

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 590 (Fourth Edition)

SHORT TITLE: Consumer Credit Counseling/Debt Management.

SPONSOR(S): Senator Dorsett

	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.			
Justice		No substantial impact anticipated.			
LOCAL GOVERNMENTS		Exact amount cannot be determined; no substantial impact anticipated.			
ADDITIONAL PRISON BEDS*		No additional prison beds anticipated.			
POSITIONS: (cumulative)		Exact amount cannot be determined; no additional positions anticipated.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments; Department of Justice					
EFFECTIVE DATE: Upon ratification.					
<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 amends G.S. 14-426 to permit additional specified individuals to engage in the practice of debt adjustment. Engaging in debt adjusting services or transactions without specific authorization is a Class 2 misdemeanor.

Section 1 of SB 590 amends G.S. 14-426 to provide that lawyers who engage in debt adjusting activities incidental to the practice of law and certain organizations that provide credit counseling, education, and debt management services are *not* deemed to be debt adjusters or engaged in the business or practice of debt adjusting. An organization must meet a specified list of criteria not to be considered a debt adjuster. The fourth edition of the bill adds to these criteria that the organization not receive a payment for referring the debtor to a provider of services.

Section 2 amends G.S. 14-423 to broaden the definition of “debt adjusting” by including additional activities not included under current law. This section also restricts the definition of “debtor” to individuals residing in North Carolina.

Current G.S. 14-425 permits district attorneys to act to enjoin a person from acting, offering to act, or attempting to act as a debt adjuster, or engage in debt adjusting. Section 3 of the bill amends G.S. 14-425 to allow the Attorney General, as well as district attorneys, to act to enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting business or the offering of any debt adjusting services and for whomever brings the action under this section to appoint a receiver for the property and money employed in the transaction. Section 3 adds to G.S. 14-425 that the court may assess civil penalties and award attorneys’ fees to the State. The provisions in this bill expire in two years (October 1, 2007).

Source: Administrative Office of the Courts Research and Planning (05/09/05).

ASSUMPTIONS AND METHODOLOGY:

General

By expanding the conduct defined as debt adjusting, this bill would be expected to result in additional Class 2 misdemeanor charges and convictions and could, consequently, entail costs to the Judiciary and Department of Correction. The Administrative Office of the Courts (AOC) currently does not maintain a specific offense code for engaging in debt adjusting in violation of G.S. 14-424, which is some indication that the offense may be infrequently charged and rarely result in convictions. As such, few additional Class 2 misdemeanor charges and convictions are anticipated to result from this bill, and the associated fiscal impact is not expected to be substantial.

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 expand the scope of Class 2 misdemeanors for unlawfully engaging in debt adjusting (violations of G.S. 14-423), additional Class 2 convictions would be expected to result from this bill. Due to lack of historical data, the Sentencing Commission is unable to project the

number of additional Class 2 misdemeanors that would result, but the lack of an AOC offense code (see “General”) is some indication that the number would not be substantial.

In FY 2003-04, 15 percent of Class 2 misdemeanants received active sentences and the average active sentence length was 23 days. Because Class 2 misdemeanors carry a maximum sentence of 45 days and sentences less than 90 days are served in local jails, offenders sentenced under this bill would not impact prison population. Offenders with active sentences of less than thirty days are housed in county jails at county expense.

In FY 2003-04, 86 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

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.

Due to lack of historical data, AOC is unable to estimate the number of additional Class 2 misdemeanor charges that would result from expanding the scope of offenses relating to debt adjusting. However, the lack of an offense code for current violations of G.S. 14-423 is some indication that charges are presently infrequent (see “General”). Based on the costs of time in court, attorney preparation time, and jury fees, the average estimated cost to process one Class 2 misdemeanor charge via trial is \$1,365. For trials in which indigent defense is needed, AOC estimates that the additional cost would be \$949 per trial. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$271 per plea.

To the extent that the Attorney General would act under this bill to enjoin the continuation of debt adjusting in circumstances where district attorneys are not doing so now, there would be additional hearings in superior court to assess civil penalties and award attorney fees. Any proceeds from civil penalties would be remitted to the Civil Penalty and Forfeiture Fund, which must be used exclusively for the public school system as required by the State Constitution. Because no data is available regarding the frequency with which such hearings would occur, the associated costs and amount of civil penalties assessed cannot be determined.

Department of Justice

The Department states that it will be able to absorb any additional workload generated by this bill with existing resources.

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

TECHNICAL CONSIDERATIONS: This bill would be effective when it becomes law. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The N.C. Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and, thus, assume that the legislation will not impact the prison system until the beginning of 2006-07. If the bill becomes effective prior to December 1, there will be an impact on the prison system in the 2005-06 fiscal year.

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Signed Copy Located in the NCGA Principal Clerk's Offices