

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 1354 (Fifth Edition)

SHORT TITLE: Strengthen Domestic Violence Laws.

SPONSOR(S): Representatives Sherrill and McLawhorn

	FISCAL IMPACT				
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>
REVENUES:	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
OPERATING EXPENDITURES:	\$3,347,978	\$18,371,891	\$30,223,560	\$5,348,255**	\$5,378,701**
Department of Correction-Operating	-	\$13,086,150	\$24,909,423	No est. avail**	No est. avail**
Department of Correction-Capital	There are no available prison beds in this time frame. This note assumes the use of contractual prison beds (\$57.92 per bed per day). In the long term, due to the limited availability of contractual beds, the State will need to construct new cells at \$56,500 per bed. Construction would have to begin in FY 04-05 for beds to be available in FY 07-08.				
State Bar Pass-through	\$1,417,154	\$1,417,154	\$1,417,154	\$1,417,154	\$1,417,154
Judicial Branch	\$1,809,068	\$3,293,409	\$3,293,409	\$3,293,409	\$3,293,409
Positions	25				
Department of Justice	\$121,756	\$121,756	\$121,756	\$121,756	\$121,756
Positions	2				
Community College System	-	\$453,422	\$481,818	\$515,936	\$546,382
POSITIONS TOTAL:	27	-	-	-	-
Judicial Branch	25				
Department of Justice	2				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts, Department of Correction, Department of Justice, Department of Administration, Community College System.					
EFFECTIVE DATE: Upon ratification, except criminal penalty section: December 1, 2004. <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:

Part I requires all domestic violence offenders to complete an abuser treatment program.

Part II requires the Criminal Justice Training and Standards Division to incorporate domestic violence training into the Basic Law Enforcement Training curriculum, and also develop domestic violence in-service training for active law enforcement officers to be offered regularly.

Part III directs the Department of Public Instruction to study the issue of anti-violence programs in the schools. The Department is also instructed to study training for school personnel dealing with students who are victims of abuse.

Part IV increases the state pass-through to the State Bar to provide legal services to domestic violence victims; the pass-through amount changes from \$1.05 to \$2. To offset this loss to the General Fund, a new fee of \$100 is created for out of state attorneys who wish to appear in a court case in North Carolina. This fee is estimated to raise \$1 Million/year, which will go into the new legal services fund.

Part V adds two domestic violence advocates to the Child Fatality Task Force.

Part VI directs the Department of Health and Human Services to study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs.

Part VII directs the State Bar to study the issue of providing CLE credit to active attorneys for pro bono legal representation.

Part VIII modifies an existing felony aggravating factor to clarify that a position of trust or confidence can include a domestic relationship.

Part IX creates a Class H felony for assault by strangulation inflicting physical injury.

Part X amends the Habitual Misdemeanor Assault Statute so that it becomes a Class H felony on the 3rd assault conviction, when that assault causes physical injury.

Part XI provides for a system of indicating on criminal judgments that an offense involves domestic violence.

Part XII directs the North Carolina Sentencing and Policy Advisory Commission to study misdemeanor assault and other misdemeanor offense classifications.

Part XIII authorizes warrantless arrest for violation of a pretrial release order.

Part XIV conforms state firearms law to federal law.

Part XV prohibits a judicial official from refusing to issue a warrant for arrest solely because a prior warrant has been issued for the arrest of another person involved in the same matter.

Part XVI amends the nurse's privilege laws to clarify that the privilege does not preclude the admission of otherwise admissible written or printed medical records.

Part XVII expands the circumstances under which a temporary child custody award may be made as part of an ex parte domestic violence protective order and gives the court specific factors to consider in deciding custody in domestic violence cases.

Part XVIII prohibits employers from firing, or otherwise discriminating against, an employee because the employee has taken time off work to seek relief under Chapter 50B.

Part XIX requires clerks, when feasible, to provide a private area for complainants in 50B cases to fill out forms and ask questions.

Part XX requests that the Supreme Court adopt rules establishing domestic violence training requirements for judges and requires AOC to study the issue of domestic violence training for other court personnel.

Part XXI is the effective date of the bill as a whole. Each part contains its own effective date for those changes.

ASSUMPTIONS AND METHODOLOGY:

This domestic violence legislation makes large-scale changes to criminal law statutes as well as numerous other aspects of the law affecting the appropriations process. This fiscal note will examine the bill by section.

Section I requires all domestic violence offenders sentenced to the Department of Correction either for probation or prison to complete an abuser treatment program. This requirement will have costs, which cannot be determined exactly, because offender information systems, both in the courts and Corrections, do not identify offenders as perpetrators of domestic violence. A subsequent section of the bill (Part XI) directs the Administrative Office of the Courts (AOC) to develop a tracking measure within its Automated Court Information System (ACIS) to identify these offenders.

For offenders sentenced to probation, this bill moves participation in an abuser treatment program from the list of optional conditions to the mandatory list, assuming a program is “reasonably available.” These programs currently exist in 76 counties, and are funded by the Domestic Violence Commission in the Department of Administration. They may not have capacity for all probationers as currently funded. The Division of Prisons will need to work with the Domestic Violence Commission to develop a program appropriate for abusers that takes into account the Division’s other offender management priorities, such as inmate disciplinary status, as well as the length of sentence.

Section II requires domestic violence training for entry-level law enforcement officers, as well as regular in-service training for active law enforcement officers. This section would have fiscal impact upon both the Department of Justice and the Community Colleges. The Department of Justice would require two additional positions to coordinate and perform the in-service training requirement in the bill, costing \$121,000 per year.

The Community College System provides Basic Law Enforcement Training (BLET), where the additional entry-level training would be added under this bill. Adding time to the BLET curriculum, based on current-year full-time equivalents, would be around \$450,000 in the second year of the analysis time-frame, going up to \$546,000 by year 5 due to enrollment increases. Any costs for in-service training in the Community Colleges cannot be determined.

Section III directs the Department of Public Instruction to study the issue of anti-violence programs in the schools, as well as training for school personnel in dealing with students who are victims of abuse. This section is not expected to have any fiscal impact.

Section IV increases the pass-through from General Court of Justice fees to the State Bar. Currently, the Treasurer sends \$1.05 out of every court fee collected to the State Bar for the Access to Civil Justice Act. This bill increases that pass-through to \$2. This section also creates a new \$100 fee on out-of-state lawyers who wish to handle a case in North Carolina, which goes to the General Fund. This fee is estimated to generate about \$1 million. The funds will be passed through to the State Bar to be used in individual counties on a formula basis: 20% of the funds shall be based on an even-share basis, 80% based on the rate of domestic violence protective orders issued under GS 50B in that county. This section becomes effective July 1, 2004.

Section V adds two domestic violence advocates to the Child Fatality Task Force. This section has no expected fiscal impact.

Section VI directs the Department of Health and Human Services to study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse needs. As this section requires a study, it has no expected fiscal impact. The findings of the study, due to the 2005 session of the General Assembly, may have fiscal impact.

Section VII directs the State Bar to study the issue of providing Continuing Legal Education credit to active attorneys for pro bono legal representation in domestic violence proceedings for victims. This section has no expected fiscal impact.

Section VIII modifies an existing felony aggravating factor, which can be used to extend a sentence to prison; the factor allows sentence enhancement for abuse in a position of trust, including a domestic relationship. This may have some fiscal impact, but cannot be projected since aggravating factors reflect judicial discretion within the sentencing grid.

Section IX creates a Class H felony for assault by strangulation inflicting serious injury. The new strangulation assault offense may have significant impact on the prison population, as well as court operations. The offense represents roughly \$1.3 million in court impact in the first year. Felonies are usually tried in Superior Court rather than District Court; felony trials also generally take longer than misdemeanor trials. Trials in Superior Court involve juries and much more prosecutor preparation time. AOC also expects the trial rate to increase. Misdemeanor offenses often result in guilty pleas, rather than trials. Defendants charged with felonies are more likely to go to trial than to plead, one estimate suggests they are twice as likely to go to trial. Given the high volume of assault cases, any increase in felony trial rate can result in large impact on court resources.

Based on a survey of District Attorneys as to the frequency of strangulation as a component of existing assault crimes, the AOC estimates that there will be 5,665 charges of the new Assault Involving Strangulation offense. These cases would most likely be tried in Superior Court, although District Court judges can hear guilty pleas in Class H felony cases. These additional costs are based on higher costs of running trials in Superior versus District Court. In order to deal with this higher court caseload, the AOC will need two additional Superior Court judges, two court reporters, six Assistant District Attorneys, and two deputy clerks of court.

Since strangulation is a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the state prison population. It is not known how many offenders might be sentenced under this bill. If, for example, there were three Class H convictions for this offense per year, 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.

The Sentencing Commission did attempt, however, to project the scope of impact resulting from this change using the AOC's District Attorney survey. According to data extracted by the AOC, there were 21,805 defendants charged with simple assault, 2,241 defendants charged with assault inflicting serious injury, 29,248 defendants charged with assault on a female, and 11,955 defendants charged with other Class A1 misdemeanor assaults. The AOC estimates that physical injury by strangulation was involved in the following:

- 7% (n=1,527) of simple assault cases;
- 12% (n=269) of assault inflicting serious injury cases;
- 12% (n=3,510) of assault on a female cases;
- 3% (n=359) of other Class A1 misdemeanor assault cases.

An estimated 5,665 cases may be affected by this proposal. In FY 2002-03, 32.9% of offenders convicted of a Class H felony received an active punishment with an average estimated time served of 10.5 months. The remaining 67.1% of offenders convicted of a Class H felony received a non-active punishment. The revocation rate for these offenders was 49.5%. Assuming that 29.3% of Class H charges result in Class H convictions, there would be an estimated 1,660 convictions for this offense per year. If this were the case, the combination of active sentences and probation revocations would result in the need for 478 additional prison beds the first full year (2005-06) of operation and 961 additional prison beds the second year (2006-07). Because this is a new crime and the projection must be based on survey data rather than existing judicial practice, the Sentencing Commission cannot use its simulation model to forecast impact. Instead, they are providing a two-year projection based simply on current numbers and expected growth. These offenders, at Class H, would not be expected to stack up in the system due to long sentences.

Rows 4 and 5 in the following chart show the impact of this bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation might add up to 1,091 inmates to the prison system by the end of FY 2006-07.

	June 30 <u>2004</u>	June 30 <u>2005</u>	June 30 <u>2006</u>	June 30 <u>2007</u>	June 30 <u>2008</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,290	-2,058	-3,010	-3,958	-4,828
4. No. of Projected Additional Inmates <u>Due to this Bill</u> ³	0	0	521	1,091	N/A
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³	0	0	521	570	N/A

These beds would be over and above those already needed by the prison system, so they would have to be procured either by finding space through contracts and temporary beds or constructing new prison facilities. As a practical matter, some temporary or contractual beds will be needed to carry forward until new facilities could be constructed. Projecting from current average incarceration costs per day of \$57.92, and assuming 3% annual inflation, we assume the annual operating cost for a prison bed to be \$23,100 for 2005-06, and \$23,793 for 2006-07. Applying these rates to the numbers projected for the strangulation offense, we expect a cost to the Department of Correction of \$11,041,800 in 2005-06 and \$22,865,073 in 2006-07.

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes 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.

² Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.**

³ Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

Assuming that the Department will construct new beds for the longer-term effects of this legislation, the Department would need to begin planning construction of new facilities to expand capacity by about 1,000 beds (strangulation as well as the Habitual Misdemeanant statute discussed below). Using an average of the construction costs of minimum and medium prison beds (\$56,500), the cost of 1,000 new beds would be \$56,500,000.

Section X amends the Habitual Misdemeanor Assault statute so that a conviction of an assaultive misdemeanor, when the offender has two prior assault convictions and the assault causes physical injury, becomes a Class H felony. This bill changes the existing habitual misdemeanor offense by lowering the threshold at which an offender qualifies for the charge. Under current law, an offender must have been convicted of five prior misdemeanors, two of which are assaults, in order to be charged as a habitual misdemeanor. The AOC estimates that an additional 1,527 offenders would be eligible for the habitual misdemeanor charge given the lower threshold under this bill, and that 24% of them (366) would likely be charged as such, based on the survey of District Attorneys. This increase would likely cost the court system about \$65,000 in the first year of the bill's effective date. This section would add approximately 130 prison beds to the capacity need, assuming that 100% of the offenders convicted under this statute received an active sentence. If judges sentenced these offenders using similar practice to existing Class H felonies, this section would only add 45 new beds by year 2 (2006-07).

Assuming the same prison operating costs as for Section X, we would assume that prison costs for this section to range from \$1,039,500 to \$3,049,200 in each year.

Section XI provides for a reporting system in the Administrative Office of the Courts to record whether an offense involves domestic violence. Program development for the reporting system would require \$132,000 for contractual programmers and implementation training. The courts also expect an increase in trial time to establish the existence of the domestic relationship, costing about \$290,000.

Section XII directs the Sentencing Commission to study misdemeanor offense classifications. The Sentencing Commission estimates a need for \$20,000 for contractual consulting services and travel to perform the research and analysis necessary for this study.

Section XIII authorizes warrantless arrest for violation of a pretrial release order. This may result in more jail beds used for pretrial abusers, but there is no information on which to base an impact estimate.

Section XIV makes conforming changes to state firearm laws to mirror existing federal law. It is expected to have no state level fiscal impact.

Section XV prohibits a judicial official from refusing to issue a warrant for arrest solely because a prior warrant has been issued for the arrest of another person involved in the same matter. This is expected to have no fiscal impact on the state.

Section XVI amends the nurse's privilege laws to clarify that the privilege does not preclude the admission of otherwise admissible written or printed medical records. This should have no fiscal impact.

Section XVII expands the circumstances under which a temporary child custody award may be made as part of an ex parte domestic violence protective order and gives the court specific factors to consider in deciding custody in domestic violence cases. A survey of District Court judges implies no significant fiscal impact from this change.

Section XVIII prohibits employers from firing, or otherwise discriminating against, an employee because the employee has taken time off work to seek relief under Chapter 50B.

Section XIX requires Clerks of Superior Court, where feasible, to provide a private area for complainants in domestic violence cases filing for protective orders under GS 50B to fill out forms and ask questions. Court facilities are the responsibility of county governments; as such, providing private space for handling domestic violence cases does not affect state resources. The AOC has conducted a survey of clerks, and has learned that many already have provision for private space, either through construction or through creative use of existing space.

Section XX requests that the Supreme Court adopt rules establishing domestic violence training requirements for judges and requires AOC to study the issue of domestic violence training for other court personnel. As this is a study provision, no cost is expected, but the study's findings may indicate the need for future expansion of the AOC training budget.

Section XXI is the effective date of the whole bill. It is effective upon ratification, except that the criminal penalty sections, IX, X, and XI, are effective on December 1, 2004, which is the standard date for criminal law changes.

SOURCES OF DATA: Administrative Office of the Courts; NC Sentencing and Policy Advisory Commission; Department of Correction; Community College System; Department of Public Instruction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Douglas Holbrook

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

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