

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 853 (First Edition)

SHORT TITLE: Death by Distribution of Drugs.

SPONSOR(S): Senator Clodfelter

	FISCAL IMPACT				
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction			No estimate available (see pg. 2 for details).		
Judicial			No estimate available (see pg. 2 for details).		
ADDITIONAL PRISON BEDS*			No estimate available (see pg. 2 for details).		
POSITIONS: (cumulative)			No estimate available (see pg. 2 for details).		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: December 1, 2005					
<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: This bill eliminates murder proximately caused by the unlawful distribution of opium, cocaine, or methamphetamine from the definition of Second Degree murder (a Class B2 felony) under current G.S. 14-17, and creates a new Class E felony for proximately causing the death of another by the willful and unlawful distribution of a Schedule I or Schedule II controlled substance (among which opium, cocaine, and methamphetamine are included).

ASSUMPTIONS AND METHODOLOGY:

General

The fiscal impact of this bill cannot be evaluated due to variations in the fiscal outcomes of reclassifying charges and convictions for deaths caused proximately by the distribution of drugs. Under current law, if the drug causing a death is *opium, cocaine, or methamphetamine*, the offense is Second Degree Murder, a Class B2 felony. Any death proximately caused by unlawful distribution of a Schedule I or II controlled substance *other than* opium, cocaine, or methamphetamine could be charged presently as Involuntary Manslaughter (a Class F felony) or not result in a charge. Under this bill, *any* death caused proximately by the unlawful distribution of a schedule I or II controlled substance (whether opium, cocaine, methamphetamine, or otherwise) would be a Class E felony. Thus, some charges and convictions could be reduced from Class B2 to Class E felonies, some charges and convictions could be elevated from Class F to Class E felonies, and some altogether new Class E charges and convictions could result.

Charges and convictions reduced from Class B2 to Class E felonies would be expected to result in some reduction to prison population, associated incarceration costs, and court costs for affected offenders. However, broadening the scope of the offense to include *all* Schedule I and II controlled substances would be expected to lead to additional Class E charges and convictions and associated costs to the Department of Correction and the Courts.¹ Due to lack of data on the numbers of charges and convictions that would be reclassified as Class E offenses, the specific amount of costs or any cost savings cannot be determined.

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.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

This bill could reduce some convictions from Class B2 to Class E felonies, elevate some convictions from Class F to Class E felonies, and result in some altogether new Class E convictions (see “General”). In FY 2003-04 there were 181 convictions for Second Degree Murder (Class B2) and 83 convictions for Involuntary Manslaughter (Class F), however, it is not known how many of these convictions were for proximately causing a death through the unlawful distribution of a Schedule I or II controlled substance (including opium, cocaine, and

¹ Additional Class E charges and convictions could be new or could be elevated from Class F felonies for Involuntary Manslaughter, depending on how these cases are currently charged.

methamphetamine) and would thus become Class E felonies under this bill. The number of additional offenders that would be convicted of a Class E offense under this bill and would not be presently convicted of Second Degree Murder or Involuntary Manslaughter is also unknown due to lack of historical data.

Class B2 → Class E Convictions: With the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence and the average estimated time served for an offender convicted of Second Degree Murder was 197 months in FY 2003-04. In contrast, 49 percent of Class E convictions resulted in active sentences in FY 2003-04 with an average estimated time served of 31 months. Because Class E offenders receive shorter sentences and are eligible for non-active sanctions, convictions reduced from Class B2 to Class E would be expected to result in a reduction to prison population and costs associated with these offenders. Due to the length of sentences imposed, Class B2 felony convictions have a long-term impact on prison population. Thus, some of the impact of any Class B2 convictions reduced to Class E felonies would occur outside the five-year fiscal note horizon.

Class F → Class E Convictions: In FY 2003-04, of the 83 offenders convicted of Involuntary Manslaughter, 44 (53%) received active sentences with an average estimated time served of 23 months. On average, 49 percent of Class E convictions resulted in active sentences with an average estimated time served of 31 months. If, for example, ten convictions were for Class E rather than Class F felonies under this bill, no additional prison beds would be needed in the first year and two beds would be needed in the second. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

New Class E Convictions: It is unknown how many new Class E felony convictions would result from proximately causing a death through the unlawful distribution of a Schedule I or II controlled substance other than opium, cocaine, or methamphetamine. New Class E convictions could also result for a death proximately caused by unlawful distribution of opium, cocaine, or methamphetamine for cases in which the State could previously not prove malice, necessary to obtain a Second Degree Murder conviction. If, for example, there were two convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Non-Active Sentences: In FY 2003-04, 51 percent of Class E felonies resulted in intermediate sanctions. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter (based on the cost of intensive probation, the most common intermediate sanction).

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these 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.

In calendar year 2004, AOC data indicate that 88 defendants were charged with Second Degree Murder and 103 were charged with Involuntary Manslaughter. It is not known how many of these charges involved deaths caused proximately by the unlawful distribution of drugs. AOC data for calendar 2004 reveal that approximately 570 defendants were charged with the sale, delivery, or trafficking of a Schedule I controlled substance (such as heroin, MDA, MDMA, and LSD). Approximately 6,395 defendants were charged with the sale, delivery, or trafficking of a Schedule II controlled substance (such as opium, cocaine, amphetamine, and methamphetamine). However, the number of deaths resulting from the ingestion, injection, or absorption of a Schedule I or II controlled substance is unknown, and no data is available regarding the number of charges that would result from any such deaths.

Reductions in court time and attorney preparation time could lead to decreased workload in superior court for charges reduced from Class B2 to Class E felonies due to this bill. However, increases in time to process new Class E felony charges or charges elevated from Class F to Class E felonies would lead to additional workload in superior court. Due to the lack of data on the number of charges for a death caused proximately by the unlawful distribution of a Schedule I or II controlled substance, the specific amount of any reduction or increase in workload and costs cannot be determined. Table 3 below outlines the average estimated cost to dispose of a single Class E felony charge via trial and via guilty plea, the *decrease* in cost to settle a charge as a Class E rather than Class B2 felony, and the *increase* in cost to settle a charge as a Class E rather than Class F felony.

Table 1: Estimated Average Per Charge Settlement Costs [() denotes savings]

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	-
Class E Felony	\$5,847	\$2,912	\$8,759	\$414
Class B2 → Class E	(\$2,905)	(\$1,567)	(\$4,472)	(\$622)
Class F → Class E	\$372	\$208	\$580	\$17

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

TECHNICAL CONSIDERATIONS: None

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