

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 949

SHORT TITLE: Mandatory Sentence/Drug Dealer

SPONSOR(S): Representative Nichols

FISCAL IMPACT: Expenditures: Increase (X) Decrease ()
Revenues: Increase () Decrease ()
No Impact ()
No Estimate Available ()

FUND AFFECTED: General Fund (X) Highway Fund () Local Fund ()
Other Fund (X) (Indigent Persons Attorney Fee Fund)

BILL SUMMARY: Amends G.S. 90-95(b) to impose a mandatory minimum sentence of seven years incarceration and a \$25,000 fine for persons who manufacture, sell or deliver, or possess with intent to manufacture, sell, or deliver a controlled substance classified in Schedule I or II of the Controlled Substances Act. Requires mandatory minimum of three years and \$10,000 fine for same conduct with respect to Schedule III, IV, V, or VI substances. Sentences also apply to conspiracy to commit the foregoing offenses. Suspended sentence or probation not allowed. Sentence may be reduced by one-third only upon recommendation of district attorney that offender has rendered substantial assistance to the government in prosecution of others. Youthful offenders treated the same as adults with respect to eligibility for release or parole. Sentences imposed for G.S. 90-95(b) offenses shall run consecutively.

EFFECTIVE DATE: DECEMBER 1, 1993; Applicable to all offenses occurring on or after that day.

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

JUDICIAL DEPARTMENT

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES	\$62,751	\$107,573	\$107,573	\$107,573	\$107,573
INDIGENT DEFENSE	8,167	14,000	14,000	14,000	14,000
GENERAL FUND	54,584	93,573	93,573	93,573	93,573
REVENUES/RECEIPTS	0	0	0	0	0

* Expenditures do not include inflationary or salary increases.

POSITIONS: The Administrative Office of the Courts (AOC) does not itemize the need for new positions largely because the impact of this bill is spread across state. However, the AOC notes that the "increased workload due to this bill, combined with other pending legislation, would require additional personnel."

ASSUMPTIONS AND METHODOLOGY: The above costs for the Judicial Department are based on the following analysis prepared by the AOC. The AOC estimates that this bill would result in an increase in jury trials for drug defendants who under current law are pleading guilty. More specifically, the AOC estimates an additional 47 trials at a cost of \$93,573 per year in court time, and additional assigned counsel costs of \$14,000 per year.

"Given that this bill addresses the sentencing of defendants already in the court system, it should create no new filings. Most of the district attorneys surveyed, however, felt that the requirement of a mandatory minimum term of imprisonment would lead to an increase in the number of trials requested by this group of defendants. District attorneys' estimates varied widely, but on average yielded a 25% increase in the number of trials.

Extrapolating from data from the first quarter of 1993, we estimate that under current law, in a year's time there will be approximately 186 defendants (in 256 cases) who will request a trial on the charges covered by this bill. If trials were to increase by 25%, 47 trials would be required for defendants who formerly would have plead guilty.

From AOC data on appointment of counsel in such drug trials, we estimate that defendants will not be indigent (and thus retain their own counsel) in 39% (18) of the trials. The public defender will be involved in 19% (9), and court-appointed counsel will be assigned in 42% (20) of the cases. The cost estimates below detail the anticipated costs for the additional trials, broken down as follows: a) costs for the additional days in court (excluding costs of private assigned counsel), and b) additional costs for assigned counsel.

a) Days in courts: District attorneys estimated that such drug trials would require approximately 1.5 days in superior court. For the estimated 18 trials involving retained counsel and for the 20 trials involving assigned counsel, we estimate the cost for court time (including costs for the judge, jury, assistant district attorney, clerk, and court reporter) in each trial to be \$1,926 (\$1,292 for the first day, and \$634 for the second half-day). Thus, these 38 trials would cost approximately \$73,188. For the 9 trials involving the public defender, costs for the first day are estimated at \$1,518 and costs for the second half-day are estimated at \$747, for a total per trial of \$2,265, or \$20,385 for 9 trials. The total costs for court time for all 47 trials are estimated at \$93,573. (These estimates do not account for additional preparation time by district attorneys or public defenders in the cases that are tried rather than

plead, and do not include any additional preparation time for district attorneys or any defense counsel in cases that are plead.)

b) Costs for assigned counsel: For the 20 trials involving assigned counsel, we estimate that an additional 5 hours of preparation time would be required, as compared to cases in which a plea was entered. Including the 9 hours of trial time spent in court, 14 additional hours would be required from assigned counsel representing these defendants going to trial. At \$50 per hour, these 20 trials represent an additional \$14,000 in assigned counsel costs.

Other Considerations: A far greater cost will likely be incurred by the prison system. The mandatory minimum sentences are much longer than the sentences now received by such drug defendants. Even if the court finds that these defendants have rendered substantial assistance, their sentences will only be reduced by two-thirds of the mandatory minimums specified. According to the district attorneys interviewed, substantial assistance would be found in approximately 33% of the cases.

DEPARTMENT OF CORRECTION

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPEND.*	\$27,148,166	\$90,208,756	\$137,347,565	\$194,079,799	\$2
RECURRING**	9,117,620	51,792,307	102,334,121	157,227,155	1
NON-RECURR.	18,030,546	38,416,449	35,013,444	36,852,644	

*** Expenditures would not be realized unless the current prison cap is removed. Under the existing prison cap, no additional expenditures would result within the Department of Correction.**

**** Recurring expenditures do not include salary or inflationary increases.**

[NOTE: The projected expenditures are shown each year as expansion needs beyond the current operating budget of the Department of Correction (DOC). As required, this note projects fiscal impact for the next five years. However, the full impact of this bill would not be realized until FY 2002-2003.

POSITIONS: 2,211 New positions

ASSUMPTIONS AND METHODOLOGY: The above cost estimates are calculated from the projected increase in prison populations that would result upon ratification of this bill. Projections apply to all relevant offenses committed on or after December 1, 1993.

Added Inmate Population: The number of additional beds that would be required by the DOC was estimated by Rob Lubitz, Executive Director of the N.C. Sentencing and Policy Advisory Commission using the Commission's correctional population simulation model. (See Appendix IV of the Commission's "1993 Report to the General Assembly" for further explanation.) The projected increase in prison population is based on the following assumptions:

- 1) There would be no changes in charging practices or in plea negotiation practices resulting from this bill.
- 2) The "Substantial Assistance" provision of this bill would apply to one third of all offenders subject to this bill. (Estimate provided by the AOC.. See above narrative for the Judicial Department.)
- 3) The growth rate for these crimes will match the growth rate used in the Commission's correctional population simulation model.

Based on the above assumptions, the Commission calculated the total number of DOC beds projected under current sentencing laws and practices and then projected the expected DOC population under the proposed mandatory sentencing laws prescribed in this bill. The following table illustrates the projected increases in prison populations for the next five years.

Fiscal Year	Added Inmate Population
1993/94	758
1994/95	2,607
1995/96	5,495
1996/97	8,387
1997/98	11,054

Additional Costs: Additional costs are realized only if it is assumed that the current prison cap is removed.

Recurring Expenditures - Recurring or operating costs have been estimated according to the expected classification (i.e., minimum, medium, or close custody) of drug offenders who would be sentenced to a mandatory seven years or three years of imprisonment under this bill. Based on a telephone interview with Nevelle Jones, Chief of Classifications for the Division of Prisons, it is assumed that all of the drug offenders affected by this bill would be initially assigned to medium custody confinement. Promotion to minimum custody is expected to occur after 90 days for those inmates having received the three year mandatory sentences and after 12 months for those having been sentenced to the seven year mandatory sentence. On the basis of this assumption, operating costs have been calculated by dividing the expected number of "Added Inmate Population" into 7 year and 3 year offenders. For each type of offender, operating costs have been calculated according to the number of months each offender is expected to serve in the two custody levels.

For example, in FY 93-94 the total added inmate population is expected to be 758 offenders. Of these offenders, 568 are expected to be sentenced under the 7 year mandatory provision; and, 190 are expected to be sentenced under the 3 year mandatory minimum. Since 3 year offenders are expected to be promoted after 90 days, operating costs for this group is calculated by multiplying 190 inmates x 90 days x \$59.41 (average 1992 operating cost per medium security inmate per day) and then adding this total to the total gained by multiplying 190 inmates x 120 days (remaining # of days in first fiscal year since bill has a Dec. 1st effective date) x \$44.53 (average 1992 operating cost per minimum security inmate per day). A similar strategy is used to calculate costs involving the second group or 7 year mandatory offenders. For FYs 94-95 through 97-98, costs are calculated in the same manner while taking projected turnover into account.

Non-Recurring Expenditures - Non-recurring or capital costs would be estimated to total \$159,960,979 over the first five year period. As noted from the table on the preceding page, 758 new beds would be required in FY 93-94. Since all inmates will initially be assigned to medium custody and for simplification purposes, capital costs for the first FY are calculated according to the costs to construct medium security confinement only. [Note that per bed costs to construct both medium and minimum security confinement have been calculated according to the average cost per bed (averages are based on costs for both beds constructed in a new facility and in an expanded facility) taken from page VI of the DOC Master Plan.] For FY 93-94, 758 new medium security beds x \$23,787 (average cost per bed) yields an expenditure of \$18,030,546. Costs for the remaining years are calculated based on the number of beds required (both minimum and medium) minus the number of new beds already constructed in the preceding year(s). Note that by FY 97-98, the total costs to construct the 11,054 beds referenced above include those costs to build a total of 2,488 medium security beds and 8,566 minimum security beds.

As previously noted, the full impact of this bill will not be realized until FY 2002-2003. At that time the Sentencing and Policy Advisory Commission estimates that a total of 18,491 beds will be necessary as a result of this bill.

Additional Positions: Based on the 1992 recommendation of the Government Performance Audit Committee (GPAC), approximately 2,211 new positions would be required if the prison cap were removed and 11,054 additional beds were built. Page 8.15 of the Public Safety Section of the GPAC report entitled "Our State Our Future" recommends a staffing ratio of 1 to 5. The above noted operating costs could be lower if this ratio were in effect. (Note that the above GPAC recommendation/ratio has been used to calculate the number of additional positions because the Division of Prisons is unable to provide relevant information to otherwise calculate said positions.)

SOURCES OF DATA: Administrative Office of the Courts; N.C. Sentencing and Policy Advisory Commission; Department of Correction - Division of Prisons

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION

733-4910

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[FRD#003]



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