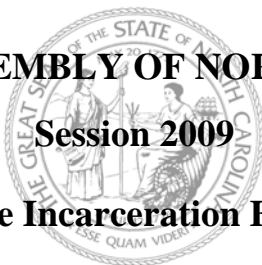


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 140 (First Edition)

SHORT TITLE: Amend Domestic Crim. Trespass.

SPONSOR(S): Senator Snow

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
EXPENDITURES					
GENERAL FUND					
Correction			Indeterminate fiscal impact		
Probation			Indeterminate fiscal impact		
Judicial			Indeterminate fiscal impact		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2009					
<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:

Amends GS 14-134.3 (Domestic criminal trespass) to provide that it is unlawful for a person subject to a valid protective order that is enforceable under GS Chapter 50B to enter property being operated as a safe house or haven for victims of domestic violence where the protected party is residing after being forbidden to do so or to remain on the premises after being ordered to leave by the lawful occupant, unless the person enters upon the premises pursuant to a judicial order or written separation agreement, which gives the person the right to enter the premises in order to visit minor children. Makes violation of this provision a Class H felony, regardless of whether any of the parties protected by the protective order are present on the property. Makes a conforming change. Amends GS 15A-2000(e) to add to the list of aggravating circumstances relevant to considering a sentence of death or life imprisonment for capital felonies that a defendant was subject to a valid protective order enforceable under GS Chapter 50B at the time of the commission of the capital felony and committed the capital felony on the premises of a safe house

or haven for victims of domestic violence where the protected party was residing. Effective December 1, 2009, and applies to offenses committed on or after that date
Source: Bill Digest S.B. 140 (02/11/0200).

ASSUMPTIONS AND METHODOLOGY:

General

Section 1

Section 1 adds subsection (c) to N.C.G.S. 14-134.3, Domestic Criminal Trespass, making it a Class H felony for a person subject to a valid protective order enforceable under Chapter 50B to enter property being operated as a safe house or haven for victims of domestic violence where the protected party is residing after being forbidden to do so, or to remain on the premises after being ordered to leave by the lawful occupant, unless the defendant enters pursuant to a judicial order or written separation agreement giving him or her the right to enter for visitation with minor children. The offense occurs whether or not the protected party is present at the time of the trespass.

Since the proposed section creates a new offense, the North Carolina Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.* However, as discussed below, the proposed offense either overlaps with or is a subset of existing offenses that carry a lower offense class than Class H felony. In FY 2007-08, 36% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Therefore, for every 3 convictions in the lower classes that meet the elements for Class H felony as proposed by this bill, the combination of active sentences and probation revocations would result in the need for one (1) additional prison bed the first year and two (2) additional prison beds the second year.

This proposed new felony offense overlaps with the existing Class 1 misdemeanor of Domestic Criminal Trespass under G.S. 14-134.3(a) for which there were 201 convictions in FY 2007-08. However, the elements of the two offenses differ. The new felony offense requires that the party protected by the protective order be “*residing*” on the premises at the time of the trespass; while the existing misdemeanor offense requires the premises to be “*occupied*” by the offender’s present or former spouse or person with whom the offender lives as if married (a narrower group than those protected from domestic violence under Chapter 50B). Unlike the proposed felony offense, the existing misdemeanor offense does *not* require the offender to be subject to a Chapter 50B protective order at the time of the trespass; nor does the existing offense require that the premises be operated as a safe house or have for victims of domestic violence.

The new felony offense would cover a subset of acts within the existing Class A1 misdemeanor of knowingly violating a valid Chapter 50B protective order under G.S. 50B-4.1(a). In FY 2007-08, there were 1,341 convictions for this offense.

This proposed new offense would also cover a subset of acts within the existing Class H felony of knowingly violating a valid Chapter 50B protective order after two prior Chapter 50B convictions, G.S. 50B-4.1(f). In FY 2007-08, there were six convictions under G.S. 50B-4.1(f). Since the new offense is the same class as the current offense in G.S. 50B-4.1(f), no additional impact to the prison population would be expected.

The new offense would cover a subset of acts within the existing Class 2 misdemeanor of First Degree Trespass, the Class 3 misdemeanor of Second Degree Trespass, and the Class 1 misdemeanor of Common Law Forcible Trespass to Real Property. However, these generic trespass offenses do not require the existence of a valid domestic violence protective order, or entry onto property operated as a safe house or

haven for victims of domestic violence where the party protected by the order is residing. In FY 2007-08, there were 561 convictions for First Degree Trespass, 6,526 convictions for Second Degree Trespass, and nine (9) convictions for Common Law Forcible Trespass to Real Property.

Section 2

Section 2 of the proposed bill adds a new aggravating circumstance to capital sentencing as G.S. 15A-2000(e) (12) for an offender who was subject to a valid protective order enforceable under Chapter 50B at the time of the commission of a capital felony (i.e., first degree murder) and who commits the offense on the premises of a safe house or haven for victims of domestic violence where the protected party was residing. A jury may recommend the death penalty if it finds an aggravating circumstance beyond a reasonable doubt, the aggravating circumstance is sufficiently substantial to call for the imposition of the death penalty, and the mitigating circumstance(s) are insufficient to outweigh the aggravating circumstance(s). A finding of this aggravating circumstance would allow a death sentence for some offenders who would receive a life sentence under current law.

In FY 2007-08, there were 100 convictions for First Degree Murder (Class A). Offenders convicted of First Degree Murder may receive either a death sentence or life without parole. Of the 100 convictions for First Degree Murder in FY 2007-08, four (4) received a death sentence and 96 received life without parole. It is unknown how many of the First Degree Murder convictions had currently-valid protective orders entered under Chapter 50B at the time of the commission of the offense¹ and the offense was committed on the premises of a safe house or haven for victims of domestic violence. Any impact for this proposed change will come from the difference between the length of time the average inmate with a death sentence spends in prison prior to execution verses the length of time the average inmate will remain in prison on a sentence of life without parole. According to the Department of Correction, from Calendar Years 1998 through 2008, 35 people were executed.² Their average time in prison prior to execution was 12.4 years. Therefore, *any impact from this proposed change will occur outside the ten-year fiscal note projection period.*

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

Because this proposed legislation creates a new offense, the Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this bill on the prison population. Therefore, *it is not known how many additional prison beds may be needed* under the proposed legislation.

It is important to note that 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 that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

¹ None of the 96 First Degree Murder convictions with a life without parole sentence in FY 2007-08 also had a Class A1 misdemeanor conviction for violation of G.S. 50B-4.1 (violation of a domestic violence protective order). However, four (4) of the 96 First Degree Murder convictions with a life without parole sentence were identified in AOC's Automated Criminal Infractions System as domestic violence offenders but did not have a concurrent conviction under G.S. 50B-4.1.

² There have been no executions in North Carolina since an execution that occurred on August 18, 2006.

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.³

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction –, the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 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.

In FY 2007-08, 38% of Class H felony offenders received active; 50% received intermediate; and 12% received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 31 and 29 months, respectively. The average cost for a single Class H felony offender receiving these punishments would be \$4,574 for intermediate and \$2,061 for community punishment. Because this is a new charge and there is no historical data upon which to base an estimate, *potential costs to DCC cannot be determined.*

Judicial Branch

The Administrative Office of the Courts (AOC) 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 1

AOC data for Calendar Year 2008 show approximately 1,461 defendants charged with misdemeanor domestic criminal trespass under current G.S. 14-134.3. It cannot be determined how many of these charges involve defendants subject to a Chapter 50B protective order who trespassed at a safe house for domestic violence victims. *The number of charges that would be subject to the penalty increase cannot be estimated.* AOC expects the increase in punishment to be accompanied by more vigorous defense and prosecution, resulting in increased court time and costs to dispose of these cases. Thus, AOC expects an increase in the workload of Superior Court judges, district attorneys, clerks, and court reporters. There would also be an increase in expenditures for jury fees and indigent defense.

Section 2

AOC data for Calendar Year 2008 indicate that approximately 482 defendants were charged with first degree murder. In addition, there were approximately 391 defendants charged with “murder” under current G.S. 14-17 with no designation of first or second degree murder, since this information is sometimes not

³ 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.

known at the time of charge. AOC has no data from which to estimate the number of first degree murder cases that involve parties to a protective order. From *anecdotal* information, it appears that each year there are a significant number of murder cases in the domestic setting, with a significant number of those murders occurring while a protective order was in place.

To the extent that murders involving parties to a protective order are being prosecuted as first degree murders with the death penalty sought, this new aggravating factor would probably not have a substantial impact on these cases at the trial level. Because evidence of this aggravating factor is fairly straight forward, its existence may not increase the complexity or litigation time of cases in which the death penalty is being sought anyway.

The greatest impact would be on those cases that are not being tried capitally under current law, but would be tried capitally under this bill because the existence of additional aggravating factors would outweigh any mitigating circumstances and warrant a death sentence. Costs for court and prosecutorial time at the trial level would be very high. For example, the court time for a guilty plea in a first degree murder case would take several hours, and a trial for a non-capital murder case would take about one week. In comparison, however, the “average” capital trial can be expected to last at least three weeks, involving very extensive preparation time for both the prosecution and defense. Also, for any case in which the additional aggravating factor results in a death sentence rather than life, the appeal and post-conviction process for these cases would be substantially more time-consuming and costly for trial and appellate courts, with indigent defense costs alone for a motion for appropriate relief in a capital case often exceeding \$100,000. *AOC is unable to estimate the number of cases that might be affected by this bill.* For any case that would become capital by virtue of this bill, or that results in a sentence of death instead of life imprisonment, there would be a substantial fiscal impact on the court system.

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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