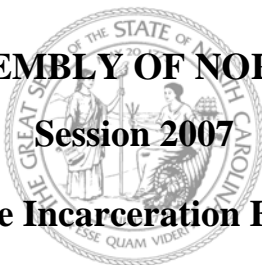


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 44 (Third Edition)

SHORT TITLE: DV Orders/Repeat Violators.

SPONSOR(S): Representatives McLawhorn, Ross, Farmer-Butterfield, and Parmon

FISCAL IMPACT					
	Yes ( X )	No ( )	No Estimate Available ( )		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
<b>GENERAL FUND</b>					
<b>Correction</b>					
Recurring	<b>This bill is expected to have an impact on the prison system; see page 3</b>				
Nonrecurring					
<b>Judicial</b>					
Recurring	<b>Cost to dispose of cases is estimated at \$19,110 for first full year</b>				
<b>TOTAL EXPENDITURES:</b>	<b>Total expenditures cannot be determined due to unknown impact for prison capital and operating costs.</b>				
<b>ADDITIONAL PRISON BEDS:</b>					
(cumulative)*	<b>Exact impact cannot be determined; see page 3</b>				
<b>POSITIONS:</b>					
(cumulative)	<b>Exact amount cannot be determined</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> December 1, 2008					
<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:** HB 44 reduces the number of prior convictions that would subject a defendant to enhanced punishment for violating a protective order. Under current GS 50B-4.1(f), a defendant is guilty of a Class H felony if he violates a protective order and has three prior convictions for such offense. The first edition of HB44 lowered the threshold to one prior conviction. *The 2<sup>nd</sup> and 3<sup>rd</sup> editions of HB44 lower the threshold to two prior convictions.* The third edition also clarifies that offenses committed before December 1, 2008 count in determining the total number of prior offenses.

**ASSUMPTIONS AND METHODOLOGY:**

Under current GS 50B-4.1(f), a defendant is guilty of a Class H felony if he violates a protective order and has three prior convictions for such offense. The 1<sup>st</sup> edition of HB44 lowered the threshold to one prior conviction, such that a defendant would be guilty of a Class H felony upon conviction of a second or subsequent offense. *The newest edition instead lowers the threshold from the current three prior convictions to two prior convictions for such offense.* Those defendants who currently have one or two prior convictions would be subject to the enhanced punishment as a result of HB 44.

Data provided by the Administrative Office of the Courts (AOC) indicates that in calendar year 2006, over 4,600 defendants were charged with a Class A1 misdemeanor of violating a protective order under current GS 50B-4.1(a). Of those defendants charged, 3,251 had one prior conviction and 34 had two prior convictions for this offense. Under the 3<sup>rd</sup> edition of HB 44, these 34 defendants would face a Class H felony instead of a Class A1 misdemeanor charge.

The NC Sentencing and Policy Advisory Commission provided information indicating that in Fiscal Year 2006-07, there were seven (7) Class H felony convictions for violation of GS 50B-4.1(f). An active sentence was imposed for 57% of these convictions, approximately 4 defendants. In addition, in FY 2006-07, there were 1,261 Class A1 misdemeanor convictions for violations of protective orders. While, fifty-two percent of these defendants, 652, had at least two prior convictions, it is not known how many of the priors were for 50B violations. The Fiscal Research Division (FRD) is unable to provide a fiscal estimate for the proposed HB 44 amendment for following reasons:

- There is no data available on the how many of the persons who were charged with a 50B violation were convicted.
- For the persons convicted of Class A1 misdemeanor violation of a 50B order in FY 2006-07 and who had prior convictions, it is not known how many had prior convictions for violating under Chapter 50B.

**Department of Correction – Division of Prisons**

In calendar year 2006, AOC's data indicates that 34 persons charged with a Class A1 misdemeanor of violating a protective order under current GS 50B-4.1(a) had two prior convictions for this

offense. Using the following assumptions, FRD determined that the proposed amendment to HB 44 would have a fiscal impact, but the impact would be significantly less than that for HB 44, 1<sup>st</sup> edition:

1. The number of persons charged with a Class H felony violation of a protective order in future years would be approximately the same as the number of persons charged in 2006 with a Class AI misdemeanor violation of a protective order who had two prior convictions for the same offense (34).
2. The percentage of persons convicted of a Class H felony violation of a protective order who would receive an active sentence would be equivalent to the percentage of Class H felony 50B convictions given an active sentence in FY 2006-07, 57 percent.
3. In FY 2006-07, 35 percent of Class H felony convictions resulted in active sentences with an average time served of 10 months.

If, for example, there were three persons convicted of a Class H felony violation of 50B order each year under the proposed amendment, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year, and two additional prison beds in the second year. The table below illustrates the potential prison beds needed depending upon several conviction scenarios:

<b>Projected Convictions and Prison Bed Impact Scenarios</b>		
<b>Projected # Convictions</b>	<b>Prison Beds Required</b>	
	<b>FY 2008-09</b>	<b>FY 2009-10</b>
3	1	2
10	3	7
20	6	13

Because of projected prison bed shortages in each of the next 10 years, *any new felony convictions would result in the need for prison bed construction.* The estimated cost to construct a new prison in FY 2008-09 is \$63,000 - \$69,000 per medium custody bed. The construction cost is lower if beds are added to existing prison facilities, \$39,000 - \$43,000. Thus, prison bed construction cost in the first year could range from \$78,000 up to \$897,000 depending upon the number of beds and whether they are added to existing facilities or a new facility is constructed. Once constructed, the daily operating costs would range from \$58.15 to \$84.57 per inmate, with annual operating costs ranging from \$20,606 to \$29,098 per inmate, depending upon custody level. Operating costs include security, inmate programs, inmate costs (food, medical, etc.) and administrative overhead.

**Department of Correction – Division of Community Correction**

In FY 2006-07, 43% of Class H felony convictions for 50B violations resulted in either intermediate or community punishments, predominantly special, intensive, or general supervision probation. Under the proposed amendment, the Division of Community Corrections (DCC) could incur additional costs for offenders placed under its supervision. However, it is not known how many offenders would be sentenced to community or intermediate punishments, to which type, or for how long. Nor is it known how these types of non-active sentences would differ from current practices for domestic violence protective order convictions (G.S. 50B-4.1(a)). DCC's cost to supervise community or intermediate offenders by a probation officer averaged \$2.09 per offender, per day in FY 2006-07. The daily cost per offender on intermediate sanction is much higher, ranging from \$7.52 to \$15.03 depending upon the type of sanction ordered, e.g. electronic house arrest, day reporting center, etc. Intensive supervision probation, the most frequently used intermediate sanction, costs an estimated \$16.53 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

<b>DCC Supervision Costs</b>	
<b>Type of Supervision</b>	<b>Daily Cost</b>
Community	\$ 2.09
Intermediate	\$ 7.52 – \$15.03
Intensive	\$ 16.53

**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 bill. Assuming that 34 persons would be charged, AOC estimates that the difference in court-time and indigent defense costs for disposal of Class H felony rather than Class A1 misdemeanor charges would be approximately \$19,110 in the first year.

**SOURCES OF DATA:** Administrative Office of the Courts; NC Sentencing and Policy Advisory Commission; Department of Correction; Office of State Construction.

**TECHNICAL CONSIDERATIONS:** none

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Denise Thomas and Scott Tesh

**APPROVED BY:** Lynn Muchmore, Director  
Fiscal Research Division

**DATE:** June 26, 2008



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