

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB631 < Edition 1 >

SHORT TITLE: Autopsy Photos Not Public Record

SPONSOR(S): Rep. Setzer, et al.

FISCAL IMPACT

Yes () No () No Estimate Available (X)

FY 2001-02 FY 2002-03 FY 2003-04 FY 2004-05 FY 2005-06

REVENUES

EXPENDITURES

Department of Correction: No estimate available but assume minor fiscal impact possible due to potential for incarceration

Judicial Branch: No estimate available

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Judicial Branch and the Department of Corrections

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY:

This bill amends Chapter 132 of N.C. General Statutes by adding a new section (G.S. 132-1.5A) that addresses photographs and video recordings made pursuant to autopsy. G.S. 132-1.5A(a) addresses the findings of the General Assembly. G.S. 132-1.5A(b) provides that, except for dissemination to specific persons listed in the subsection (i.e. certain medical examiners, district attorney, superior court judge, and an individual entitled to bring a wrongful death action on behalf of the deceased), photographs and video recordings are not public records as defined in G.S. 132-1. (Public records as defined by G.S. 132-1 include all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. New 132-

1.5A(c) provides that any person who provides one or more photographs or videos, in violation of the new section, is guilty of a Class I felony.

This bill also amends G.S. 130A-389, which addresses autopsy reports and their dissemination, to subject them to the limitations imposed by the proposed new section G.S. 132-1.5A.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate how many offenders might be sentenced under this bill or the impact of this bill on the prison population. Because of the lack of data, there is no estimate available of the fiscal impact of HB 631. However, Fiscal Research believes there could be some minor fiscal impact since offenders convicted of a Class I felony can receive an active prison sentence. The Sentencing Commission noted that 13% of Class I felons received an active sentence in FY 1999/2000, with an average sentence length of 6 months. Still, fiscal impact is anticipated to be minor because it is assumed only a small number of people would not adhere to the requirements in the bill given the potential felony charge.

Judicial Branch

Under current law, G.S. 130A-389(d), all autopsies performed solely at the request of the decedent's next of kin and not deemed advisable nor in the public interest by the Chief Medical Examiner are part of the decedent's medical records and, therefore, are not public records. Thus, this bill addresses only those autopsies that, in the opinion of the Chief Medical Examiner, are advisable and performed in the public interest at either State or county expense. The AOC gathered information from the State Chief Medical Examiner's Office, which indicates that approximately 4,500 such autopsies are performed in North Carolina yearly.

The AOC does not have any data from which to estimate the number of additional cases that might be brought to the court system as a result of this bill. Moreover, subject to major qualifications noted in the technical consideration below, the AOC does not anticipate a substantial fiscal impact from these amendments. Given that the custodians of the items covered by this bill would generally adhere to the requirements, they assume, therefore, that there would not be a large number of charges under this bill. However, they do conclude that some additional time and expense may be incurred to develop the procedures necessary to assure that these materials, if introduced as evidence, are handled properly by the court clerks and do not become public record.

TECHNICAL CONSIDERATIONS:

AOC notes this bill does not specifically address access to autopsy photos and/or videos that are presented as evidence in a court of law and, as a result, become a matter of public record via the trial record. If all of the court files containing this type of evidence would need to be sealed to be consistent with this bill, additional costs may be incurred by the court system.

FISCAL RESEARCH DIVISION 733-4910

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