

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1354 (First Edition)

SHORT TITLE: Strengthen Domestic Violence Laws.

SPONSOR(S): Representatives Sherrill and McLawhorn

FISCAL IMPACT					
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>
REVENUES:	\$3,460,000	\$3,460,000	\$3,460,000	\$3,460,000	\$3,460,000
OPERATING EXPENDITURES:	\$3,910,824	\$18,954,737	\$30,806,406	\$5,931,101**	\$5,961,547**
Department of Correction—Operating	-	\$13,086,150	\$24,909,423	No est. avail**	No est. avail**
Department of Correction—Capital	There are no available prison beds in this time frame. This note assumes the use of contractual prison beds (\$57.92 per bed per day). In the long term, due to the limited availability of contractual beds, the State will need to construct new cells at \$56,500 per bed. Construction would have to begin in FY 04-5 for beds to be available in FY 07-8.				
Judicial Branch Positions	\$1,809,068 25	\$3,293,409	\$3,293,409	\$3,293,409	\$3,293,409
Department of Justice Positions	\$121,756 2	\$121,756	\$121,756	\$121,756	\$121,756
Department of Administration	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Community College System	-	\$453,422	\$481,818	\$515,936	\$546,382
POSITIONS TOTAL:	27	-	-	-	-
Judicial Branch	25				
Department of Justice	2				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts, Department of Correction, Department of Justice, Department of Administration, Community College System.					

EFFECTIVE DATE: Upon ratification, except criminal penalty section: December 1, 2004.

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: H 1354. STRENGTHEN DOMESTIC VIOLENCE LAWS. TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS, AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON DOMESTIC VIOLENCE. Effective for offenses committed on or after December 1, 2004, adds new GS 15A-1353(b)(12) to make as regular probation condition that defendant attend and complete abuser treatment program if court finds defendant is responsible for acts of domestic violence and there is program, approved by Domestic Violence Commission, reasonably available to defendant, unless court finds program would not be in best interests of justice. Effective for offenses committed on or after December 1, 2004, amends GS 143B-262 to require Department of Correction, in consultation with Domestic Violence Commission, to establish domestic violence treatment program for offenders sentenced to term of imprisonment in custody of Department and whose record includes court finding that offender committed acts of domestic violence; requires offender to complete program before completing incarceration, with specified exception. Amends various provisions in GS Ch. 17C and 17E to require specified entry-level and in-service domestic violence training for law enforcement officers; amount of training hours and effective dates for training specified in bill. Requires Department of Public Instruction, in collaboration with State Board of Education, to study issue of anti-violence programs in schools and training for school personnel dealing with students who are victims of domestic and relationship violence; specifies reporting dates to legislative committees.

Adds new Article 37B to GS Ch. 7B to create Domestic Violence Victim Assistance Act. Funds appropriated under article shall be used to (1) provide legal assistance to domestic violence victims; (2) provide education to domestic violence victims concerning their legal rights and duties; and (3) involve private bar in representation of domestic violence victims. Emphasis to be placed on representing clients needing legal assistance with GS Ch. 50B proceedings. Funds to be provided to North Carolina State Bar for provision of direct services by and support of established legal services programs as specified in bill; State Bar to report as specified in bill to General Assembly on use and disbursement of funds. Amends GS 84-4.1 (limited practice of out-of-state attorneys) to add \$100 fee with motion to practice in North Carolina, with funds being remitted to North Carolina State Bar for above-described act; effective for motions filed on or after July 1, 2004.

Effective for orders issued on or after July 1, 2004, amends GS 50B-3 to provide that if, on completion of 10-day hearing, court issues protective order, court must require defendant to pay \$100 fee. However, fee not to be assessed on renewal of same order. Effective July 1, 2004, appropriates \$2 million for 2004-2005 from General Fund to Department of Administration, to be credited to Domestic Violence Center Fund established under GS 50B-9. Amends GS 7B-1402 to add following members to Child Fatality Task Force: (1) representative from NC Domestic Violence Commission; appointed by House Speaker upon recommendation by Commission Director; and (2) representative

from NC Coalition Against Domestic Violence, appointed by Senate President Pro Tem upon recommendation of coalition's Executive Director. Deletes two public members from Commission. Requires Department of Health and Human Services to study and develop plan for serving clients of domestic violence programs with mental health and substance abuse service needs; specifies reporting to legislative committee. Requires North Carolina State Bar, in cooperation with North Carolina Bar Association, to study issue of providing CLE credit to attorneys for providing pro bono legal representation, and specifically for such representation to domestic violence victims; specifies reporting to legislative committee.

Effective for offenses committed on or after December 1, 2004, (1) amends statutory aggravating factor in GS 15B-1340.16(d)(15) (taking advantage of position of trust) to specifically include domestic relationship; (2) amends GS 14-32.4 to provide that person who assaults another person and inflicts physical injury by strangulation is guilty of Class H felony; (3) amends GS 14-33.2 (habitual misdemeanor assault) to require proof of two or more prior convictions for either misdemeanor or felony assault (now, requires proof of five or more prior misdemeanor convictions, two or which were misdemeanor assaults); provides that conviction of GS 14-33.2 may not be used as prior conviction for any other habitual offense statute; and (4) amends GS 15A-1343.2(e) (delegation to probation officer in community punishment) to add within delegation probationer's submission to curfew requiring probationer to remain in specified place for specified period each day and wear electronic monitoring device.

Effective for offenses committed on or after December 1, 2004, adds new GS 15A-1382.1 to provide that when defendant is convicted of offense involving assault or communicating threat and judge determines that victim had personal relationship [as defined in GS 50B-1(b)] between defendant and victim, then judge must indicate on judgment that case involved domestic violence; clerk must insure that official record of defendant's conviction includes this determination. If community punishment is imposed, court must determine whether defendant must comply with special conditions of probation under GS 15A-1343(b1); judge is also authorized to require electronic monitoring under GS 15A-1343(b1)(3c), despite the provisions of GS 15A-1340.11(6)c.

Directs Sentencing and Policy Advisory Commission to study classification of misdemeanor offenses, particularly classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses; Commission to develop system for classifying misdemeanor offenses based on their severity. Specifies reporting to General Assembly.

Effective for offenses committed on or after December 1, 2004, amends GS 15A-401(b)(2) to authorize law enforcement officer to make arrest without arrest warrant when defendant has violated pretrial release order entered under GS 15A-534.1(2) (apparently intends (a)(2), which concerns judge's imposition of conditions when defendant was released after being charged with domestic violence crime). Effective for offenses committed on or after December 1, 2004, amends GS 14-415.1 to prohibit convicted felon from possessing any firearm (now, only handgun or firearm with barrel length less than 18 inches or overall length less than 26 inches). Deletes provision that allows convicted felon to possess firearm in own home or place of business. Amends GS 15A-304 to provide that judicial official may not refuse to issue arrest warrant solely because prior arrest warrant had been issued for another person involving same matter.

Effective for actions filed on or after Oct. 1, 2004, amends GS 50B-2(c) (ex parte order by judge) and (d) (ex parte order by authorized magistrate) to permit, if court or magistrate finds that child is exposed to substantial risk of physical or emotional injury or sexual abuse, on request of aggrieved party, court or magistrate may order other party to stay away from minor child, or return minor child to, or not remove minor child from, physical care of parent or person *in loco parentis*, if court or magistrate finds order is necessary for child's safety. Court or magistrate may specify terms of contact, if permitted, between minor child and other party, as set out in bill.

Effective for actions filed on or after October 1, 2004, (1) adds new GS 50B-3(a1) to provide that, on request of either party at hearing after notice or service of process, court shall consider and may award temporary custody of minor children and establish temporary visitation rights as set out in bill; (2) amends GS 50B-3(b) to provide that temporary award of custody may not be renewed to extend such custody beyond maximum one-year period; (3) adds new GS 50B-5.5 and amends GS 95-241(a) to prohibit employment discrimination against domestic violence victims.

Requests North Carolina Supreme Court to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases. Requires Administrative Office of Courts to study issue of training for court personnel in domestic violence issues and report findings and recommendations to 2005 legislative session.

ASSUMPTIONS AND METHODOLOGY: This domestic violence legislation makes large-scale changes to criminal law statutes as well as numerous other aspects of the law affecting the appropriations process. This fiscal note will examine the bill by section.

Section I requires all domestic violence offenders sentenced to the Department of Correction either for probation or prison to complete an abuser treatment program. This requirement will have costs, which cannot be determined exactly, because offender information systems, both in the courts and Corrections, do not identify offenders as perpetrators of domestic violence. A subsequent section of the bill (Part XII) directs the Administrative Office of the Courts (AOC) to develop a tracking measure within its Automated Court Information System (ACIS) to identify these offenders.

For offenders sentenced to probation, this bill moves participation in an abuser treatment program from the list of optional conditions to the mandatory list, assuming a program is "reasonably available." These programs currently exist 76 counties, and are funded by the Domestic Violence Commission in the Department of Administration. They may not have capacity for all probationers as currently funded. The Division of Prisons will need to work with the Domestic Violence Commission to develop a program appropriate for abusers that takes into account the Division's other offender management priorities, such as inmate disciplinary status, as well as the length of sentence.

Section II requires 16 hours of domestic violence training for entry-level law enforcement officers, as also two hours every other year for in-service training for active law enforcement officers. This section would have fiscal impact upon both the Department of Justice and the Community Colleges. The Department of Justice would require two additional positions to coordinate and perform the in-service training requirement in the bill, costing \$121,000 per year.

The Community College System provides Basic Law Enforcement Training (BLET), where the additional 16 hours would be added under this bill. Adding time to the BLET curriculum, based on current-year full-time equivalents, would be around \$450,000 in the second year of the analysis time-frame, going up to \$546,000 by year 5 due to enrollment increases. Any costs for in-service training in the Community Colleges cannot be determined.

Section III directs the Department of Public Instruction to study the issue of anti-violence programs in the schools, as well as training for school personnel in dealing with students who are victims of abuse. This section is not expected to have any fiscal impact.

Section IV creates a new fund to provide legal services for domestic violence victims. This fund would be administered by the State Bar, and would be funded by a new \$100 *pro hac vice* fee, a fee charged to attorneys not licensed in North Carolina who wish to participate in a case here. The Administrative Office of the Courts estimates the fee could generate \$1 million per year. The funds will be passed through to the State Bar to be used in individual counties on a formula basis: 20% of the funds shall be based on an even-share basis, 80% based on the rate of domestic violence protective orders issued under GS 50B in that county. This section becomes effective July 1, 2004.

Section V creates a \$100 fee for defendants against whom a 50B order is obtained. The fee could generate as much as \$2.46 million if collected in every case. This money goes into the General Fund. In Subsection 5.2, the bill also appropriates \$2 million recurring from the General Fund to the Domestic Violence Center Fund. This section becomes effective July 1, 2004.

Section VI adds two domestic violence advocates to the Child Fatality Task Force. This section has no expected fiscal impact.

Section VII directs the Department of Health and Human Services to study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse needs. As this section requires a study, it has no expected fiscal impact. The findings of the study, due to the 2005 session of the General Assembly, may have fiscal impact.

Section VIII directs the State Bar to study the issue of providing Continuing Legal Education credit to active attorneys for pro bono legal representation in domestic violence proceedings for victims. This section has no expected fiscal impact.

Section IX modifies an existing felony aggravating factor, which can be used to extend a sentence to prison; the factor allows sentence enhancement for abuse in a position of trust, including a domestic relationship. This may have some fiscal impact, but cannot be projected since aggravating factors reflect judicial discretion within the sentencing grid.

Section X creates a Class H felony for assault by strangulation inflicting serious injury. The new strangulation assault offense may have significant impact on the prison population, as well as court operations. The offense represents roughly \$1.3 million in court impact in the first year. Felonies are usually tried in Superior Court rather than District Court; felony trials also generally take longer than misdemeanor trials. Trials in Superior Court involve juries and much more prosecutor preparation time. AOC also expects the trial rate to increase. Misdemeanor offenses often result in guilty pleas,

rather than trials. Defendants charged with felonies are more likely to go to trial than to plead, one estimate suggests they are twice as likely to go to trial. Given the high volume of assault cases, any increase in felony trial rate can result in large impact on court resources.

Based on a survey of District Attorneys as to the frequency of strangulation as a component of existing assault crimes, the AOC estimates that there will be 5,665 charges of the new Assault Involving Strangulation offense. These cases would most likely be tried in Superior Court, although District Court judges can hear guilty pleas in Class H felony cases. These additional costs are based on higher costs of running trials in Superior versus District Court. In order to deal with this higher court caseload, the AOC will need two additional Superior Court judges, two court reporters, six Assistant District Attorneys, and two deputy clerks of court.

Since strangulation is a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the state prison population. It is not known how many offenders might be sentenced under this bill. If, for example, there were three Class H 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 two additional prison beds the second year.

The Sentencing Commission did attempt, however, to project the scope of impact resulting from this change using the AOC's District Attorney survey. According to data extracted by the AOC, there were 21,805 defendants charged with simple assault, 2,241 defendants charged with assault inflicting serious injury, 29,248 defendants charged with assault on a female, and 11,955 defendants charged with other Class A1 misdemeanor assaults. The AOC estimates that physical injury by strangulation was involved in the following:

- 7% (n=1,527) of simple assault cases;
- 12% (n=269) of assault inflicting serious injury cases;
- 12% (n=3,510) of assault on a female cases;
- 3% (n=359) of other Class A1 misdemeanor assault cases.

An estimated 5,665 cases may be affected by this proposal. In FY 2002-03, 32.9% of offenders convicted of a Class H felony received an active punishment with an average estimated time served of 10.5 months. The remaining 67.1% of offenders convicted of a Class H felony received a non-active punishment. The revocation rate for these offenders was 49.5%. Assuming that 29.3% of Class H charges result in Class H convictions, there would be an estimated 1,660 convictions for this offense per year. If this were the case, the combination of active sentences and probation revocations would result in the need for 478 additional prison beds the first full year (2005-06) of operation and 961 additional prison beds the second year (2006-07). Because this is a new crime and the projection must be based on survey data rather than existing judicial practice, the Sentencing Commission cannot use its simulation model to forecast impact. Instead, they are providing a two-year projection based simply on current numbers and expected growth. These offenders, at Class H, would not be expected to stack up in the system due to long sentences.

Rows 4 and 5 in the following chart show the impact of this bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation might add up to 1,091 inmates to the prison system by the end of FY 2006-07.

	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,290	-2,058	-3,010	-3,958	-4,828
4. No. of Projected Additional Inmates <u>Due to this Bill</u> ³	0	0	521	1,091	N/A
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³	0	0	521	570	N/A

These beds would be over and above those already needed by the prison system, so they would have to be procured either by finding space through contracts and temporary beds or constructing new prison facilities. As a practical matter, some temporary or contractual beds will be needed to carry forward until new facilities could be constructed. Projecting from current average incarceration costs per day of \$57.92, and assuming 3% annual inflation, we assume the annual operating cost for a prison bed to be \$23,100 for 2005-06, and \$23,793 for 2006-07. Applying these rates to the numbers projected for the strangulation offense, we expect a cost to the Department of Correction of \$11,041,800 in 2005-06 and \$22,865,073 in 2006-07.

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

² Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.**

³ Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

Assuming that the Department will construct new beds for the longer-term effects of this legislation, the Department would need to begin planning construction of new facilities to expand capacity by about 1,000 beds (strangulation as well as the Habitual Misdemeanant statute discussed below). Using an average of the construction costs of minimum and medium prison beds (\$56,500), the cost of 1,000 new beds would be \$56,500,000.

Section XI amends the Habitual Misdemeanor Assault statute so that a conviction of an assaultive misdemeanor, when the offender has two prior assault convictions and the assault causes physical injury, becomes a Class H felony. This bill changes the existing habitual misdemeanor offense by lowering the threshold at which an offender qualifies for the charge. Under current law, an offender must have been convicted of five prior misdemeanors, two of which are assaults, in order to be charged as a habitual misdemeanant. The AOC estimates that an additional 1,527 offenders would be eligible for the habitual misdemeanor charge given the lower threshold under this bill, and that 24% of them (366) would likely be charged as such, based on the survey of District Attorneys. This increase would likely cost the court system about \$65,000 in the first year of the bill's effective date. This section would add approximately 130 prison beds to the capacity need, assuming that 100% of the offenders convicted under this statute received an active sentence. If judges sentenced these offenders using similar practice to existing Class H felonies, this section would only add 45 new beds by year 2 (2006-07).

Assuming the same prison operating costs as for Section X, we would assume that prison costs for this section to range from \$1,039,500 to \$3,049,200 in each year.

Section XII provides for a reporting system in the Administrative Office of the Courts to record whether an offense involves domestic violence. This section also authorizes the use of house arrest for offenders placed on Community Supervision; house arrest is currently authorized only for Intermediate offenders. Program development for the reporting system would require \$132,000 for contractual programmers and implementation training. The courts also expect an increase in trial time to establish the existence of the domestic relationship, costing about \$290,000. There is no estimate on the impact of the house arrest provision.

Section XIII amends the Delegated Authority statute that allows the Department of Correction to enhance a probationer's punishment without returning to court in response to violations. This provision allows probation officers to place a Community offender on electronic house arrest. Delegated Authority is seldom used, and hence impact cannot be projected from this section.

Section XIV directs the Sentencing Commission to study misdemeanor offense classifications. The Sentencing Commission estimates a need for \$20,000 for contractual consulting services and travel to perform the research and analysis necessary for this study.

Section XV authorizes warrantless arrest for violation of a pretrial release order. This may result in more jail beds used for pretrial abusers, but there is no information on which to base an impact estimate.

Section XVI makes conforming changes to state firearm laws to mirror existing federal law. It is expected to have no state level fiscal impact.

Section XVII prohibits a judicial official from refusing to issue a warrant for arrest solely because a prior warrant has been issued for the arrest of another person involved in the same matter. This is expected to have no fiscal impact on the state.

Section XVIII amends the nurse's privilege laws to clarify that the privilege does not preclude the admission of otherwise admissible written or printed medical records. This should have no fiscal impact.

Section XIX expands the circumstances under which a temporary child custody award may be made as part of an ex parte domestic violence protective order and gives the court specific factors to consider in deciding custody in domestic violence cases. A survey of District Court judges implies no significant fiscal impact from this change.

Section XX prohibits employers from firing, or otherwise discriminating against, an employee because the employee has taken time off work to seek relief under Chapter 50B.

Section XXI requires Clerks of Superior Court, where feasible, to provide a private area for complainants in domestic violence cases filing for protective orders under GS 50B to fill out forms and ask questions. Court facilities are the responsibility of county governments; as such, providing private space for handling domestic violence cases does not affect state resources. The AOC has conducted a survey of clerks, and has learned that many already have provision for private space, either through construction or through creative use of existing space.

Section XXII requests that the Supreme Court adopt rules establishing domestic violence training requirements for judges and requires AOC to study the issue of domestic violence training for other court personnel. As this is a study provision, no cost is expected, but the study's findings may indicate the need for future expansion of the AOC training budget.

Section XXIII is the effective date of the whole bill. It is effective upon ratification, except that the criminal penalty sections, IX, X, and XI, are effective on December 1, 2004, which is the standard date for criminal law changes.

SOURCES OF DATA: Administrative Office of the Courts; NC Sentencing and Policy Advisory Commission; Department of Correction; Community College System; Department of Public Instruction.

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