

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 173 (Senate PCS CSRC-16)
SHORT TITLE: No Death Penalty/Mentally Retarded
SPONSOR(S): Senator Ballance

FISCAL IMPACT

	Yes ()	No (X)	No Estimate Available (X)		
		(Dept. of Correction)	(Judicial Branch)		
	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>

REVENUES -- -Not Applicable---

EXPENDITURES

Department of Correction – No fiscal impact
Judicial Branch – No estimate available but no significant fiscal impact anticipated

POSITIONS: 0

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Judicial Branch, Department of Corrections

EFFECTIVE DATE: Applies to trials begun on or after December 1, 2001

BILL SUMMARY:

Adds new GS 15A-2004, providing that no defendant who is mentally retarded shall be sentenced to death. To qualify as mentally retarded, a defendant must have an IQ of 70 or below existing concurrently with impairment in adaptive functioning and manifesting before the age of 18. Requires court to determine before trial whether defendant is mentally retarded and to declare the case non-capital if defendant is so found. The burden of proof rests upon the defendant to demonstrate mental retardation by a preponderance of the evidence. Senate PCS CSRC-16 adds language stating that an

intelligence quotient test must have been administered before the commission of the alleged crime.

ASSUMPTIONS AND METHODOLOGY:

Overall

A reliable estimate of the fiscal impact of SB 173 cannot be provided because it is unknown how many defendants accused of first-degree murder on or after December 31, 2001 will meet the definition of mental retardation used in this bill. Discussions with mental health and criminal justice professionals indicated that 2% is a commonly accepted estimate of the percentage of the general population that is mentally retarded. While it is likely that the percentage would be higher for the criminal population, it could not be reliably determined how many criminal offenders that will commit first-degree murder will meet the definition used in this bill. Regardless, the number of cases is likely to be low as explained below.

Department of Correction

Given that it is unknown how many defendants that could be sentenced to death will be classified as mentally retarded, **the fiscal impact on the Department of Correction (DOC) in the short and long term cannot be determined at this time. However, it is clear that there will be no cost in the five-year fiscal note horizon.**

The key issue is the difference between the length of time the average inmate will spend on death row before execution versus the length of time the average inmate will remain in prison on a sentence of life without parole. According to information from DOC, there are currently 201 inmates with a death sentence. Sixteen people have been executed since the passage of the 1977 Death Penalty provision and through the end of CY 2000. From CY 1995 through CY 2000, 10 people were executed. For these executions, the average time on death row prior to execution was almost 11 years. If individuals were convicted of first-degree murder, but not sentenced to death, they would still take up a prison bed during that timeframe. Therefore there would be no fiscal impact for at least the first eleven years of this bill.

Although SB 173 has no short-term fiscal impact on DOC, there could be long-term fiscal impact based on information from the North Carolina Sentencing and Policy Advisory Commission. Of the 23 offenders who were sentenced to death in FY 1999/2000, the age range was from 19 to 50. Since a life sentence under Structured Sentencing means for the rest of the person's natural life, if these persons had been sentenced to life without parole and lived to age 65, the average time served would have been 33.7 years. Thus, SB 173 would affect the long-term incarceration rate and create the need for more prison beds.

Judicial Branch

A major qualifying assumption is that the new procedures for raising the issue of mental retardation *would apply only prospectively, to new trials, and would not apply to persons already on death row*. If it were held as a result of this legislation that a mentally retarded person on death row couldn't be executed, there would be substantial fiscal impact. Hearings for determination of mental retardation for persons already on death row would be new, additional proceedings, and could be very costly.

Under the bill, there is potential for additional pretrial hearings brought to determine whether a defendant is mentally retarded. Again, there is no clear way to estimate the number of offenders that will meet the definition of mentally retarded. For speculative purposes, if one applied the 2% general population figures to 377 first-degree murder cases where the death penalty was initially sought (1998-99 AOC figures excluding public defender cases), the projected number would be 8 cases. If one assumes 5% because of nature of an offender population, the total would be 19 cases annually.

This is a relatively small number of cases. If one assumed this number of cases, the AOC cannot project how many motions would be successful. Further, since the costs of a capital trial greatly exceed the costs of a non-capital trial, the additional costs for additional hearings are offset by a "savings" from having fewer capital trials. Therefore, **the AOC does not predict a substantial fiscal impact on the courts.**

TECHNICAL CONSIDERATIONS: None

SOURCES: Department of Correction; Judicial Department; North Carolina Sentencing and Policy Advisory Commission; and, Office of Indigent Defense Services

FISCAL RESEARCH DIVISION 733-4910

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DATE: April 17, 2001



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