

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 950

SHORT TITLE: Use of Firearm During Drug Offense

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: Adds new G.S. 90-95.6 to make it a Class F felony, punishable by at least ten years imprisonment, for a person to possess a concealed weapon or use a deadly weapon while committing a felony offense under G.S. 90-95. Provides that new offense is a separate punishable offense from other felony offenses under G.S. 90-95; that a person sentenced under new section shall not receive a suspended sentence or probation and shall not be eligible for parole, good time, gain time, or committed youthful offender status; and that any sentence under new section shall run consecutively with any term of imprisonment imposed for a felony under G.S. 90-95 and any other sentence then being served.

EFFECTIVE DATE: December 1, 1993; applicable to offenses committed on or after that date.

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*	\$39,792	\$68,214	\$68,214	\$68,214	\$68,214
INDIGENT DEFENSE	4,900	8,400	8,400	8,400	8,400
GENERAL FUND	34,892	59,814	59,814	59,814	59,814
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 of 30 jury trials for drug defendants who currently plead guilty under existing law. Annual costs associated with the 30 additional trials total \$59,814 for court time and \$8,400 for assigned counsel.

"Given that this bill creates a separate new offense, there will be additional case filings as a result. However, district attorneys are already charging other weapons offenses where appropriate. In addition, all of the defendants would already be in the court system on other drug charges. The bulk of the increased cost to the court system would arise from some increase in the number of jury trials requested by this group of defendants. On average, district attorneys estimated a 10% increase in the number of trials for drug defendants.

"Extrapolating from data reflecting the first quarter of 1993, we estimate that under current law, in a year's time there will be approximately 303 defendants (in 403 cases) who will request a jury trial in drug cases. If trials were to increase by 10% due to this bill, 30 trials would be required for defendants who formerly would have plead guilty to the accompanying drug charges.

"From AOC data on the appointment of counsel in such drug trials, we estimate that defendants will not be indigent (and thus retain their own counsel) in 39% (12) of the trials. The public defender will be involved in 19% (6), and court-appointed counsel will be assigned in 42% (12) of the cases. The cost estimates described below detail the anticipated costs for the additional trials, broken down as follows: a) costs for additional days in court (excluding costs of private assigned counsel), and b) additional costs for assigned counsel.

"a) Days in court: District attorneys estimated that such drug trials would require approximately 1.5 days in superior court. For the estimated 12 trials involving retained counsel and for the 12 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 24 trials would cost approximately \$46,224. For the 6 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 \$13,590 for 6 trials. The total costs for court time for all 30 trials are estimated at \$59,814. [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 12 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 12 trials represent an additional \$8,400 in assigned counsel costs.

"Other Considerations: A far greater cost will likely be incurred by the prison system. The mandatory minimum sentence of ten years is much longer than the sentences now received by such drug defendants. According to the district attorneys interviewed, drug defendants either possess a concealed weapon or use deadly weapon in approximately 20% of the cases.

"The district attorneys interviewed were of the opinion that such a bill could increase the number of plea bargains to other drug charges. Thus, the effect of the bill could actually increase the number of convictions for other G.S. 90-95 offenses."

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. *	\$29,360,209	\$76,112,469	\$111,203,032	\$144,514,317	\$1
RECURRING**	10,164,100	45,451,026	76,807,030	109,095,474	1
NON-RECURR.	19,196,109	30,661,443	34,396,002	35,418,843	
REVENUES/RECEIPTS	0	0	0	0	0
RECURRING					
NON-RECURRING					

*** 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: 1,313 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) This bill would apply to 20% of all offenders convicted of a felony offense under G.S. 90-95. (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	807
1994/95	2,096
1995/96	3,542
1996/97	5,031
1997/98	6,566

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 the G.S. 90-95 offenders who would be sentenced to a mandatory ten 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 relevant offenders would be initially placed in medium security confinement and would remain there until they were eligible for promotion to minimum security confinement. (A Class F felon serving a ten year mandatory sentence is not eligible to be promoted to minimum security until after serving 5 years. Hence, for the purpose of estimating the five year fiscal impact of this proposed

bill, all costs are estimated on the basis of medium security confinement.)

Operating costs are calculated as follows:

- For FY 93-94, 807 additional inmates x \$59.41 (operating cost per medium security bed per day) x 7 months (relevant period from this bill's 12/1/93 effective date) or 212 days = \$10,164,100

- For the remaining FYs, 94-95 through 97-98, # of additional inmates x \$59.41 x 1 year or 365 days

Non-Recurring Expenditures - Non-recurring or capital costs would be estimated to total \$156,185,442 over the five year period. As noted from the table on the preceding page, 807 new medium security beds will be required in FY 93-94. Costs to construct these beds are calculated according to the average cost per medium security 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, 807 new medium security beds x \$23,787 (average cost per bed) yields an expenditure of \$19,196,109. Costs for the remaining years are calculated based on the number of beds required minus the number of new beds already constructed in the preceding year(s).

As noted above, 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 14,496 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 1,313 new positions would be required if the prison cap was removed and 4,431 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

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