

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 2096

SHORT TITLE: Allow Majority Jury

SPONSOR(S): Representative Decker

FISCAL IMPACT: Expenditures: Increase (X) Decrease ()
Revenues: Increase () Decrease ()
No Impact ()
No Estimate Available ()

FUNDS AFFECTED: General Fund (X) Highway Fund () Local Fund ()
Other Fund (X) Indigent Persons Attorney Fee Fund

BILL SUMMARY: "ALLOWING THE 1993 GENERAL ASSEMBLY, REGULAR SESSION 1994, TO CONSIDER A BILL TO BE ENTITLED THAT ONLY A MAJORITY OF A JURY, INSTEAD OF A UNANIMOUS JURY, IS REQUIRED TO RETURN A DEATH SENTENCE FOR A CAPITAL OFFENSE."

EFFECTIVE DATE: Upon ratification

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Branch;
Department of Correction

FISCAL IMPACT - JUDICIAL BRANCH

	<u>Indigent Defense</u>	<u>Other State Funds</u>	<u>Total</u>
FY94-95	489,021	622,391	1,111,412
FY95-96	503,692	641,063	1,144,755
FY96-97	518,803	660,295	1,179,098
FY97-98	534,367	680,104	1,214,471
FY98-99	550,398	700,507	1,250,905

* The figures above assume a 3% increase in indigent defense and other costs after FY 94-95.

ASSUMPTIONS AND METHODOLOGY: Judicial Branch

* The Administrative Office of the Courts (AOC) has provided the following information regarding the fiscal impact of this legislation on the Judicial Branch. The Fiscal Research Division has reviewed this information and is in agreement with their findings and conclusions.

"The change to majority jury decision-making would make death sentences more likely. We project that more cases will proceed capitally and

that jury sentencing decisions will more often result in the death penalty. It is estimated that this bill would result in an additional 15 cases tried capitally, and that 22 additional appeals would be from death rather than life sentences. The fiscal impacts shown on page 1 are the estimated incremental cost differences between capital and non-capital trials and appeals.

Under current law, a life sentence results when even one juror 'holds out' for life. Based on a survey of district attorneys, in cases where a jury's decision results in a life sentence, it is estimated that a majority of the jury favored death in 20.8% of the cases. Based on that survey and AOC data, there are an estimated 15 capital cases per year in which the result was a life sentence, but in which a majority of the jury favored death. Under this bill, these cases would result in death sentences. The fiscal impact for these cases would be the difference in costs for appeals from death versus life sentences.

Another category of fiscal impact from this bill is projected for additional cases that would be tried capitally. In some cases under current law, prosecutors may be willing to offer a guilty plea to second degree murder (for which the punishment can also be life in prison), because the prospect of a unanimous jury decision for death seems too unlikely to justify the time and expense of a capital trial. Under this bill, some such cases may be tried capitally because the prospect of gaining a majority would be stronger. Based on a survey of district attorneys, it is estimated that there would be 15 additional capital trials under this bill. It is anticipated that in two of these cases, the jury verdicts would be not guilty or guilty of a lesser offense; these cases would not be presented to a jury for sentencing. It is estimated that the remaining 13 cases would go to the jury for capital sentencing, and that there would be death sentences by unanimous or majority jury decision in seven cases. Those seven cases would represent additional capital appeals which, when added to the 15 additional appeals discussed above, result in an estimated total of 22 additional capital appeals.

Data comparing the costs of capital and non-capital cases are available in a study by the Duke University Terry Sanford Institute of Public Policy, Cook, Phillip J., and Slawson, Donna B., The Costs of Processing Murder Cases in North Carolina (May 1993) (hereinafter cited as 'Costs Study'). The fiscal impact of this bill for the additional appeals and trials estimated above, based on the average cost differences set forth in the Costs Study are as follows: (a) a fiscal impact of \$154,000 for 22 additional capital appeals, based on a cost difference of \$7,000 between a capital and non-capital appeal; (b) a fiscal impact of \$81,186 for two capital trials that would not go to the jury for sentencing, based on a cost difference of \$40,593 between a capital and non-capital trial through the guilt phase; and (c) a fiscal impact of \$876,226 for 13 trials that would go to the jury for sentencing, based on a cost difference of \$67,402 between a capital and non-capital trial through jury sentencing.

The total cost for additional trials and appeals comes to \$1,111,412. The Costs Study found that on average, indigent defense costs represent some 44% of the total costs of capital cases. The table on page one

allocates that total for the 1994-95 estimates at 44% for indigent defense and 56% for other costs (which include superior court judges, district attorneys, court reporters, courtroom clerks, Supreme Court Justices and Supreme Court staff). These amounts are increased for subsequent years by 3% for indigent defense and other costs; these increases are intended to estimate only inflation for salaries, attorney fee payment rates, etc., but not additional cases. At the cost of a capital case, an increase of even one case would cause a substantial increase in expenditures.

No specific estimates are provided for other post-conviction proceedings or retrials, although these costs would be substantial. Federal and state post-conviction proceedings (including habeas corpus and motions for appropriate relief) are filed routinely in death cases. The costs would be substantial. In two cases examined in the Costs Study, superior court post-conviction costs came to \$67,354 and \$147,261, and costs for additional appeals came to \$23,041 and \$10,663.

There would be two categories of retrials. First, it can be anticipated that some of the estimated 22 additional capital appeals will result in state or federal reversals for retrial and/or resentencing. In any case that is tried capitally following appellate reversal, the cost would not be the incremental difference between a capital and non-capital trial, but rather the cost for an entirely new, additional trial, which according to the Costs Study would average \$84,099. It is very speculative to predict the number of cases that would be reversed on appeal and then be retried capitally; recent data are skewed by the fact that a very many cases have been reversed for resentencing due to a U.S. Supreme Court decision, *McKoy v. North Carolina*, which held certain capital sentencing provisions unconstitutional. However, there would be some such cases, and the costs (probably beginning the third year following enactment) would be substantial; the costs for three such cases would exceed \$250,000 at the trial level, and additional amounts for subsequent appeals.

Second, in the event that the provisions of this bill were held unconstitutional, resentencing and potentially retrial would be ordered for every defendant sentenced under a majority jury verdict. The costs would well exceed what is shown on the table on page one; again, the costs would be for new capital trials, rather than incremental differences between capital and non-capital trials (and resentencing could be ordered for additional cases that were not considered in this fiscal note, in which the jury was unanimous for a death sentence, if the trial record does not reveal unanimity). It is not reasonably possible to predict the number of cases that might be affected. (We are not aware of any state that has enacted statutory provisions for decision-making by less than a unanimous jury in capital cases, or of any case that seems to clearly rule on the constitutionality of provisions like those in this bill. In non-capital cases, the U.S. Supreme Court has upheld majority verdicts of nine out of twelve jurors. *Johnson v. Louisiana*, 406 U.S. 356 (1972). This bill does not define "majority"; given its ordinary meaning, it would seem to mean seven out of twelve jurors. For six-person juries, the U.S. Supreme Court has held that a majority verdict of five jurors is not constitutional, *Burch v. Louisiana*, 441 U.S. 130 (1979). A related

issue is whether there would be any valid provision of law under which the death sentence could be imposed on retrial, or in pending cases, if the provisions of this bill were held unconstitutional, see State v. McKoy, 327 N.C. 31 (1990).)"

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Charles E. Perusse
Carolyn Wyland

APPROVED BY: Tom Covington **TomC**

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