

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 506 (Second Edition)

SHORT TITLE: Clarify Entitlement to Counsel/Appointment.

SPONSOR(S): Representatives Ross, Goodwin, and Jackson

FISCAL IMPACT				
Yes ()	No ()	No Estimate Available (X)		
<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES:				
Judicial - IDS		Indeterminate fiscal impact		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch – Office of Indigent Defense Services				
EFFECTIVE DATE: July 1, 2009				

BILL SUMMARY:

Clarifies entitlement to counsel in guardianship proceedings under GS Chapter 35A, sex offender monitoring determinations, and postconviction proceedings in capital cases.

Amends GS 35A-1207(a), 35A-1290(c), and 35A-1293 to provide that regarding modifications of guardianships, removal of guardians, and appointment of successor guardians, the ward is entitled to be represented by counsel of the ward’s choice or by an appointed guardian ad litem if the clerk determines the ward’s interests are not adequately represented, with respect to any proceeding under Subchapter II of GS Chapter 35A where the ward has been adjudicated incompetent; also amends GS 35A-1116 to clarify the responsibility for payment of witness fees and the fees of an appointed guardian ad litem in guardianship proceedings. Adds a provision to proposed GS 35A-1116(c2) that the respondent pays the fees of the appointed guardian ad litem if the respondent is not adjudicated incompetent, the clerk finds that there were reasonable grounds for bringing the proceeding, and the respondent is not indigent.

Amends GS 14-208.40B(b) to provide for appointment of counsel for an indigent defendant if the Department of Correction schedules a hearing to determine whether the defendant is subject to satellite monitoring under GS 14-208.40. Amends GS 7A-451(c) to provide that an indigent defendant who is under a sentence of death and desires counsel may apply to the Office of Indigent Defense Services (was, superior court) for the appointment of counsel for postconviction proceedings; provides that the defendant is presumed indigent if previously determined indigent for purposes of trial or direct appeal, and directs the Office of Indigent Defense Services to request the superior court to determine indigency if the defendant was not previously determined to be indigent. Adds new GS 7A-451(a)(18) providing that an indigent

person is entitled to services of counsel in a proceeding involving placement into satellite sex offender monitoring.
Effective July 1, 2009.

ASSUMPTIONS AND METHODOLOGY:

The Office of Indigent Defense Services (IDS) was asked to provide Fiscal Research with an estimate of the potential fiscal impact of this bill. IDS staff reported that they do not anticipate a significant fiscal impact from the implementation of this bill. They indicated that this bill may result in a small cost savings to the State. IDS provided the following justification and commentary to support their analysis.

Office of Indigent Defense Services

Chapter 35A Proceedings

Chapter 35A of the General Statutes provides that the State shall bear the cost of an appointed GAL-attorney advocate to represent the respondent in an incompetency proceeding and to represent the petitioner-ward in a proceeding to restore competency, both of which are covered by Subchapter I of Chapter 35A. However, the statutes do not explicitly address the appointment or compensation of a GAL-attorney advocate in the following related proceedings, all of which are covered by Subchapter II of Chapter 35A: 1) modification of a guardianship order; 2) removal of a guardian; or 3) appointment of a successor guardian. Clerks are routinely appointing GAL-attorney advocates in these proceedings and, as AOC did in the past, before IDS was created, IDS pays their fees if the ward is indigent because the issues are sufficiently related to the purposes of the original guardianship proceeding and appointment of a guardian. House Bill 506 is intended to clarify that the ward is entitled to a GAL-attorney advocate in these proceedings and that IDS is authorized to pay the GAL-attorney advocate's fees, as has been done for many years. Thus, *new G.S. 35A-1217 would simply codify the current practice.*

The amendments to G.S. 35A-1116(c) are intended to codify the existing practice of AOC paying the fees of witnesses and IDS paying the fees of the appointed GAL-attorney advocate. To the extent that the amendments will result in any fiscal changes, they may generate some small savings. Under the existing language in G.S. 35A-1116(c), the State may be bearing the costs of witness and GAL-attorney advocate fees in cases when the respondent is NOT adjudicated incompetent, but there WERE reasonable grounds for the petitioner to bring the proceeding, even if the respondent is not indigent. In such cases where the respondent is not indigent, the amendments would transfer that payment responsibility to the petitioner for the petitioner's witness and to the respondent for the respondent's witness. IDS staff believe that there will be very few cases that fit into that category, but those that do may result in some small savings to the State.

Satellite Monitoring Hearings

G.S. 14-209.40A directs that, when an offender is convicted of a "reportable conviction," including offenses against a minor or sexually violent offenses, the court shall make certain determinations during the sentencing hearing and may order the offender to enroll in a satellite-based monitoring program for a period of time or for life. When this hearing occurs during the sentencing phase immediately following conviction, the attorney who represented the offender during the guilt determination phase continues to represent the offender during the satellite monitoring phase of the hearing. However, in older cases in which there was no prior determination by a court about satellite-based monitoring, or in more recent cases in which the court did not make a determination about satellite-based monitoring, G.S. 14-208.40B requires the Department of Correction to schedule a hearing in the court of the county where the offender resides, so that the court can make the requisite determination about satellite monitoring. Although most, if not all, judges have recognized the need for and are appointing counsel for those "send back" cases, the statute does not specifically address the right to counsel or provide for the appointment of counsel. *The amendments are intended to codify the existing practice of appointing counsel in those "send back" cases and to clarify*

that IDS has authority to pay for the representation. Again, that would simply represent a codification of the practice that is already prevalent.

First, Section 3 of the bill would add the entitlement to counsel in these proceedings to G.S. 7A-451(a) (“Scope of Entitlement”). Again, that would simply clarify the entitlement to counsel that has already been the prevalent understanding and practice. Second, Section 4 of the bill would clarify that the District Attorney is responsible for scheduling the hearing in “send back” cases and for representing the Department of Correction. Third, Section 4 also would clarify that the “send back” hearing shall be held in Superior Court in the county of the offender’s residence.

Procedure for Appointing Counsel in Capital Post-Conviction Cases

These amendments would simply create a streamlined procedure for appointment of counsel in these cases. Before IDS has authority to appoint post-conviction counsel in capital cases, G.S. 7A-451(c) currently requires that IDS first must be appointed by a court. This requirement has been administratively cumbersome in some cases, and has produced unnecessary paperwork for the courts and the IDS office. The bill would streamline the process by allowing IDS to appoint capital post-conviction counsel without first seeking an appointment with the court. The bill would rely on a presumption of continuing indigency based on a prior indigency finding, the IDS office would be required to request a finding from the Superior Court in the district where the defendant was indicted before appointing counsel.

SOURCES OF DATA: Office of Indigent Defense Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Danielle Seale, Denise Thomas

APPROVED BY:

Marilyn Chism, Director
Fiscal Research Division

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