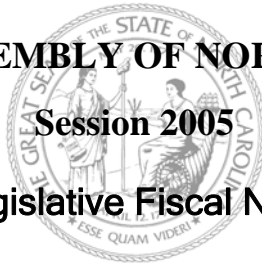


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1613 (First Edition)

SHORT TITLE: Methadone Distribution/2nd Degree Murder.

SPONSOR(S): Senator Snow

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
GENERAL FUND					
Correction	Impact anticipated; exact amount cannot be determined. See page 2 Assumptions and Methodology.				
Recurring					
Nonrecurring					
Judicial	Impact anticipated; exact amount cannot be determined.				
Recurring					
Nonrecurring					
TOTAL	Exact amount cannot be determined.				
EXPENDITURES:					
ADDITIONAL PRISON BEDS*	Exact number cannot be determined.				
POSITIONS: (cumulative)	Exact number cannot be determined.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2006.					
<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: This bill amends G.S. 14-17 to expand the list of Schedule II controlled substances that may be involved in second degree murder, as identified by G.S. 90-90. Under current G.S. 14-17, it is second degree murder to proximately cause the death of another by the unlawful distribution of certain controlled substances, specifically methamphetamine, opium, cocaine, or certain derivatives or chemical equivalents of opium and cocaine.

Source: Adapted from summary by Administrative Office of the Courts.

ASSUMPTIONS AND METHODOLOGY:

General

Presently, any person who proximately causes the death of another by the unlawful distribution of a Schedule II controlled substance, other than those specified in G.S. 14-17, could be charged with involuntary manslaughter (a Class F felony) or some other offense. By expanding the list of applicable Schedule II substances, this bill would greatly increase the criminal penalty for such an offense, to a Class B2 felony.

Department of Correction

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. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon, or beyond.*

Length of sentence varies with a defendant's prior record level and the presence of mitigating or aggravating factors. At a minimum, assuming mitigating factors and no prior criminal record, second-degree murder is punishable by a mandatory prison term of 94 months (7.8 years). In the typical, presumptive range, a convicted offender in the lowest prior record level is required to serve a minimum of 125 months active time (10.4 years). *However, a potential conviction under this bill could carry a maximum sentence of 392 months (32.7 years), assuming the highest prior record level and aggravating factors. In comparison, a Class F felon sentenced in lower prior record levels could potentially receive intermediate punishment, such as jail and probation. Sentences for a Class F offense range from 10 to 49 months.*

In 2004-05, there were 208 convictions of second-degree murder and four convictions of attempted second-degree murder. For these 208 convictions, the average minimum sentence imposed was 179 months (14.9 years), with an average estimated time served of 190 months (15.8 years). For Class F felony convictions, the average estimated time served was 18 months. Of these convictions, 52 percent received intermediate sentences, predominantly special and intensive supervision probation. Yet due to the proposed penalty change, there is no anticipated impact for the Division of Community Corrections.

The Sentencing and Policy Advisory Commission anticipates that this proposed bill could have a long-term impact on the State's prison population, due to long, mandatory active sentences for Class B2 felonies. However, it is not known how many additional offenses might lead to convictions of second-degree murder. Given the combination of active sentencing and post-release supervision revocation, if one additional conviction occurs per year, it would result in the

need for one additional prison bed the first year and two prison beds the second year. Assuming this threshold and a close custody level, the construction of additional prison beds could cost the State \$112,860 the first year, and \$243,778 the second year. The average daily cost per inmate in close custody is \$74.52, or approximately \$27,200 per year.

In addition, the proposed criminal penalty enhancement could also increase the need for Youth Development Center (YDC) resources. Juvenile commitment to an YDC is authorized in all Delinquency History Levels and for the adjudication of “Violent” offenses, those so classified in accordance with Class A through E felonies. In 2004-05, 29 percent of juveniles that were adjudicated delinquent for a “Violent” offense received a Level 3 (YDC) commitment. Based on the current YDC population (approximately 475), the Sentencing and Policy Advisory Commission anticipates that any small increase in the demand for YDC resources will constitute a significant increase in resource needs.

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.

In calendar year 2005, approximately 6,200 defendants were charged with the trafficking, sale, or delivery of methamphetamine, opium, or cocaine. Of these, 1,604 defendants were convicted - a conviction rate of approximately 26 percent. Similarly, approximately 1,320 defendants were charged with the sale and/or delivery of a Schedule II controlled substance other than the three aforementioned; 330 of these defendants were convicted (25 percent). However, data is not available to determine the number of deaths that were proximately caused by the unlawful distribution of a Schedule II controlled substance other than methamphetamine, opium, cocaine, or a derivative or equivalent thereof. Hence, an estimate of the number of charges that would be elevated to a Class B2 felony is also unavailable.

Presently, the AOC estimates a cost of \$8,452 per trial for a charge of involuntary manslaughter (a Class F felony). The estimated cost per trial for a second-degree murder charge (Class B2) is \$13,749; a difference of \$5,297 among the two penalties. Assuming a guilty plea for a single Class F felony and a jury trial for a Class B2 felony, the difference among penalty types and disposal methods is \$13,340. Hence, the Administrative Office of the Courts anticipates a substantial increase in potential court costs as a result of this proposed penalty change and more vigorous defense and prosecution.

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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