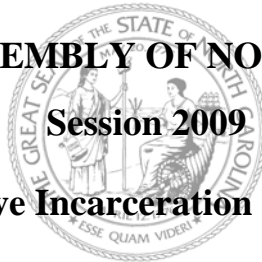


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 403 (Second Edition)

SHORT TITLE: Victims Compensation Amendment.

SPONSOR(S): Senator Berger of Franklin

| FISCAL IMPACT | | | | | |
|---|-------------------|-------------------|-----------------------------|-------------------|-------------------|
| | Yes (X) | No () | No Estimate Available (X) | | |
| | <u>FY 2009-10</u> | <u>FY 2010-11</u> | <u>FY 2011-12</u> | <u>FY 2012-13</u> | <u>FY 2013-14</u> |
| EXPENDITURES | | | | | |
| GENERAL FUND | | | | | |
| Correction | | | Indeterminate fiscal impact | | |
| Judicial | | | Indeterminate fiscal impact | | |
| Crime Control and Public Safety | | | Indeterminate fiscal impact | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Crime Control and Public Safety | | | | | |
| EFFECTIVE DATE: July 1, 2009 and applies to pending claims and claims filed on or after that date | | | | | |
| <i>*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.</i> | | | | | |

BILL SUMMARY:

Expands the reach of the Crime Victims Compensation Act by amending the definition of criminally injurious conduct in G.S. 15B-2(5) to include the offenses of felony and misdemeanor death by vehicle and by amending the definition of economic loss in G.S. 15B-2(10) to include the cost of grief counseling for the spouse and children of the deceased victim. Effective July 1, 2009 and applies to claims pending or filed on or after that date.

Source: Bill Digest S.B. 403 (03/04/0200)

ASSUMPTIONS AND METHODOLOGY:

General

The NC 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.

The Sentencing Commission reports that this bill creates a provision allowing a victim of a crime to apply to the Crime Victim's Compensation Commission for compensation for economic loss as a result of criminally injurious conduct. G.S. 15B-7, Filing of application for compensation award; contents, contains two criminal offenses:

1. A person who knowingly and willfully presents or attempts to present a false or fraudulent application
2. A State officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent application

Violation is a Class 1 misdemeanor if the application is for a claim of not more than four hundred dollars (\$400.00), a Class I felony if the application is for a claim of more than four hundred dollars (\$400.00).

It is possible that more people would file false or fraudulent applications as a result of adding the offenses of felony and misdemeanor death by vehicle.

Department of Correction – Division of Prisons

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 15B-7. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. In FY 2007-08, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 convictions that result from the proposed broadening of G.S. 15B-7 *would not be expected to have a significant impact on the prison population*. The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 1 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

In FY 2007-08, 16% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve additional Class I felony convictions per year as a result of the proposed broadening of G.S. 15B-7, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond*. Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

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 \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

Judicial Branch

The Administrative Office of the Courts (AOC) 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.

AOC staff reports that “criminally injurious conduct” under G.S. 15B-2(5) includes conduct that involves impaired driving as defined in 20.4.10(24a), which includes the offense of felony death by vehicle. Therefore, it appears that the only new conduct added under this bill would be misdemeanor death by vehicle. Under G.S. 15B-7, filing a false claim for crime victims’ compensation is a Class 1 misdemeanor offense, or a Class I felony offense if the amount claimed is over four hundred dollars (\$400.00) This bill would expand the pool of potential claimants and the eligible expenses that could be claimed, and could, therefore, increase the potential for false claims. It could also increase the number of contested claims, which are handled by administrative law judges. The AOC does not have an offense code for filing a false crime victims’ claim, which is some indication that the offense is not often charged, and thus, *is not able to provide a cost estimate* of possible cases resulting from the implementation of this bill.

In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. A typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

Department of Crime Control and Public Safety

The Department of Crime Control and Public Safety (CCPS) was asked to provide Fiscal Research with a cost estimate, however, exact costs are unable to be predicted due to the uncertainty of the nature and scope of the potential claims. The figures used to provide the following cost estimate are based on the number of misdemeanor and felony deaths by vehicle (182 cases) that were investigated by the NC State Highway Patrol (SHP) during FY 2007-08. The number of misdemeanor and felony deaths by vehicle investigated by all law enforcement agencies in NC are expected to be significantly higher, thus, the potential number of claims and costs to settle these claims is expected to be significantly higher than the dollar amounts shown

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.

below. It is also important to note that it is unlikely that 100% of the victims of felony and misdemeanor death by vehicles will 1) request compensation or economic loss and/or grief counseling through the Victims Compensation Program, and 2) will qualify for these services (program guidelines require that all participants show no collateral source of payment).

CCPS reported that counselors recommend one counseling session per week for the first twelve consecutive weeks, then bi-weekly for the rest of the year (28 total sessions). CCPS provided the following cost breakdown for counseling:

Intake – \$110-\$165 (average cost: \$137.50)

Session – \$100-\$125 (average cost: \$112.50)

Total cost: 28 sessions x \$112.50 = \$3,150 + \$137.50 (intake) = \$3,287.50 per person

CCPS also commented that most counselors do not do group or family grief counseling because of the different ages in the family (child, adolescent, and adult). Each individual has a different perspective of death and, therefore, would need to be seen separately.

To provide the counseling services enumerated above to one family member for each of the 182 cases of death by vehicle that were investigated by the SHP during FY 2007-08 the cost to the Victims Compensation Program would be \$598,325. To provide the same services to a family of three individuals would cost \$1,174,975.

In their cost estimate, CCPS reported that North Carolina is one of few states with compensation programs that do not include grief counseling for families of homicide victims. In FY 2007-08, the Victims Compensation Program paid funeral expenses for 257 victims of homicides, incurring a cost of \$1,128,657. If counseling services were provided for a family of three individuals in each of these cases, the costs would total \$2,534,662.50. This cost, combined with the cost of counseling services for families of three individuals for each death by vehicle case investigated by the SHP in FY 2007-08, totals \$4,329,637.50.

CCPS states that if this bill is enacted, economic loss would include misdemeanor death by vehicle, which would allow the 182 potential victims of death by vehicle investigated by the SHP in FY 2007-08 (note that all others investigated by local law enforcement agencies are not included in this cost calculation) to be eligible for \$30,000 in medical expenses and an additional \$5,000 in funeral costs. The costs for grief counseling and economic loss combined could total \$10,699,637.50.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Crime Control and Public Safety

TECHNICAL CONSIDERATIONS:

- Current G.S. 15B-2(5) states that criminally injurious conduct includes conduct that amounts to an offense involving impaired driving as defined in G.S. 20-4.01(24a). That statute includes felony death by vehicle (G.S. 20-141.4) as an impaired driving offense. However, 15B-2(5) also states that criminally injurious conduct does not include conduct punishable only as a violation of other provisions of Chapter 20 of the General Statutes. The language in this bill could serve to clarify that felony death by vehicle is considered criminally injurious conduct.

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DATE: April 14, 2009



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