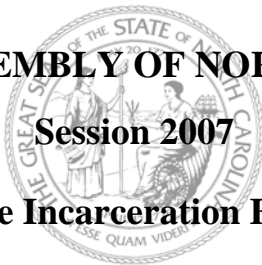


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 2417 (First Edition)
SHORT TITLE: Crimes of Torture and Enforced Disappearance.
SPONSOR(S): Representatives Luebke, Jones, Harrison, and Coleman

FISCAL IMPACT table with columns for fiscal years (FY 2008-09 to FY 2012-13) and rows for GENERAL FUND (Correction, Judicial), ADDITIONAL PRISON BEDS, POSITIONS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

This bill enacts new GS 14-34.9, creating and defining the statutory crimes of torture and enforced disappearance. Torture is defined to include its common law definition and also any act by which serious physical or mental pain or suffering is intentionally inflicted by or with the consent or acquiescence of a public official to obtain a confession or punish or intimidate. The bill excludes pain or suffering resulting from lawful interrogation, detention, arrest, or use of force and makes statutory torture a class E felony. The bill defines enforced disappearance as the arrest, detention, or abduction of a person by or with the authorization of a state or a political organization, followed by a refusal to either acknowledge the deprivation or give information about the person's fate or whereabouts, with the intention of depriving the detainee of due process of law. Enforced disappearance becomes a class F felony. The bill provides that North Carolina has jurisdiction when a person commits one of the offenses in North Carolina, when a person commits an act in North Carolina that is in furtherance of a conspiracy to commit the actual offense outside the state, or when a person enters into a conspiracy to commit one of the offenses in North Carolina, even if the conspiracy was formulated elsewhere or conduct in furtherance of the conspiracy occurs elsewhere. The bill also amends GS 15A-622(h) to add statutory torture and enforced disappearance to the offenses for which an investigative grand jury may be convened.

Source: Bill Digest H.B. 2417 (05/21/0200)

ASSUMPTIONS AND METHODOLOGY:

General

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

G.S. 14-34.9(b) makes it a Class E Felony to commit torture. Subsection (a)(4) defines torture as both the definition of torture provided at common law and any act by which serious mental or physical pain or suffering is intentionally inflicted on a person for purposes such as obtaining from the person or from a third person information or a confession, punishing the person for an act or she or a third person has committed or is suspected of having committed, or intimidating or coercing the person or a third person based on discrimination of any kind, when the pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

G.S. 14-34.9(c) makes it a Class F Felony to arrest, detain, or abduct of a person as, or with the authorization, support, or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts of the person, with the intention of depriving the detainee of due process of law.

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

In FY 2006/07, 53% of Class E convictions resulted in active sentences, with an average estimated time served of 29 months. If, for example, there were two Class E convictions under this proposed bill 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. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

In FY 2006/07, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill 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.

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.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 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 \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. In FY 2006/07, 46% of Class E and 48% Class F felony offenders received intermediate punishment. Community punishment is not provided for Class E or Class F offenders under current structured sentencing guidelines.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

Judicial Branch

The Administrative Office of the Courts 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.

To the extent that the offense of torture is being punished under current law as malicious maiming (Class C felony, GS 14-30), assault with a deadly weapon with intent to kill inflicting serious injury (Class C felony), assault with a deadly weapon with intent to kill (Class E felony) or inflicting serious injury (Class E felony, GS 14-32), assault inflicting serious bodily injury (a Class F felony, GS 14-32.4), or something similar, Fiscal Research does not expect a large number of new charges to arise from this bill. This bill, however, would enhance the punishment of any offense current classified as Class F or lower felony. AOC has no data from which to determine the number of charges that constitutes torture; therefore it cannot be estimated how many charges would be subject to the increased penalty under this bill. Any increased punishment would be accompanied by more vigorous defense and prosecution, resulting in increased court time and costs to dispose of these cases.

¹ 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.

With respect to the offense of enforced disappearance, AOC has no data from which to estimate the number of charges that would arise. It is anticipated that these cases would involve complex issues of criminal law, state jurisdiction, and other matters and be time-consuming and costly for the courts to dispose at the trial and appellate levels.

Section 2 expands current GS 15A-622(h) by authorizing the use of investigative grand juries for the offenses of torture and enforced disappearance. There is no available data from which to estimate the number of grand juries that would be convened for this purpose. Such proceedings would increase the workload of prosecutors and expenditures for jury fees.

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

TECHNICAL CONSIDERATIONS: There is no extant common law offense of torture. A statute now provides that murder by torture is first-degree murder. Torture in this context has been defined as a course of conduct intentionally inflicting grievous pain and suffering for the purpose of punishment, persuasion, or sadistic pleasure. Subsections (a)(4) and (b) can thus be construed to include any conduct intentionally inflicting grievous pain and suffering for the purpose of punishment, persuasion, or sadistic pleasure, regardless of whether it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity. However, this analysis assumes that the offense covers only acts by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity.

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