

BILL NUMBER: HB 962 (Revised fiscal note)

The fiscal note for HB 962 has been revised. The number of additional prisoners that would result from the proposed legislation was reported incorrectly in the May 17, 1995 fiscal note (see page 5)...PLEASE DELETE OR DISCARD THE EARLIER VERSION.

Thank you. TomC
NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 962 (Revised fiscal note)

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SHORT TITLE: DRUG KINGPIN PUNISHMENT

SPONSOR(S): REPRESENTATIVE SHAW

FISCAL IMPACT:	Expenditures:	Increase (X)	Decrease (
))
	Revenues:	Increase ()	Decrease (
))

FUNDS AFFECTED: General Fund (X) Highway Fund ()

BILL SUMMARY: "TO PROVIDE FOR A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE FOR PERSONS CONVICTED OF TRAFFICKING IN ILLEGAL DRUGS, TO DECLARE THAT A HOUSE OR BUILDING IN A RESIDENTIAL AREA THAT IS THE SCENE OF ILLEGAL DRUG-RELATED ACTIVITIES IS A PUBLIC NUISANCE, TO PROVIDE THAT IT IS A CLASS 1 MISDEMEANOR FOR A PERSON TO LOITER IN A PUBLIC AREA TO ENGAGE IN ILLEGAL DRUG-RELATED ACTIVITIES, AND TO PROVIDE THAT A PERSON WHO TESTIFIES AGAINST A DEFENDANT CHARGED WITH A DRUG TRAFFICKING OFFENSE SHALL BE GRANTED IMMUNITY." Amends G.S. 90-95 to provide (1) that any person who is convicted of a second or subsequent violation of trafficking in illegal drugs is guilty of Class B1 felony and, notwithstanding provisions of Structured Sentencing Act, shall be sentenced to life in prison without parole, and (2) that a person who provides substantial assistance in identification, arrest, or conviction of accomplice, accessory, co-conspirator, or principal shall be granted immunity from prosecution under section. Adds new G.S. 14-277.5 provide that residence or building in a residential area is a public nuisance if there are frequent visits to the building at irregular hours causing large volumes of traffic, and purpose of visits is violation of any provision of Article 5 of G.S. Chapter 90. Adds new G.S. 14-401.15 making it a Class 1 misdemeanor for person to remain or wander about in public place and to repeatedly stop motor vehicles, repeatedly pass or receive

money or objects to or from purpose of violating any provision of Article 5 of G.S. Chapter 90.

EFFECTIVE DATE: December 1, 1995; applies to offenses committed on and after effective date.

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

FISCAL IMPACT

TOTAL	INDIGENT DEFENSE	OTHER STATE FUNDS
FY 95/96	\$71,767	\$366,474
	\$438,241	
FY 96/97	\$130,562	\$644,994
	\$775,556	
FY 97/98	\$139,701	\$664,344
	\$804,045	
FY 98/99	\$149,480	\$684,274
	\$833,754	
FY 99/00	\$159,944	\$704,802
	\$864,746	

ASSUMPTIONS AND METHODOLOGY: Judicial Branch

CONCLUSIONS: The Administrative Office of the Courts believes that the proposed bill would have a substantial impact on the Judicial Branch. This fiscal note looks separately at the four main parts of the proposed bill:

FISCAL IMPACT

1. increasing the punishment to life in prison without parole for second or subsequent offense drug trafficking convictions;
2. revising substantial assistance provisions to give immunity from prosecution for drug trafficking to those who offer substantial assistance (no estimate available).

NO FISCAL IMPACT

3. declaring as a public nuisance sites where frequent visits are made for the purpose of drug violations;
4. creating a Class 1 misdemeanor offense for loitering for the purpose of engaging in unlawful drug-related activities; and

INCREASED PENALTY FOR DRUG TRAFFICKING: If the penalty for a second or subsequent drug trafficking conviction were life in prison without parole (as a Class B1 felony), the Administrative Office of the Courts believes that a greater number of defendants would contest their trafficking charges much more vigorously. A survey of district attorneys indicated that of all those charged

with drug trafficking approximately 13% more than under current law would go to trial if this provision were enacted.

In FY 93/94, there were 1,353 drug trafficking filings under G.S. 90-95(h) in the superior courts. If 13% more of these defendants requested a trial, there would be 176 additional trials per year.

District attorneys surveyed estimated that each trial would last 3 days (nearly a day longer than under current law). Costs for court time would average \$3,558 per trial (excluding indigent defense costs).

In superior court, the Administrative Office of the Courts estimates that 60% these defendants would be found indigent, with 75% of them represented by assigned counsel and 25% by the public defender. In the last seven months of FY 95/96, superior court trial costs (excluding public defender costs) would be \$366,474 and defense costs (assigned counsel and public defender) would be \$71,767. Assigned counsel costs that would have been incurred in the absence of the proposed legislation for disposition by plea have been deducted from the previous and following estimates.

In FY 96/97, trial costs would be \$644,994 and defense costs would be \$130,562. These figures exclude public defender and district attorney preparation time outside of trial, additional workload within the clerks' offices, and possible costs from additional appeals. Estimates for the years following FY 95/96 assume a 7% annual increase in indigent defense costs, and a 3% increase in other costs.

IMMUNITY FOR SUBSTANTIAL ASSISTANCE: The proposed bill modifies G.S. 90-95(h)(5) to provide that a person who provides substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals shall be granted immunity from prosecution for drug trafficking. Under current law, a grant of immunity is not an option. The Administrative Office of the Courts is unable to estimate the fiscal impact of this provision.

PUBLIC NUISANCE: The proposed bill adds new G.S. 14-277.5 to provide that a residence or a building is a public nuisance "if it is located in a residential area, there are frequent visitations at the house or building during irregular hours, the visitations are the cause of large volumes of vehicular traffic around the house or building, and the purpose of the visitations is for a violation of any provision of Article 5 of Chapter 90 of the General Statutes." With these type of areas declared a public nuisance, the provision might lead to some additional court hearings to obtain temporary restraining orders, preliminary injunctions, and orders of abatement. However, these provisions to obtain orders of abatement under Article 1 of Chapter 19 are not frequently used, according to district attorneys and clerks. Thus, the Administrative Office of the Courts does not expect a substantial impact from this provision of the proposed bill.

DRUG-RELATED LOITERING: The proposed bill creates new G.S. 14-401.15, entitled "Loitering for the purpose of engaging in unlawful drug-related activities." Under this section, it is a Class 1 misdemeanor to loiter in a public place for the purpose of engaging in unlawful drug-related activities. Most of the district attorneys surveyed believe that some additional defendants would be charged with this offense, but that the increase in district court filings was not likely to have a significant impact upon the district courts.

ASSUMPTIONS AND METHODOLOGY: Department of Correction

Two alternatives are provided for the possible fiscal impact on the Department of Correction. Alternative 1 assumes that the current beds available could be utilized to fulfill the requirements of the proposed legislation. Alternative 2 assumes that all of the beds required by the proposed legislation would have to be supplied by the construction and operation of new facilities or the utilization of private provider beds.

ALTERNATIVE 1: FISCAL IMPACT: DEPARTMENT OF CORRECTION

NO FISCAL IMPACT

After analyzing the proposed legislation thoroughly, the Department of Correction estimates the following distribution of beds as needed under the proposed legislation:

Close Custody - 45%
Medium Custody - 38%
Minimum Custody - 17%

The time required for the state to site, design, and construct each type of facility is listed below:

Close Custody - 30 months
Medium Custody - 24 months
Minimum Custody - 21 months

ALTERNATIVE 1 - assumes that the current beds available could be utilized to fulfill the requirements of this proposed bill.

With present beds, beds that have been funded but not completed, and beds retained by renovating the existing Polk Youth Center, enough beds are projected to be available at 130% capacity of 50 square feet per inmate until June 30, 2000, for inmates incarcerated under the Structured Sentencing Act which became effective October 1, 1994.

The following chart shows, for the end of each fiscal year, the above-noted projected beds to be available, the number of inmates projected under Structured Sentencing effective October 1, 1994, the surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill:

	June 30	June 30	June 30	June 30	June
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
No. of Inmates Under Structured Sentencing Effective 10/1/94	25,822 27,694	25,936	26,143	26,738	
Projected Beds Available at 130% Capacity of 50 Sq. Ft./Inmate*	29,854 31,870	31,870	31,870	31,870	
No. of Beds Over/Under	+4,032 +4,176	+5,934	+5,727	+5,132	
No. of Inmates Due to Structured Sentencing					
No. of Projected Additional Inmates Due to this Bill	0	0	11	56	114
No. of Additional Beds Needed Due to this Bill	0	0	0	0	0

* The projected prison bed capacity also includes 656 beds likely to be funded by the 1995 General Assembly that will be added due to double-bunking in selected single cells, and 827 beds gained through the most recent modification of Small v. Martin.

Alternative 1: It is not anticipated that the proposed legislation would have a significant fiscal impact on the Department of Correction. Based on the North Carolina Sentencing and Policy Advisory Commission projections of prison population, including the impact of the proposed legislation, and the Department of Correction estimated prison bed capacity, the Fiscal Research Division believes that the proposed legislation would not have any fiscal impact on the Department of Correction at this time.

Other Assumptions:

This fiscal note does not account for the Repeal Prison Cap legislation and its related potential use of many of the currently available prison beds. The effect of repealing the cap is not considered since no decision has been made by the General Assembly as to the effective date of the legislation. It is necessary to have an effective date prior to incorporating the related bed utilization into the fiscal analysis of 1995 Session proposed legislation.

These projections do not include the 2,424 beds which are being requested in the Governor's 1995-97 Capital Improvement budget at a cost of \$86,000,000 in 1995-96 and \$14,000,000 in 1996-97. The estimated annualized operating costs for these beds is \$50,000,000.

ALTERNATIVE 2 - Alternative 2 assumes that all of the beds required by the proposed legislation would have to be provided through the construction and operation of new facilities.

ALTERNATIVE 2: FISCAL IMPACT: DEPARTMENT OF CORRECTION

	RECURRING	NON-RECURRING	TOTAL
FY 95/96	\$0	\$313,785	\$313,785
FY 96/97	\$0	\$742,696	\$742,696
FY 97/98	\$269,720	\$2,009,707	\$2,279,427
FY 98/99	\$1,286,070	\$2,594,984	\$3,881,054
FY 99/00	\$2,619,615	\$4,127,068	\$6,746,683

See Appendix A for the detailed cost analysis for Alternative 2.

SOURCES OF DATA: Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION (733-4910)

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DATE: May 18, 1995

[FRD#003]

APPENDIX A: ALTERNATIVE 2 - COST ANALYSIS

Fiscal Year	Total Beds Minimum	Annual Bed Increase	Close	Medium	
FY 95-96	0	0	0	0	0
FY 96-97	0	0	0	0	0
FY 97-98	11	11	5	4	2
FY 98-99	56	45	20	17	8
FY 99-00	114	58	26	22	10

FY 95/96: 0 Additional Inmates

FY 96/97: 0 Additional Inmates

FY 97/98: 11 Additional inmates: 5 close security beds
4 medium security beds
2 minimum security beds

Construction:

Minimum: FY 96/97: \$29,220 X 2 = \$ 58,440
Medium: FY 96/97: \$38,020 X 4 = \$152,080
Close: FY 95/96: \$62,757 X 5 = \$313,785

Operating:

Minimum: FY 97/98: \$18,913 X 2 = \$ 37,826
Medium: FY 97/98: \$23,816 X 4 = \$ 95,264
Close: FY 97/98: \$27,326 X 5 = \$136,630

Minimum: FY 98/99: \$19,130 X 2 = \$ 38,260
Medium: FY 98/99: \$24,090 X 4 = \$ 96,360
Close: FY 98/99: \$27,640 X 5 = \$138,200

Minimum: FY 99/00: \$19,350 X 2 = \$ 38,700
Medium: FY 99/00: \$24,367 X 4 = \$ 97,468
Close: FY 99/00: \$27,958 X 5 = \$139,790

FY 98/99: 45 Additional inmates: 20 close security beds
17 medium security beds
8 minimum security beds

Construction:

Minimum: FY 97/98: \$30,973 X 20 = \$619,460
Medium: FY 97/98: \$40,301 X 17 = \$685,117
Close: FY 96/97: \$66,522 X 8 = \$532,176

Operating:

Minimum: FY 98/99: \$19,130 X 20 = \$382,600
Medium: FY 98/99: \$24,090 X 17 = \$409,530
Close: FY 98/99: \$27,640 X 8 = \$221,120

Minimum: FY 99/00: \$19,350 X 20 = \$387,000
 Medium: FY 99/00: \$24,367 X 17 = \$414,239
 Close: FY 99/00: \$27,958 X 8 = \$223,664

FY 99/00: 58 Additional inmates: 26 close security bed
 22 medium security bed
 10 minimum security bed

Construction: Minimum: FY 98/99: \$32,831 X 26 = \$853,606
 Medium: FY 98/99: \$42,719 X 22 = \$939,818
 Close: FY 97/98: \$70,513 X 10 = \$705,130

Operating: Minimum: FY 99/00: \$19,350 X 26 = \$503,100
 Medium: FY 99/00: \$24,367 X 22 = \$536,074
 Close: FY 99/00: \$27,958 X 10 = \$279,580

**ESTIMATED ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER
 STRUCTURED SENTENCING**

END OF FISCAL YEAR	ESTIMATED ADDITIONAL PRISON INMATES
FY 00/01	179
FY 01/02	248
FY 02/03	321
FY 03/04	400
FY 13/14	1,458



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