

**Description of Legislation**

1. Summary of Legislation

Under current law, two of the elements of the crime of armed robbery are that the defendant (a) threatened or endangered the life of another, and (b) did so with the use or threatened use of a dangerous weapon, implement, or means. This bill amends GS 14-87(a) to revise these two elements so that the standards are subjective rather than objective, that is to say, that a reasonable person under the circumstances would have believed that the article in question was a dangerous weapon and that his life was being endangered or threatened.

2. Effective Date

October 1, 1991

3. Fund or Tax Affected

General Fund

4. Principal Department/Program Affected

Judicial Department, Department of Correction

**Cost or Revenue Impact on State**

<u>FY</u>	<u>FY</u>
91-92	92-93

1. Non-Recurring Costs/Revenues

	<u>FY 1991-92</u>	<u>FY1992-93</u>
2. Recurring Costs/Revenues: Judicial Department	\$52,800	- \$105,600
\$70,400 - \$140,800		
Department of Correction		-0-
\$626,285		

3. Fiscal/Revenue Assumptions

The Administrative Office of the Courts conducted a survey of seven representative District Attorneys and two defense representatives to determine the impact of this bill on the Judicial Department. All agreed that the bill would result in more armed robbery charges and convictions with estimates ranging from 7.5 to 60% of common law robbery convictions becoming armed robbery convictions. After weighting the estimates according to the size of the districts. The AOC provided an overall estimate that 20% of the common law robbery convictions would become armed robbery convictions.

The representative district attorneys and defense personnel differed in their estimates as to increase in trials, from no significant increase in trials to almost all of the new cases having to be tried. Given this variation, the AOC gave estimates for a 10% increase and a 20% increase in trials.

Given the variation in opinion, estimates for a 10% increase and a 20% increase in trials will be given. According to AOC data, in fiscal

year 1989-90, there were approximately 1,040 convictions for common law robbery as charged or to a lesser offense reduced from armed robbery. Since robbery cases have been increasing an average of 15% per year over the past six years, it is estimated that there will be approximately 1,196 such convictions in 1990-91. On the assumption that approximately 20% of these convictions would, with the new law, be armed robbery convictions, there would be an addition of 239 armed robbery convictions. If 10% of these cases were tried, there would be an additional 24 trials. If 20% of these cases were tried, there would be an additional 48 trials. Each trial is estimated to last approximately two days. The cost of a two-day superior court trial is approximately \$3,328 (including the costs for a judge, court reporter, assistant district attorney, assistant public defender, deputy clerk, bailiff, jury expenses, and courtroom expenses). At this rate, 24 trials would cost the system approximately \$79,872. Similarly, 48 trials would cost \$159,744.

The main impact upon the Judicial Department appears to be the additional trials generated by the bill. Given that the estimated new trials are few in number (24-48) and of comparatively short duration (two days), and the fact that the opinions of impact are so varied, the Judicial Branch should be able to absorb the costs of such trials, except for indigent defense costs. Given that the Indigent Persons' Attorney Fee Fund continues to run a deficit, provisions should be made for appropriations to cover the estimated indigent defense costs. At the trial level, costs for indigent representation are estimated to be between \$38,400 (24 trials) and \$76,800 (48 trials). (Each case is estimated to require 40 hours of time at an average of \$40 per hour.)

Concerning the impact on appeals, those convicted after a trial are likely to appeal. Therefore, the number of additional appeals is estimated to closely follow the number of additional trials resulting in a guilty verdict. Some district attorneys thought that there might be a flurry of appeals initially, but that appeals would subside as the law was settled. The reasonable person standard would cause some appeals. However, as one district attorney pointed out, this issue would be just one of several likely to be put forth in the appeals commonly following conviction at trial.

With a conviction rate of 67% (last year's figure for armed robbery trials), there would be between 16 and 32 appeals. Indigent representation for each appeal is estimated to cost approximately \$2,000 per case, for a total of \$32,000 to \$64,000 for indigent representation at the appellate level.

Thus the total estimated yearly cost for the Judicial Department's Indigent Persons' Attorney Fee Fund ranges from \$70,400 to \$140,800 for both the estimated number of new trials and appeals. This estimated cost does not take into account increasing numbers of robbery cases beyond FY 1990-91. As noted previously, these cases have been increasing at 15% per year for the last six years.

Based upon the estimate by the Judicial Department that 20% of the present convictions for common law robbery would become convictions for armed robbery, with the changes provided for in this bill, the

Department of Correction estimates that, based upon the 309 admissions to prison in 1990 for common law robbery, 62 additional persons would be admitted to prison for armed robbery each year. The effect of these increased admissions will result in the following number of additional inmates, with a steady level achieved during the 8th year:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>	<u>Year 8</u>
0	31	93	155	217	279	341	360

These inmates will originally be classified in medium custody and, pending good behavior and no complicating factor, could be classified into minimum custody after approximately one-half of the mandatory minimum. The FY 1989-90 cost for medium custody was \$55.35 and for minimum custody was \$41.11. Since approximately 80% of the cost of maintaining an inmate is for personnel costs, the projected cost beyond the first year will be largely dependent upon changes in salaries and wages and inflation for all other operating items. The projected cost contained in this fiscal note is based upon FY 1989-90 data and does not allow for inflationary costs or the 6% salary increase granted in FY 1990-91 or for future salary increases or inflationary costs.

	<u>Minimum</u>	<u>Medium</u>	<u>Total</u>
Year 1 (1991-92)	\$-0-	\$-0-	\$-0-
Year 2 (1992-93)		626,285	626,285
Year 8	2,760,948	3,757,711	6,518,659

**ESTIMATED FUTURE CAPITAL COSTS**

For the 360 additional inmates estimated to be in the prison system by the end of the eighth year, one-half are estimated to be in minimum custody and one-half in medium custody. The FY 1990-91 cost of constructing a minimum custody dorm bed ranges from approximately \$6,000 for the dorm construction alone to \$15,000 for the dorm and ancillary improvements and the cost of medium custody bed ranges from \$13,100 for the dorm construction alone to approximately \$27,000 for the dorm and ancillary improvements.

**Cost/Revenue Impact on County or Local Government**

	<u>FY</u> 91-92	<u>FY</u> 92-93
1. Non-Recurring Costs/Revenues		
2. Recurring Costs/Revenues		
3. Fiscal/Revenue Assumptions		

**Sources of Data for Fiscal Note**

Judicial Department; Department of Correction

Technical Considerations/Comments

Official  
Fiscal Research Division  
Publication



Signed Copy Located in the NCGA Principal Clerk's Offices