

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 735

SHORT TITLE: Domestic Violence/Bail and Sentence

SPONSOR(S): Representative Sherrill

FISCAL IMPACT: **Expenditures:** **Increase (x)** **Decrease ()**
 Revenues: **None(x)** **Increase ()** **Decrease ()**

FUND AFFECTED: **General Fund (x)** **Highway Fund ()** **Local Govt. ()**
 Other Funds ()

BILL SUMMARY: "TO INCREASE THE PENALTY FOR CERTAIN MISDEMEANORS IF THEY ARE COMMITTED AS ACTS OF DOMESTIC VIOLENCE AND TO PROVIDE THAT A JUDGE IS THE ONLY JUDICIAL OFFICIAL WHO MAY SET CONDITIONS OF PRETRIAL RELEASE FOR CRIMES OF DOMESTIC VIOLENCE." Changes each of the following misdemeanor penalties, notwithstanding the misdemeanor sanction grid and provisions of G.S. 15A-1340.23, so that person convicted may be sentenced to an active term of imprisonment not to exceed 24 months if the victim is a current or former spouse or cohabitant. Adds new G.S. 14-33(c) to so provide if a defendant is convicted of a simple assault, a simple assault and battery, participating in a simple affray, or, in the course of these, inflicts or attempts to inflict serious injury, uses a deadly weapon, or assaults a female. Amends G.S. 14-134.3 to so provide if a defendant is convicted of domestic criminal trespass. Amends G.S. 14-277.1(b) to so provide if a defendant is convicted of communicating threats. Amends G.S. 15A-534.1 to require that the judicial official who determines the conditions of pretrial release for these crimes of domestic violence be a judge.

EFFECTIVE DATE: Sections 1, 2, and 3 become effective December 1, 1995, and apply to offenses committed on or after that date. The remainder is effective upon ratification.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: District court, district attorneys' offices, indigent defense

FISCAL IMPACT(*)

| | Indigent Defense | Other State Funds | Total |
|----------|------------------|-------------------|-------|
| FY 95/96 | \$32,852 | \$ 90,825 | |
| | \$123,677 | | |
| FY 96/97 | \$60,260 | \$160,371 | |
| | \$220,631 | | |
| FY 97/98 | \$64,478 | \$165,182 | |
| | \$229,660 | | |
| FY 98/99 | \$68,991 | \$170,137 | |
| | \$239,128 | | |
| FY 99/00 | \$73,820 | \$175,241 | |
| | \$249,061 | | |

(*) Note: Fiscal estimates provided are for Sections 1, 2, and 3 of the bill. No estimate is available for the fiscal impact of Section 4 of the bill.

ASSUMPTIONS AND METHODOLOGY:

Sections 1, 2, and 3 of this bill increase the possible penalty for certain Class 1 misdemeanors involving acts of domestic violence by authorizing an active term of imprisonment not to exceed 24 months. Section 4 of the bill specifies that judges are the "judicial officials" who must determine conditions of pretrial release for crimes of domestic violence under G.S. 15A-534.1.

SECTIONS 1 THROUGH 3

Punishment levels

The misdemeanors affected by this proposed bill are certain assaults involving domestic situations under G.S. 14-33, domestic criminal trespass under G.S. 14-134.3, and communicating threats under G.S. 14-277.1. Each of these offenses is now punishable as a Class 1 misdemeanor, the maximum punishment for which is 120 days imprisonment at the highest prior record level under G.S. 15A-1340.23. At present, an active sentence is not authorized for prior conviction level 1, and community punishment is authorized for all prior record levels. This bill extends the possible punishment for these three offenses to "an active term of imprisonment not to exceed 24 months," notwithstanding the provisions of structured sentencing.

It is difficult to estimate the precise impact that this bill would have upon the Judicial Branch. Any increase in trials would be due to the fact that defendants might be more likely to contest charges carrying the potential of greater punishments. On the other hand, defendants might be more willing to plea bargain for fear of greater sentences at trial.

A survey of district attorneys indicated that there may be some increase in the number of trials for the relevant domestic offenses. Each offense is discussed separately.

Domestic assault: If an assault under G.S. 14-33(a), or (b)(2) involves a victim who is a spouse or former spouse or a person with whom the defendant lives or has lived, the assault is subject to the provisions of this bill. Based on the survey of district attorneys, it is estimated that 46% of all assaults involve a domestic situation meeting the above definition, and that an additional 8% of the cases would go to trial under this bill.

Extrapolations from fourth quarter 1994 data indicate that in 1994, there were approximately 20,100 convictions for assault under the relevant provisions of G.S. 14-33. Based on the survey results, it is estimated that 9,246 (46%) of these were domestic assaults. If an additional 8% went to trial, then approximately **740 additional domestic assault cases** would go to trial under this bill.

Domestic criminal trespass: It is estimated that an additional 8% of domestic criminal trespass cases would go to trial under this bill. Extrapolations from fourth quarter 1994 data indicate that in 1994, there were approximately 544 convictions for domestic criminal trespass in North Carolina. If an additional 8% went to trial, then the increase in the number of cases of domestic criminal trespass going to trial would be approximately **44 cases**.

Communicating threats: It is estimated that an additional 7% of cases of communicating threats would go to trial under this bill. Extrapolations from fourth quarter 1994 data indicate that in 1994, there approximately 4,194 convictions for communicating threats in North Carolina. If an additional 7% went to trial, the increase in the number of cases going to trial would be approximately **294 cases**.

Total increase in cases going to trial: Based on the above estimates, this bill could result in 740 additional misdemeanor domestic violence assault cases, 44 additional domestic criminal trespass cases, and 294 additional cases of communicating threats, for **a total of 1,078 additional domestic violence cases going to trial every year**.

Defense costs: It is estimated that 40%, or 431, of these cases would involve indigent defendants. Approximately 68% (293) of the indigent defendants would be represented by private assigned counsel, and approximately 32% (138) would be represented by the public defenders. It is estimated that the incremental difference in attorney time between guilty pleas and trials would be about three hours per case (same for all three types of offenses), including additional time needed to prepare for trials. The cost of additional private assigned counsel time for 293 cases would be \$43,950, based on an estimate of \$150/case. The cost of additional assistant public defender time for

138 cases would be \$12,368. With a December 1 effective date, additional defense costs for fiscal year 1995-96 would total \$32,852, and additional defense costs for fiscal year 1996-97 would total \$56,318.

Court costs: The estimated cost for court time per day in district court (for a judge, a court reporter, and an assistant district attorney) is \$865. Each case that would go to trial under this bill would involve an incremental increase of about one hour of court time. The 1,078 cases would take 1,078 additional hours of court time, or 180 days of court, for a total additional yearly estimated court cost of \$155,700. Court costs for fiscal year 1995-96 would total \$90,825, and court costs for fiscal year 1996-97 would total \$155,700.

These figures exclude additional workload within the clerks' offices, possible costs from additional appeals, and additional trial preparation time for district attorneys.

SECTION 4

Pretrial release

Under current law, any "judicial official" may determine the conditions of pretrial release for crimes of domestic violence under G.S. 15A-534.1. Under the bill, a judge must determine conditions of pretrial release under G.S. 15A-534.1. As discussed below, it will be difficult to implement this requirement. Requiring judges to make such determinations will be a problematic and potentially very expensive proposition.

Currently, persons arrested must be taken before a magistrate for an initial appearance "without unnecessary delay," pursuant to G.S. 15A-511. At this initial appearance, the magistrate must determine whether probable cause exists, and, if so, must make a determination regarding commitment or bail according to Article 26 (G.S. 15A-531 - G.S. 15A-547). Article 26 includes G.S. 15A-534.1. Although G.S. 15A-511(f) indicates that "any judge, justice, or clerk of the General Court of Justice" may conduct an initial appearance, the district attorneys surveyed indicated that magistrates conduct initial appearances in almost all cases.

Thereafter, a defendant must have a first appearance before a district court judge, pursuant to G.S. 15A-601. According to G.S. 15A-601(c), if the defendant is detained in custody after the initial appearance, the first appearance before a district court judge must be within 96 hours after being taken into custody or at the first regular session of district court in the county, whichever occurs first. If the defendant is not taken into custody, the first appearance must be held at the next session of district court in that county. Under G.S. 15A-601(e), the clerk of superior court may conduct a first appearance if a

district court judge is not available within 96 hours. G.S. 15A-601(b) provides that if a district court judge conducts the initial appearance under G.S. 15A-511, the judge may consolidate those proceedings and the first appearance under G.S. 15A-601.

If a district court judge conducted consolidated initial and first appearance proceedings, the judge would already be complying with the provisions of this bill requiring a judge to determine pretrial release conditions under G.S. 15A-534.1. However, as stated above, district attorneys surveyed indicated that magistrates conduct initial appearances in almost all cases. At such initial appearances, magistrates are statutorily required, under G.S. 15A-511(e), to determine conditions of pretrial release.

Under this bill, the Administrative Office of the Courts assumes that the magistrates could still conduct initial appearances and make probable cause determinations. Those persons for whom no probable cause exists would be released immediately. However, in those cases in which probable cause exists (the vast majority), such persons would have to be held in jail until a judge became available to determine the conditions of pretrial release under G.S. 15A-534.1.

Furthermore, requiring judges to make these determinations would significantly delay other cases in district court. Initial appearances, which include pretrial release determinations, must be conducted "without unnecessary delay," pursuant to G.S. 15A-501(2) and G.S. 15A-511(a)(1). There is no precise time period defined by the phrase "without unnecessary delay." Courts have indicated that delays of several hours are not unreasonable. See State v. Payne, 328 N. C. 377 (1991) (delay of 1.5 hours); State v. Martin, 315 N. C. 667 (1986) (delay of 1.75 hours); State v. Richardson, 295 N. C. 309 (1978) (delay of 4.5 hours); State v. Reynolds, 298 N. C. 380 (1979) (delay of 2 to 3 hours). Although the first appearance may be held as long as 96 hours after the initial arrest, it seems that the initial appearance would have to be held well within 96 hours. The Administrative Office of the Courts assumes that determinations of pretrial release, as well as determinations of probable cause, would have to be made "without unnecessary delay."

Under the current system, magistrates make pretrial release determinations, as well as probable cause determinations, within hours of a person's arrest. Magistrates are available 24 hours a day to make determinations. According to the Administrative Office of the Courts, district court judges would not always be available to make pretrial release determinations "without unnecessary delay." **In short, without significant costs, and without extensive delay, the Administrative Office of the Courts does not foresee a way to implement the requirement for district court judges to timely consider pretrial release in all domestic violence cases.**

Furthermore, the increased workload for district court judges would be substantial. As the district attorneys surveyed indicated, almost all initial appearances, and pretrial release determinations, are held before magistrates. Under this bill, all persons charged with domestic violence offenses who were not released for lack of probable cause would have to go before a district court judge. The extra time required of district court judges to dispose of pretrial release determinations would significantly delay other cases. It is also expected that detaining more people in the jails could cause severe overcrowding problems.

SOURCES OF DATA:

District attorneys; Administrative Office of the Courts' Court Information System.

TECHNICAL CONSIDERATIONS: In G.S. 14-33(c) [page 1, line 11], it appears that there is a word missing after the word "section."

FISCAL RESEARCH DIVISION (733-4910)

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