

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 891 (Second Edition)

SHORT TITLE: Master Keys/Lock-Picking Devices Regulated.

SPONSOR(S): Representative Alexander

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>
<b>GENERAL FUND</b>					
<b>Correction</b>	Class I felonies created by this bill could lead to small increase in prison population and the need for more prison beds, but the exact number of beds needed and therefore cost cannot be determined (see pg. 2 for details).				
<b>Judicial</b>	Exact amount cannot be determined (see pg. 2 for details).				
<b>ADDITIONAL PRISON BEDS*</b>	Exact amount cannot be determined (see pg. 2 for details).				
<b>POSITIONS: (cumulative)</b>	Exact amount cannot be determined (see pg. 2 for details).				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> December 1, 2005					
<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 would enact new G.S. 14-56A, creating new criminal offenses for: 1) possession of any motor vehicle master key, or other lock-picking device, with the intent to commit any felony, larceny, or unauthorized use of a motor propelled conveyance; and, 2) the willful purchase, sale, or transfer of any motor vehicle master key, lock-picking, key-cutting, or hot wiring device for unlawful use. A first violation of this statute would be a Class 1 misdemeanor; a second, and any subsequent violation, would be a Class I felony.

## ASSUMPTIONS AND METHODOLOGY:

### **General**

As this bill would create new criminal offenses, it would be expected to lead to additional charges and convictions and would have an associated fiscal impact. This legislation would be expected to affect incarceration and indictment rates through two means:

- 1) *New Class 1 misdemeanor and Class I felony charges and convictions for unlawful possession, purchase, sale, or transfer of motor vehicle master keys, lock-picking, or other prohibited devices.*
- 2) *Some convictions for motor-vehicle-related offenses that would otherwise be Class 1 misdemeanors could be elevated to Class I felonies.*

New Class I felony convictions and present misdemeanor convictions elevated to Class I felonies could increase prison bed needs and therefore prison costs. New Class 1 misdemeanor convictions would likely impact local jails, though a short prison sentence could result. In addition, increased court workload and costs would be anticipated due to the additional charges for these offenses.

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 create new criminal offenses, the Sentencing Commission has no historical data from which to project the impact that this legislation would have on prison population. This bill would be expected to impact incarceration rates through two means: 1) by resulting in new Class 1 misdemeanor and Class I felony convictions, and 2) by elevating some current convictions from Class 1 misdemeanors to Class I felonies. The potential number of convictions under either scenario is unknown, but there would be an impact on prison population if a significant number of Class I felony convictions were to result from this bill.

Table 1 on the next page outlines convictions for related offenses under current law. Although we do not know what proportion of these offenses involved the use of a master key or other lock-picking device, these convictions may provide some indication of the potential number of individuals eligible to be charged and convicted under subsection (b) of this bill for possession of a master key or lock-picking device.

**Table 1: FY 2003-04 Convictions for Related Offenses**

<b>Offense Class</b>	<b>Offense</b>	<b>Convictions</b>
Class I Felony	§14-56 <i>Breaking or Entering a Motor Vehicle.</i>	586
Class H Felony	§ 14-72 <i>Felony Larceny, Motor Vehicle</i>	332
Class 1 Misdemeanor	§ 14-72.2 <i>Unauthorized Use of a Motor Vehicle</i>	1,466
Class 1 Misdemeanor	§ 14-72 <i>Misdemeanor Larceny, Motor Vehicle</i>	20
<b>Total</b>		<b>2,404</b>

For offenders receiving a first-time conviction under this bill (a Class 1 misdemeanor) and a conviction for one of the above offenses, if the sentences were to run concurrently, there would be no impact on prison population. However, offenders receiving a second or subsequent conviction under this bill would be guilty of a Class I felony. Thus, some offenders that would be punished as misdemeanants under current law for the offenses listed above could instead or additionally be convicted of a Class I felony as a result of this bill.

If a large number of the misdemeanor convictions shown above were to become Class I felony convictions, the impact on the prison system could be substantial. However, as only a second offense under this bill would be punishable as a Class I felony, the number of additional Class I felony convictions and the resulting impact on prison beds may not be significant.

*Class I Felonies:* In FY 03-04, eleven percent of Class I felony convictions resulted in active sentences. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

*Class 1 Misdemeanors:* In FY 2003-04, 19 percent of Class 1 misdemeanants received active sentences, and the average estimated sentence length was 43 days. DOC reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per offender per day. Because active sentences of less than ninety days are served in county jails, Class 1 misdemeanor convictions resulting from this legislation are not expected to significantly impact prison population.

*Non-Active Sentences:* In FY 2003-04, 49 percent of Class I convictions resulted in intermediate sanctions and 40 percent in community sanctions; two percent of Class 1 misdemeanants received intermediate sanctions and 79 percent received community punishment. Probation officers in the Division of Community Correction (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

### **Judicial Branch**

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

For calendar year 2004, AOC data indicates that 3,550 defendants were charged under G.S. 14-56 with breaking or entering into or breaking out of motor vehicles (felony Class I) and 118 defendants were charged with an attempt for this offense (felony Class H). AOC data additionally shows that 4,928 defendants were charged with unauthorized use of a motor vehicle under G.S. 14-72.2 (misdemeanor Class 1).

As this bill would create new offenses, AOC is unable to estimate the number of additional charges that would result. For any additional Class I felony or Class 1 misdemeanor charges due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior and district court workload, respectively. AOC estimates the costs to process one Class I felony or one Class 1 misdemeanor charge as shown in Table 2 below. Based on prior-year data, the majority of charges that are not dismissed are likely to be settled via guilty plea.

**Table 2: CY 2004 Estimated Per Charge Settlement Costs**

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	-
<i>Class I Felony</i>	\$3,877	\$1,931	\$5,808	\$329
<i>Class 1 Misdemeanor</i>	\$1,880	\$1,333	\$3,213	\$284

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

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** April 14, 2005

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