

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 44 (First Edition)
SHORT TITLE: DV Orders/Repeat Violators.
SPONSOR(S): Representatives McLawhorn, Ross, Farmer-Butterfield, and Parmon

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction		Significant impact anticipated; however, an exact amount cannot be determined. See Assumptions and Methodology – pp. 2-3.			
Judicial		Significant impact anticipated; however, an exact amount cannot be determined. See Assumptions and Methodology – p. 4.			
TOTAL EXPENDITURES:		Amount cannot be determined.			
ADDITIONAL PRISON BEDS: (cumulative)*		Amount cannot be determined.			
POSITIONS: (cumulative)		Amount cannot be determined.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	December 1, 2007.				
<i>*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.</i>					

BILL SUMMARY: Under current G.S. 50B-4.1(f), it is a Class H felony for a person to knowingly violate a valid protective order upon previous conviction of three offenses under Chapter 50B (Domestic Violence). H.B. 44 rewrites G.S. 50B-4.1(f) to reduce the prior conviction threshold at which the current penalty (Class H) would apply, from three to one. The act would become effective December 1, 2007, and apply to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

Reducing the prior conviction threshold (G.S. 50B-4.1(f)) to one would subject repeat violators to the current Class H felony penalty upon a second or subsequent conviction of an offense under Chapter 50B; rather than a fourth or subsequent conviction, as the statute now provides. Thus, violators with one or two prior convictions would be primarily affected by the proposed offense expansion. These alleged and/or convicted offenders would otherwise be subject to the current Class A1 misdemeanor penalty for violation of a valid protective order (G.S. 50B-4.1(a)).

The frequency of repeat violation for offenders with one or two prior convictions is unknown. *However, given the relatively high prior year charge and conviction frequencies for domestic violence protective order (DVPO) violation, Fiscal Research anticipates that this proposal could have a significant impact for both Corrections and the Courts. Such impact would be driven largely by the construction and operation of additional prison beds.*

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill. Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond. Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.*

Misdemeanants who are sentenced to active punishment typically serve the designated term of incarceration within a local jail, whereas most active sentences for felony convictions are served in state prison.¹ In FY 2005-06, 26% of Class A1 misdemeanor convictions resulted in active sentences, with an average estimated time term served of 50 days. In contrast, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Thus, *assuming that additional convictions and active sentences occur, this proposal will significantly lengthen the term of incarceration for certain protective order violations, while also increasing prison bed demands.*

Although prior year conviction data for DVPO violations does not distinguish prior convictions for offenses under Chapter 50B, it does provide some indication of the affected offender pool and potential impact on the prison population.² In FY 2005-06, there were 1,369 Class A1 misdemeanor convictions for violation of a valid protective order (G.S. 50B-4.1(a)); of these convictions, 942 had at least one prior conviction for some offense. However, it is not known how many of these Class A1 misdemeanor convictions occurred after one or two prior convictions

¹ Active sentences between 1 and 90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

² *FY 2005-06 DVPO convictions represent only a portion of the total number of convictions for offenses under Chapter 50B. The actual pool of offenders who could be subject to the proposed offense expansion is likely much larger than this annual, offense-specific data indicates.*

under Chapter 50B. There were eight Class H felony convictions for violations of G.S. 50B-4.1(f); almost 63% (5) had an active sentence imposed.

Given this relatively high number of convictions for protective order violation, the Sentencing and Policy Advisory Commission was asked to estimate potential prison bed needs based on several “conservative” conviction scenarios (Table 1). Each scenario assumes that a percentage of FY 2005-06 domestic violence protective order convictions – those also having at least one prior conviction for some offense (942 total) – would become subject to the proposed threshold reduction. These estimates demonstrate two-year impacts only and assume FY 2005-06 sentencing and revocation patterns for Class H felonies. Actual convictions, active sentencing rates, and revocation rates could exceed these assumptions.

Table 1. Projected Convictions and Prison Bed Impact			
<i>Projected Convictions</i>		<i>Prison Beds Required</i>	
Scenarios	# Convictions	FY 08/09	FY 09/10
1%	9	3	6
2.5%	24	8	15
5%	47	14	30
10%	94	28	59

As shown, if 5% of the assumed conviction pool were to result in Class H felony convictions under this proposal, 14 additional prison beds would be required by FY 2008-09; 30 would be required by FY 2009-10. Assuming inmate assignment to medium custody, the construction of prison beds within a new, stand alone facility could cost the State \$2,041,200 in FY 2007-08; bed construction within an add-on facility could cost approximately \$1,263,600.³ These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$395,503 in FY 2008-09, and \$872,932 in FY 2009-10.⁴

Table 2. Estimated Prison Bed Construction and Operation Costs				
<i>Prison Bed Construction Alternatives & Costs</i>			<i>Operating Costs</i>	
Scenarios	Stand Alone: FY 07/08	Add-On: FY 07/08	FY 08/09	FY 09/10
1%	\$ 408,240	\$ 252,720	\$ 84,751	\$ 174,586
2.5%	\$ 1,020,600	\$ 631,800	\$ 226,002	\$ 436,466
5%	\$ 2,041,200	\$ 1,263,600	\$ 395,503	\$ 872,932
10%	\$ 4,014,360	\$ 2,485,080	\$ 791,006	\$ 1,716,766

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

³ New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁴ Impact on incarcerated population is assumed for FY 2008/09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

(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.⁵

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominantly special, intensive, or general supervision probation; 74% of Class A1 misdemeanor convictions resulted in active sentences. Thus, *assuming that convictions subject to the proposed offense expansion were to occur, the Division of Community Corrections could assume 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. Nor is it known how such non-active sentencing would differ from current practices for domestic violence protective order convictions (G.S. 50B-4.1(a)).

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.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of a specific bill. For such bills, fiscal impact is typically based on the assumption that court-time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Based on preliminary data for calendar year 2006, there were approximately 4,600 defendants charged with violating a protective order under G.S. 50B-4.1(a). Of those charged, 3,251 had one prior conviction and 34 had two prior convictions for that same offense. Thus, *although future year charges may vary, this analysis assumes that the aforementioned 3,285 charges would occur annually, and would be subject to the proposed offense expansion.*⁶

Assuming this charge frequency, the AOC estimates that the difference in court-time and indigent defense costs for disposal of Class H felony rather than Class A1 misdemeanor charges would be approximately \$1.8 million per year. This cumulative, annual cost estimate includes some non-recurring costs for new positions. As shown in Table 2, it is assumed that a higher percentage of Class H felony charges would result in trial (12%), relative to Class A1 misdemeanor charges

⁵ 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.

⁶ *Calendar year 2006 DVPO conviction data represents only a portion of the total number of convictions for offenses under Chapter 50B. The actual pool of offenders who could be subject to the proposed offense expansion is likely much larger than this annual, offense-specific data indicates.*

(9%); guilty plea percentages (23%) are held constant. The remaining charges are presumed as dismissed.

Table 3. Estimated Court-Time & Indigent Defense Cost Differences							
<i>Trial</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
Class	# Cases	Court-Time*	DA Prep.*	Jury*	Court Costs	# Cases	Defense Cost
Class A1	296	\$ 1,586	\$ 1,193	-	\$ 822,584	133	\$ 191,387
Class H	394	\$ 3,081	\$ 1,590	\$ 640	\$ 2,092,534	296	\$ 601,472
<i>* Estimated costs per case</i>			<i>Difference: \$1,269,950</i>			<i>Difference: \$410,085</i>	
<i>Plea</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
Class	# Cases	Court-Time*	DA Prep.*	Jury*	Court Costs	# Cases	Defense Cost
Class A1	756	\$ 62	\$ 99	-	\$ 121,716	340	\$ 28,220
Class H	756	\$ 135	\$ 99	-	\$ 176,904	567	\$ 53,298
<i>* Estimated costs per case</i>			<i>Difference: \$55,188</i>			<i>Difference: \$25,078</i>	

In addition, the Administrative Office of the Courts anticipates that the proposed offense expansion could impact defense strategies for persons charged with a first offense, as these defendants would face felony charges upon second violation of a protective order. Thus, additional costs could be incurred if the amount of required court-time for such cases were to increase.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball and Denise Thomas

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

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