

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1100

SHORT TITLE: Kill Law Officer/Capital Crime

SPONSOR(S): Representative Nichols

FISCAL IMPACT: Expenditures: Increase (X) Decrease ()
Revenues: Increase () Decrease ()
No Impact ()
No Estimate Available ()

FUND AFFECTED: General Fund (X) Highway Fund () Local Fund ()
Other Fund (X) (Indigent Persons Attorney Fee Fund)

BILL SUMMARY: Amends G.S. 14-17.2 to make it First Degree Murder (a Class A felony) to kill a law enforcement officer, a correctional officer, a district attorney, an assistant district attorney, a justice, or a judge while the officer is discharging his or her official duties.

EFFECTIVE DATE: December 1 1993; applicable to all offenses committed on or after that date.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department; Department

JUDICIAL DEPARTMENT

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98	
EXPENDITURES *	\$19,600	\$58,000	\$39,200	\$39,200	\$39,000	I
GENERAL FUND	7,100	20,500	14,200	14,200	14,200	
REVENUES/RECEIPTS	0	0	0	0	0	
RECURRING						
NON-RECURRING						

* Projected expenditures do not include inflationary or salary increases.

POSITIONS: No new positions.

ASSUMPTIONS AND METHODOLOGY: The above cost estimates are based on an analysis provided by the Administrative Office of the Courts (AOC). In the below narrative (edited by the Fiscal Research Division), the AOC explains that the proposed legislation is expected to affect very few cases. However, additional costs are

estimated as this bill would make persons under age 17 subject to the death penalty. Under present law they are not. The fiscal implications are a direct result of the substantial cost differences between a capital and non-capital cases.

"First, it seems clear that the bill would affect very few cases. The 1991 Uniform Crime Report of the SBI Division of Criminal Information (DCI) reports that 14 law enforcement officers were killed feloniously in the ten year period from 1982 to 1991. Additional information from the DCI indicates that there were three murders of law enforcement officers in 1992. It is noteworthy that of the 17 murders in the past 11 years, 7 were committed in the past two years.

Impact on Cases Age 17 and Older

"As to defendants age seventeen and over, it appears that nearly all (if not all) are subject to capital prosecution under existing law. Present law, G.S. 14-17, states that murder is a capital offense if, among other things, it is a willful, deliberate, and premeditated killing, or is committed in the perpetration or attempted perpetration of certain felonies. For defendants age seventeen or older, a case that would become a capital case only because of this bill would be a case in which there is no evidence of premeditation or any other factor defining first degree murder under G.S. 14-17. (In addition, for the death penalty to be imposed, such cases would need to include evidence of some aggravating circumstance other than the fact that the victim was a law enforcement officer. In cases under this bill, the victim's official position would be an element of the offense, and case law indicates that an element of the offense cannot also be used as an aggravating circumstance.) In a telephone interview, one district attorney indicated that it is difficult to imagine a real-life circumstance involving the murder of a law enforcement officer where the defendant was not also engaged in the commission of a felony, generally involving a deadly weapon, or where the murder was not premeditated.

"This conclusion is corroborated by additional information from the DCI about murders of law enforcement officers in 1991 and 1992. In 1991, there were four murders of law enforcement officers; three were categorized by DCI as involving "ambush (entrapment and premeditation)," and the fourth involved a response to a burglary call (and thus was apparently a murder committed in the perpetration of a felony listed in G.S. 14-17). In 1992, there were three murders of law enforcement officers, and all involved first degree murder charges.

"It is possible for there to be an occasional case involving an adult defendant that would become a capital case because of this bill. However, since there would be a very small number of such cases (over many years), no specific fiscal estimates are being provided for these cases.

Impact on Cases Under Age 17

"In addition to defining the elements of first degree murder as discussed above, G.S. 14-17 specifically exempts persons who were under the age of 17 at the time of the murder from capital punishment. Thus, under current law, the only punishment for persons under age 17 who are convicted of first degree murder is life imprisonment. [The exemption for persons under age 17 does not apply to murders committed while serving a prison sentence for a prior murder or while on escape from a prison sentence for a prior murder. It is assumed that such murders are very rare.] Unlike the present statute, there would not be an exemption for persons under age 17 who charged under the proposed new section, G.S. 14-17.2. Therefore, the bill would change present law by making a person under age 17 subject to the death penalty when prosecuted for the murder of a law enforcement officer.

[NOTE: The U.S. Supreme Court has held that execution of a person age 16 or older does not per se violate the 8th Amendment ban against cruel or unusual punishment. Stanford v. Kentucky, 492 U.S. 361 (1989). Thus, it is clear that this bill could impact on persons age sixteen. In Thompson v. Oklahoma, 487 U.S. 815 (1988), four justices concluded that it would be unconstitutional to execute a person under age 16.]

"Since murders of law enforcement officers are relatively infrequent, few cases will be affected. However, based on the following information from district attorneys, some cases will be affected and at least one case involving the murder of a police officer in 1992 would have been affected. In that case, there were two defendants. One defendant was age 16 at the time of the murder and the second defendant was older. The death penalty was sought against the older defendant and the district attorney indicated that the death penalty would have been sought against both defendants if the law had allowed it. In another case, four teen-agers, including at least one under age 17, were involved in the murder of an officer. First degree murder charges were pursued against one defendant. The district attorney indicated that with a different factual situation, and if the law allowed it, capital charges would have been brought against the others as well.

"With these reports, and considering the increasing violence and use of guns by juveniles, we hesitate to conclude that such cases are unusual or not to be expected. The AOC Juvenile Services Division reports that in the past 12 months, from March 1992 to March 1993, 19 juveniles age 14 or 15 were bound over from juvenile to superior court for murder offenses. (It is not known whether any of the victims were law enforcement officers.)

Additional Expenditures

"Based on this recent experience, we estimate that on the average, one defendant per year would become subject to the death penalty under the provisions of this bill. The costs for a capital trial greatly exceed the costs for a non-capital trial. Based on readily available AOC data, the estimated additional

costs per case would be at least \$25,000 for indigent defense, \$1,500 for expert witnesses, and \$12,700 for additional days in court (which includes the costs for in-court trial time for an assistant district attorney, judge, clerk, court reporter, and jury). These costs total \$39,200 per case. Since the bill would be effective December 1, 1993, it is estimated that for the one case affected in 1993-94, only half of the \$39,200 (or \$19,600) would be incurred during that fiscal year. The other half for that case would be incurred in FY 1994-95, as would the full \$39,200 for the case affected by the bill in the second year.

"The foregoing costs are minimum estimates. They do not include any of the increased costs for additional out-of-court district attorney preparation time or additional court time for pretrial motions. The foregoing estimates are limited to the first trial, and do not include additional costs for first appeal and other post-conviction proceedings. (Under a grant from the State Justice Institute, researchers with the Duke University Institute of Public Policy will shortly complete a study on the costs of capital cases in North Carolina. This study will provide the best data available (nationwide) on the costs of capital litigation. That data, when available, could warrant re-examination of assumptions made in this fiscal note).

Additional Considerations

"As previously discussed, at least the vast majority of defendants age seventeen and older who murder law enforcement officers are subject to the death penalty under existing law. However, it is likely that such persons would be charged under the provisions of this bill, if enacted, rather than under present G.S. 14-17. Persons sentenced under this bill would not be eligible for parole. In contrast, under present law, in a capital case that results in a life sentence, the defendant could be eligible for parole in 20 years. A District Attorney observed that this difference in parole eligibility would probably lead to a decision to bring capital charges under the new section, rather than G.S. 14-17. (As explained above, however, it appears that the case would need to include evidence of some aggravating circumstance other than the fact that the victim was a law enforcement officer.) However, this possible change in charging practices is not expected to alter the nature of the case, since in either event the charge carries a possible sentence of death. The difference in parole eligibility, in the event that the sentence is life rather than death, is not expected to lead to different defense strategies or other case processing differences with greater fiscal impact.

"Also, we do not make any fiscal estimates for the possible application of this bill, which applies to "murder," to "accidents" that under present law are not prosecuted or categorized as murder. (Note that as a factual and legal matter, there is not always a clear line between an "accident" and conduct that justifies an imputation of intent). It does not seem that this bill would change the analysis of whether or not

the situation (such as a car chase that results in the death of an officer) warrants a charge of murder."

DEPARTMENT OF CORRECTION

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES	0	0	0	0	0
RECURRING					
NON-RECURRING					
REVENUES/RECEIPTS	0	0	0	0	0
RECURRING					
NON-RECURRING					

POSITIONS: No new positions.

ASSUMPTIONS AND METHODOLOGY: The fiscal impact of the proposed legislation upon the Department of Correction (DOC) has been estimated according to the assumption that there will be one additional defendant per year who will either be sentenced to death or life imprisonment without the possibility of parole. As reflected in the table above, there would not be a significant cost difference to house a defendant affected by the this legislation as compared to a defendant who would be incarcerated for life with the possibility of parole after 20 years under current law. This is due the fact that both a death row inmate and an inmate serving a life sentence would be housed in maximum security confinement for the initial five year period.

DOC data reveals that a Class A Felon serving a life sentence can be expected to serve 29% of the minimum 20 year term before parole eligibility (or 5.8 years) in maximum security confinement. Likewise, data collected on the 4 executions performed in the past decade suggests that the average time an inmate sentenced to death spends on death row (also maximum security confinement) is approximately 6.9 years. [Note this average is derived from periods of 4.3 years, 5.9 years, 6.0 years, and 11.2 years, indicating that a substantially longer period (i.e., 11.2 years) may exist for some death row felons.] Thus, for the period of this note, costs would be similar. The Department of Correction estimates the average cost for maximum security inmates on a system-wide basis to be \$85.38 per inmate per day. The average cost of maximum security inmates housed at Central Prison (where death row inmates are most likely to be housed) is estimated to be \$87.72 per inmate per day.

Over a longer time frame, the following cost comparisons can be made. Assuming that a death row inmate is housed in Central Prison maximum security confinement for the average period of 2,504 days or about 6.9 years, the overall cost of confinement is approximately \$219,650 added to estimated execution costs of \$3,882 for a total of \$223,532. Assuming that an inmate serves 20 years of a life sentence before being paroled, the following costs would be incurred according to the average time life-sentenced inmates (presently in

the system) spend in various custody levels; - maximum custody x 2117 days x \$85.38/day =	\$180,749	
- close custody x 2044 days x \$68.28/day =	\$139,564	
- medium custody x 1971 days x \$59.41/day =	\$117,097	
- minimum custody x 1168 days x \$44.53/day =		<u>\$52,011</u>
	Total	
\$489,421		

Since a 16 year old offender convicted of the murder of a law enforcement officer would receive either a death sentence or a life sentence without parole under the proposed legislation, this bill could result in additional savings or expenditure for the state. Savings would result if a defendant were sentenced to death. This is because, under current law, the only punishment for first degree murder involving persons under the age of 17 is life imprisonment. Referring to the above estimates, costs to incarcerate an inmate receiving a life sentence (for 20 years prior to parole) total \$489,421. These costs are \$265,889 greater than the costs estimated to confine and execute an offender who upon ratification of this bill could be sentenced to death.

If, however, the relevant defendants are sentenced to life imprisonment without parole, considerable expenditure could result over a long period of time. Assuming that the young offenders would live longer than 20 years, additional expense would be accrued daily and the total additional costs resulting from this bill would be dependent upon how long each offender lived prior to dying of natural causes.

SOURCES OF DATA: Administrative Office of the Courts; Juvenile Services Division; SBI Division of Criminal Information; Department of Correction

TECHNICAL CONSIDERATIONS:

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[FRD#003]

