

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 888 2nd Edition Drug Law Amendments

SHORT TITLE: Drug Law Amendments

SPONSOR(S): Sen. Roy A. Cooper

FISCAL IMPACT

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

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 pages 3 and 4 of this note for calculation of that cost.

FY 1999-00 FY 2000-01 FY 2001-02 FY 2002-03 FY 2003-04

GENERAL FUND

Correction

Recurring

Nonrecurring

No Impact.

Judicial

Recurring

Nonrecurring

No estimate available, but potential fiscal impact.

Justice

a. Lab Analysis by SBI

No Fiscal Impact.

b. Restitution for Lab Cleanup

No estimate available. Potential positive impact on general fund revenues if restitution is collected.

TOTAL EXPENDITURES

POSITIONS: None

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Correction, Judicial Branch, Department of Justice

EFFECTIVE DATE: December 1, 1999.

BILL SUMMARY:

DRUG LAW AMENDMENTS . TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES. Amends GS 90-95 to make possession of methamphetamine and amphetamine a Class I felony; to add several substances to list of immediate precursor chemicals, to provide that crime of trafficking in amphetamines depends on amount of drugs possessed in terms of grams rather than dosage use; and to increase punishment for trafficking in methamphetamines and amphetamines from Class G to Class F felony if person sells, manufactures, delivers, or possesses 28 to 200 grams; from Class F to Class E felony for 200 to 400 grams, and Class D to Class C felony for 400 or more grams. Amends GS 90-95.3 to provide that funds paid for restitution to state for expense of analyzing controlled substances to be paid to Dep't of Justice Special Fund rather than General Fund if SBI performed analysis and to require court to order person convicted of manufacture of controlled substance to make restitution to law enforcement agency for actual cost of cleanup of clandestine laboratory used to manufacture controlled substance. Amendments to GS 90-95 effective Dec. 1, 1999; amendments to GS 90-95.3 effective when it becomes law.

Source: Institute of Government, Daily Bulletin, April 14, 1999.

DRUG LAW AMENDMENTS. Intro. 4/13/99. House committee substitute makes the following changes to 1st edition. Deletes provision allowing funds collected as restitution for cost of drug analysis under GS 90-95.3 to be retained by Dep't of Justice if drug analysis was performed by State Bureau of Investigation. Amends GS 90-91 to include Ketamine among Schedule III controlled substances.

Source: Institute of Government, Daily Bulletin, July 7, 1999.

ASSUMPTIONS AND METHODOLOGY:

2nd Edition changes noted in **Bold**

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.)

	<u>June 30</u> <u>2000</u>	<u>June 30</u> <u>2001</u>	<u>June 30</u> <u>2002</u>	<u>June 30</u> <u>2003</u>	<u>June 30</u> <u>2004</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	31,467	31,472	31,936	32,750	33,685
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	34,493	34,717	34,717	34,717	34,717
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+3,026	+3,245	+2,781	+1,967	+1,032
4. No. of Projected Additional Inmates Due to this Bill	3	12	12	12	12
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u>	0	0	0	0	0

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The population projections used for incarceration fiscal notes are based on January, 1999 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.

² 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 2/19/99. The EOC is the number of beds above 100% capacity (Standard Operating Capacity). The EOC 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 any proposals to close small prisons are approved by the General Assembly during the 1999 Session.

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 12 inmates to the prison system by the end of FY 2003-04. 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 1997-98:

DAILY INMATE COST

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (97-98)	\$51.27	\$67.44	\$78.64	\$62.41

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

Calculation of Prison Bed Projections

1. Class I felony to possess amphetamine/methamphetamine –AOC database contains only one specific breakout for Schedule II drugs, cocaine but SBI records show one to two percent of Schedule II drugs are amphetamine/methamphetamine. Assuming 1.5 percent, there would be 33 convictions with two active convictions of 5.5 months each or one new prison bed in year one. With probation revocations, it is assumed there would be total need of seven prison beds each year for years 2 through 5.

2. Class H felony to possess or distribute an immediate precursor chemical and add six new chemicals --- Currently, there are three convictions per year for seizing clandestine laboratories, according to the SBI. Assuming adding six new chemicals would result in 10 convictions per year and three offenders receiving active sentences, the result would be two prison beds the first year and three beds in subsequent years for probation revocations for a total of five beds for years 2 through 5.

3. Increase penalties for trafficking in amphetamine and methamphetamine – The number of convictions is small so this bill would primarily affect sentence length for these offenders. There would be no impact until at least 2006-07, when it is assumed the number of beds needed would be four and eight in 2007-08 to account for longer sentences.

4. Ketamine – the 2nd edition adds Ketamine to the list of Schedule III controlled substances. Sale of Schedule III substances is a Class H felony – there were no offenders in the 1997-98 AOC database whose most serious conviction was for this offense. Manufacture, sell or deliver, or possess with intent to manufacture is a Class I felony for Schedule III - -only one offender was identified in the AOC database for this Schedule III offense. Possession of Schedule III substance is a Class 1 misdemeanor – 19 offenders were identified in the AOC database, still a relatively insignificant number.

In addition, the SBI lab notes they have had only six cases in the last 6 months where Ketamine was identified in lab analyses, although since Ketamine is not currently a controlled substance, there is no overt effort to identify this substance.

Therefore, given the small number of Schedule III convictions, the small number of Ketamine cases, and the available prison capacity it is anticipated that adding Ketamine as a drug violation will have no fiscal impact on the prison system.

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 2004. 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>2004-5</u>	<u>2005-6</u>	<u>2006-7</u>	<u>2007-8</u>
Inmates Due to This Bill	12	12	16	24
Available Beds	117	-757	-1,708	-2,557
New Beds Needed	0	12	16	24

Judicial Department

The Judicial Department indicates that it is likely this bill will have a fiscal impact. In each criminal penalty change outlined in the bill summary, the criminal penalty is increased over the current penalty. In the past, these increases have led to more trials and in turn, increased costs for court personnel and indigent defense. However, the Administrative Office of the Courts (AOC) is unable to accurately determine the number of amphetamines/methamphetamine related charges except for criminal trafficking.

In these cases, 81 defendants were charged in 1998. However, AOC does not have the data to determine how many of these defendants would be charged with the higher level felonies based on the quantities of drugs specified in the bill.

While not likely to be significant, there will be impact on the court system due to this bill.

For adding Ketamine to the list of Schedule III Controlled Substances, given the small number of Schedule III cases generally and assuming a small number of Ketamine cases, there is likely to be little or no impact on the Judicial Department.

Department of Justice

Section 2 adds a new subsection (c) to G.S. 90-95.3. This new subsection mandates the court to order restitution for the cost of cleaning up clandestine laboratories. The new language states that restitution will be paid to law enforcement agencies. In most cases, this will be the SBI Crime Lab. There is no information available on the cost of cleaning up clandestine laboratories so there is no estimate available of the fiscal impact. Any funds that are collected in restitution will revert to the general fund at the end of the fiscal year as over-realized receipts. However, the Department of Justice indicates that one incident could cost as much as \$30,000 to \$40,000. To date, there have only been several cleanup incidents a year, usually as the result of an explosion.

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

TECHNICAL CONSIDERATIONS: none

FISCAL RESEARCH DIVISION 733-4910

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