

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** SB 173 (4<sup>th</sup> Edition)  
**SHORT TITLE:** No Death Penalty/Mentally Retarded  
**SPONSOR(S):** Senator Ballance

**FISCAL IMPACT**

<b>Yes ()</b>	<b>No (X)</b>	<b>No Estimate Available (X)</b>		
	<b>See Below</b>			
<b><u>FY 2001-02</u></b>	<b><u>FY 2002-03</u></b>	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>

**REVENUES** -- -Not Applicable---

**EXPENDITURES**

Department of Correction – No fiscal impact (no affect on incarceration in first 11 years)  
Judicial Branch – No estimate available but no significant fiscal impact and could be reduction in costs if capital case workload decreases  
Department of Justice – No estimate available but no significant fiscal impact and could be reduction in costs if capital case workload decreases

**POSITIONS:** 0

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Judicial Branch; Department of Correction; Department of Justice

**EFFECTIVE DATE:** Applies to trials begun on or after December 1, 2001

**BILL SUMMARY:**

Adds new GS 15A-2004, providing that no defendant who is mentally retarded shall be sentenced to death. To qualify as mentally retarded, a defendant must have an IQ of 70 as measured by a standardized intelligence quotient test existing concurrently with impairment in adaptive functioning manifesting before the age of 18. Requires court to determine before trial whether defendant is mentally retarded and to declare the case non-

capital if defendant is so found. The burden of proof rests upon the defendant to demonstrate mental retardation by a preponderance of the evidence. The intelligence quotient test must have been administered before the commission of the alleged crime.

*Fourth Edition of SB 173 adds appeal rights for either side to the Court of Appeals to Section 1 of the bill. This edition also adds Sections 2, 3, and 4 which give the District Attorney the discretion to decide whether to try a first degree murder case capitally or non-capitally, even if evidence of an aggravating factor exists, and if the defendant chooses to plead guilty to first degree murder. If the District Attorney chooses not to seek the death penalty, the court must sentence the defendant to life imprisonment without parole.*

## **ASSUMPTIONS AND METHODOLOGY:**

### **Overall**

A reliable estimate of the fiscal impact of SB 173 cannot be provided because it is unknown how many defendants accused of first-degree murder on or after December 31, 2001 will meet the definition of mental retardation used in this bill. Discussions with mental health and criminal justice professionals indicated that 2% is a commonly accepted estimate of the percentage of the general population that is mentally retarded. While it is likely that the percentage would be higher for the criminal population, it could not be reliably determined how many criminal offenders that will commit first-degree murder will meet the definition used in this bill. Regardless, the number of cases is likely to be low as explained below.

### **Department of Correction**

Given that it is unknown how many defendants that could be sentenced to death will be classified as mentally retarded, **the fiscal impact on the Department of Correction (DOC) in the short and long term cannot be determined at this time. However, it is clear that there will be no cost in the five-year fiscal note horizon.**

The key issue is the difference between the lengths of time the average inmate will spend on death row before execution versus the length of time the average inmate will remain in prison on a sentence of life without parole. According to information from DOC, there are currently 201 inmates with a death sentence. Sixteen people have been executed since the passage of the 1977 Death Penalty provision and through the end of CY 2000. From CY 1995 through CY 2000, 10 people were executed. For these executions, the average time on death row prior to execution was almost 11 years. **If individuals were convicted of first-degree murder, but not sentenced to death, they would still take up a prison bed during that timeframe. Therefore there would be no fiscal impact on DOC for at least the first eleven years of this bill.**

Although SB 173 has no short-term fiscal impact on DOC, there could be long-term fiscal impact based on information from the North Carolina Sentencing and Policy

Advisory Commission. Of the 23 offenders who were sentenced to death in FY 1999/2000, the age range was from 19 to 50. Since a life sentence under Structured Sentencing means for the rest of the person's natural life, if these persons had been sentenced to life without parole and lived to age 65, the average time served would have been 33.7 years. Thus, SB 173 would affect the long-term incarceration rate and create the need for more prison beds.

### **Judicial Branch**

A major qualifying assumption is that the new procedures for raising the issue of mental retardation *would apply only prospectively, to new trials, and would not apply to persons already on death row*. If it were held as a result of this legislation that a mentally retarded person on death row couldn't be executed, there would be substantial fiscal impact. Hearings for determination of mental retardation for persons already on death row would be new, additional proceedings, and could be very costly.

Under the bill, there is potential for additional pretrial hearings brought to determine whether a defendant is mentally retarded. Again, there is no clear way to estimate the number of offenders that will meet the definition of mentally retarded. For speculative purposes, if one applied the 2% general population figures to 377 first-degree murder cases where the death penalty was initially sought (1998-99 AOC figures excluding public defender cases), the projected number would be 8 cases. If one assumes 5% because of nature of an offender population, the total would be 19 cases annually.

This is a relatively small number of cases. If one assumed this number of cases, the AOC cannot project how many motions would be successful. Further, since the costs of a capital trial greatly exceed the costs of a non-capital trial, the additional costs for more hearings could be at least offset by a "savings" from having fewer capital trials. Capital cases are considerably more expensive in terms of court time, trial preparation, jury fees and indigent defense costs than other proceedings. *This bill would also reduce workload at the Department of Justice/Capital Litigation Section because they would represent the state in fewer appeals of a capital case.*

The addition of District Attorney discretion in this edition of SB 173 is not likely to affect the bill's fiscal impact. Current case law requires a prosecutor to seek the death penalty in a case of 1<sup>st</sup> degree murder if there is sufficient evidence of an aggravating factor as defined in GS 15A-2000. The DA's options are to try the case as a capital case or consider a plea of 2<sup>nd</sup> degree murder. Under SB 173, the decision to try a case capitally will be made by the prosecutor and the state could agree to accept a sentence of life imprisonment.

However, prosecutors can currently choose to accept a plea for 2<sup>nd</sup> degree murder as an alternative to trying it as a 1<sup>st</sup> degree capital case. If this bill results in DA's instead trying these cases as 1<sup>st</sup> degree non-capital, there could be an increase in court workload. (It is also possible a DA could choose to accept a plea as 1<sup>st</sup> degree non-capital under the new law.) Again, since the costs of capital cases outweigh the costs of other proceedings,

the net impact is likely to be a reduction in court workload and costs. *It is not possible to project an exact number of trials or the dollar savings because these decisions will be in the prosecutor's discretion.*

**TECHNICAL CONSIDERATIONS:** None

**SOURCES:** Department of Correction; Judicial Department; North Carolina Sentencing and Policy Advisory Commission; and, Office of Indigent Defense Services

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