

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** SB 910 (2nd Edition)  
**SHORT TITLE:** Crime to Defraud Drug Tests  
**SPONSOR(S):** Senator Rand

	FISCAL IMPACT				
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring</b>	<i>May be enough convictions to slightly affect prison population and need for beds. Exact amount cannot be determined.</i>				
<b>Nonrecurring</b>					
<b>Judicial</b>					
<b>Recurring</b>	<i>May be enough charges and convictions to affect Judicial System workload and costs. Exact amount cannot be determined.</i>				
<b>Nonrecurring</b>					
<b>TOTAL EXPENDITURES:</b>	<i>Exact Amount cannot be determined</i>				
<b>ADDITIONAL PRISON BEDS*</b>	<i>For every 7 convictions of 1<sup>st</sup> offense, 1 offender sent to local jails For every 5 convictions for 2<sup>nd</sup> or subsequent offense, 1 prison bed</i>				
<b>POSITIONS:</b>	<i>None</i>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch, Local Jails				
<b>EFFECTIVE DATE:</b>	December 1, 2002				
<i>*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.</i>					

**BILL SUMMARY:** This bill adds to GS 14-401.20 to outlaw defrauding or attempting to defraud drug and alcohol screening tests. It would make it unlawful to distribute, market, or transport urine, adulterate bodily fluid samples or sell or possess adulterants, with intent to defraud these tests. Marketing urine or advertising devices to spike samples would also be outlawed. Violations would be Class 1 misdemeanors for first offense, Class I felonies for subsequent offenses.

**ASSUMPTIONS AND METHODOLOGY:**

Likely offenders to this new law would be businesses producing/selling/marketing products to adulterate urine and defraud screening tests, individuals selling urine to these companies for this purpose, or individuals possessing adulterants or using adulterants or devices to defraud screenings. These could include employees or job applicants, probationers, parolees, and inmates subject to drug screening, and participants in substance abuse programs. There are currently 150,000 offenders under the supervision of the Department of Correction (DOC), most of them subject to drug screening. There is at least one known provider of urine test substitution kits located in North Carolina. National data indicates that about 1.6% of drug tests with positive results involved persons who adulterated or replaced their samples (source: AOC analysis of draft bill, citing *Drug Testing Index*). At least four states have already passed similar legislation and South Carolina has had one conviction since its bill was adopted in 1999. Based on this information, the Fiscal Research Division (FRD) believes violations of this new law will occur but will not be overwhelmingly large unless there is a specialized effort to prosecute these crimes.

**Department of Correction**

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data on which to estimate the impact of the bill on the prison population. However, they do have information on sentences for existing Class I felony and Class 1 misdemeanor offenses.

Based on that data, for approximately every five convictions for second or subsequent offenses (Class I), there would be a need for one additional prison bed the first year and two beds the second year due to active sentences and probation revocations. As explained below, the cost of each additional prison bed required is approximately \$24,612 for the year, assuming medium custody.

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).

	<b><u>June 30</u></b> <b><u>2003</u></b>	<b><u>June 30</u></b> <b><u>2004</u></b>	<b><u>June 30</u></b> <b><u>2005</u></b>	<b><u>June 30</u></b> <b><u>2006</u></b>	<b><u>June 30</u></b> <b><u>2007</u></b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>1</sup>	34,129	34,840	35,647	36,485	37,405
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>2</sup>	32,087	34,679	34,847	34,847	34,847
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-2,042	-161	-800	-1,638	-2,558
4. No. of Projected Additional Inmates <u>Due to this Bill</u> <sup>3</sup>	exact amount cannot be determined				
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> <sup>3</sup>	exact amount cannot be determined				

<sup>1</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on December 2001 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.

<sup>2</sup> Projected number of prison beds is based on beds completed or funded and under construction as of 12/13/01. 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 2002 Session to eliminate prison beds or close prisons.***

<sup>3</sup> Criminal Penalty bills effective December 1, 2002 will only affect inmate population for one month of FY 2002-03, June 2003, due to the lag time between when an offense is committed and an offender is sentenced.

**OPERATING:** Operating costs are based on actual 2000-01 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 2001 shown below and included in the recurring costs in the Fiscal Impact Table on Page 1.

**Daily Inmate Operating Cost 2000-01**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2000-01)	\$54.02	\$67.43	\$84.21	\$65.29

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 2003 and 2004; this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2004-05 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.

**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.

For **SB 910**, the Judicial Branch believes fraudulent activity to defeat drug tests appears to be widespread and to the extent offenders are discovered and prosecuted in North Carolina, they expect the impact on the court system of this bill to be substantial. The impact would come primarily from pleas in district court for the more frequent misdemeanor charges. Each day in District Criminal Court costs \$1,350 for the personnel in the courtroom with additional costs related to the role of magistrates, clerks, etc.

**Local Jails**

On average, for every seven convictions of a Class 1 misdemeanor, one offender receives an active sentence averaging 40 days to be served in a local jail. For 30-90 day sentences in local jails, the Department of Correction reimburses the county \$18/day. If sentencing practice for this offense is similar to that of other Class 1 misdemeanors, for every seven convictions on first offense, the cost to the state would average \$720 (=40\*18).

**TECHNICAL CONSIDERATIONS:** This bill is identical to SB 1162 which passed the Senate in July.

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

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Elisa Wolper

**APPROVED BY:** James D. Johnson

**DATE:** October 2, 2002



**Signed Copy Located in the NCGA Principal Clerk's Offices**