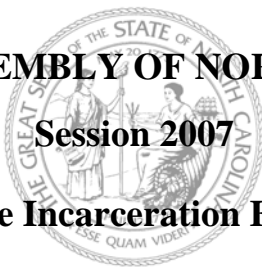


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 229 (First Edition)

SHORT TITLE: Murder/Violation of Prot. Order.

SPONSOR(S): Senator Boseman

| | FISCAL IMPACT | | | | |
|---|---|--|----------------------------------|--------------------------|--------------------------|
| | Yes (X) | No () | No Estimate Available () | | |
| | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> | <u>FY 2010-11</u> | <u>FY 2011-12</u> |
| GENERAL FUND | | | | | |
| Correction | | Possible fiscal impact; however, prior year conviction data <i>does not</i> suggest that such impact will be substantial. * See Assumptions and Methodology – p. 2-3. | | | |
| Judicial | | Possible fiscal impact; however, prior year charge data <i>does not</i> suggest that such impact will be substantial. * See Assumptions and Methodology – p. 4. | | | |
| TOTAL EXPENDITURES: | | Amount cannot be determined. | | | |
| ADDITIONAL PRISON BEDS: (cumulative)* | | Amount cannot be determined. | | | |
| POSITIONS: (cumulative) | | Amount cannot be determined. | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: | Department of Correction; Judicial Branch. | | | | |
| EFFECTIVE DATE: | December 1, 2007. | | | | |
| <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: S.B. 229 amends G.S. 14-17 to expand the definition of first degree murder (Class A felony), including therein any murder committed by a person subject to a valid domestic violence protective order (DVPO) against a person designated as a protected party under that order. Applicable orders include those issued by the courts of this state, another state, or of an Indian tribe. Protected parties include the petitioner of the order, minor family member, or any

other person so designated by the order. The bill specifies that such offense, unless covered under some other provision of law providing greater punishment, is punishable by imprisonment for life without parole.

S.B. 229 also amends G.S. 14-17 to expand the age threshold for imposition of the death penalty to convicted offenders above the age of eighteen years, in lieu of the present age of seventeen years. It also removes the current provision that allows certain first degree murder offenses committed by persons under age seventeen to be punishable by death, if such offense was committed while serving a prison sentence for a prior murder or while on escape from such sentence. This death penalty prohibition for all offenders under age eighteen brings the state into compliance with a recent U.S. Supreme Court decision (*Roper v. Simmons*, 03-633).

Sources: Bill Digest S.B. 229 (02/20/0200); Administrative Office of the Courts; Sentencing & Policy Advisory Commission

ASSUMPTIONS AND METHODOLOGY:

General

To the extent that murders involving parties to a domestic violence protective order are already being prosecuted as first degree murder offenses (Class A), implementation of this proposal would not be expected to generate any additional fiscal impact. However, there would be an expected impact if such murders now presented as second degree murder offenses (Class B2) were to be treated as first degree offenses. Given the current wording of the bill, which specifies “murder,” this analysis does not assume that offenses presently considered as voluntary or involuntary manslaughter would become subject to the proposed offense change.

Prior year charge and conviction data indicate a relatively low incidence of offenses meeting the criteria of the proposed offense. *But given the severity of such offense and the potential for future charges and convictions, some additional fiscal impact is anticipated. Prior year data does not suggest that this impact will be substantial; however, Fiscal Research cannot quantify the degree of potential fiscal impact at this time.*

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Accordingly, Fiscal Research does not assume savings due to deterrent effects for any criminal penalty bill. Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond. Therefore, any new felony conviction resulting in an active sentence will require an additional prison bed.*

I. Murder in Violation of Protective Order: First Degree

Under structured sentencing, length of sentence varies with an offender’s prior record level and the presence of mitigating or aggravating factors. With the exception of extraordinary mitigation, active punishment (incarceration) is mandatory for all Class B2 convictions. At the typical, presumptive range, offenders with no prior criminal record must serve a minimum active sentence of 125 months (10.4 years). Offenders with more extensive criminal histories and who commit

aggravated Class B2 offenses, as evidenced by the aggravated range, may receive minimum terms of up to 392 months (32.7 years). In contrast, felons who commit capital crimes receive either the death sentence or life imprisonment without parole.

| Table 1. Minimum Sentence Ranges Under Structured Sentencing: Class A and B2 Felonies | | | | | | | |
|--|--------------------|-------------------------------------|----------------------|-----------------------|-----------------------|-----------------------|----------------------|
| | | Prior Record Level | | | | | |
| Offense Class | | I (0 Pts.) | II (1-4 Pts.) | III (5-8 Pts.) | IV (9-14 Pts.) | V (15-18 Pts.) | VI (19+ Pts.) |
| | Disposition | A | A | A | A | A | A |
| A | | <i>Death or Life Without Parole</i> | | | | | |
| | Disposition | A | A | A | A | A | A |
| B2 | <i>Aggravated</i> | 157-196 | 189-237 | 220-276 | 251-313 | 282-353 | 313-392 |
| | <i>Presumptive</i> | 125-157 | 151-189 | 176-220 | 201-251 | 225-282 | 251-313 |
| | <i>Mitigated</i> | 94-125 | 114-151 | 132-176 | 151-201 | 169-225 | 188-251 |

Given these differences in sentence length, new convictions meeting the proposed criteria (Class A) could generate a greater long-term impact on prison bed demands relative to that of Class B2 offenses. Specifically, the mandatory life without parole sentencing prescribed for such offenses could result in a long-term “stacking effect,” since prison bed occupancy for these “lifers” would generally continue for a longer duration.¹

Thus, to the extent that now second degree murder offenses were to result in first degree convictions under this proposal, the Department of Correction could incur some additional costs for prison bed construction and operation. In FY 2005-06, there were 206 convictions for second degree murder and two convictions for attempted second degree murder. The average minimum sentence imposed for these second degree murder convictions was 172 months (14.3 years), with an average estimated time served of 183 months (15.3 years). Of these total convictions, *two* were identified by the Administrative Office of the Court’s Automated Criminal Information System (ACIS) as domestic violence offenses (Chapter 50B). *This low incidence of offense would seemingly indicate a modest fiscal impact; however, it is not known how many future offenses will occur.*

II. Death Penalty Prohibition for Persons Under Age 18

To the extent that convicted offenders age 17 or younger would receive mandatory life imprisonment without parole under the proposed sentencing change, in lieu of a death sentence, the Department of Correction could incur additional costs for prison bed construction and operation. In FY 2005-06, there were *no* first degree murder convictions for offenders under age 18 that received a death sentence. *Accordingly, Fiscal Research does not anticipate a significant fiscal impact due to this proposed sentencing change.*

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of a specific bill. For such bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

¹ It is assumed that aggravated offenses meeting the proposed criteria would be eligible for the death penalty.

I. Murder in Violation of Protective Order: First Degree

Current charge data does not distinguish the number of second degree murder cases that involve parties to a domestic violence protective order.² Thus, the Administrative Office of the Courts cannot estimate the number of second degree murder offenses that would meet the proposed criteria, and which would thereby result in prosecution for first degree murder. In calendar year 2006, approximately 415 defendants were charged with first degree murder and approximately 100 defendants were charged with second degree murder. In addition, approximately 380 defendants were charged under G.S. 14-17 with no designation of first or second degree murder, since pertinent information is sometimes unknown at the time of the charge.

Although an impact estimate is unavailable, the Administrative Office of the Courts expects that any cases subject to the proposed penalty enhancement would be accompanied by more vigorous defense and prosecution, resulting in increased court-time costs, jury fees, and indigent defense costs. Presently, the estimated court-time costs for disposal of a Class B2 felony trial and plea are \$16,023 and \$1,265, respectively.³ Capital cases, in contrast, tend to be much more costly due to the complex jury selection process, appointment of two attorneys to represent the defendant, increased trial preparation time, separate sentencing phase, and lengthy appeals process. However, it is also assumed that the proposed sentencing restriction to life imprisonment without parole would somewhat mitigate these potential costs to the Courts.

II. Death Penalty Prohibition for Persons Under Age 18

Were death penalty eligibility to be restricted to offenders above age 18, net court-time savings could be experienced for cases in which the penalty would be otherwise authorized. However, ACIS data indicates that there are currently no defendants age 17 or under with a death sentence for first degree murder. *Accordingly, it is assumed that few capital cases would be affected by the proposal, and that any potential savings would not be substantial.*

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

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² ACIS data for FY 2005-06 identifies two convictions for offenses qualifying as domestic violence offenses (Chapter 50B).

³ Actual costs may vary from this general estimate, which includes jury and indigent defense costs. Estimated cost per Class B2 guilty plea is \$1,265.