

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 746 (First Edition) (PCS CSSV-10 (v.1))

SHORT TITLE: Sentencing Enhancement Changes/Sent. Comm.

SPONSOR(S): Senator Miller

FISCAL IMPACT

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

FY 2001-02 FY 2002-03 FY 2003-04 FY 2004-05 FY 2005-06

REVENUES

EXPENDITURES:

Department of Correction: No fiscal impact

Judicial Branch: No estimate available but no significant impact expected

POSITIONS: None

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: When it becomes law and applies to offenses committed on or after that date.

BILL SUMMARY: SB 746 amends the enhanced sentencing laws to conform to a recent U.S. Supreme Court case and a N.C. Court of Appeals case by requiring that (1) the facts of supporting an enhanced sentence be alleged in the indictments and (2) a jury determine the enhancement issues beyond a reasonable doubt. Three North Carolina statutes allow a judge to increase a sentence beyond the ranges authorized by the Structured Sentencing Act and are affected by this bill - - firearm enhancement; enhancement for class B1 felonies for victims 13 years of age or younger; and, bulletproof vest enhancement. The bill also adds a new section to Article 81B of Chapter 15A which sets out the maximum punishment for all classes of felonies. This new section does not change the law but rather it clarifies the maximum punishments that are currently permitted and applied by judges in the sentencing process. The Senate PCS adds several technical amendments

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

According to the Sentencing Commission, the proposed amendments to sentencing law provide only clarification and/or language change to existing law. None of the amendments create new offenses or make any changes in offense class, disposition or sentence length. Therefore, SB 746 will have no impact on the prison population and thus no fiscal impact on the Department of Correction.

Judicial Branch

The key component of SB 746 could impact the Judicial Branch, but there is no data for estimating the fiscal impact. The bill allows a defendant to have a jury trial on the issue of enhancement even after pleading guilty or no contest to the felony. For example, a defendant could have his sentence “enhanced” for use of a firearm and have a jury trial because of that enhancement; a jury trial is not available under these circumstances in current law.

Two scenarios could result under this bill according to the Administrative Office of the Courts. Under a “cost” scenario, defendants who would currently plead guilty (or no contest) to the underlying felony and the “enhancement” may opt to plead guilty to the underlying felony but elect for a jury trial to decide the issue of sentence enhancement. This would increase costs to the court system by adding jury trials that do not currently exist in the court system.

The AOC also indicates there could be a “no cost or savings” scenario. Defendants who are currently pleading not guilty to the felony and enhancement, may opt to plead guilty or no contest to the underlying felony and proceed to a jury trial on the enhancement. In this scenario there could be time and ultimately cost savings due to a jury trial on one issue rather than multiple issues.

Given the lack of data on what choice a defendant might make, there is no estimate available on the fiscal impact. However, the Sentencing Commission indicates that there are a relatively small number of cases that will be affected by SB 746. For example, only a few cases of firearm enhancement are decided each year because the use of a firearm is already included in the underlying felony. Also, there are few cases of B1 felonies that meet the three conditions: 13 years of age or younger, one or more prior B1 convictions, and no mitigating factors. Given the number of cases will be relatively small, Fiscal Research assumes there will be no significant fiscal impact on the Judicial Branch.

TECHNICAL CONSIDERATIONS: None

SOURCES OF DATA: North Carolina Sentencing and Policy Advisory Commission and Judicial Department

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Jim Mills

APPROVED BY: James D. Johnson

DATE: April 12, 2001



Signed Copy Located in the NCGA Principal Clerk's Offices