

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** Senate Bill 1530  
**SHORT TITLE:** Discretionary Drug Sentencing  
**SPONSOR(S):** Senator Ballantine

**FISCAL IMPACT**

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

**No direct fiscal impact due to this bill for the Department of Correction because DOC can absorb the additional inmates within current prison bed capacity. However there is an indirect cost to add additional inmates to the prison system since otherwise funds could be used for other purposes; see page 3 of this note for calculation of that cost.**

	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
<b>GENERAL FUND</b>					
<b>Correction</b>					
Recurring	Does not require additional beds to be constructed until 2006-07. These				
Nonrecurring	beds and related funding are outside the five-year horizon of fiscal notes.				
<b>Judicial</b>					
Indigent Defense Expenses	\$90,750	\$93,273	\$96,072	\$98,954	\$101,923
Jury Fees	<u>\$89,232</u>	<u>\$91,909</u>	<u>\$94,666</u>	<u>\$97,506</u>	<u>\$100,431</u>
<b>TOTAL EXPENDITURES</b>	\$179,982	\$185,182	\$190,738	\$196,460	\$202,354

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Dept. of Correction; Local County Jails; Judicial Department

**EFFECTIVE DATE:** December 1, 1998. Applies to offenses committed on or after that date.

*Since the above items include salaried and non-salaried items, a constant 3% inflation rate is used.*

**BILL SUMMARY:** *TO PROVIDE THAT ACTIVE TIME MAY BE IMPOSED IN THE COURT'S DISCRETION FOR CERTAIN DRUG OFFENSES.* This bill first amends G.S. 90-95(d) by deleting statutory language that requires suspension of any prison sentence for a Class 3 misdemeanor charge of possessing a Schedule VI controlled substance. Amends G.S. 15A-1340.13 and 1340.20 by allowing the court to impose an active punishment for a second or subsequent misdemeanor drug possession violation, or a felony drug possession violation, although the class and conviction level do not otherwise authorize the imposition of active punishment. Applies to offenses committed on or after effective date.

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction

The following chart shows, for the end of each fiscal year, prison beds estimated to be available, the projected inmate population, the deficit or surplus of available beds compared to population, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (In the following chart, rows 4 and 5 are specific to this bill)

	<b><u>June 30</u></b> <b><u>1999</u></b>	<b><u>June 30</u></b> <b><u>2000</u></b>	<b><u>June 30</u></b> <b><u>2001</u></b>	<b><u>June 30</u></b> <b><u>2002</u></b>	<b><u>June 30</u></b> <b><u>2003</u></b>
1. Projected No. of Inmates Under Current Structured Sentencing Act <sup>1</sup>	31,177	30,475	30,743	31,228	31,828
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>2</sup>	34,120	34,936	34,936	34,936	34,936
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+2,943	+4,461	+4,193	+3,708	+3,108
<b>4. No. of Projected Additional Inmates Due to this Bill</b>	<b>+22</b>	<b>+267</b>	<b>+273</b>	<b>+278</b>	<b>+284</b>
5. No. of Additional Beds Need Each Fiscal Year Due to this Bill	0	0	0	0	0

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 284 inmates to the prison system by the end of FY 2002-03. There is no direct fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. However, even though costs can be absorbed due to available bed capacity, there is a daily cost for each inmate added to the system that will have to be expended in lieu of using available funds for other purposes or reverting these funds. The average cost per day for one inmate was the following in 1996-97:

<sup>1</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The population projections used for incarceration fiscal notes are based on January, 1998 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rates forecast by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

<sup>2</sup> Projected number of prison beds based on Department of Correction estimates of available prison bed Expanded Operating Capacity (EOC) for beds completed or funded and under construction as of 4/8/98. The EOC is approximately 130% of standard operating capacity and is authorized by previous court consent decrees or departmental policy. These bed capacity figures do not include any State prison beds that are contracted through local jails or any beds that would be lost to the system if the Governor's proposal to close nine small prisons (at a loss of 666 EOC beds) is approved by the General Assembly during the 1998 Session.

**DAILY INMATE COST**

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (96-97)	\$53.63	\$67.85	\$79.96	\$63.27

These costs include security, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons.

**Note:** This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly. Other criminal penalty bill enhancements being considered by the General Assembly reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal notes look at the impact of a bill through the year 2003. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year. As the chart indicates, new beds would be needed in 2006-07 as a result of this bill.

	<u>2003-4</u>	<u>2004-5</u>	<u>2005-6</u>	<u>2006-7</u>
Inmates Due to This Bill	289	295	301	307
Available Beds	2,467	1,689	951	271
New Beds Needed	0	0	0	36

**CONSTRUCTION:** Construction costs are based on actual 1997-98 costs for each custody level as provided by the Office of State Construction on May 26, 1998. Based on these costs, the following per bed/cell construction costs would apply:

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 97-98	\$30,240	\$57,585	\$89,250

Because funds for the close custody beds are budgeted 3 years in advance and funds for the medium and minimum custody beds are budgeted 2 years in advance, this bill technically has an impact on the state budget as early as 2003-04, when construction funds would be needed to provide close custody beds by 2006-07. However, since 2003-04 is outside the five-year horizon for fiscal notes, these construction costs are not included in this analysis.

**IMPACT ON COUNTY JAILS:** The Sentencing Commission also estimated the number of misdemeanants who would receive active punishment at a county jail as a result of this bill. Using data from the Sentencing Commission and the NC Association of County Commissioners, this bill would add 35 additional jail inmates

statewide by 2002-03 and increases costs by \$28,000 (35 additional inmates X \$40 per inmate per day X 20 days for maximum sentence).

## **ASSUMPTIONS AND METHODOLOGY: Judicial Department**

### Misdemeanor Violations

For misdemeanor drug possession violations, this bill authorizes an active punishment in prior record level II for Class 2 and 3 misdemeanors for defendants with a prior drug possession conviction (bill does not apply to defendants with prior record levels of I or III, or charged with a Class 1 misdemeanor). In 1997, 27,128 defendants were charged with Class 2 and Class 3 misdemeanor possession offenses. The Administrative Office of the Courts (AOC) estimates that 50% of these defendants, or 13,564, plead guilty as charged. Data from the Sentencing Commission indicates that 32% of defendants convicted for Class 2 and Class 3 possession offenses are sentenced in prior record level II. Thus, the AOC estimates that 4,340 defendants (13,564 X 32%) would plead guilty to the Class 2 and Class 3 charges and be in prior record level II. Of these defendants, 85%, or 3,689, would have a prior drug possession conviction and would be eligible for active punishment under this bill.

The imposition of active punishment in this bill would make defendants more likely to contest the charges and proceed to court. Using estimates from district attorneys for another bill modifying certain drug offense penalties, the AOC estimates that 12% of the 3,689 defendants above would go to trial if this bill were enacted instead of pleading guilty under current law. The Fiscal Research Division reviewed court disposition data and other drug possession legislation with similar penalties, and estimates a trial rate increase of 6%. Thus, an additional **221 defendants** (3,689 defendants X 6%) would go to trial if the bill was enacted instead of pleading guilty under current law. Assuming that each trial would last an average of 6 hours, the AOC estimates an additional **1,326 hours** of court time (221 trials X 6 hours per trial) for the additional drug possession cases. **At this time, the Fiscal Research Division believes this additional statewide district court workload could be absorbed within existing judicial department resources.** However, this note measures the impact of this bill alone; the cumulative effect of all criminal penalty bills passed in this legislative session might warrant additional district court personnel.

The AOC estimates that 88 of the misdemeanants who would now go to trial under this bill would be found indigent and represented by court-appointed counsel (221 defendants X 40%). There would be an additional 528 hours of court time (88 defendants X 6 hours per trial), which combined with 176 hours of case preparation time (88 cases X 2 hours per case), yields 704 additional hours for court-appointed counsel. Assuming \$50 an hour for indigent counsel, the estimated indigent expenses for the 88 new misdemeanor trials would be **\$35,200.**

### Felony Violations

For felony violations, this bill authorizes an active punishment for defendants convicted of Class I felony possession offenses sentenced in prior record levels I, II, or III. In 1997, the AOC estimates that 3,792 defendants were charged with Class I possession felonies, and that 55% of these defendants, or 2,086, would be expected to plead guilty. Sentencing Commission data indicates that 90% of defendants convicted for Class I felony possession offenses are sentenced in prior record levels I, II, or III. Thus, AOC estimates that 1,877 defendants (2,086 X 90%) would plead guilty to the Class I offense and be in prior record level I, II, or III.

The imposition of active punishment in this bill would make felonious defendants more likely to contest the charges and proceed to court. Using estimates from district attorneys for another bill modifying certain drug offense penalties, the AOC estimates that 12% of 1,877 defendants estimated above would go to trial if this bill were enacted instead of pleading guilty under current law. The Fiscal Research Division reviewed court

disposition data and other drug possession legislation with similar penalties, and estimates a trial rate increase of 9%. Thus, an additional **169 defendants** (1,877 X 9%) would go to trial under this bill than plead guilty under current law. Assuming that each trial would last an average of 9 hours, the AOC estimates an additional **1,521 hours** of court time (169 defendants X 9 hours per trial) for the additional drug possession cases. **At this time, the Fiscal Research Division believes this additional statewide superior court workload could be absorbed within existing judicial department resources.** However, this note measures the impact of this bill alone; the cumulative effect of all criminal penalty bills passed in this legislative session might warrant additional superior court personnel.

The AOC estimates that 101 of the felons who would now go to trial under this bill would be found indigent and represented by court-appointed counsel (169 defendants X 60%). There would be an additional 909 hours of court time (101 defendants X 9 hours per trial), which combined with 202 hours of case preparation time (101 cases X 2 hours per case), yields 1,111 additional hours for court-appointed counsel. Assuming \$50 an hour for indigent counsel, the estimated indigent expenses for the 169 new felony trials would be **\$55,550**.

In addition, the new superior court trials would incur jury fees, which AOC estimates at **\$89,232** for all 169 trials (169 trials X \$528 per trial).

**SOURCES OF DATA:** Department of Correction; Office of State Construction; North Carolina Sentencing and Policy Advisory Commission; Judicial Department

**TECHNICAL CONSIDERATIONS:** None

#### **FISCAL RESEARCH DIVISION**

**733-4910**

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