

# GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

## Legislative Fiscal Note

**BILL NUMBER:** Senate Bill 685 (Third Edition)

**SHORT TITLE:** Up Penalties Cross Burn/Illeg. To Hang Noose.

**SPONSOR(S):** Senator Berger of Franklin

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>
<b>GENERAL FUND</b>	<b>Note: This bill would be expected to have little, if any, effect on Corrections and the Judicial system.</b>				
<b>Correction</b>	<b>Minimal fiscal impact</b>				
<b>Judicial</b>	<b>Minimal fiscal impact; exact amount cannot be determined</b>				
<b>TOTAL EXPENDITURES:</b>					
<b>ADDITIONAL PRISON BEDS:</b> (cumulative)*				<b>Cannot be determined</b>	
<b>POSITIONS:</b> (cumulative)				<b>Cannot be determined</b>	
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch.				
<b>EFFECTIVE DATE:</b>	Sections 1 through 4.1 of this act become effective December 1, 2008, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.				
<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:

July 15, 2008

S 685. UP PENALTIES CROSS BURN/ILLEG. TO HANG NOOSE (NEW). Filed 3/12/07. House committee substitute deletes the provisions of the 2nd edition and replaces it with AN ACT TO PROHIBIT THE PLACING OF A BURNING CROSS ANYWHERE IN THE STATE; RAISE THE PENALTY FOR BURNING A CROSS WITH THE INTENT TO INTIMIDATE; TO RAISE THE PENALTY FOR PLACING AN EXHIBIT WITH THE INTENT TO INTIMIDATE; TO RAISE THE PENALTY FOR PLACING AN EXHIBIT WHILE WEARING A MASK, HOOD, OR OTHER DISGUISE; TO CLARIFY THAT THE TERM “EXHIBIT” INCLUDES OBJECTS SUCH AS NOOSES; TO RAISE THE PENALTY FOR OFFENSE COMMITTED BECAUSE OF VICTIM’S BACKGROUND; TO STUDY THE IMPACT OF RECENT CROSS BURNINGS AND NOOSE HANGINGS ACROSS THE STATE; AND TO MAKE RECOMMENDATIONS FOR MODIFICATION TO THE CRIMINAL LAWS OF THE STATE. Amends GS 14-12.12 to make it unlawful for any person to place or caused to be placed a burning or flaming cross or any manner of exhibit which includes a burning or flaming cross real or simulated, anywhere in the state (was, on the property of another in this state or on a public street or highway). Makes conforming change to caption. Amends GS 14-12.13 (placing exhibit with intention of intimidating, etc., another) and GS 14-12.14 (placing exhibit while wearing mask, hood, or other disguise) to provide that the term exhibit includes items such as a noose. Amends GS 14-12.15 to increase the penalty for violations of GS 14-12.12(b), GS 14-12.13, and GS 14-12.14 from a Class I to a Class H felony. Amends GS 14-3(c) to provide that a Class A1 or Class 1 misdemeanor committed because of the victim’s race, color, religion, nationality, or country of origin is a Class H (was, Class I) felony. Effective December 1, 2008, and applies to offenses committed on or after that date.

Requires the Legislative Research Commission to study the impact of recent cross burnings and noose hangings in the state and determine if any modifications need to be made to existing statutes. Requires the Commission to report its findings and recommendations for legislation to the 2009 General Assembly.

*Source: Bill Digest S.B. 685 (03/12/0200)*

Note: SB 685 used to be “DNR Form Signatures.” The bill has been completely rewritten.

#### **Department of Correction – Division of Prisons**

For amended GS 14-12.12, 14-12.13, 14-12.14, and 14-3, the Sentencing Commission has no data from which to estimate the impact of this proposed bill on the prison population. 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), a Class 1 misdemeanor resulting from offenses which contain ethnic intimidation as an element of the offense. It is not known how many of these 6 convictions involved the conduct covered under the proposed amended offenses. Fiscal Research does not anticipate a significant impact due to this bill.

#### **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.<sup>1</sup>

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.

The lack of AOC offense codes for these offenses may be an indication of the relatively few number of charges that occur. There is no data from which to estimate the number of new charges resulting from the amended statutes. There is also no data from which to estimate how many charges 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

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Fiscal Research Division

**DATE:** July 16, 2008



**Signed Copy Located in the NCGA Principal Clerk's Offices**

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<sup>1</sup> 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.