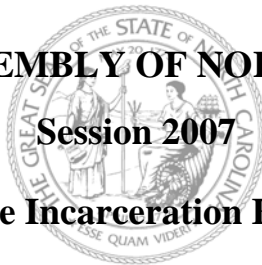


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 9 (First Edition)
SHORT TITLE: Domestic Violence Order/No Firearm Purchase
SPONSOR(S): Senator Boseman

FISCAL IMPACT

Yes (xxxx) No () No Estimate Available ()
FY 2007-08 FY 2008-09 FY 2009-10 FY 2010-11 FY 2011-12

GENERAL FUND

Correction Degree of fiscal impact on Corrections cannot be determined.
Recurring
Nonrecurring
Judicial Degree of fiscal impact on the Judicial system cannot be determined.
Recurring
Nonrecurring

TOTAL EXPENDITURES:

ADDITIONAL PRISON BEDS: (cumulative)*

POSITIONS: (cumulative)

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:

Senate Bill 9 amends G.S. 50B-3(a), which lists the conditions to be imposed in a domestic violence protective order (DVPO), to specify that the person subject to “may” be prohibited from purchasing a firearm, but the defendant “shall” be prohibited from doing so. Currently, G.S. 50B-3 provides only that any party to the order, whether the plaintiff or defendant, “may” be prohibited from purchasing a firearm for a time specified in the order.

Source: SPAC analysis

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

Violation of the conditions of a DVPO is a Class A1 misdemeanor under G.S. 50B-4.1(a). However, G.S. 50B-3.1(j) and G.S. 14-269.8 make it a Class H felony to own, possess, purchase, or receive or attempt to own, purchase, possess or receive a firearm, machine gun, ammunition, or permit to purchase or carry concealed firearms in violation of a DVPO.

In 2005-06, there were 1,369 convictions for violating a DVPO, and 8 convictions for owning, possessing, purchasing, or receiving or attempting to own, purchasing, possessing or receiving a firearm, machine gun, ammunition, or permit to purchase or carry concealed firearms in violation of a DVPO. It is not known if any of the 1,369 convictions prosecuted for violating G.S. 50B-4.1(a) involved purchase of a firearm in violation of a DVPO but were not prosecuted under G.S. 14-269.8 because the DVPO did not specify surrender of firearms. Currently, the Administrative Office of the Courts does not have an offense code for this offense, which is some indication that there are infrequent charges and/or infrequent convictions. G.S. 14-269.8 and G.S. 50B-3.1(j) are duplicates of each other, and it appears that AOC records prosecutions for violating these statutes under G.S. 14-269.8.

The Sentencing and Policy Advisory Commission notes that the proposed amendment would expand the pool of potential Class H offenders under G.S. 14-269.8 to include defendants who, under current law, have not been ordered not to purchase a firearm under G.S. 50B-3(a)(11) and have not been ordered to surrender and not possess a firearm under G.S. 50B-3.1, but would be ordered to do so under the amended G.S. 50B-3. The Sentencing Commission also notes that the language of G.S. 14-269.8 refers to “accordance with G.S. 50B-3.1,” which suggests that the offense applies only to defendants subject to a surrender order. The language of G.S. 14-269.8 refers specifically to “accordance with G.S. 50B-3.1,” suggesting that its offense applies only to defendants subject to a surrender order under G.S. 50B-3.1, but the remaining language of G.S. 14-269.8 is general enough that it would appear to cover all defendants in violation of a DVPO by purchasing (as well as possessing, etc.) a firearm.

In 2005-06 there were only 8 convictions under G.S. 14-269.8, and it is not known how many additional convictions may result from the expansion of the current statute. In 2005-06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H convictions 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.

Daily Inmate Operating Cost per Custody Level, FY 2005-06

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$54.81	\$70.83	\$79.72	\$66.87

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

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. The daily cost per offender on intermediate sanction ranges from \$7.71 to \$14.97, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.97 for the initial six-month intensive duration, and \$1.96 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2005-06, 66% of Class H convictions resulted in either intermediate or community punishments, predominantly special, intensive, or general supervision probation. *Thus, if future convictions for the proposed offense(s) were to occur, the Division of Community Corrections (DCC) would likely assume some additional costs for offenders placed under its jurisdiction.* However, it is not known 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 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.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload 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 2006 show some 4,020 defendants charged with the misdemeanor offense and 30 charged with the felony offense of violating a protective order. We cannot determine how many of these charges involve the defendant's purchase of a firearm. To the extent that defendants are prohibited from purchasing a firearm in protective orders under current law, we would not expect a substantial number of charges to arise from this amendment. To the extent that defendants are not being prohibited from purchasing a firearm under current law, they would be under this bill; some violations, and new charges, can be expected. We have no data from which to estimate the number of new charges that would arise from this amendment.

Presently, the estimated cost per Class H trial and plea are \$7,345 and \$325, respectively. These cost estimates account for indigent defense. Actual costs may vary with time requirements and disposition.²

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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DATE: April 30, 2007



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² Cost estimates are based on projected court-time requirements for judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings.