NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 57

SHORT TITLE: Guilty but Mentally Ill

SPONSOR(S): Senator McDaniel, Ballentine; Allran and East

FISCAL IMPACT

Yes ( ) No ( ) No Estimate Available (X)

(in millions)

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
GENERAL FUND					
Correction					
Recurring					
Nonrecurring					
			No Reliable Estimate Available		
Judicial					
Recurring					
Nonrecurring					
TOTAL EXPENDITURES					

POSITIONS: No Reliable Estimate Available

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch

EFFECTIVE DATE: Applies to offenses committed on or after December 1, 1997.

BILL SUMMARY: *TO REPEAL THE DEFENSE OF NOT GUILTY BY REASON OF INSANITY AND TO ESTABLISH THE SENTENCE OF GUILTY BUT MENTALLY ILL*. Repeals GS 15A-959(c) (pretrial hearing to determine whether the defendant is not guilty by reason of insanity) and Art. 80 of GS 15A (special provisions on involuntary commitment of defendants found not guilty by reason of insanity) but retains and codifies (in new GS 14-7.30) current state law with respect to insanity defense (i.e., that a defendant who, because of a mental disease or defect, did not know the nature and quality of his or her act or that the act was wrong is not guilty by reason of insanity).

Establishes new verdict of "guilty-but-mentally-ill" when jury finds that defendant was not insane when he or she committed offense but lacked substantial capacity to conform his or her conduct to the requirements of law. Adds new Art. 79 and 80A in GS Ch. 15A to govern the sentencing and release of defendants found guilty but mentally

ill. Provides that upon return of such a verdict, the judge shall impose sentence pursuant to Structured Sentencing Act as if the defendant had been found guilty. For defendants who receive an active punishment (a sentence of imprisonment), (1) defendant may not be released until he or she has been in custody for the minimum period of confinement that may be required for law by the offense; (2) if the defendant suffers from a recognized mental disease or defect, the judge must commit the defendant initially to a state mental health facility; (3) if the facility determines that the defendant no longer suffers from a mental disease or defect and the term of imprisonment has not expired, the judge shall hold a hearing to determine whether the defendant should be released, released on probation, continued in the mental health facility, or transferred to the Dep't of Correction; and (4) the Dep't of Correction shall prepare a suitable community-based treatment plan for implementation upon release of the defendant. For defendants who receive a community or intermediate punishment (usually not a sentence of imprisonment), provides that judge may commit defendant to state mental health facility. Does not expressly address sentencing of a defendant who has been found guilty-but-mentally-ill in a capital case. Applies to offenses committed on or after Dec. 1, 1997.[1]

ASSUMPTIONS AND METHODOLOGY: Judicial Branch and Department of Correction

Judicial Branch

Although the Judicial Branch indicates that an overall cost estimate of this bill cannot be provided, several areas have been identified where some fiscal impact may occur with the inaction of this bill.

The greatest potential for fiscal impact lies in the possibility of requiring a jury trial in cases where, under current law, the insanity defense is raised and the case is disposed by motion. This bill deletes G.S. 15A-959(c), under which, *with the consent of the prosecutor*, the defendant can raise the insanity defense by motion. The hearing on such a motion is conducted by the judge without a jury. If the motion is granted, the case is dismissed with prejudice. (Under current law, the defendant would be committed to a mental health facility pursuant to G.S. 15A-1321. However, this bill would repeal that section. If the motion is denied, the defendant may raise the insanity defense at trial to the jury. The potential fiscal impact, therefore, relates to cases in which under current law the State consents to the bringing of a motion *and* the judge grants the motion. In such cases, under this bill, the insanity defense would have to be litigated, if at all, in a jury trial. (In cases where the State would not consent, *or* the judge would deny the motion, the defense must be presented, if at all, to a jury under both current law and this bill.)

The Administrative Office of the Courts (AOC) has no comprehensive data on how often judges grant motions raising the insanity defense. A database limited to indigent defense payments to private counsel in murder cases reveals only two cases in which such motions were granted over the past three and one-half years (fiscal 1993-94 through the first half of 1996-97). Murder cases make up a small proportion of total criminal caseloads, so it is safe to assume that this bill will affect far more non-murder cases. Since dispositions by trial are much more expensive than other dispositions, there is potential for some fiscal impact.

From the available data on murder cases, it could be predicted that one to two murder cases will be affected by this bill each biennium. There can be some fiscal impact from even one additional capital trial. However, it probably cannot be assumed that this bill will result in an additional jury trial in *every* case in which the judge grants a defendant's insanity motion under current law. One District Attorney explained that the State does not often consent to the bringing of such motions, and that judges do not often grant the motions. In general, the State consents only when the fact pattern seems strong enough to warrant "testing" the issue of insanity before the judge, such that if the judge can be persuaded, neither efficiency nor the interests of justice would be served by trying the case to a jury. It seems likely that in some cases where the State consents to the bringing of an insanity motion under current law, the State would conclude that the fact pattern supports a claim of diminished capacity. If this bill were enacted, therefore, it may be that some of the cases that are now disposed by motion ,

[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill: Vol. 1997, No. 6.

would instead be disposed by a plea agreement, without need for jury trial (or at least without need for capital trial).

In summary, while available data does not provide an adequate means to provide specific estimates, there can be little doubt that this bill may result in some additional jury trials and, in all likelihood, over the years, additional capital trials. These additional trials will arise in cases where, under current law, the State consents to a more efficient and less costly procedure. Even if there is no significant statewide fiscal impact, the impact may be material for a particular district -- affecting the District Attorney's office, indigent defense costs, judicial time, etc.

Department of Correction

An estimate on the overall fiscal impact of this bill on the Department of Correction is not available. The provision in this bill that requires the Department of Correction to "prepare a suitable community-based treatment plan for implementation upon release of the defendant" is a cost that cannot be determined. It is assumed each released defendant would require a separate plan of treatment. Since a reliable estimate is not available on the number of released defendants, the prices of such plans are unknown. However, the Sentencing and Policy Advisory Commission projects that there will be very few additional inmates added to the overall prison population. They have determined these few additional inmates can be absorbed within existing Department of Correction resources.

SOURCES OF DATA: Department of Correction, Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS:

The Judicial Branch outlined several technical considerations concerning this bill. These technical considerations have been forwarded to the Bill Drafting and Research Divisions of the North Carolina General Assembly for their review.

FISCAL RESEARCH DIVISION
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