

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: — HB 241 — 1st Edition

SHORT TITLE: Amend Drug Trafficking Laws

SPONSOR(S): Representative Haire

	FISCAL IMPACT				
	Yes (<u>X</u> -)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
		<u>() reflects savings</u>			
Correction (R)*					
<u>Correction**¹</u>					
<u>-(Recurring)</u>	==	<u>\$1.31 M</u>	<u>\$1.55 M</u>	<u>(\$985,782)</u>	<u>(\$603,166)</u>
<u>Recurring</u>					
<u>Judicial (R)</u>	<u>\$67,998</u>	<u>\$1.17 M</u>	<u>\$1.2 M</u>	<u>\$1.24 M</u>	<u>\$1.3 M</u>
<u>DJJDP</u>		<u>Unable to determine exact amount.</u>			
<u>TOTAL EXPENDITURES:</u>					
0		0			
		0			
		0			
		0			
<u>EXPENDITURES:</u>	<u>\$67,998</u>	<u>\$2.48 M</u>	<u>\$2.75 M</u>	<u>\$250,000</u>	<u>\$670,000</u>
ADDITIONAL					
		- PRISON BEDS**			
	==	==	<u>(39)</u>	<u>(170)</u>	<u>(175)</u>
POSITIONS:					
		-(cumulative)			
<u>Judicial Branch</u>	<u>6</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>
<u>Correction</u>	==	==	<u>(16)</u>	<u>(68)</u>	<u>(70)</u>
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Juvenile Justice and Delinquency Prevention (DJJDP)					
EFFECTIVE DATE: <u>December 1, 2003</u>					

While there will be additional costs associated with lowering the marijuana threshold and increasing the number of offenders on post release supervision, these exact amount cannot be determined.

**Conservative estimate of bed savings based only on the change in felony levels for drug trafficking. Does not take into account costs due to decreasing the marijuana threshold.*

***This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: HB 241 makes several changes affecting drug trafficking cases and moves these offenses onto the structured sentencing grid. Section 1 of the bill amends G.S. 90-95(h) to reclassify each drug trafficking offense two classes higher than the current classification. It also amends G.S. 90-95(h) to lower the initial threshold amount for marijuana trafficking offenses and reduces the threshold ranges. Section 2 of the bill amends G.S. 90-95(i) to make the amended penalties apply to any attempt to commit drug trafficking offenses. Under the bill, defendants charged with attempt to commit drug trafficking would be punished at the same felony class as for trafficking (the increased classes provided under Section 1). All attempts would be punished at two felony classes higher than under current law and all sentences would be active sentences.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The AOC does not have adequate data to separate out the various drug trafficking cases by quantity and felony class. However, the AOC does anticipate a significant impact on court workload. Some cases will require additional hours, especially cases involving life without parole, whether for B1 drug trafficking offenses, or for habitual felon prosecution. After surveying district attorneys, the AOC indicates that the additional in-court time and preparation time for serious cases would average 1.5 hours per case.

In calendar year 2002, AOC data reveal that there were 3,875 cases for drug trafficking that would fall under the scope of this bill: 2,346 defendants were charged with drug trafficking offenses, 842 defendants were charged with conspiracy to commit drug trafficking offenses excluding marijuana trafficking offenses, 291 defendants were charged with trafficking marijuana, 101 defendants were charged with conspiracy to commit drug trafficking in marijuana, and approximately 295 defendants¹ were charged with relevant marijuana offenses involving amounts between 5 and 10 pounds who could be charged under this bill.

An increase of a minimum of 1.5 work hours applied to the 3,875 cases that fall under the scope of this bill would increase workload by 5,813 hours. Using 1,800 hours per year as a full-time workload, the AOC estimates a cost of \$957,921 for the first full year. This cost reflects three superior court judges, three assistant district attorneys, three clerks, and three court reporters. Furthermore, based on AOC data for trafficking offenses under G.S. 90-95(h), the AOC estimates that at least 55 percent of the 3,875 cases (2,131) would require indigent representation at \$65 per hour, or \$207,774 for indigent defense. **The AOC estimates that, for the first year, the minimum in-court costs equal \$1,165,694.**

Department of Correction: Division of Prisons

Drug traffickers are currently subject to a single mandatory sentence based on the type and quantity of drug involved. This bill proposes punishing drug trafficking offenses according to the

¹ Based upon a survey of district attorneys, the AOC estimates that approximately 3.3% of defendants charged with relevant marijuana offenses involved amounts between 5 and 10 pounds.

felony punishment chart and classifying those offenses so that the sentence lengths available will approximate the current mandatory sentences. However, because the felony punishment chart includes ranges of possible sentences, some offenders with little or no prior record may receive a sentence less than the current mandatory sentence. This could produce bed savings, which in turn would create operating savings. Because the majority of drug trafficking offenders have few prior record points, the bed savings due to shorter active sentences will outweigh the beds added by the increased felony classes.

Key Effects of This Bill:

- Increase felony level of drug trafficking offenses ⇒ increase sentence lengths
- Move onto structured sentencing grid ⇒ use prior record levels ⇒ shorten some sentences
- Lower poundage threshold for marijuana trafficking ⇒ increase some sentences, more active sentences

The box on page 1 reflects the projected reduction in the number of beds needed under structured sentencing as a result of this bill
Key Aspects of DOC Costs:-

- HB 241 will save more prison beds than it adds.
 - Fewer minimum custody beds will be needed.
 - More close and medium custody beds will be needed.
- Operating costs will increase in the short run because close and medium custody beds cost more to operate than minimum custody beds. After several years, this bill will save enough minimum custody beds to more than make up for the costs of operating the smaller increase in close and medium custody beds.

Fiscal Research Approach:

1. Use conservative estimate of bed savings – assume that all drug trafficking offenders will receive the longest presumptive sentence possible (save 175 beds per year by 2008). A less conservative estimate would save 299 beds by 2007-08.
2. Do not take into account bed increases due to lower marijuana threshold – cannot estimate number of offenders this will affect (maximum of 60 beds increase per year).
3. Net effect is that the potential bed increases due to #2 (marijuana threshold) will be balanced by the conservative estimate in #1.

Using this approach, we estimate that HB 241 will save a net of zero prison beds in 2004-05, the first full year of impact. By 2007-08, HB 241 will save 175 prison beds-20:

	FY 2004-05		FY 2007-08	
Savings:	Beds	136 minimum custody beds	432 minimum custody beds	
	Dollars	= (\$4.0 M)	= (\$9.4 M)	
Costs:	Beds	86 close, 49 medium custody beds	25 medium, 232 close custody beds	
	Dollars	= \$2.7 M	= \$8.8 M	
Net:	Beds	0 beds	175 beds	
	Dollars	= \$1.3 M	= (\$603,166)	

Assumptions in Fiscal Research Division Approach:

The NC Sentencing and Policy Advisory Commission provided a range of impacts based on different assumptions. Our analysis uses assumptions that place the bed impact in between the

maximum and minimum projections. To estimate the fiscal impact on the prison system, we made the following assumptions:

- The prior record distribution of drug trafficking cases mirrors the distribution of prior records of drug trafficking offenders in FY 2001-2002.
- The minimum sentence imposed will be the highest minimum sentence of the presumptive range under the current felony punishment chart by offense class and prior record level. This assumption, we believe, mirrors judicial practices for drug offenses due to their serious nature.
- There will be no change in prosecutorial practices regarding “substantial assistance.” (AOC data indicate that drug trafficking offenders only receive non-active sentences or sentences lower than the mandatory length if they provide “Substantial assistance was found in all drug trafficking cases where a non-active sentence was imposed or where the active sentence length was lower than the mandatory sentence length. Substantial assistance” involves a defendant providing significant assistance to the district attorney and other law officers in the prosecution of related crimes.) To project prison beds added or saved as a result of this bill, we assume there would be no change in practices regarding sentence departures for substantial assistance.
- There would be no changes in judicial or prosecutorial practices regarding drug trafficking convictions; and there is no deterrent or incapacitative effect.

Our analysis does not take into account the new marijuana threshold amounts for drug trafficking included in HB 241. Neither the AOC (besides a survey of district attorneys) nor the State Bureau of Investigation has any data concerning marijuana amounts in relation to trafficking and non-trafficking offenses. Therefore, the impact of this section of HB 241 cannot be determined. In FY 2001-2002, there were 1,336 convictions for marijuana possession between 0 and 10 pounds. It is not known how many of these were for possession of five to ten pounds. Using the AOC’s estimate ~~–If the assumption that 3.3 percent of convictions for relevant marijuana offenses involve amounts between 5 and 10 pounds proves accurate,~~ there would be the need for 17-30 additional prison beds by FY- 2005-2006.¹

It is important to note that if a higher percentage of convictions for relevant marijuana offenses involve possession of marijuana between 5-10 pounds, the need for additional prison beds could outweigh the bed savings created from other provisions in the bill. However, Our analysis assumes that all drug trafficking offenders sentenced under this bill would serve the highest minimum sentence in the presumptive range. Offenders sentenced below the maximum to shorter sentences will help to offset the bed increases from new marijuana offenses.

¹ While the NC Sentencing and Policy Advisory Commission has provided these scenarios, it cannot project the actual number of prison beds created by this section of HB 241.

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* That means the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will ~~add~~ **reduce** the prison population by 175 inmates ~~inmates to the prison system~~ by the end of FY 2007-08.

	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,290	-2,058	-3,010	-3,958	-4,828
4. No. of Projected Additional Inmates					
<u>Due to this Bill</u>³	--	--	-39	-170	-175
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³	-	--	-39	-170	-175

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts 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. The Sentencing and Policy Advisory Commission projections do not assume deterrent or incapacitative effects.

² Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.**

³ Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

POSITIONS: ~~It is anticipated that approximately _____ positions would be needed to supervise the additional inmates housed under this bill by 2007-08.~~ is anticipated that approximately 70 fewer positions would be needed to supervise the additional inmates housed under this bill by 2007-20-08. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes look at the impact of a bill through ~~the year-FY 2008.~~ 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.

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Inmates Due to —This Bill	<u>-192</u>	<u>-225</u>	<u>-224</u>	<u>-219</u>
Available Beds (over/under)	-5,616	-6,339	-7,039	-7,684
New Beds Needed	<u>-5,424</u>	<u>-6,114</u>	<u>--6,815</u>	<u>-7,465</u>

DISTRIBUTION OF BEDS: HB 241 overall reduces the need for 219 beds by 2011-20-12. The bill reduces the need for 708 minimum custody beds by 2011-20-12. Of those beds, 364 beds are shifted to close custody and 125 beds to medium custody. The reduction in minimum custody beds is largely a result of raising the felony class for drug traffickers two felony classes higher, thus placing more traffickers in medium or close custody prison beds. The reason that some beds are not shifted to medium or close custody, and simply are eliminated, is that some drug traffickers with few prior record points will serve shorter sentences than under current law, even with the increase in felony class.

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2002-03 costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed -2002-02 <u>03</u>	\$38,595	\$73,494	\$85,444

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on Page 1 of this note. These costs assume that funds to construct prison beds should be budgeted in advance. Based on previous prison construction projects we are assuming it will typically require three years for planning, design and construction of new beds.

OPERATING: Operating costs are based on actual 2001-02 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate will be added each year to the base costs for FY 2002 shown below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1.

Daily Inmate Operating Cost 2001-02

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2001-02)	\$50.04	\$65.17	\$80.19	\$62.43

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2004 and 2005, ~~this is based on the assumption~~ assumes that Correction cannot build prisons quickly enough to house additional offenders before 2005-06 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

While savings are relatively moderate in the first few years, they begin to increase steadily starting in 2005-20-06. In 2005-20-06, the Sstate will spend \$1.5 million in prison operating costs. In 2011-20-12, the Sstate will save the need for \$9.53 million in prison operating costs. Our analysis does not take into account the new marijuana threshold amounts for drug trafficking included in HB 241. With these new threshold amounts, the savings that result from HB 241 could possibly be lower, but an exact amount cannot be determined. -If offenders serve sentences closer to the middle of the presumptive range, savings could be greater.

Operating costs were calculated by using the daily operating costs adjusted for inflation for each custody level, multiplied by 365 days, and then multiplied by the number of beds projected for each custody level. To calculate Department of Correction operating costs for FY 2004-20-05, the daily cost per close custody inmate (\$80.19 + inflation) was multiplied by 365 days and then was multiplied by the number of additional close custody beds needed (86). Similar methodology was used to calculate costs for additional medium (49) and less minimum custody (-136) beds. DOC operating costs were calculated for each custody level and then were summed for the total DOC operating cost for 2004-20-05 as a result of this bill. Out years were calculated in the same manner.

Other Areas of Fiscal Impact Department of Correction: Division of Community Corrections

Post Release Supervision

Under HB 241, drug traffickers who are currently convicted for Class G (n=437) and Class F (n=96) trafficking offenses would now become eligible for post-release supervision as Class E and Class D felons, respectively.

In addition, HB 241 will impact the Division of Community Corrections (DCC). However, drug traffickers who received non-active sentences, as Class F and G felons, would now receive active sentences, decreasing the number of probationers served by DCC. Overall, there would be an initial decrease followed by a small long-term increase in the workload of probation/parole officers, equivalent to two to four offender months times the number of offenders under post-release supervision as a result of this legislation.

In addition, the Sentencing Commission's model was unable to project the impact of the increased number of offenders exiting prison on post-release supervision will have on the prison system as a result of technical revocations to prison. An increase in the number of offenders exiting prison on post-release supervision may result in the need for additional prison beds for offenders whose post-release was revoked.

Juvenile Justice System Department of Juvenile Justice and Delinquency Prevention

Under HB 241, drug trafficking offenses, attempted drug trafficking offenses, and conspiracies to commit drug trafficking offenses will be raised two classes. This will cause some of the offenses to move from the "Serious" offense classification to the "Violent" classification on the juvenile disposition chart and may increase the use of Level 2 and Level 3 dispositions in the juvenile justice system. However, We are unable to estimate the number of additional violent classifications that may arise from HB 241 is unknown.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

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

TECHNICAL CONSIDERATIONS: None

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