

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note



BILL NUMBER: Senate Bill 514 (Third Edition)

SHORT TITLE: Magistrates Provide Appointment of Counsel.

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes ()

No ()

No Estimate Available ()

FY 2009-10 FY 2010-11 FY 2011-12 FY 2012-13 FY 2013-14

GENERAL FUND EXPENDITURES:

Judicial – AOC

Indeterminate fiscal impact

Judicial – IDS

No significant fiscal impact anticipated

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch

EFFECTIVE DATE: July 1, 2009

BILL SUMMARY:

The proposed bill seeks to permit Chief District Court judges to authorize magistrates who are licensed attorneys to appoint counsel in limited circumstances pursuant to Article 36. Appointments of counsel under Article 36 require a determination of indigency and are subject to rules of the Indigent Defense Services Commission; for an indigent criminal defendant. This bill states that magistrates cannot appoint counsel in cases that are potentially capital offenses (this appointment of counsel is done through the Office of the Capital Defender). This bill would become effective July 1, 2009.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch – AOC

The Administrative Office of the Courts (AOC) reports to Fiscal Research that for cases that require additional settings under current practice due to the absence of an attorney, the proposed authority for magistrates could result in less workload for clerks and judges, transferring that work instead to magistrates. There would be some savings in terms of judges' time, and some cost for increased magistrates' time. There may also be some costs incurred at the outset to provide training to magistrates on determining

indigency. *It is unclear how often magistrates would be authorized to appoint counsel or how frequently they would make such appointments.*

There are currently 56 attorney-magistrates in 24 counties, so most counties would remain unaffected by this legislation. These magistrates represent 8% of all magistrates, and their proportional workload (based on criminal filings and number of magistrates in each county) represents fewer than 6% of all criminal case filings in the state. However, AOC does not know whether these attorney-magistrates are assigned proportionally to criminal cases or if they hear small claims cases or other matters more frequently. For example, based on available data, if these 56 magistrates are assigned proportionately, AOC would estimate that they would see approximately 246,000 defendants for first appearances annually, of whom 124,000 would be defended by public defenders or court-appointed counsel. (2008 data, assumes one case per defendant and that all non-traffic misdemeanor and felony cases require a first appearance before a magistrate.) However, AOC does not know whether magistrates would be authorized or inclined to appoint counsel at a first appearance.

AOC has no data regarding the extent to which these particular magistrates handle initial appearances or other criminal proceedings in their counties at which attorney appointments might be made, or how often they would be authorized and inclined to appoint counsel in the cases before them. It can be expected that use of this new authority would evolve in various counties and be applied in circumstances where it proves efficient.

Judicial Branch – IDS

The Office of Indigent Defense (IDS) reported to Fiscal Research that it appears that all but 14 of the 56 attorney magistrates in the state are located in judicial districts in which there is a Public Defender. In districts in which there is a Public Defender, the Public Defender's Office represents indigent defendants unless there is a conflict of interest or the existing case load prevents the Public Defender from providing representation.

This proposed legislation will not change the standards for appointment of counsel in criminal cases, but will speed up the process in those districts in which the chief District Court judge elects to delegate this authority to lawyer-magistrates. As most of the eligible magistrates sit in Public Defender districts, earlier appointment of the Public Defender should not increase IDS' costs. It is difficult to predict whether earlier appointment of private assigned counsel in those cases in which the Public Defender does not provide representation will result in any increase in defense costs to IDS. In some cases, it is possible that private assigned counsel will spend additional time on cases due to the earlier appointment. However, it is more likely that an earlier appointment will result in counsel resolving the case more quickly, and possibly with fewer court appearances, rather than spending more time on the case. For example, counsel appointed to represent an incarcerated defendant prior to the first appearance may be able to address the defendant's bond at the first appearance rather than returning to court to be heard on a motion to reduce the bond. Misdemeanor defendants who now experience significant delay before their first appearance may be able to meet with the appointed counsel prior to that appearance and resolve the case during their first court appearance, rather than applying for appointment of counsel during that appearance and returning for a subsequent appearance with counsel.

Given the limited scope of S 514, the fact that most of the eligible magistrates sit in Public Defender districts, and the likelihood that counsel appointed earlier in the process can resolve cases more quickly and with no more work than counsel appointed later in the process, *IDS does not predict any measurable increase in defense costs.*

SOURCES OF DATA: Administrative Office of the Courts, Office of Indigent Defense Services

TECHNICAL CONSIDERATIONS: None

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