur as a result of this new offense. Section 7 of this bill provides that violation of this section is a Class E felony offense.

Sections 6, 7 and 8: Civil remedies

The AOC has no data from which to estimate the number of civil actions that would arise from this bill. Depending on the number of actions filed, there could be a substantial impact on the court system.

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

TECHNICAL CONSIDERATIONS: None.

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Signed Copy Located in the NCGA Principal Clerk's Offices