

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 1117 (2nd Edition)

**SHORT TITLE:** DA Discretion

**SPONSOR(S):** Rep. Baddour

<b>FISCAL IMPACT</b>					
	<b>Yes ( )</b>	<b>No ( )</b>	<b>No Estimate Available (X )</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>
<b>REVENUES</b>					
<b>EXPENDITURES</b>			<b><u>Possible Reduction in Judicial Branch and DOJ Workload &amp; Costs</u></b>		
<b>POSITIONS:</b>	<b>None</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	<b>Judicial Department, Department of Justice, Department of Correction</b>				
<b>EFFECTIVE DATE:</b>	<b>When it becomes law</b>				

**BILL SUMMARY:** HB 1117 would add a new section GS 15A-2004 to provide that the district attorney has discretion whether to seek the death penalty for a defendant indicted for first degree murder, even if evidence of aggravating circumstances exists. Also specifies that a district attorney can agree to accept a life sentence at any point prior to adjudication by a jury. If state agrees to accept a life sentence and defendant agrees to plead guilty, trial judge must impose sentence of life imprisonment. The State would be required to give notice to the defendant and the court of its intent to seek the death penalty on or before the date of the pretrial conference. If the State does not give this notice, then the trial must be conducted as a non-capital proceeding

**ASSUMPTIONS AND METHODOLOGY:** 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 HB 1117, 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 at any point prior to adjudication by the jury or on remand of a capital case for re-sentencing.

The fiscal impact of this bill depends on:

Potential Savings--change in the frequency of capital trials: Capital cases are considerably more expensive in terms of court time, trial preparation, jury fees and indigent defense costs. This bill would result in fewer capital trials. This 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.

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.) Since the costs of capital cases far 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.

Potential Cost--reduction in Death Penalties/Increase in Life Imprisonment

This bill could result in more life sentences if DA's choose to pursue more cases as non-capital cases and **if** they would have been successful in obtaining a conviction and the death penalty if they had tried. It is impossible to project the number of sentences that will be life in prison instead of death.

For each such case, the fiscal impact on the Department of Correction depends on the difference between the length 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 for at least the first eleven years of this bill.*

Because there are potential workload savings for the Judicial Branch and Department of Justice and because there would be no impact on the prison population for at least 11 years, the net impact of this bill is a cost savings. However, the exact amount cannot be projected.

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION 733-4910**

**PREPARED BY:** Elisa Wolper

**APPROVED BY:** James D. Johnson

**DATE:** April 24, 2001



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