

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 5 (Second Edition)
SHORT TITLE: Methadone Distribution/2nd Degree Murder.
SPONSOR(S): Senator Snow

		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	Some fiscal impact anticipated, given mandatory active sentencing for Class B2 convictions and the associated length of incarceration. However, an exact amount cannot be determined. See Assumptions and Methodology – pp. 2-3.					
Judicial	Some fiscal impact anticipated, due to increased court-time demands for disposal of Class B2 felony charges. However, an exact amount cannot be determined. See Assumptions and Methodology – pp. 4.					
DJJDP	Fiscal impact is not assumed to be substantial. Exact amount cannot be determined. See Assumptions and Methodology – pp. 3-4.					
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.						
*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.						

BILL SUMMARY: Under current G.S. 14-17, it is second degree murder to proximately cause the death of another through the unlawful distribution of certain controlled substances, when the ingestion of such substance causes the user’s death.¹ The second edition of S.B. 5 amends G.S. 14-17 to include all Schedule I (G.S. 90-89) and Schedule II (G.S. 90-90) controlled substances, thereby expanding the application of this second degree murder offense (Class B2 felony).

ASSUMPTIONS AND METHODOLOGY:

General

Presently, a person who proximately causes the death of another through the unlawful distribution of a *Schedule I or II* controlled substance, other than those specified in G.S. 14-17, could be charged and convicted of involuntary manslaughter (Class F felony). *Consequently, by expanding the list of applicable controlled substances, the proposed bill would greatly increase the criminal penalty for such offense, from involuntary manslaughter (Class F felony) to second degree murder (Class B2 felony).*

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 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.*

Under structured sentencing, the length of sentence varies with a defendant’s prior record level and the presence of mitigating or aggravating factors. At the typical, presumptive range, a convicted Class B2 felon at the lowest prior record level must serve a minimum term of 125 months (10.4 years). In comparison, Class F felons, up to prior record level III, could potentially receive intermediate sanction or probation. Minimum sentences for Class F offenses (across all prior record levels) range from 10 to 49 months.

Table 1. Minimum Sentence Ranges Under Structured Sentencing: Class B2 and Class F Felonies							
		Prior Record Level					
Offense Class		I (0 Pts.)	II (1-4 Pts.)	III (5-8 Pts.)	IV (9-14 Pts.)	V (15-18 Pts.)	VI (19+ Pts.)
	Disposition	A	A	A	A	A	A
B2	<i>Aggravated</i>	157-196	189-237	220-276	251-313	282-353	313-392
	Presumptive	125-157	151-189	176-220	201-251	225-282	251-313
	<i>Mitigated</i>	94-125	114-151	132-176	151-201	169-225	188-251
	Disposition	I/A	I/A	I/A	A	A	A
F	<i>Aggravated</i>	16-20	19-24	21-26	25-31	34-42	39-49
	Presumptive	13-16	15-19	17-21	20-25	27-34	31-39
	<i>Mitigated</i>	10-13	11-15	13-17	15-20	20-27	23-31

¹ Specifically, methamphetamine, opium, cocaine, or certain derivatives or chemical equivalents of opium and cocaine (G.S. 90-90(1)d., including methamphetamine).

In 2005-06, there were 206 convictions for second-degree murder (Class B2 felony) and two convictions for attempted second-degree murder, with an average minimum sentence imposed of 172 months (14.3 years). **In contrast, there were 89 involuntary manslaughter (Class F felony, G.S. 14-18) convictions in FY 2005-06, with an average minimum sentence imposed of 18.6 months (1.6 years).** Of these, 55 percent received intermediate sentences, predominantly special and intensive supervision probation.

The 89 involuntary manslaughter convictions is a starting point for determining the pool of offenders that could be charged with a Class B2 felony instead of a Class F. However, data is not available on the number of these cases where an overdose death was involved. Therefore an estimate of the number of such cases that might lead to second-degree murder convictions under the proposed offense enhancement cannot be made. However, *due to mandatory active sentencing and the associated sentence length for Class B2 felonies, the Sentencing and Policy Advisory Commission anticipates that this proposal could have a long-term impact on the State's prison population.*

If, for example, only one additional conviction were to occur per year, *the combination of active sentences would require one additional prison bed in the first applicable year; two additional beds in the second year; and 1 new employee in the second year.* Assuming inmate assignment to close custody, the construction of two prison beds within a new, stand alone facility could cost the State \$235,440 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$153,360.² 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 \$31,796 in FY 2008-09, and \$65,500 in FY 2009-10.³

Department of Correction – Division of Community Corrections

There is no anticipated impact for the Division of Community Corrections within the five year fiscal note horizon, due to mandatory incarceration and length of sentence (7.8 year minimum). *However, to the extent that future convictions for the enhanced offense were to occur, the Division of Community Corrections (DCC) could assume additional costs for offenders placed on post-release supervision.* Although any future impact is not assumed to be significant, it is not known exactly how many offenders would receive such supervision, or for how long.

Department of Juvenile Justice and Delinquency Prevention

The proposed criminal penalty enhancement could also increase the need for Youth Development Center (YDC) resources. Juvenile commitment to a YDC is authorized for all Delinquency History Levels for the adjudication of “Violent” offenses, those so classified in accordance with

² 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).

³ Impact on incarcerated population is assumed to begin in FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

Classes A through E felonies. In FY 2005-06, 27 percent of the juveniles that were adjudicated delinquent for a “Violent” offense received a Level 3 (YDC) commitment. *However, based on the projected YDC population (approximately 503 by FY 2009-10) and estimated available bed capacity (approximately 508), Fiscal Research does not anticipate a substantial impact on YDC resources.*

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.

Current data does not distinguish the number of deaths that were proximately caused by the unlawful distribution of a Schedule I or II controlled substance. Thus, it is not known how many charges would occur for the proposed offense enhancement. However, relatively high charge frequencies for Schedule I and II controlled substance offenses suggest that future charges could result. In calendar year 2006, approximately 17,500 defendants were charged with the trafficking, sale, delivery, or possession of, with intent to sell or deliver, cocaine, amphetamine/methamphetamine, or opium/heroin; approximately 2,895 defendants were charged for such offenses involving other Schedule II controlled substances. Approximately 700 defendants were charged with the trafficking, sale, delivery, or possession of, with intent to sell or deliver, a Schedule I controlled substance (including MDA/MDMA, LSD, and methaqualone).

Table 2. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08				
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>	<i>Change in Cost: Trial</i>	<i>Change in Cost: Plea</i>
Class F Felony	\$ 9,902	\$ 539	N/A	N/A
Class B2 Felony	\$ 16,023	\$ 1,265	\$ 6,121	\$ 726

As shown, the Administrative Office of the Courts estimates court-time costs of \$9,902 for disposal of an involuntary manslaughter (a Class F felony) charge via trial; \$539 via plea. In contrast, estimated court-time costs for a Class B2 felony trial and plea are \$16,023 and \$1,265, respectively. Consequently, the estimated increases in court-time costs for the proposed offense enhancement are \$6,121 per trial, and \$726 per plea.

Actual court-time costs may vary with time requirements and disposition (i.e. trial or plea). These cost estimates are based on projected court-time requirements for jurors, judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings.

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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