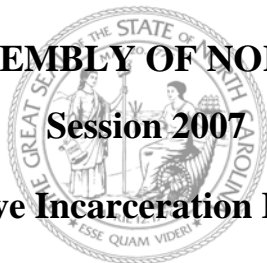


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 47 (Fourth Edition)

SHORT TITLE: Violate Order/Possess Deadly Weapon Felony.

SPONSOR(S): Representatives McLawhorn, Ross, Farmer-Butterfield, and Jeffus

	FISCAL IMPACT				
	Yes (X)	No ()		No Estimate Available ()	
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction	Some fiscal impact anticipated; however, the exact amount cannot be determined. See Assumptions and Methodology, pp.2-4				
Judicial					
TOTAL EXPENDITURES:		Amount cannot be determined.			
ADDITIONAL PRISON BEDS: (cumulative)*		Amount cannot be determined.			
POSITIONS: (cumulative)		Amount cannot be determined.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	December 1, 2007.				
*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.					

BILL SUMMARY: The second edition of H.B. 47 amends G.S. 50B-4.1 to add subsection (g), which creates a new Class I felony offense for knowingly violating a protective order by failing to stay away from a place or person as directed by the order, *and to do so while possessing a deadly weapon*. It also makes conforming changes to specify that this new penalty is not subject to the current penalty enhancement provided in subsection (d) of G.S. 50B-4.1. H.B. 47 becomes effective December 1, 2007, and applies to offenses committed on or after that date.

The third edition clarifies that unlawful possession of a deadly weapon includes possession on or about the person, or within close proximity to the person.

** The fourth edition retains the change from the third edition, and increases the penalty for the proposed offense - from a Class I felony to a Class H felony.*

ASSUMPTIONS AND METHODOLOGY:

Current Offenses

General violation of a protective order is a Class A1 misdemeanor (G.S. 50B-4.1(a)). However, if such violation is concurrent to the commission of another felony, excluding Class A or B1 offenses, punishment for the principal felony offense is elevated by one offense class (G.S. 50B-4.1(d)). Violation of a protective order after three previous convictions for offenses under Chapter 50B is a Class H felony (G.S. 50B-4.1(f)). In addition, per *current* G.S. 14-269.8, it is a Class H felony to own, possess, purchase, receive, or attempt thereto, a firearm, machine gun, ammunition, or permits to purchase or carry concealed firearms while subject to a valid protective order (G.S. 50B-3.1 requires a defendant to surrender all firearms, machine guns, ammunition, permits to purchase firms, and permits to carry concealed firearms).

Proposed Offense

H.B. 47 (fourth edition) creates a new Class H felony offense for violation of a protective order, *adding the conditions of possession of a deadly weapon and failure to stay away from a place or a person, as so ordered*. In effect, offenses meeting the above criteria would be enhanced from general violation of a protective order – from a Class A1 misdemeanor to a Class H felony (no effect is assumed for firearm violations under G.S. 14-269.8).

Because current charge and conviction data do not distinguish general violation offenses that involve simple possession of a deadly weapon, there is no reliable basis upon which to project the number of future offenses that would meet these criteria. However, *based on the relatively high frequencies of charge and conviction for domestic violence protective order (DVPO) violation, Fiscal Research anticipates some impact for both Corrections and the Courts*.

Department of Correction: Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond*. Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Class A1 misdemeanants sentenced to active punishment typically serve the designated term of incarceration within a local jail.¹ However, most active sentences for felony convictions are served in state prison.² *Thus, the new, enhanced penalty (Class H felony) for violating a protective order while possessing a deadly weapon will not only lengthen time served for such offense, but also require imprisonment within a state facility.*

Although a projection of future offenses is unavailable, prior year conviction data for DVPO violations provide some indication of potential impact. In FY 2005-06, there were 1,369

¹ In FY 2004-05, 25% of Class A1 misdemeanants (for all crimes and prior record levels) received active sentences, with an average time served of 73 days.

² Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

misdemeanor convictions for violation of a valid protective order (G.S. 50B-4.1(a)); eight Class H felony convictions for repeated violation (G.S. 50B-4.1(f)); and, eight Class H convictions for unlawful purchase under G.S. 14-269.8.³ ***Of the 1,369 misdemeanor convictions, eight also had a concurrent conviction for an offense involving a deadly weapon (i.e. assault with a deadly weapon, G.S. 14-33(c) (1)).***⁴ However, it is unlikely that this statistic captures all DVPO violations involving possession of a deadly weapon. Accordingly, the number of actual offenses could vary.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. For illustration, if there were three Class H convictions under this proposed bill per year, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; two additional beds in the second year; and one new employee in the second year.*

Assuming these thresholds and inmate assignment to medium custody, the construction of two additional prison beds within a new, stand alone facility could cost the State \$136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$84,240.⁵ These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$58,195 in FY 2009-10.⁶

Department of Correction – Division of Community Corrections

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominantly special, intensive, or general supervision probation. *Thus, assuming that future convictions for the new offense occur, the Division of Community Corrections (DCC) could incur additional costs for offenders placed under its supervision.* It is not known exactly how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used

³ Although G.S. 14-269.8 also prohibits possession, the current AOC offense code references “purchase” only. Thus, it is not known if all relevant convictions have been logged under the current code.

⁴ *Sentencing Commission data, based on sentencing episodes, indicates that these eight “concurrent” offenses involving a deadly weapon were sentenced on the same dates as DVPO (G.S. 50B-4.1) violations.*

⁵ New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). “Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁶ Impact on incarcerated population is assumed to begin in FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

Based on preliminary data for calendar year 2006, there were 4,053 defendants charged under G.S. 50B-4.1, most for a general violation offense (4,024).⁷ While it is not known how many charges might occur for this new, enhanced offense, *the Administrative Office of the Courts anticipates that any enhancement will be accompanied by more vigorous litigation, thereby increasing court time requirements and the associated costs of case disposal.* Specifically, new cases will be disposed in superior court, rather than district court, increasing jury involvement and superior court personnel workload (district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel).

Estimated FY 2007-08 costs for a Class A1 misdemeanor trial and plea are \$4,215 and \$245, respectively. In contrast, estimated costs for a Class H felony trial and plea are \$7,345 and \$325, respectively. Actual court-time costs may vary with time requirements and disposition (i.e. trial or plea); however, the approximate difference in trial cost for this new, enhanced offense is \$3,130. These cost estimates account for indigent defense.

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

TECHNICAL CONSIDERATIONS: None

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⁷ There were 33 defendants charged for unlawful purchase under G.S. 14-269.8 in CY 2006.