

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1543 (Second 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.				
LOCAL GOVERNMENTS	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	It is likely that most offenders receiving active sentences under this bill would be housed in county jails at county expense or at a cost to the State of \$18/day. The exception would be Class 1 misdemeanants falling in Prior Record Level III, who are eligible for active sentences long enough to be served in state prison.				
POSITIONS: (cumulative)	Exact amount cannot be determined; no additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch; Local Governments				
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.

The second edition would include licensed physicians among persons who may obtain copies of autopsy photographs or recordings if the copies are used to confer with attorneys or others with a professional need to use or understand forensic science. The second edition also modifies proposed new G.S. 130A-389.1(g) to make unauthorized disclosure of autopsy photographs or recordings a Class 2 misdemeanor (rather than a Class I felony), and proposed new G.S. 130A-389.1(h) to make unauthorized removal, copying, or creation of an image of an autopsy photograph or recording with intent to steal a Class 1 misdemeanor (instead of a Class H felony).
Source: Adapted from Bill Digest H.B. 1543 (06/01/2005).

ASSUMPTIONS AND METHODOLOGY:

Summary

As this bill creates new Class 1 and 2 misdemeanors, 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 1 and 2 misdemeanor 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.

- In FY 2003-04, 19 percent of Class 1 and 15 percent of Class 2 misdemeanors resulted in active sentences and the average active sentence lengths were 12 and 31 days, respectively.
- Offenders with active sentences of less than thirty days are housed in county jails at county expense and DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per day per offender.
- The remaining 81 and 85 percent of Class 1 and 2 misdemeanants, respectively, received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because all Class 2 and most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation would not be expected to substantially impact prison population.

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 1 and 2 misdemeanor offenses, AOC is unable to estimate the number of new charges that may result from this bill. For any misdemeanor charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing district 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
	Court/Attorney Costs	Indigent Defense	Total	
				-
Class 1 Misdemeanor	\$1,880	\$1,333	\$3,213	\$284
Class 2 Misdemeanor	\$1,373	\$949	\$2,322	\$272

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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Signed Copy Located in the NCGA Principal Clerk's Offices