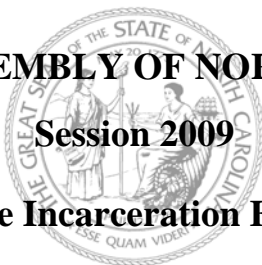


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 74 (First Edition)
SHORT TITLE: Increase Penalty/2nd Degree Murder.
SPONSOR(S): Senator Jones

FISCAL IMPACT table with columns for Yes, No, and No Estimate Available across fiscal years 2009-10 to 2013-14. Includes sections for EXPENDITURES (Correction, Judicial), PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED, and EFFECTIVE DATE.

BILL SUMMARY:

The proposed legislation would increase the penalty for second degree murder (N.C.G.S. 14-17) from a Class B2 felony to a Class B1 felony. Because the attempt to commit a felony is punished one class lower than the commission of the felony, attempted second degree murder would therefore increase from a Class C felony to a Class B2 felony.

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

There is no short-term impact for the proposed reclassification of second degree murder from Class B2 felony to Class B1 felony. Sentence lengths for Class B1 felons range from 144 months to life without parole, depending on Prior Record Level, with an average estimated time served of 261 months in FY 2007-08. Class B2 felony convictions ranged from 94 months to 392 months, depending on Prior Record Level. Given the sentencing range for Class B2 felons and the average sentence imposed for second degree murder convictions in FY 2007-08, *all of the impact that would result from reclassifying second degree murder from Class B2 felony to Class B1 felony would occur outside the ten-year projection period.* As a result, the Structured Sentencing Simulation Model could not be used to project the impact from the proposed reclassification. However, *substantial long-term impact to the prison population would occur* due to the longer sentence lengths available for Class B1 felony convictions and will continue as these convictions “stack up” in prison.

There is also a potential for impact from the resulting reclassification of accessory after the fact to second degree murder from Class D to Class C felonies. In FY 2007-08 there were two (2) convictions for this offense. Due to the small number of convictions, a more detailed impact projection using the Structured Sentencing Simulation Model would not be reliable. *Impact on the prison population will occur beginning the fifth year of the projection period* as a result of the longer average estimated time served (95 months for Class D compared to 71 months for Class C) and will continue as these convictions “stack up” in prison.

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.* Therefore, any additional prison beds required as a result of this proposed legislation will place a further burden on the current prison bed shortage.

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.

In Calendar Year 2008, approximately 94 defendants were charged with second degree murder; there were no charges for attempted second degree murder. Typically, AOC would anticipate increased costs due to higher trial and plea rates and more hours required for Class B1 felony trials compared to Class B2 felony trials. Due to the December 1 effective date, the increase would amount to approximately \$9,000 in FY 2009-10 and \$17,000 in FY 2010-11 due to increased time for judges, clerks, district attorneys, and in-court support personnel.

However, a survey of District Attorneys indicates that there is the potential for more murder cases to be resolved by pleas to second degree murder rather than first degree non-capital murder trials under this bill. This is because the increased penalty – Class B2 felony carries a minimum presumptive sentence of 10.4 years while Class B1 felony carries a minimum presumptive sentence of 16 years – increases the likelihood that the State would be willing to accept a plea to second degree murder. It is unclear how the increase in penalty would affect a defendant’s willingness to plead guilty to second degree murder.

Therefore, *the overall impact of this bill cannot be determined.* While there will be an increase in cost due to the penalty increase, it may be at least partially offset by a decline in first degree non-capital murder trials in favor of second degree murder pleas.

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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