

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 9 (Third Edition)

SHORT TITLE: No Discriminatory Purpose in Death Penalty.

SPONSOR(S): Senator Brown

	FISCAL IMPACT				
	Yes ( )	No ( )	No Estimate Available ( )		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
<b>GENERAL FUND</b>					
Department of Justice (DOJ)					
Judicial- AOC					
Judicial- IDS					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Justice; Judicial Branch.					
<b>EFFECTIVE DATE:</b> The act is effective when it becomes law.					

BILL SUMMARY:

The proposed legislation would remove provisions in the Racial Justice Act (RJA) that allow the introduction of certain statistical evidence to show discrimination in either pretrial or posttrial proceedings in capital cases. The act also includes the language used in the McCleskey case, in which the defendant has the burden of proving that the decision makers in the defendant's case acted with discriminatory purpose. The act nullifies all hearings that may have been ordered under the current law. In addition, the act does not change the laws relating to pre-trial or post-trial proceedings which were in effect prior to the passage of the RJA, and that no hearings are authorized on the basis of the act.

The act is effective when it becomes law, and applies to all capital cases held prior to, on, or after the effective date.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Justice**

The Department of Justice (DOJ) reported to the Fiscal Research Division that the proposed legislation will not have a significant fiscal impact on the Department.

### **Judicial Branch- Administrative Office of the Courts**

The Administrative Office of the Courts (AOC) reported to the Fiscal Research Division that there could be a reduction in future costs as a result of the proposed legislation. AOC stated that while the bill is intended to reduce the fiscal impact of the Racial Justice Act (RJA), there were no funds appropriated for the original RJA. AOC also believes there could be hearings on the validity of the bill itself which will have some fiscal impact on the courts. AOC cannot provide a more accurate cost estimate at this time.

### **Judicial Branch- Indigent Defense Services**

The Office of Indigent Defense Services (IDS) reported to the Fiscal Research Division that the only claims that would continue to be litigated would be those that did not depend upon the enactment of the RJA. While there are likely a number of defendants who have filed claims under the RJA that also allege direct discriminatory purpose, any expense in litigating these remaining claims would not be due to the proposed legislation, but to preexisting law prohibiting a prosecutor or juror from acting with discriminatory intent.

IDS has already paid the majority of the costs in investigating and filing RJA claims for post-conviction cases, and the costs for trial level cases have been minimal to date. For pending claims that have been filed under the RJA that would be nullified by the proposed legislation, assuming that pending claims can be retroactively nullified, there would be some savings from the nullification of claims that would otherwise have required further litigation. The amount of the savings is difficult to determine, because it would be from claims that might have been resolved after extensive litigation or might have been resolved without an evidentiary hearing. While two post-conviction cases are being actively litigated in Forsyth County, it appears that many post-conviction cases are not proceeding to hearings in the immediate future. In addition, any hearings under the RJA would most likely be spread out over several years, and the cost of litigating those claims (and savings from not litigating them) would similarly be spread out over this time.

It is possible that some defendants who filed claims under the RJA will seek to challenge the nullification of a claim that was validly filed under the RJA, and there will be some cost to this potential litigation. It is also possible that some of the savings will be offset by the cost of further litigation of non-RJA claims by defendants who would have obtained relief under the RJA. IDS reports the savings are difficult to measure and will be realized over several years.

**SOURCES OF DATA:** Department of Justice; Administrative Office of the Courts; Office of Indigent Defense Services

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** June 10, 2011



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