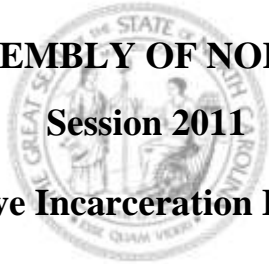


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 408 (Second Edition)

SHORT TITLE: Amend Criminal Discovery Laws.

SPONSOR(S): Representatives T. Moore, Spear, and Shepard

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:					
Correction			<i>*See Assumptions and Methodology*</i>		
Probation			<i>*See Assumptions and Methodology*</i>		
Judicial			<i>*See Assumptions and Methodology*</i>		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<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:

The proposed legislation amends G.S. 15A-903(a)(1) to clarify that upon motion of the defendant, the court must order the state to make available to the defendant all files of the law enforcement agencies, investigatory agencies, and prosecutor’s offices involved in the investigation of the crimes committed or prosecution of the defendant. The act directs that, in addition to any results, all other data, calculations, or writings of any kind must be made available to the defendant when any matter or evidence is submitted for testing or examination. The act defines prosecutor’s office as the office of the prosecuting attorney and defines investigatory agency as any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor’s office.

In addition, the proposed legislation deletes the previously added provision in G.S. 15A-903(a)(2) regarding the requirement that any representative of the State who is requesting investigative

assistant or expert witness services must file a motion and notice of hearing on the defendant in court in the presence of opposing counsel. The act also substitutes language directing standardized fee scales be developed by the Administrative Office of the Courts (AOC) and Indigent Defense Services (IDS) for all expert witnesses and private investigators who are compensated with state funds.

The act rewrites G.S. 15A-903(c) to require law enforcement and investigatory agencies to make available to the prosecutor's office a complete copy of the relevant files, including any information under G.S. 15A-903(a)(1), in a timely matter. The act also creates new subsection (d) to G.S. 15A-903 making it a Class H felony to willfully omit or misrepresent evidence or information required to be disclosed under G.S. 15A-903(a)(1) or provided under G.S. 15A-903(c). Any other willful omission or misrepresentation under the statute is a Class 1 misdemeanor.

The proposed legislation deletes the provision in G.S. 15A-904 stating that the District Attorney or other prosecuting attorney and legal staff are presumed to be acting in good faith if the state has undertaken compliance with Article 48 of G.S. Chapter 15A by making disclosure. The act amends G.S. 15A-910 to provide a presumption that prosecuting attorneys and their staff acted in good faith if they made reasonably diligent inquiry of agencies under G.S. 15A-903(c) and disclosed responsive materials, when courts and State agencies are determining whether to impose personal sanctions for untimely disclosure of law enforcement and investigatory agencies' files.

The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

SOURCE: BILL DIGEST H.B. 408 (03/17/0201)

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

G.S. 15A-903(d) makes it a Class H felony for any person to willfully omit or misrepresent evidence or information required to be disclosed or provided pursuant to G.S. 15A-903(a)(1) or G.S. 15A-903(c). G.S. 15A-903(a)(1) provides that upon motion of the defendant, the court must order the State to make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutor's offices involved in the investigation of the crimes committed or the prosecution of the defendant. G.S. 15A-903(c) provides that on a timely basis, law enforcement and investigatory agencies shall make available to the prosecutor's office a

complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant.

Since the proposed section creates a new offense, the Sentencing Commission has no historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2009-10, 36 percent of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H 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 two additional prison beds the second year.

G.S. 15A-903(d) also creates a new Class 1 misdemeanor for willful omission or misrepresentation of evidence or information required to be disclosed pursuant to any other provision of G.S. 15A-903. G.S. 15A-903(a)(2) - (3) require the prosecuting attorney to give notice to the defendant of any expert witnesses and a written list of all other witnesses who the State reasonably expects to call during trial, and G.S. 15A-903(b) provides that if the State voluntarily provides disclosure to the defendant, it shall be to the same extent as that required by G.S. 15A-903(a).

Since the proposed section creates a new offense, the Sentencing Commission has no historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 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 \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for

¹ 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.

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.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

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.

Section 1: AOC already has a fee scale in use for all expert fees and private investigators compensated by State funds. Therefore, there will be no new fiscal impact for this provision of the bill.

There is some anticipated fiscal impact for the new Class H felony and Class 1 misdemeanor offenses of willfully omitting or misrepresenting evidence or misinformation required to be disclosed. It is not possible to estimate the number of charges that may arise from this new offense. However, the frequency is believed to be minimal.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for Class H felonies are handled in superior court. Overall, the monetary value of the average workload of a lower level (Class I through F) felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$945. As the Class H felonies in this bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for those offenses increased from Class 1 misdemeanors to Class H felonies, the average fiscal impact of each case would be the full \$945. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class H felony case was \$540 per indigent defendant.

On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (three hours at \$75 per hour) per indigent defendant.

Section 2: Any additional motions to compel that are filed to order the release of the identity of any individual providing information about a crime or criminal conduct to a Crime stoppers organization will create some fiscal impact. These potential motions will require work on the part of Assistant District Attorneys, District or Superior Court Judges (the severity of the offense will determine the court in which these motions will be filed), Deputy Clerks, Court Reporters (if heard in Superior Court), and Victim Witness Legal Assistants.

Section 4: This section allows for the court to impose personal sanctions against prosecuting attorneys and their staff when the disclosure of law enforcement and investigatory agencies' files has been untimely. It is not anticipated that these sanctions would occur with any substantial frequency (perhaps even less than once per year). However, each occurrence would require court time for Assistant District Attorneys, District or Superior Court Judges (the severity of the original case will determine the court in which these issues will be handled), Deputy Clerks, Court Reporters (if heard in Superior Court), and Victim Witness Legal Assistants.

Overall: In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

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