

**NORTH CAROLINA GENERAL ASSEMBLY  
LEGISLATIVE FISCAL NOTE  
(INCARCERATION NOTE G.S. 120-36.7)**

**BILL NUMBER:** HB 65      2nd Edition

**SHORT TITLE:** Autopsy Photos Not Public Record

**SPONSOR(S):** Representative Ray

|   | <b>FISCAL IMPACT</b>   |                                   |                                  |                          |                          |
|---|--|-----------------------------------|----------------------------------|--------------------------|--------------------------|
|   | <b>Yes (X)</b>   | <b>No ( )</b>                     | <b>No Estimate Available ( )</b> |                          |                          |
|   | <b><u>FY 2003-04</u></b>   | <b><u>FY 2004-05</u></b>          | <b><u>FY 2005-06</u></b>         | <b><u>FY 2006-07</u></b> | <b><u>FY 2007-08</u></b> |
| <b>GENERAL FUND</b>   |  |                                   |                                  |                          |                          |
| <b>Correction</b>   |  |                                   |                                  |                          |                          |
| <b>Recurring</b>  |  | Unable to determine exact amount. |                                  |                          |                          |
| <b>Judicial</b>   |  |                                   |                                  |                          |                          |
| <b>Recurring</b>  |  | Unable to determine exact amount. |                                  |                          |                          |
| <b>TOTAL EXPENDITURES:</b>  |  | Unable to determine exact amount. |                                  |                          |                          |
| <b>ADDITIONAL PRISON BEDS*</b>  | Unable to determine exact amount; no significant impact anticipated.   |                                   |                                  |                          |                          |
| <b>POSITIONS: (cumulative)</b>  | Unable to determine exact amount; no additional positions anticipated. |                                   |                                  |                          |                          |
| <b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>   | Department of Correction (DOC); Judicial Branch                        |                                   |                                  |                          |                          |
| <b>EFFECTIVE DATE:</b>  | December 1, 2003   |                                   |                                  |                          |                          |
| <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:** HB 65 creates a special exemption from the Public Records Law for photographs and video or audio recordings of an autopsy. The bill also amends Chapter 132 of the General Statutes by adding a new section, which provides that any person may inspect or examine photographs or video or audio recordings of an autopsy at reasonable times and under reasonable supervision of the custodian. The custodian of the record is prohibited from providing copies of the record to the public, except as otherwise provided.

Two broad categories of groups are allowed to access autopsy records under the bill: (1) public officials (chief medical examiner, investigating medical examiner, district attorney, superior court judge, and law enforcement officers conducting an investigation) and (2) personal representatives of the estate of the deceased; a person authorized by order issued in a special proceeding; and a medical examiner, coroner, physician, or their designee who uses the material for teaching, training, or academic purposes.

HB 65 clarifies the procedure through which a person can access autopsy records, and makes conforming changes to notice requirements. New G.S. 130A-389.1(d) provides that a person who is denied access to copies of an autopsy record or who is restricted in their use may commence a special proceeding pursuant to Article 33, Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose such record, and may prescribe any restrictions or stipulations that the clerk deems appropriate. Appeals may be made to the Superior Court pursuant to Article 27A, Chapter 1 governing appeals and transfers from the clerk. The bill does not apply to civil proceedings.

#### **ASSUMPTIONS AND METHODOLOGY:**

##### **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

Because the proposed bill creates two new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of HB 65 on the prison population. It is not known how many offenders might be sentenced for Class I and Class H felony convictions. If, for example, there were ten Class I convictions for violations of disclosing autopsy records in violation of G.S. 130A-389.1(g), the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2000-2001, 9 percent of Class I felony offenders were sentenced to active sentences, 37 percent were sentenced to intermediate sanctions, and 54

percent were sentenced to community punishment. On average, offenders served between seven and nine months.

Furthermore, if there were three Class H felony convictions for removal and copying of an autopsy record with the intent to steal the record in violation of G.S. 130A-389.1(h), the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. Class H felons serve active prison sentences, receive intermediate sanctions, and may receive community punishment if they fall in Prior Record Level I. In 2000-2001, 33 percent of Class H felony offenders were sentenced to active sentences, 51 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders served between nine and twelve months.

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these 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.

Because the bill provides for a new Class I and Class H felony offense, AOC is unable to estimate the number of new charges that may result from this bill. For Class I felony offenses that are brought to trial, the estimated court cost per trial is \$4,637. For Class I offenses not brought to trial and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$255. For Class H felony offenses that are brought to trial, the estimated court cost per trial is \$5,012. For Class H felony offenses not brought to trial and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$283. It is unlikely that many trials and pleas would occur as a result of this bill.

AOC also estimates that HB 65 would have an impact on the clerk's workload resulting from the special proceedings commenced to access autopsy records. However, there is no data available to estimate the number of such proceedings. Furthermore, AOC anticipates that since HB 65 does not apply to civil, criminal, or administrative proceedings, the autopsy records introduced into evidence would become public records via the trial record and that clerks would not incur additional workload in carrying out measures to keep such records confidential. However, to the extent that the bill may lead to a large number of motions in criminal cases for orders restricting or controlling disclosure of an autopsy report, there may be an additional time and cost to the court, prosecution, and defense.

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

**TECHNICAL CONSIDERATIONS:** none

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**DATE:** March 28, 2003



**Signed Copy Located in the NCGA Principal Clerk's Offices**