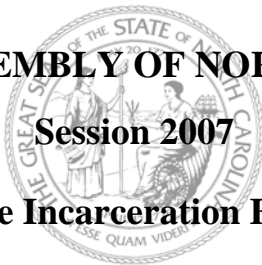


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 83 (Second Edition)
SHORT TITLE: Amend Domestic Criminal Trespass.
SPONSOR(S): Senator Snow

Table with columns: FISCAL IMPACT, Yes (xx), No (), No Estimate Available (), FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12. Rows include GENERAL FUND, Correction, Judicial, TOTAL EXPENDITURES, ADDITIONAL PRISON BEDS, POSITIONS, and EFFECTIVE DATE.

BILL SUMMARY: Amends GS 14-134.3 (Domestic Criminal Trespass) by making it a Class H felony for a person who is subject to a valid protective order enforceable under GS Chapter 50B to enter a shelter for victims of domestic violence, or to remain on the premises after being ordered to leave by the lawful occupant regardless of whether any of the parties protected by the protective order are present on the property at the time. Provides an exception if the person enters the premises pursuant to a judicial order or a written separation agreement that gives the person the right to enter the premises for visitation with minor children. Enacts GS 15A-2000(e)(12)], providing that it is an aggravating circumstance for first degree murder if the defendant who is the subject of a valid protective order commits a murder on the premises of a shelter for victims of domestic violence.

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.

Section One

Section One of Senate Bill 83 establishes a new offense, Domestic Criminal Trespass (G.S. 14-134.3), which makes it a Class H felony for a person subject to valid protective order to enter property of a safe house or haven for victims of domestic violence after being forbidden to do so or after be ordered to leave. The defendant is permitted to visit pursuant to a judicial order or written separation agreement allowing him or her the right to enter for visitation with minor children.

The bill creates a new offense class and, therefore, the Sentencing Commission does not have any historical data to estimate its impact on the prison population. In 2005-06 34% of Class H convictions resulted in active sentences, with an average time served of 11 months.

Section Two

Section Two of the bill creates a new aggravating circumstance to capital sentencing (G.S. 15A-2000(e) (12) for an offender who was subject to a valid protective order at the time of the commission of a capital felony and the offense was committed on the premises of a domestic violence safe house of haven. The circumstances of the offense do not require that the victim(s) be the person(s) protected by the protective order. A finding of this aggravating circumstance would enable imposition of the death penalty for some persons currently convicted of first-degree murder and sentenced to life without parole.

Department of Correction – Division of Prisons

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.*

First, under the increased penalty in Section One, if there were three Class H convictions, the combination of active sentences and parole revocations would result in the need for one additional prison bed in the first year and two additional prison beds in the second year.

Second, If three Class 1 misdemeanor convictions became Class H felonies under this proposal, then combination of active sentences and parole revocations would result in the need for one additional prison bed in the first year and two additional prison beds in the second year.

Finally, under Section Two of this bill, the Sentencing Commission concludes that “a finding of this aggravating circumstance would enable imposition of the death penalty for some persons currently convicted of first-degree murder and sentenced to life without parole. There would be no additional impact on the prison population as a result of this proposed bill.”

In 2005-06, there were 84 convictions for First Degree Murder, including seven who received death sentences and 77 who received life without parole. It is not known how many of those convictions had violated a valid protective order and committed their offense on the premises of a domestic violence safe house or safe haven.

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.

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%.

Judicial Branch

The Administrative Office of the Courts 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.

Section One

The Administrative Office of the Courts (AOC) reports that there were 1,640 defendants charged with misdemeanor domestic criminal trespass under G.S. 14-134.3. AOC cannot determine how many of these

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.

charges involved defendants subject to a protective order who trespassed at a domestic violence safe house or safe haven, and therefore they cannot estimate the number of charges.

Section Two

AOC notes that the greatest impact on the courts would be the cases that are not being tried as capital case under the current statute, but would be tried as capital cases under this proposal. AOC notes that in 2006, there were 415 defendants charged with First Degree murder and 380 defendants charged with murder with no designation (this information is sometimes not known at the time of the charge). There is no data to estimate the number of these charges that involved parties to a protective order.

Presently, the AOC estimates a cost of \$7,345 per trial for a Class H charges, and a cost per plea is an estimated \$325 for the same offense. AOC 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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