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NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** HB 811

**SHORT TITLE:** New Capital Crime/Repeal Life Review

**SPONSOR(S):** Representatives Justus

**FISCAL IMPACT:** Expenditures: Increase (x) Decrease ( )  
Revenues: Increase ( ) Decrease ( )

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

**BILL SUMMARY:** To repeal judicial review of life sentences without parole after twenty-five years and every two years thereafter and to provide that a person who murders a law enforcement officer, a correctional officer, a district attorney, an assistant district attorney, a justice, or a judge is guilty of a capital offense, punishable by death or life imprisonment without parole. As title indicates, repealing G.S. Chapter 15A, Art. 85B, and adding new capital crime in new G.S. 14-17.2. Makes repeal effective on ratification and new crime effective December 1, 1995.

**EFFECTIVE DATE:** Sections 2 and 3 become effective December 1, 1995, and apply to offenses committed on or after that date. The remainder is effective upon ratification.

**PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:** Judicial Department (superior courts, prosecutors, indigent defense)

**FISCAL IMPACT**

	<u>FY</u> <u>1995-96</u>	<u>FY</u> <u>1996-97</u>	<u>FY</u> <u>1997-98</u>	<u>FY</u> <u>1998-99</u>	<u>FY</u> <u>1999-00</u>
Prosecutors	\$14,828	\$15,273	\$15,731	\$16,203	\$16,689
Indigent Defense	\$29,657	\$30,547	\$31,463	\$32,407	\$33,379
Judge and other superior court costs	\$22,917	\$23,605	\$24,313	\$25,042	\$25,793
TOTAL	\$67,402	\$69,425	\$71,507	\$73,652	\$75,861

## **ANALYSIS:**

### **Section 1: Repeal review of sentences of life without parole**

Section 1 repeals Article 85B of G.S. Chapter 15A, effective upon ratification. The one statute in this Article, G.S. 15A-1380.5, entitles a defendant sentenced to life without parole to review of the sentence by a superior court judge after the defendant has served 25 years of imprisonment and every two years thereafter unless the sentence is altered or commuted. The judge must review information listed in the statute (such as the trial record, information from the Department of Correction (DOC), and "any other information" the judge deems appropriate), and make a recommendation to the Governor or an executive agency designated by the Governor regarding whether the sentence should be altered or commuted.

Under HB 811 defendants sentenced to life would have no hope of eventual release. (Under present law, the only hope other than commutation by the Governor lies in the judicial review process that HB 811 repeals). As a result, in some circumstances, there would be more trials because some defendants would have nothing to gain by pleading guilty as charged and nothing to lose by going to trial. The Administrative Office of the Courts predicts that cases involving a life sentence without any possibility of eventual release would become a category of litigation second in complexity and cost only to death cases.

Cases in which the death penalty is being sought would probably not be affected by this bill at the trial court level since these cases are already being defended to the most vigorous extent possible. It is possible that there would be some savings in death cases from the post-trial phases of such cases. If juries are made aware that life without parole means no possibility of release, they may be more willing to impose that sentence rather than death, a decision that could save significant costs routinely incurred for the appellate and post-conviction phases of a death case. On the other hand, there would likely be a costly increase in trials in cases punishable by life without parole where the death penalty is not being sought. It is in these cases where defendants will have nothing to lose by going to trial rather than pleading guilty. However, in such cases defendants may be more willing to plead guilty to a lesser offense (such as second degree murder), if the prosecutor were willing to accept such a plea, which could avoid some trials and offset the increase.

Although the fiscal impact from this Section of HB 811 could be very substantial, the Administrative Office of the Courts concluded that they are unable to predict a specific fiscal impact.

## **Sections 2 and 3: Murder of certain officials made a capital crime**

Section 2 adds new G.S. 14-17.2 making it a capital offense (Class A felony) for any person to murder a law enforcement officer, correctional officer, district attorney, assistant district attorney, justice or judge while discharging their official duties. Under Structured Sentencing, if the defendant is not sentenced to death, life without parole must be imposed.

Nearly all, if not all murders of law enforcement officers (or prosecutorial or judicial officials) are prosecuted capitally under existing law, G.S. 14-17. While it is possible for an occasional case involving an adult defendant to become a capital case because of this bill, the Administrative Office of the Courts would expect only a very small number of such cases over many years, and no specific fiscal estimates are provided for such cases.

As to defendants under age 17, the present first degree murder statute, G.S. 14-17, specifically exempts from capital punishment persons who were under the age of 17 at the time of the murder. Thus, under present law, the only punishment for first degree murder for persons under age 17 is life imprisonment. (The exemption for persons under age 17 does not apply to murders committed while serving a prison sentence for a prior murder or while on escape from a prison sentence for a prior murder. It is assumed that such murders are very rare.) In contrast, there would be no exemption for persons under age 17 charged under proposed new G.S. 14-17.2. Therefore, the bill would change present law by making a person under age 17 subject to the death penalty for the murder of a law enforcement officer.

Since murders of law enforcement officers and other officials covered by this proposed bill are relatively infrequent, few cases would be affected. However, based on information from district attorneys explained in the prior fiscal notes, some cases will be affected. Considering the increasing violence and use of guns by juveniles, as for the prior fiscal notes, we estimate that on the average one defendant per year under age 17 involved in the murder of a police officer (or other official covered by the proposed bill) would become subject to the death penalty under this bill.

Cost estimates are based on a study published by the Duke University Terry Sanford Institute of Public Policy, *The Costs of Processing Murder Cases in North Carolina* (Cook, Phillip J., and Slaws, Don B., May 1993). That study reports that the average difference in cost between a capital and non-capital trial is \$67,402 per case. That amount is used for this fiscal note as the additional cost for the estimated average of one case affected in 1995-96. That study also reports (age page 65) that on average, indigent defense costs represent 44% and prosecution costs represent 22% of the total costs of capital cases. Accordingly, it is estimated that of the \$67,402, 44%, or \$29,657, would be for indigent defense, and 22%, or \$14,828, would be for

prosecution costs, with the remainder for other courtroom costs (including judge, clerk, expert witnesses, etc.).

Although these sections of HB 811 would become effective December 1, 1995, the estimates for 1995-96 are not adjusted. This fiscal note assumes that on the average there will be only one murder per year with the factual circumstances (e.g., murder of a law enforcement officer by a person age 16) that would lead to a fiscal impact, but it is impossible to predict whether the one murder in 1995-96 would arise before or after the effective date. Given the conservative assumption of only one case, the Administrative Office of the Courts assumes that it would arise after the effective date.

Also, the Administrative Office of the Courts shows the full costs for that case in the fiscal impact for 1995-96, although depending on when the case is filed and how quickly it is prosecuted, some of the costs would be incurred in 1995-96 and some in 1996-97. It would be very speculative to estimate exactly how long after ratification the case would be tried, or how much of pretrial costs would be incurred in 1995-96. In any event allocating the costs between two years would not affect the total requirements for the biennial. The estimated per case costs are increased by 3% for the years following 1995-96.

The cost estimates in this fiscal note are limited to the first trial, and do not include additional costs that would be incurred (largely after the 1995-1997 biennial) for first appeal and post-conviction proceedings.

**SOURCES OF DATA:** Administrative Office of the Courts

**FISCAL RESEARCH DIVISION (733-4910)**

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**DATE:** April 28, 1995



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