



# CIVITAS INSTITUTE

# Legislative Recap

## 2007 GENERAL ASSEMBLY

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## Judicial Spending Up, Sex Offender and Gang Legislation Still Under Consideration

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The 2007 session saw dozens of bills introduced on criminal justice issues, but very few became law. Proposed legislation ranged from tougher penalties for sex offenders to the forgiveness of nonviolent crimes. In order to be heard during the 2008 session, bills must either have passed one chamber (“crossed over”) or have an appropriations or revenue element. Because criminal justice bills tend to cost money, most legislation still has the potential to pass next year, even if it didn’t cross over from one chamber to the other.

Legislation that did pass was often tied to current events. A bill to allow the governor to immediately remove from office a disbarred or suspended judge or district attorney was introduced after a district court judge was disbarred for fraud and refused to leave office. Questions had also been raised about the conduct of District Attorney Mike Nifong (D-Durham), and his disbarment later in the session likely helped to expedite the bill’s passage. Similarly, a bill to tighten up penalties for speeders followed a series in the *Raleigh News & Observer* highlighting findings “that troopers are writing tickets faster than ever and that courts are knocking down charges just as fast.”

Perhaps the most significant changes in the criminal justice area pertain to the resources available for the prosecution of crimes. The 2007 session saw a 13 percent increase in the JPS General Fund budget. Much of this increase was in the form of new positions: the 2007 budget adds a net 353 positions for 2007-08. The budget for 2008-09 adds another 236 positions, for a two-year increase of nearly 600 new employees. Compared to 2006-07, Justice & Public Safety (JPS) spending will be \$239 million higher in 2007-08 and \$250 million higher in 2008-09.

### Budget Highlights

The General Fund budget for the Justice & Public Safety (JPS) agencies – the judicial branch, including the Office of Indigent Defense, and the Departments of Correction, Crime Control & Public Safety, Justice, and Juvenile Justice & Delinquency Prevention – is \$2.06 billion for 2007-08, roughly 10 percent of the total General Fund budget and 13 percent higher than in 2006-07.

In addition to the General Fund, roughly 15 percent of the JPS budget is derived from non-General Fund sources such as the Highway Fund, federal revenue, and department receipts. The Department of Crime Control & Public Safety (CCPS) receives the majority of its funding – more than 80 percent – outside of the General Fund. The State Highway Patrol, which is housed in CCPS, is funded by the Highway Fund and also receives significant federal money through the Governor’s Crime Commission, the National Guard, and other programs.

While the budgets for all JPS agencies grew compared to FY2006-07, the judicial branch carried the greatest increase, with an increase of \$39 million (21 percent) and 654 positions by the second year of the biennium.

## **Judicial Branch**

- The budget mandated the division of District 22 (Alexander, Iredell, Davie, Davidson) into 22A and 22B, adding 14 new positions including judges, a district attorney, and support staff, as well as the promotion of two judges to chief judges. The split is effective January 1, 2009, so there is no cost in the first year and the \$722,000 cost in 2008-09 represents only half a year. The full annual cost will be approximately \$1.3 million. This split was added during conference – the House budget contained no district splits and the Senate budget proposed to study a split of District 24. HB 490 (Divide District 22) was introduced by Representatives Ray Warren (D-Alexander) and Karen Ray (R-Iredell).
- Funds for technology. An increase of \$10 million including 78 positions to continue technology initiatives – primarily upgrades to the courts' information systems.
- New staff positions for district attorneys' and clerks' offices totaling more than \$22 million for 449 positions phased-in over two years. Most positions will be allocated by the Administrative Office of the Courts, but the 28 assistant district attorney positions will be allocated to judicial districts by the Legislature.
- Expansion of magistrates and district court judges. Expansion funding of \$4.1 million for new magistrates, district and superior court judges, and judicial support staff, phased-in over two years.
- An end to state funding for courthouse telephone systems. Traditionally, in order to have a compatible statewide system, counties have built courthouses and the state has paid for the telephone system. In 2005, this policy drew attention because Mecklenburg's new courthouse required a telephone system that cost \$1.5 million. While the 2007 budget includes \$125,500 for the new Rockingham Courthouse, it also includes a provision that places the responsibility for future telephone systems on the counties. New systems must still be compatible with the statewide court telephone system.
- Replacement for expiring federal funds. \$2 million to replace federal funds for Guardian ad Litem and Drug Treatment Court programs that will expire during the biennium.
- Funding for indigent defendants. \$10 million was appropriated to expand the number of public defender offices and increase the hourly rate for assigned counsel from \$65 to \$75.

## **Department of Justice**

- Funding for 28 new positions, mostly in the State Bureau of Investigation, and startup funds for a new crime laboratory in the Piedmont Triad area.
- A reserve of \$50,000 contingent on the passage of human trafficking legislation (HB 974, SB 1079, or similar).
- \$2 million in capital funds to construct a firing range at the Western Justice Academy.

## **Crime Control & Public Safety**

- \$4.1 million including 20 positions for flood plain mapping (costs and positions decrease in second year as maps enter maintenance mode).
- \$4.8 million for gang prevention and intervention grants.
- \$750,000 for a grant to the North Carolina Sheriffs' Association for "technical assistance and training" associated with illegal immigration.
- \$6.3 million from the Highway Fund for a helicopter, 24 positions for the expanding Voice Interoperability Plan for Emergency Responders (VIPER) 800 MHz system, and five more state troopers.

## **Capital funding for Correction and Juvenile Justice Facilities**

- \$10 million for planning and site development for five new youth development centers, a healthcare facility at the women's prison and for prison expansions.
- Authorization of \$33 million in certificates of participation (COPs) debt financing for two prison additions.

## **Continuation Reviews**

- The budget includes continuation reviews for several programs: the Clerks' Conference, the District Attorneys' Conference, Juvenile Crime Prevention Councils, and the Criminal Justice Partnership Program.
- All funds for these programs are nonrecurring for FY2007-08. Future funding is contingent upon continuation reviews conducted by the Fiscal Research Division.

## **SEX OFFENDER LEGISLATION: PASSED**

### **Sex Offenders/Test for STDs (HB 118)**

*Status: Presented to Governor Easley on July 24, 2007*

*Cost: No fiscal note available*

Amends current law to require that the tests be conducted within 48 hours and to specify the type of HIV test to be used.

### **Require Disclosure/Sex Offenders/Child Custody (HB 1328)**

*Status: Presented to Governor Easley on August 1, 2007*

*Cost: No fiscal note available*

Requires that persons requesting child custody disclose any convictions for sexually violent offenses.

### **Sex Offenders/Pretrial Release (SB 17/S.L. 2007-172)**

*Status: Signed by Governor Easley on July 4, 2007*

*Cost: No fiscal note available*

Changes conditions imposed on a sex offender for pretrial release from discretionary to mandatory; allows judge to waive conditions under certain circumstances.

## **SEX OFFENDER LEGISLATION: NOT PASSED**

### **Jessica Lunsford Act for NC (HB 933)**

*Status: Passed House, referred to Senate Judiciary I (Civil)*

*Cost: At least \$1.6 million in the first year (2<sup>nd</sup> ed.)*

This bill would increase the penalty for rape or a first-degree sexual offense by an adult (18 or over) with a child under 12. Instead of a minimum sentence of 16 years followed by five years of post-release supervision, the new penalty would be 25 years with lifetime GPS monitoring upon release or life in prison. The legislation also increases other penalties for sexual crimes involving children; requires community notification when a sexually violent predator or repeat sex offender is released; shortens the timeframe for updating registration information; and bans sex offenders from entering premises where children would reasonably be known to congregate. The first edition of the bill included the same "25 years to life" provision for a new crime of "lewd or lascivious molestation," with the same age restrictions. The behavior covered by this offense would typically fall under North Carolina's "indecent liberties with children" statute, a much broader offense that is generally punishable by intermediate sanctions such as intensive probation or by a prison sentence of at least one year. "Lewd and lascivious molestation" proved to be the most costly part of the first edition and was removed from the second edition.

### **Enhance Penalty for Rape of Child Victim (SB 356)**

*Status: Referred to Senate Judiciary I (Civil)*

*Cost: No fiscal note available; bulk of costs would not begin for at least 16 years*

Would add five years to the minimum sentence for a first-degree rape/sexual offense if the victim is under age 12.

### **Protect Children From Sexual Predators Act (SB 132)**

*Status: Passed Senate, referred to House Appropriations*

*Cost: \$2 million, including capital costs for prisons in the first year; approaches \$1 million annually by the fifth year*

Would increase penalties and broaden definitions for sexual exploitation of a minor, ban use of social networking websites (i.e., MySpace) by sex offenders, and increase the penalty for solicitation of a minor by computer if the offender shows up at a physical meeting place. Earlier editions required parental permission for a minor to use social networking websites, but this section was deleted in the fourth edition. Attorney General Roy Cooper is promoting the parental permission element.

### **Sex Offender/Register E-Mail Address (SB 869/HB 764)**

*Status: SB 869 passed Senate, referred to House Judiciary I*

*Cost: \$2.4 million in the first year, including \$1.1 million for the construction of prison beds, approximately \$1 million thereafter*

This bill would have required sex offenders to register their email addresses and other online identifiers. The SBI would have compiled those identifiers and, for a \$100 fee, provided the list to entities such as MySpace that have databases of registered users. Those entities, in turn, would have been required to report complaints of online solicitation if the subject of the complaint has an identifier registered to a sex offender.

The legislation would also have allowed a judge to revoke any or all licenses held by a sex offender, including a driver's license, if the offender was not in compliance with registration requirements. In addition, the bill would have added two crimes – regarding sexual acts involving a juvenile and parents/guardians – to the list of sexually violent offenses that require registration. Finally, the legislation would appropriate \$250,000 to Crime Control & Public Safety for grants to local sheriffs' offices to assist in monitoring compliance with the sex offender registry and investigating reportable offenses. The grants would require a 25 percent local match.

### **Up Penalties/Sex Offenses With Child Victim (HB 28)**

*Status: In House Appropriations Committee*

*Note: SB 17 was a companion bill, but was changed to Sex Offenders/Pretrial Release and passed*

*Cost: \$8 million in the first year, primarily for construction of prison beds; more than \$3 million annually once fully implemented*

This bill would have increased criminal penalties and the activities that are prohibited under law and expanded the definition of "sexual activity" under the child pornography statutes. Specifically, the bill includes in the definition of "dissemi-

nation of harmful materials to a minor” dissemination to anyone the offender believes to be a minor. It also increases the penalties for sexual exploitation of a minor, soliciting a child by computer, and committing a second or subsequent offense of indecent liberties with children.

#### **Conform to Adam Walsh Law (HB 1698)**

*Status: Referred to House Judiciary II*

*Cost: No fiscal note available, but the bill would require funds to implement*

This bill would have expanded the requirements for registration as a sex offender to include such items as a DNA sample, social security number, and all residences. In addition to registering in his home county as required by current law, the offender would also be required to register with the sheriffs in counties where he worked or attended school. The offender would need to register within three days rather than ten days. The sex offender registry would also be amended to include information on sex offenders’ criminal histories.

#### **Up Criminal Penalty/Solicit Child by Computer (HB 688)**

*Status: In House Judiciary II Committee*

*Cost: No fiscal note available, but bill would cost money to implement*

This legislation would have increased the penalty for solicitation of a child by computer from a Class H felony to a Class E felony. Previous legislation in 2005 (SB 472/S.L. 2005-121) increased the penalty from a Class I felony to a Class H felony. Compared to Class H felons, Class E felons are more likely to receive prison sentences instead of community-based intermediate sanctions, and those prison sentences are considerably longer. The move to Class E would also require that felons convicted of this offense be supervised in the community for five years after release from prison.

#### **Prohibit Sex Offenders Living with Minors (SB 1509)**

*Status: Referred to Senate Judiciary I (Civil) Committee*

*Cost: No fiscal note available*

This legislation would have prevented a sexual predator from residing with any minor unless the minor in the household is a blood relative and the offense was not against that minor.

### **BILLS RESULTING IN A CHANGE IN STATUS FOR SOME FELONS**

#### **Expunge Nonviolent Crimes (HB 176)**

*Status: Referred to House Judiciary III Committee*

*Cost: Estimated \$2 million annually*

This bill would have expunged nonviolent crimes classified as misdemeanors, Class H or Class I felonies after 10 years of no subsequent convictions. A similar bill (SB 559) was introduced in 2005. Estimated costs are from the fiscal note for SB 559. No fiscal note is available for HB 176.

#### **Expunge Nonviolent Crimes/Young Person (SB 1336)**

*Status: In Senate Judiciary I (Civil) Committee*

*Cost: No fiscal note available*

This legislation would have expunged nonviolent crimes classified as misdemeanors, Class H or Class I felonies after 10 years of no subsequent convictions for offenders who were under 22 at the time of the crime.

#### **Juvenile Jurisdiction to Age 18 Years (HB 492/ SB 1078/ SB 1445)**

*Status: Still in originating chamber: House Rules/Senate Judiciary I (Civil)*

*Cost: No fiscal note available*

North Carolina is currently one of three states that consider delinquent juveniles to be adults in the criminal justice system beginning at age 16. Three bills were introduced to enact recommendations made by the North Carolina Sentencing Policy and Advisory Commission in its study of youthful offenders. The key recommendations are that North Carolina: (1) raise the juvenile delinquent age from 16 to 18; and (2) allow judges to impose special sentences that would not leave a permanent criminal record on less serious offenders under age 21.

#### **Remove Ten-Year Limitation on DWI Conviction (SB 743)**

*Status: Passed Senate, referred to House Appropriations*

*Cost: Probable fiscal impact, but amount cannot be determined*

Driving while impaired (DWI) is a misdemeanor, but habitual driving while impaired is a Class F felony and involves a minimum prison sentence of one year, the permanent revocation of the offender’s driver’s license, and forfeiture of the vehicle used to commit the crime. Under current law, habitual DWI is defined as three or more DWI convictions within a 10-year period. SB 743 would eliminate the 10-year restriction. A third DWI within any timeframe would qualify an individual for the harsher punishment.

## OTHER LEGISLATION OF NOTE

### **Removal of Unqualified Judges and DAs (SB 118 / S.L. 2007-104)**

*Status: Signed by Governor Easley on June 21, 2007*

This law allows the governor to declare the office of a judge or district attorney vacant if that official is no longer authorized to practice law (disbarred or suspended with appeals exhausted). The salaries of disbarred or suspended officials will be immediately suspended. The legislation was introduced after District Court Judge James Ethridge (Johnston) was disbarred for defrauding an elderly widow, but then refused to leave office. Questions about the conduct of Durham District Attorney Mike Nifong had also arisen by the end of 2006, and his disbarment in June 2007 was quickly followed by the passage of the bill.

### **Telephone Records Privacy Protection Act (SB 1058)**

*Status: Presented to Governor Easley on July 24, 2007*

*Cost: Some cost, amount cannot be determined*

This bill prohibits obtaining, selling, or soliciting phone records by fraud. Violation would be a Class H felony.

### **Speeding Law Changes (SB 925)**

*Status: Presented to Governor Easley on August 3, 2007*

*Cost: No fiscal note available*

This legislation prevents people charged with speeding more than 25 miles an hour over the posted speed limit from pleading to "Improper Equipment" or from receiving a prayer for judgment continued. This legislation was introduced as a proposed committee substitute and adopted on May 22 – the first edition of SB 925 was titled "Create Beneficiary on Motor Vehicle Titles." The new language in the bill followed the May 13th debut of a series in the *Raleigh News & Observer* titled "Speed Unlimited."

### **Identity Theft (HB 454)**

*Status: Presented to Governor Easley on July 27, 2007*

*Cost: No fiscal note available*

This legislation permits a law enforcement officer to take a photo of the driver of a vehicle pulled over for a moving violation if the driver does not produce a valid driver's license and the officer has suspicions concerning the driver's identity. The law also prohibits the broadcasting or publication of specific public information if the person whose information is published has previously objected. Allows for civil recourse in case of violation.

### **Street Gang Prevention Act (HB 274)**

*Status: Passed House, referred to Senate Appropriations*

*Cost: More than \$31 million, including capital costs for prison beds; operating costs of more than \$10 million annually*

Introduced by Representative Mickey Michaux (D-Durham), who introduced a similar bill in 2005 (HB 50). Both HB 274 and HB 50 included funds for grants. In 2005, \$3 million in grants was included in the budget bill. This year, \$4.8 million in grants was included in the budget. The bulk of the bill would enact various new criminal offenses for gang activity and provide for seizure of property. It also includes an expunction provision for offenders who were 16 or 17 years old at the time of the offense and were not part of the gang's "management." The new street gang statutes in this bill would not be applicable to juveniles under age 16.

The bill would also expand one law that is not specifically gang-related. Current statutes add five years to an offender's sentence if he is convicted of a violent (A-E) felony and used a firearm during the commission of the crime. This bill would expand "firearm" to any "deadly weapon."

### **Juvenile Justice Commission Established (HB 1686)**

*Status: Referred to House Appropriations Subcommittee on Justice and Public Safety*

*Cost: At least \$24,000 annually*

This bill would dissolve the Advisory Council on Juvenile Justice Delinquency Prevention, which met quarterly and then received legislative authority to meet less regularly. The legislation would create a new, permanent Juvenile Justice Study Commission and shift responsibilities from the Joint Legislative Commission on Corrections, Crime Control, and Juvenile Justice to the new commission.

### **Report Denial of Some Pistol Permits (HB 1287)**

*Status: Passed House, referred to Senate Judiciary II (Criminal)*

*Cost: At least \$40,000*

Permits to purchase a pistol are issued by county sheriffs' offices. This bill would require that, if a sheriff denies a permit, he must enter information about the denial (including the reason) into a statewide database maintained by the State Bureau of Investigation (SBI). The bill would have allowed for a removal of the denial information upon successful appeal or the

sheriff's subsequent approval of a pistol permit. Implementation would begin in September 2008. A similar bill (HB 1455) was introduced in the 2005-2006 session, without the requirement that the sheriff include the reason for the denial. The estimated cost to implement HB 1455 was \$38,500 to alter the SBI's database. Including the reason for the denial would presumably increase the cost. The House passed HB 1455 in its third edition, which also required sheriffs to report on firearms, ammunition, and permits surrendered under domestic violence (50B) orders. The bill did not pass the Senate.

#### **Execution/Physician Assistance Authorized (HB 442)**

*Status: Referred to House Health Committee*

*Cost: No fiscal note available*

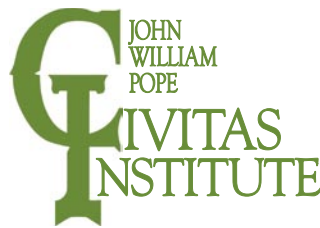
This legislation would have provided that physicians, nurses, and pharmacists shall not be subject to disciplinary action by their boards for assisting in an execution. The bill also states that "infliction of the punishment of death by administration of the required lethal substances" shall not be construed as the practice of medicine.

#### **Take DNA Sample on Arrest for Certain Crimes (HB 1697/SB 1003)**

*Status: Still in originating chamber: House Judiciary III /Senate Judiciary I (Civil)*

*Cost: Approximately \$4 million annually to state; unknown cost to local governments*

This legislation would have required arresting officers to obtain DNA samples from individuals under arrest for the commission of certain violent crimes – most Class A through E felonies, assault on a handicapped person, and stalking. Federal grant funds are generally available for the analysis of DNA samples from convicted offenders, but not for samples from arrestees. Because offenders who gave samples upon arrest would not have to provide samples upon conviction, this legislation would effectively shift funding for some DNA samples from federal to state funds.



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