

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1543 (First Edition)

SHORT TITLE: Autopsy Photos not Public Record.

SPONSOR(S): Representative Ray

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS: (cumulative)	Exact amount cannot be determined; no additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch				
EFFECTIVE DATE:	December 1, 2005				
<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 creates an 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 sets of individuals 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 investigations) 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. Unauthorized disclosure of an autopsy photograph or video or audio recording would be a Class I felony; willfully removing or copying an autopsy photograph or recording without authorization and with the intent to steal the record would be a Class H felony.

The bill additionally clarifies the procedure through which a person may 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 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:

Summary

As this bill creates new Class H and I felonies, it would be expected to result in some additional charges and convictions and would consequently incur a fiscal impact. Because the offenses are new, there is no historical data from which to estimate the numbers of charges and convictions that would occur under the bill. However, as custodians of autopsy records would be expected to predominantly comply with the provisions of the bill, it is unlikely that a substantial number of new Class H and I charges and convictions would occur. As such, a substantial fiscal impact is not expected.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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.*

Because this bill would create new criminal offenses, the Sentencing Commission has no historical data from which to estimate how the legislation would impact prison population. The table on the next page outlines for Class H and I felony convictions in FY 2003-04 the active sentence rate, average active sentence length, and the number of convictions annually that would necessitate one additional prison bed in the first year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

Felony Offense Class	Active Rate	Average Active Sentence Length (min – max)	Threshold Prison Bed Impact
Class I	11%	7 – 9 months	If, for example, there were ten Class I felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year.
Class H	37%	10 – 12 months	If, for example, there were three Class H felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year.

Non-Active Sentences: In FY 2003-04, 50 percent of Class H and 40 percent of Class I felony convictions resulted in intermediate sanctions; 13 percent of Class H and 49 percent of Class I convictions resulted in community sanctions. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

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 new Class I and Class H felony offenses, AOC is unable to estimate the number of new charges that may result from this bill. For any felony charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior court workload. AOC estimates the cost per charge based on offense class as shown in the table below.

Offense Class	Settled via Trial			Settled via Guilty Plea
	<i>Court/Attorney Costs</i>	<i>Indigent Defense</i>	<i>Total</i>	
<i>Class I Felony</i>	\$3,904	\$1,931	\$5,835	\$330
<i>Class H Felony</i>	\$4,096	\$2,100	\$6,196	\$359

AOC also expects that this bill would have an impact on the workload of clerks due to special proceedings commenced to access autopsy records, but no data is available with which to estimate the number of such proceedings that would occur. As the bill does not apply to civil, criminal, or administrative proceedings, AOC expects that 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.

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

TECHNICAL CONSIDERATIONS: None

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