

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 483 (First Edition)

SHORT TITLE: DNA Samples/Additional Felonies.

SPONSOR(S): Representatives Burr, Pridgen, and Ingle

	FISCAL IMPACT				
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
<b>EXPENDITURES:</b>					
DOJ	\$69,934	\$123,543	\$127,236	\$130,379	\$133,626
Judicial	-	\$44,760	\$48,645	\$51,875	\$54,593
<b>TOTAL:</b>	<b>\$69,934</b>	<b>\$168,303</b>	<b>\$175,881</b>	<b>\$182,254</b>	<b>\$188,219</b>
<b>POSITIONS:</b>	<i>*See Assumptions and Methodology*</i>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Justice; Judicial Branch					
<b>EFFECTIVE DATE:</b> December 1, 2011					

BILL SUMMARY:

The proposed legislation amends G.S. 15A-266.3A(f). The act expands the list of felonies to include:

1. G.S.14-32.1(e), Assault on handicapped person;
2. G.S. 14-32.2, Patient abuse and neglect;
3. G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property;
4. G.S. 14-34.4, Adulterated or misbranded foods, drugs, or cosmetics; intent to cause serious injury or death; intent to extort;
5. G.S. 14-34.9, Discharging a weapon within an enclosure;
6. Any offense in Article 13, malicious injury or damage by use of explosive or incendiary device or material;
7. G.S. 14-50.18, Soliciting; encouraging participation of minor;

8. G.S. 14-87.1, Punishment for common law robbery;
9. G.S. 14-190.7, Dissemination of obscene material to minors under the age of 16 years;
10. G.S. 14-190.8, Dissemination of obscene material to minors under the age of 13 years;
11. G.S. 14-208.44(a) and (b), Failure to enroll in a satellite-based monitoring program and tampering with a device;
12. G.S. 14-315(a1), Selling or giving weapons [handguns] to minors;
13. G.S. 14-318.4, Child abuse a felony;
14. G.S. 14-320.1, Transporting child outside the State with intent to violate custody order;
15. Any felony offense under G.S. 14-321.1, prohibiting babysitting service by a sex offender or in the home of a sex offender;
16. G.S. 14-322.1, Abandonment of a child or children for six months; and
17. Trafficking in a controlled substance.

The proposed legislation becomes effective December 1, 2011, and applies to offenses committed on or after that date.

*SOURCE: BILL DIGEST H.B. 483 (03/28/2011)*

**ASSUMPTIONS AND METHODOLOGY:**

**Department of Justice- State Bureau of Investigation (SBI)**

With the expanded list of offenses captured in the proposed legislation, the Department of Justice (DOJ) has forecasted that local agencies will have to obtain DNA from an additional 3,900 to 4,000 arrestees every year. The DNA sample will then be sent to the forensic biology science section of the North Carolina State Crime Lab, within the State Bureau of Investigation (SBI), for testing, analysis, and upload to the DNA database.

According to DOJ, the most significant cost drivers associated with the processing of these samples are the outsourcing of DNA profile analysis to a private laboratory and costs associated with buccal swab collection kits. The State covers the expenses to distribute the kits to local law enforcement agencies. Under the current contract, DNA analysis costs \$25.99 per sample, and each kit costs \$4.75. Based on the current contract rates, DOJ anticipates that the fiscal impact of the proposed legislation will be a minimum of \$123,543 in the first year of implementation (FY 2012-13). In FY 2011-12, the number of samples has been adjusted to reflect the December 1, 2011 effective date (or seven months). The chart below shows a breakdown of the DNA analysis cost per sample, cost per kit, number of samples, and inflationary increases:

	<b>FY 2011-12 (Eff Dec. 1)</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
<b>Inflation*</b>	0.00%	3.05%	2.99%	2.47%	2.49%
<b>DNA Analysis</b>	\$25.99	\$26.78	\$27.58	\$28.26	\$28.97
<b>Local Agency Kits</b>	\$4.75	\$4.89	\$5.04	\$5.17	\$5.29
<b>Samples</b>	2,275	3,900	3,900	3,900	3,900
<b>Total:</b>	\$69,934	\$123,543	\$127,236	\$130,379	\$133,626

\*Estimated based on consumer price index projections provided by Moody's economy.com (January 2011)

## **Judicial Branch**

**Workflow:** Due to the time lapse between charge and disposition (in FY 2008-09, the median length at disposition of a felony case in Superior Court was 203 days), AOC does not anticipate significant workload for court personnel until FY 2012-13.

S.L. 2010-94 which became effective February 1, 2011, would impact the workload of the Administrative Office of the Courts (AOC) and court personnel primarily due to the provisions for the expunction of DNA. G.S. 15A-266.3A(g) places the responsibility for initiating an expunction of DNA under this subsection with the defendant, who will submit a form (created by the AOC) to the prosecuting attorney for verification.

Subsection (f)(1) provides for expunction eligibility if (a) all charges listed in G.S. 15A-266.3A have been dismissed, (b) the person has been acquitted of all charges listed, (c) no charge was filed within the applicable time period, or (d) no conviction within three years of the arrest and no active prosecution is occurring.

Subsection (f)(2) further limits the expunction and destruction of samples by requiring that the State has determined that the person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.

Subsection (j) permits the SBI to retain an item of physical evidence if destroying it would destroy evidence relating to another person. Subsection (i) also prohibits the expunction of the DNA record if there was a conviction for a lesser included felony offense.

For every applicable expunction case, there would be work required for assistant district attorneys or victim witness legal assistants to review the case and review the defendant's criminal history and any pending charges.

For DNA records that are verified as expugnable, the DA staff must also prepare the paperwork for the signature of a district attorney or judge, and copy, file, and submit the signed verification form to the SBI. There would also be time incurred by judges and/or district attorneys to review and sign the verification forms. DA staff must also prepare, copy, and mail a letter to the defendant.

For DNA records that will not be verified as expugnable, the DA staff must prepare, copy, and mail a letter to the defendant.

For each expunction request, AOC estimates ten minutes per request for District Attorney (DA) staff, one minute per approved request for a DA or judge, ten minutes per request and additional 22 minutes per request for AOC staff.

Three types of hearings could result from an expunction request:

1. The defendant seeks judicial review of the State's determination that the DNA record does not qualify for expunction – estimate 20 minutes per hearing [AOC has provided a scenario of five percent (estimate of the percentage of people who are not eligible for expunction

who would ask for a hearing) to illustrate the potential impact of these hearings. AOC is unable to provide any estimates, including scenarios, for the frequency with which the other two types of hearings listed below will occur.]

2. The State or the SBI seeks a judicial order granting additional time beyond the 30 days provided in the proposed statute – estimate 20 minutes per hearing.
3. A court must determine whether any database matches that occur outside of the 30-day statutory period and after the expiration of any court-granted extension should be suppressed. These hearings will take significantly longer, and the duration cannot be estimated at this time.

Hearings would involve a judge (presumably a Superior Court judge given that the majority of the charges in question are felony charges), a deputy clerk, a court reporter, an assistant district attorney, and indigent defense if applicable.

**Workload:** AOC data is case-based, not defendant-based, and it is difficult to match defendants across multiple cases. Based on the available data and methods, AOC estimates 1,580 arrestees would be eligible for expunction. AOC attained this estimate by analyzing the number of people in FY 2010-11 who were charged with the new offenses listed in the proposed legislation and had not been convicted of a felony in the last five years that would require DNA.

The following local court personnel would be impacted: superior court judges, district attorneys, assistant district attorneys, victim witness legal assistants, deputy clerks, and court reporters (workload for some types of hearings cannot be projected). The position numbers were calculated by multiplying the time to review the case by the number of cases divided by the case-related minutes per year for each position type, as determined by the National Center for State Courts (NCSC) workload studies. Impact on existing personnel is estimated to begin in FY 2012-13.

Position Costs (salary, benefits, and inflationary increases):

Position Type	Position Cost					FY2012-13	FY2013-14	FY2014-15	FY2015-16
	Positions	Salary	Soc Sec	Retirement	Health	Total	Total	Total	Total
<b>Inflation*</b>						<b>8.87%</b>	<b>8.68%</b>	<b>6.64%</b>	<b>5.24%</b>
Superior Court Judge	0.04	\$124,382	\$8,426	\$24,889	\$4,929	\$7,082	\$7,697	\$8,208	\$8,638
Assistant District Attorney	0.03	\$70,946	\$5,428	\$7,457	\$4,929	\$2,899	\$3,151	\$3,360	\$3,536
Victims Witness Legal Assistant	0.57	\$37,364	\$2,859	\$3,927	\$4,929	\$30,456	\$33,100	\$35,298	\$37,147
Deputy Clerk	0.04	\$27,888	\$2,134	\$2,932	\$4,929	\$1,650	\$1,793	\$1,912	\$2,012
Court Reporter	0.04	\$47,772	\$3,655	\$5,021	\$4,929	\$2,673	\$2,905	\$3,098	\$3,260
<b>Subtotal Court Personnel</b>	<b>0.72</b>					<b>\$44,760</b>	<b>\$48,645</b>	<b>\$51,875</b>	<b>\$54,593</b>

\*Estimates based on consumer price index projections provided by Moody's economy.com (January 2011)

There may be a reduction in the number of suspended sentence defendants the court must order to provide a sample under G.S. 15A-266.6 and potentially a corresponding reduction in the number of suspended sentence defendants referred back to the court for failing to provide a sample. These changes could result in a slight decrease in court time for the affected defendants. In-court personnel include judges, deputy clerks, assistant district attorneys, and, in superior court, court reporters. The amount of time and number of defendants cannot be estimated.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

**SOURCES OF DATA:** Department of Justice; Judicial Branch

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** May 2, 2011



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