

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

BILL NUMBER: SB 919 3rd Edition
SHORT TITLE: Homicide Prevention Act/Domestic Violence
SPONSOR(S): Senator Rand

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
REVENUE					
Counties		See assumptions and methodology			
Local Education Agencies		See technical considerations			
EXPENDITURES					
GENERAL FUND					
Correction		Unable to determine exact amount.			
Judicial		Unable to determine exact amount.			
OTHER					
Counties		See assumptions and methodology			
ADDITIONAL PRISON BEDS*		Unable to determine exact amount.			
POSITIONS: (cumulative)		Unable to determine exact amount.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch; Counties					
EFFECTIVE DATE: 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:¹ This bill expands current G.S. 14-269.8, which prohibits a person subject to a Chapter 50B emergency or ex parte order from purchasing a firearm. It also expands Chapter 50B by creating a Class H felony for a defendant subject to a domestic violence order to possess or purchase a firearm. Under this bill, a court must order a defendant to surrender his firearms to the sheriff if he poses a threat to himself or others; under current law, this action is discretionary. This does not apply to law enforcement or military employees who possess or use firearms as part of their official duties.

Current G.S. 14-269.8 provides that it is a Class H felony for any person to purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in effect a Chapter 50B domestic violence order prohibiting the person from purchasing a firearm. This bill expands current G.S. 14-269.8 by (1) making it unlawful to also own, possess, receive, and attempt to own, possess, purchase, or receive a firearm; and (2) adding machine gun, ammunition, and permits to purchase or carry concealed firearms in place of “gun”, “rifle” and “pistol.”

The second edition of the bill requires the sheriff, instead of the defendant, to apply for an order of disposition of firearms. It also adds a provision pertaining to the sale of firearms if the sheriff conducts a sale of firearms surrendered by a defendant. In these circumstances, the sheriff must give any proceeds from the sale (after deducting costs associated with the sale) to the defendant. Under current law, the sheriff must, within 30 days after the sale, pay any proceeds to the treasurer of the county board of education in which the sale is made.

(NOTE: Third edition of the bill makes two minor clarifying changes and changes effective date to December 1, 2003)

ASSUMPTIONS AND METHODOLOGY:

General

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 (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

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.

¹ AOC Research and Planning

The Sentencing Commission notes that in 2001-02 there were no convictions for violations of G.S. 14-269.8 for purchase or attempt to purchase any gun, rifle, pistol, or other firearm while a protective order is in place. However, it is not known how many additional Class H convictions will result from adding conduct to G.S. 50B-3.1(c) that is not currently illegal under G.S. 14-269.8.

It is also not known how many new felony charges would occur as a result of amending G.S. 14-269.8 to include “own, possess, receive or attempt to own, possess, or receive a machine gun, ammunition, or permits to purchase or carry concealed weapons if ordered by the court” and to include successive protective orders. If, for example, there were three additional Class H convictions per year due to the proposed broadening of the above statutes, 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. In 2001-02, 34 percent of Class H felony offenders were sentenced to active sentences, 50 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders were sentenced to a minimum of ten and a maximum of 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.

AOC data for calendar year 2002 indicate that there were approximately 27,680 Chapter 50B protective orders issued, and two defendants were charged under current G.S. 14-269.8 for purchasing a firearm in violation of a domestic violence order. Since this bill expands current G.S. 14-269.8 and therefore creates more opportunities for violations, the AOC anticipates an increase in the number of charges under this statute. However, the AOC has no data from which to estimate the number of new felony charges that would arise from this bill.

The AOC notes that SB 919 makes mandatory one form of relief under Chapter 50B that is currently issued at the court’s discretion. Under current G.S. 50B-3.1(a)(11), the court or magistrate *may* specify in the protective order that the offender is prohibited from purchasing a firearm for a time fixed in the order. On the ex parte domestic violence protective order and domestic violence protective order forms, the judge can designate that the defendant is prohibited from possessing firearms, from purchasing firearms, and/or the defendant’s concealed handgun permit is suspended for the effective period of the order.

The AOC does not anticipate this bill to increase the length or complexity of such hearings as judges currently make determinations in the hearings as to whether a defendant possesses a firearm and whether he poses a threat to himself or others. *However, since this bill broadens the items that can be confiscated and broadens the circumstances under which firearms can be disposed, the AOC notes that the bill could potentially increase the number of motions and*

hearings. District court judges would be required to conduct hearings and issue orders with respect to these new proceedings; clerks would incur additional workload in processing orders and complying with notice requirements.

With respect to the new Class H felonies created under Chapter 50B, the AOC has no data from which to estimate the number of new felony charges that would occur as a result of this bill. For offenses that are brought to trial as Class H felonies, the estimated court cost is \$6,066. For Class H felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$352.

Local Law Enforcement

Under this bill, surrendered firearms and ammunition would be stored by county sheriffs. Counties would be allowed to charge a “reasonable fee” for this storage, to be used to pay the costs of administration and other law enforcement purposes. The amount of this fee is not set, and would likely vary by county and case. The Sheriff’s Association has noted that some individuals have surrendered large collections of guns. In these instances, the sheriff may not have space to store the gun collection onsite, and will contract with a federally licensed firearms dealer for storage. This legislation allows sheriffs to pass private storage costs on to the gun owners. It would also permit the sheriff to charge a gun owner for storing a gun or guns and ammunition onsite, in an undetermined amount. Fiscal Research cannot estimate the range of fees charged or the county revenue that would be generated.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and, Office of State Construction.

TECHNICAL CONSIDERATIONS:

This legislation provides that, if a surrendered firearm is sold, the proceeds from the sale – minus expenses incurred by the sheriff – shall be distributed to the firearm’s owner. Under current law, confiscated firearms may fall under a more general provision, G.S. 15-15, which states that, after paying for expenses, local law enforcement agencies shall pay the balance then remaining from the proceeds of such sales to the treasurer of the county board of education of the county in which such sale is made. In addition, G.S. 15-11.1 allows for the disposition of *seized* firearms to sheriffs *only* for destruction. It is not clear whether any firearms surrendered under domestic violence protective orders are currently sold, with the proceeds distributed to local education agencies (LEAs). If LEAs currently receive revenue from such sales, then this legislation would negatively impact LEA revenue. We cannot project the extent of the impact.

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