

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 884 2nd Edition
SHORT TITLE: Matthew Shepard Memorial Act
SPONSOR(S): Reps. Luebke and Insko, et al.

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available (X)		
	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>
REVENUES					
EXPENDITURES					
POSITIONS:					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Judicial Branch, Department of Correction				
EFFECTIVE DATE:	December 1, 1999 and applies to offenses committed on or after that date.				

BILL SUMMARY:

MATTHEW SHEPARD MEMORIAL ACT. TO HONOR THE MEMORY OF MATTHEW SHEPARD BY EXPANDING THE SCOPE OF THE HATE CRIME LAWS AND INCREASING THE CRIMINAL PENALTY FOR COMMITTING A HATE CRIME. Expands coverage of hate crimes statutes, GS 14-3(c) and 14-401.14, to include offenses committed because of the victim's gender, sexual orientation, or disability. If felony is committed because of victim's race, color, religion, nationality, gender, sexual orientation, disability, or country of origin, it will be punished at one sentencing level higher than that authorized by the offender's prior record level. Adds gender, sexual orientation, and disability to the list of aggravating factors under GS 15A-1340.16(d)(17). Effective Dec. 1, 1999; applies to offenses committed on or after that date.

Source: Institute of Government, Daily Bulletin, April 1, 1999.

MATTHEW SHEPARD MEMORIAL ACT. Intro. 4/1/99. House committee substitute makes the following changes to 1st edition. Amends GS 14-3(c) to add age to the list of factors that

triggers application of the act, and adds to both GS 14-3(c) and GS 14-401.14 requirement that the offense must arise out of the offender's generalized hatred of that category of persons. Adds to GS 15A-1340.16(d)(17) (list of aggravating factors) that the defendant was not charged with an offense under GS 14-401.14, and the punishment has not already been enhanced by GS 14-3(c).

Source: Institute of Government, Daily Bulletin, April 21, 1999.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

The Administrative Office of the Courts (AOC) believes that while they do not have the data to be able to predict the number of cases under this bill, they do not anticipate a substantial fiscal impact. This conclusion is based on the facts that the defendant must be motivated by a generalized hatred for one of the listed groups of people, that most of the cases would already be in court, and that the punishment upgrades are not substantial. However, the workload of the courts would increase for the felony cases involved.

Under the current law, there were 175 defendants charged with misdemeanor assault on a disabled person, 41 charged with felony assault on a disabled person, and 14 charged with abuse or neglect related crimes against disabled or elderly people (13 were felonies). The AOC does not have data on all the categories added in the bill or data on how many of these were motivated by a generalized hatred for the related group of people. For this reason, the AOC is unable to estimate how many defendants would have their punishment upgraded from a Class A1 or Class 1 misdemeanor to a Class I felony or from a Class 2 or Class 3 misdemeanor to a Class 1 misdemeanor. The AOC does not expect that there would be enough cases in this section of the bill to result in a substantial fiscal impact on the courts. Any impact would result from cases that would become Class I felonies because felonies require more court workload.

The bill also enhances felony offenses committed due to the offenders generalized hatred for one of the categories of persons. These offenders would be sentenced at one higher prior record level. Because of the limited number of felonies expected and the limited level of penalty increase under this section of the bill, a substantial fiscal impact is not anticipated.

In addition, the bill would amend the list of aggravating factors to add "gender, sexual orientation, disability, age" under factor 17 and allow judges the discretion to use the amended aggravating factor in some cases. It could be used when the defendant was not charged with a Class I felony under G.S. 14-401.14 and when the sentence was not elevated one prior record level.

The AOC believes that the fiscal impact of this bill would not be substantial and that the impact would be due to additional workload related to the felonies involved. Based on the AOC analysis, the Fiscal Research Division believes that any additional workload of this nature could be absorbed with current resources.

Department of Correction

The Sentencing Commission does not have information on how many convictions would rise from a Class A1 or Class 1 misdemeanor to a Class I felony or from a Class 2 or Class 3 misdemeanor to a Class 1 misdemeanor. However, if 100 offenders were convicted of a Class 1 misdemeanor instead of a Class 2 or Class 3 misdemeanor, approximately one new full time equivalent inmate would be added in the first year and 14 additional from probation revocations in the second year for a total of 15 the second year. If 100 are convicted of a Class I Felony instead of a Class A1 or Class 1 misdemeanor, approximately one new full time equivalent inmate would be added in the first year and five additional from probation revocations in the second year for a total of six the second year.

Shifting the prior record level up one level under the bill would increase the amount of active time served and would vary widely depending upon the original class and prior record level. The average additional months served could range from .3 months to 113.6 months. If 100 offenders were sentenced at one prior record level higher, on average, an additional 35 full time equivalent inmates would be added. If 10 offenders sentenced in each felony class from I up to B1 are sentenced one prior record level higher, it would add on average 124 full time equivalent inmates within 10 years.

In the AOC database, there are currently 11 convictions under G.S. 14-401.14. It is unknown how many convictions would be added due to the inclusion of “gender, sexual orientation, disability, age.” If the current 11 convictions were sentenced to a Class I felony instead of a Class 1 misdemeanor and there were 11 more convictions from the new classifications, it would not add any full time equivalent inmates the first year. By the second year two full time equivalent inmates would be added due to direct admissions and probation revocations.

The bill also expands the definition of one of the aggravating factors in cases where the defendant was not charged with a Class I felony under G.S. 14-401.14 and the sentence was not elevated one prior record level. There is no information on how often the expanded definition of an aggravating factor might be used in sentencing. If 10 offenders were sentenced in each felony class from Class B1 through Class I, with each receiving the midpoint of the aggravated range instead of the midpoint of the presumptive range, 180 full time equivalent inmates would be added within seven years.

Because of the low number of additional convictions anticipated and the addition of language to limit the offenders action to that arising from the “offender’s generalized hatred of that category of persons,” the Fiscal Research Division believes that the minimal fiscal impact could be absorbed within existing resources.

TECHNICAL CONSIDERATIONS:

Clarification in Section 1 could avoid confusion in sentencing. The new language specifies that “the offender shall be punished at the sentencing level that is one level higher” but could be read to mean one felony class higher rather than one prior record level.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Tammy Lester

APPROVED BY: Tom Covington

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