

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1079 Proposed Committee Substitute
(H1079-CSRO-001)

SHORT TITLE: Drug Law Amendments

SPONSOR(S): Representatives Watson; Gardner and Morris

FISCAL IMPACT

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

(in millions)

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
GENERAL FUND					
Correction					
Recurring			\$ 11,528,763	\$ 67,794,522	\$116,448,636
Nonrecurring	\$ 86,110,015	\$125,722,875	\$ 59,947,380		
Judicial					
Recurring	\$ 3,492,158	\$ 5,986,556	\$ 5,986,556	\$ 5,986,556	\$ 5,986,556
Nonrecurring	\$ 205,650	-	-	-	-
TOTAL EXPENDITURES					
Recurring	\$ 3,492,158	\$ 5,986,556	\$ 17,515,319	\$ 73,781,078	\$122,435,192
Nonrecurring	\$86,315,665	\$125,722,875	\$ 59,497,380	-	-
GRAND TOTAL	\$89,807,823	\$131,709,431	\$ 77,462,699	\$ 73,781,078	\$122,435,192

POSITIONS: It is anticipated that approximately **1,719** positions would be needed to supervise the additional inmates housed under this bill by 2001-2. This is based on inmate to employee ratios, provided by the Division of Prisons, for close, medium, and minimum custody facilities (These position totals include security, program, and administrative personnel.).

Close – 2 to 1
Medium – 3 to 1
Minimum – 4 to 1

The Judicial Branch would need an additional **56** positions starting in 1997-8.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 1997; applies to offenses on or after that date

BILL SUMMARY:. *TO STRENGTHEN THE CONTROLLED SUBSTANCES LAWS.* Amends GS 90-95 to (1) increase the penalties for a variety of drug offenses and (2) decrease from 50 pounds to three pounds the amount of marijuana a person must sell, manufacture, deliver, transport, or possess in order to be guilty of the felony of “trafficking in marijuana.”

Adds new Art. 24 (“Drug Dealer Felons”) to GS Ch. 90. “Drug dealer felon” is any person who has been convicted of a drug dealer felony (offenses specified in the act) in any federal court or a court of this or any other state. Provides for separate indictments charging a person with being a drug dealer felon and specifies required content of the indictment. Requires that a person so charged may not be required to go to trial on that charge within 20 days after the finding of a true bill by the grand jury unless the defendant waives the 20-day period. In a trial on a charge of being a drug dealer felon, the record of a prior conviction of a drug dealer felon is admissible, but only to prove that the person has been convicted of a former drug dealer felony, and may be proved by stipulation or by the original or certified copy of the court record of the prior conviction. When a defendant is charged with a drug dealer felony and with being a drug dealer felon, the defendant must be tried for the principal drug dealer felony and the indictment for being a drug dealer felon may not be revealed to the jury unless the jury finds the defendant guilty of a drug dealer felony, in which case the charge of being a drug dealer felon may be presented to the same jury. A person convicted of a drug dealer felony and of being a drug dealer felon, upon conviction, must be sentenced as a class B2 felon, unless other drug dealer felony statutes provide a greater punishment. In determining the prior record level, convictions used to establish the person’s status as a drug dealer felon may not be used. Sentences imposed for drug dealer felonies run consecutively with and commence at the expiration of any other sentence being served by the person. For the article to apply, the offense for the principal drug dealer felony must occur after the conviction of the prior drug dealer felony that creates the status as drug dealer felon.¹

SUMMARY OF FISCAL IMPACT

HB 1079 WOULD GENERATE APPROXIMATELY 1,661 NEW SUPERIOR COURT TRIALS EACH YEAR AT AN APPROXIMATE COST TO THE JUDICIAL BRANCH OF \$5.99 MILLION EACH YEAR.

IT WOULD ALSO INCREASE THE PRISON POPULATION BY 9,212 INMATES BY THE YEAR 2001-2 AND REQUIRE THE CONSTRUCTION OF 4,872 ADDITIONAL BEDS BY 2002. THE COST OF PRISON CONSTRUCTION IS APPROXIMATELY \$271 MILLION SPREAD BETWEEN 1997-8 AND 1999-2000. THE COST OF HOUSING AND SUPERVISING THE ADDITIONAL INMATES RISES TO \$116 MILLION PER YEAR BY 2001-2.

¹ *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, 1997

I. DEPARTMENT OF CORRECTION

Projected Impact of HB1079 (Drug Law Amendments) on Prison Population and Bed Availability

The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, 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: (The following information is specific to each individual bill.)

	<u>June 30</u> <u>1998</u>	<u>June 30</u> <u>1999</u>	<u>June 30</u> <u>2000</u>	<u>June 30</u> <u>2001</u>	<u>June 30</u> <u>2002</u>
Projected No. of Inmates Under Current Structured Sentencing Act ²	31,762	30,371	30,060	30,610	31,259
Projected No. of Prison Beds (DOC Expanded Capacity) ³	34,133	35,599	35,599	35,599	35,599
No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+2,371	+5,228	+5,539	+4,989	+4,340
No. of Projected Additional Inmates Due to this Bill	0	+3,132	+6,036	+7,868	+9,212
Cumulative Addition in Beds Due to this Bill	0	0	+497	+2,879	+4,872
No. of Additional Beds Need <u>Each Fiscal Year</u> Due to this Bill	0	0	+497	+2,382	+1,993

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 9,212 inmates to the prison system by 2001-02.

² The Sentencing Commission's revised prison population projections (dated December 1996) were estimated under three scenarios: High, Best, and Low. The differences in these scenarios reflect varying assumptions on incarceration rates under Structured Sentencing, probation and revocation rates, and the decline of the stock population. The projections outlined above are included in the "Best scenario" since the Sentencing Commission and the Department of Correction believe this scenario is most likely to occur.

³ Projected number of prison beds based on Department of Correction estimates of expanded bed capacity as of 1/11/97. These numbers do not include the number of beds requested in the Governor's 1997-99 Capital Improvement budget.

Note: Other bills introduced this session have a potential impact on the inmate population and bed availability. As of May 9, bills that have passed either the House or Senate together add 1,679 inmates by 2001-2. The total impact of *all* criminal bills introduced is 10,926, *not* counting HB 1079.

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the distribution of beds by custody level. For this bill, the custody division varies by year as follows:

	<u>1998-9</u>	<u>1999-2000</u>	<u>2000-1</u>	<u>2001-2</u>
Close Custody -	24.8%	26.5%	27.6%	28.4%
Medium Custody -	39 %	38 %	37.7%	37.5%
Minimum Custody -	36.2%	35.4%	34.8%	34.1%

Based on these percentages, the number of beds needed (beyond current capacity) by type is as follows:

	Close	Medium	Minimum	Total
1999-2000	135	185	177	497
2000-2001	808	1065	1006	2879
2001-2002	1407	1797	1668	4872

The Department of Correction maintains that there will be enough minimum custody beds when present construction is completed and that the true need is for more Close and Medium custody beds. However, in assigning the true cost of this bill, the Fiscal Research Division has considered the distribution of beds at each custody level as needed for new offenders who would be incarcerated under this bill if ratified.

CONSTRUCTION: Construction costs are based on actual 1996-97 costs for each custody level as provided by the Office of State Construction on May 16, 1996. A 5% per year inflation rate has been used to bring these 1996-7 costs forward to the years construction will occur. In January 1997 this rate was recommended by the Office of State Construction based on current inflationary trends for construction projects.

Funds for the close custody beds are budgeted 3 years in advance, while funds for the medium and minimum custody beds are budgeted 2 years in advance, to allow adequate time for planning and construction.

The table below shows the construction costs (per bed) that apply in each year for the relevant custody level.

Construction Costs	1997-8	1998-8	1999-00
close	\$89,250	\$93,712	\$98,398
medium	\$50,387	\$52,906	\$55,513
minimum	\$26,460	\$27,783	\$29,172

OPERATING: Operating costs are based on actual 1995-96 costs for each custody level as provided by the Department of Correction on August 19, 1996. A 4.6% per year inflationary rate on all non-salary items has been added to these recurring costs and is shown in the Fiscal Impact Table on page 1. The table below shows annual per inmate operating costs for each year and custody level.

Operations Cost	1997-8	1998-8	1999-00	2000-01	2001-02
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close	\$28,959	\$29,291	\$29,628
medium	\$23,688	\$23,960	\$24,236
minimum	\$18,289	\$18,499	\$18,711

CALCULATION OF COSTS

CONSTRUCTION

1) 1997-8

To build 177 minimum, 185 medium and 808 close. (note: since it takes 3 years to build a close custody facility, funds are budgeted in 1997-8 to meet need for close custody beds by 2000-01)

close: 808 x 89250 = \$72,114,000
medium: 185 x 50387 = \$9,321,595
minimum 177 x 26460 = \$4,683,420

2) 1998-9

To build 599 close , 880 medium and 829 minimum.

Close: 599x 93712 =\$56,133,488
medium 880x 52906 =\$46,557,280
minimum 829x 27783=\$ 23,032,107

3) 1999-2000

To build 732 medium beds and 662 minimum beds

medium 732 x 55513= \$40,635,516
minimum 662x 29172 =\$19,311,864

OPERATING

1) 1999-2000

For 135 close, 185 medium and 177 minimum

close: 135 x 28958 =\$3,909,330
medium: 185 x 23688=\$4,382,280
minimum: 177 x 18289=\$3,237,153

2) 2000-01

For 808 close, 1065 medium, 1006 minimum

close: 808 x 29291=\$23,667,128
medium: 1065 x 23960 = \$25,517,400
minimum: 1006 x 18499=\$18,609,994

3) 2001-02

For 1407 close, 1797 medium, 1668 minimum

close: 1407 x 29628 = \$41,686,596
medium: 1797 x 24236 = \$43,552,092
minimum: 1668 x 18711 =\$31,209,948

DEPARTMENT OF CORRECTION COSTS (SUMMARY OF ABOVE)

	1997-8	1998-9	1999-2000	2000-2001	2001-2002
Construction Costs(NR)					
Close	72,114,000	56,133,488	-		
Medium	9,321,595	46,557,280	40,635,516		
Minimum	4,683,420	23,032,107	19,311,864		
TOTAL	\$ 86,110,015	\$ 125,722,875	\$ 59,947,380		
Operating Costs					
Close			3,909,330	23,667,128	41,686,596
Medium			4,382,280	25,517,400	43,552,092
Minimum			3,237,153	18,609,994	31,209,948
TOTAL			\$11,528,763	\$ 67,794,522	\$116,448,636
GRAND TOTAL	\$86,110,015	\$125,722,875	\$ 71,476,143	\$ 67,794,522	\$116,448,636

TECHNICAL CONSIDERATIONS: The Sentencing Commission projections are done separately for each of the sections of the bill and then for the total net impact. The total net impact is less than the sum of the individual effects, because of interactions among the different provisions. The Department of Correction's division by custody level is also done separately by each section of the bill. Some additional assumptions were needed in order to have the total number of beds match the net impact of the bill. (1) From the DOC projections of custody level, percentages were calculated to show what percent of beds were in each custody level for the sum of the individual sections of the bill; (2) these calculated percentages were applied to the total net impact figures.

In addition, the total number of new beds needed is less than the net new total inmates, since some beds are already available. It is assumed the distribution of new beds will be the same as that of new inmates.

II. JUDICIAL BRANCH

HB 1079 makes many changes to the drug laws that would have a significant impact on the courts. The Administrative Office of the Courts analysis of the bill followed certain basic assumptions.

- 1) The stiffer penalties in HB 1079 would affect the Judicial Branch in two basic ways; more defendants would request trials and defense costs for cases where defendants plead guilty as charged would be higher due to increased preparation time. The costs of an increased number of trials include judicial personnel, jury fees and indigent defense costs.
- 2) To estimate the number of defendants that would be affected, AOC took the number of charges for each offense in 1996 and divided by 1.6, based on historical estimates of the average number of charges per defendant
- 3) It was assumed, based on past data, that 45% of defendants charged with non-trafficking drug charges and 35% of those with trafficking charges plead guilty as charged under current law.
- 4) The AOC surveyed 13 District Attorneys to get an estimate of what percentage of defendants who plead guilty as charged under current law would instead seek a trial because of the more severe penalties in HB 1079. This percentage varied from 10.5% to 42% depending on the specific charge.
- 5) The number of defendants who would plead guilty under current law multiplied by the estimated percentage who would seek a trial due to HB 1079 gives the estimated number of new trials.
- 6) Trials were assumed to take 2-3 days, depending on the charge.
- 7) Once the number of anticipated new trial days were known, it was assumed that judicial personnel can provide 1,800 days of trial per year. Dividing the number of new trial days by 1,800 gives the estimated

number of new personnel needed; 14 each of Superior Court Judges, Assistant District Attorneys, Deputy Clerks and Court Reporters. This estimate of new positions is done on an aggregate, statewide basis, as though the work were performed at a central location. In practice, the increased workload would be spread throughout the state, and the AOC feels it is doubtful that the above numbers of new positions allocated statewide would actually meet the demands of this bill.

- 8) It is assumed that 60% of defendants would require court appointed counsel as indigents. The cost of indigent defense would be \$50/hour for actual court time plus 5 hours preparation.
- 9) Increased jury fees are calculated at \$528 for each 2-day trial, and \$696 for each 2 1/2-day or 3-day trial.
- 10) For defendants that would continue to plead guilty as charged to certain offenses affected by HB 1079, their defense would require an additional hour or preparation. For the 60% who would qualify for appointed counsel, this affects indigent costs. Increased preparation time is assumed for G.S. 90-95(a)(1) cases involving Schedule I or II controlled substances, which increase from Class H felonies to Class E felonies, but does not include any additional preparation time for similar offenses involving Schedule III, IV, V, or VI controlled substances, which are increased from Class I to Class G felonies.
- 11) No additional preparation time is assumed for prosecutors and no additional support personnel are included for District Attorneys or Judges.
- 12) This note does not attempt to estimate potential increases in fines assessed and collected by the courts related to drug trafficking convictions.
- 13) Due to interaction effects among the different sections of the bill, the impact of the comprehensive bill is less than the sum of the individual components. This analysis looks at the impact of the comprehensive bill.

A table that summarizes the analysis for each provision is attached (Attachment A), and a brief explanation is presented below for each provision.

Changes to G.S. 90-95(b)(1)

HB 1079 revises G.S. 90-95(b)(1) to provide that violation of G.S. 90-95(a)(1) by manufacturing, selling or delivering, or possessing with intent to manufacture, sell, or deliver a Schedule I or II controlled substance shall be a Class E, rather than a Class H, felony. The AOC expects that this provision will have a very substantial impact, both because it relates to a crime that is charged with great frequency and because the increase in penalty is quite substantial. It should be noted, in fact, that the elevation of this offense to a Class E felony qualifies it as a "violent felony" pursuant to the violent habitual felon statute (G.S. 14-7.7 et seq.), under which a person convicted of a third "violent felony" may be sentenced to life without parole. This analysis does not provide specific estimates for increased prosecutions under G.S. 14-7.7. The analysis relative to the shift from a Class H to a Class E felony, summarized in Column A of Attachment A, predicts 754 new superior court jury trials, with a need for 6.28 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters, about \$544,850 in additional indigent defense costs and \$524,784 in additional juror fees.

Changes to G.S. 90-95(b)(2)

Similar to the above modification, HB 1079 revises G.S. 90-95(b)(2) to provide that violation of G.S. 90-95(a)(1) by manufacturing, selling or delivering, or possessing with intent to manufacture, sell, or deliver a Schedule III, IV, V, or VI controlled substance shall be a Class G, rather than a Class I, felony. The expected impacts on the courts of this provision are substantial, as shown in Column B of Attachment A: an estimated 208 new superior court jury trials, requiring some 1.39 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters. The AOC also predicts about \$106,250 in additional indigent defense costs and \$109,824 in additional juror fees.

Changes to G.S. 90-95(d)(1), G.S. 90-95(d)(2), G.S. 90-95(d)(3), and G.S. 90-95(e)(9)

HB 1079 elevates certain violations of G.S. 90-95(a)(3), possession of a controlled substance, as follows: modifies G.S. 90-95(d)(1) by changing possession of a Schedule I controlled substance from a Class I felony to a Class G felony (see Column C of Attachment A); modifies G.S. 90-95(d)(2) by changing certain possessions of a Schedule II, III, or IV controlled substance from a Class I to a Class G felony (see Column D of Attachment A); modifies G.S. 90-95(d)(3) by changing possession of a Schedule V controlled substance from a Class 2 misdemeanor to a Class I felony (anticipated number of defendants affected by this provision is small); modifies G.S. 90-95(e)(9) by changing possession of a controlled substance on the premises of a penal institution or local confinement facility from a Class I to a Class G felony (anticipated number of defendants affected by this provision is small). The combined impact of these provisions is 199 new trials requiring 1.32 positions each for SC judges, ADA, deputy clerks and court reporters. The AOC also predicts \$102,000 in additional indigent costs and \$105,072 in additional jury fees.

Changes to G.S. 90-95(h)(1)

HB 1079 substantially changes the weight thresholds for defining trafficking in marijuana, which results in some quantities of marijuana newly becoming trafficking, as well as elevations in felony class for other quantities that are already trafficking under current law. The proposed committee substitute changes the minimum weight threshold listed in G.S. 90-95(h)(1) and in G.S. 90-95(h)(1)a. to 3 pounds (the original version of the bill showed this as 1 pound). This fiscal analysis focuses on the impacts that would arise for weights between 3 pounds and 50 pounds -- those quantities that newly become trafficking -- because quantities over 50 pounds are already trafficking under current law, and are already associated with relatively severe punishments. Further, trafficking involving such large quantities would apply to very few defendants. It should be noted, though, that the severity of punishments for certain weights increases substantially under HB 1079. For example, trafficking in the amount of 1,000 pounds is now a Class G felony, with a mandatory active sentence length of 35-42 months, and a minimum fine of \$25,000. Under HB 1079, such trafficking would constitute a Class D felony, with a mandatory active sentence length of 175-219 months, and a fine of at least \$200,000.

It should be noted that the fiscal analyses relevant to marijuana trafficking estimate the incremental impacts of these provisions, over and above those already predicted due to the bill's earlier increase in felony level for Schedule VI manufacturing, selling or delivering, or possessing with the intent to manufacture, sell or deliver. Independent analyses of these provisions, which estimate the impact of these provisions without regard to any other provisions of the bill, are higher than those shown here, and are available upon request.

Changes to G.S. 90-95(h)(1)a.,b. HB 1079 lowers the minimum threshold for a charge of trafficking in marijuana from 50 pounds to 3 pounds. AOC assumed that offenses that would be charged as marijuana trafficking under the bill would come from Schedule VI controlled substance cases that are now charged under G.S. 90-95(a)(1) and that there would not be a significant number of new trafficking cases originating from current charges of *simple* possession of a Schedule VI controlled substance. Their survey of district attorneys suggests that of all Schedule VI, G.S. 90-95(a)(1) charges, about 85% involve 1 pound or less, 10% involve 1-10 pounds, 4% involve 10-50 pounds, and less than 1% involve in excess of 50 pounds.

In the 1-10 pound category, their analysis assumes that 3% of the approximate 5,182 superior court charges, or about 155 charges, are for 3-10 pounds. Under current law, these offenses could be charged as Class I felonies (presumptive minimum of 4-10 months), under other provisions of HB 1079, they could be charged as Class G felonies (presumptive minimum of 10-29 months), and under this provision of HB 1079, they could be charged as Class H felonies, with a mandatory active sentence of 25-30 months. The fiscal analysis, summarized in Column E of Attachment A, applies a 10.5% incremental increase in the trial rate, over and above that already estimated for these cases from other provisions of HB 1079. This analysis results in an estimate of 5 new superior court jury trials, requiring some 0.03 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters, about \$3,700 in additional indigent defense costs and \$2,640 in additional juror fees.

For the new trafficking offenses involving quantities of 10-50 pounds, their analysis assumes that 4% of the approximate 5,182 superior court charges, or about 207 charges, involve 10-50 pounds. Under current law, these offenses could be charged as Class I felonies (presumptive minimum of 4-10 months), under other provisions of HB 1079, they could be charged as Class G felonies (presumptive minimum of 10-29 months), and under this provision of HB 1079, they could be charged as Class G felonies, with a mandatory active sentence of 35-42 months. The fiscal analysis, summarized in Column F of Attachment A, applies a 17.5% incremental increase in the trial rate, over and above that already estimated for these cases from earlier provisions of HB 1079. This analysis results in an estimate of 10 new superior court jury trials, requiring some 0.08 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters, about \$7,450 in additional indigent defense costs and \$6,960 in additional juror fees.

Changes to G.S. 90-95(h)(3)

HB 1079 doubles the mandatory active sentence lengths for trafficking in cocaine. District attorneys felt strongly that there would be significant increases in the frequency with which defendants charged with cocaine trafficking insist on going to trial. Based on district attorneys' estimates, AOC assumes that the approximate 1,261 cocaine trafficking offenses charged in superior court during 1996 comprise the following weight breakdowns: 87%, or 1,097 charges, involve 28-200 grams of cocaine; 9%, or 113 charges, involve 200-400 grams; and 4%, or 50 charges, involve over 400 grams.

Changes to G.S. 90-95(h)(3)a.: the mandatory active sentence for cocaine trafficking involving 28-200 grams is increased from 35-42 months to 70-84 months; the fiscal analysis, summarized in Column G of Attachment A, results in an estimate of 76 new superior court jury trials, requiring some 0.63 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters, about \$46,000 in additional indigent defense costs and \$52,896 in additional juror fees.

Changes to G.S. 90-95(h)(3)b.: the mandatory active sentence for cocaine trafficking involving 200-400 grams is increased from 70-84 months to 140-168 months; the fiscal analysis, summarized in Column H of Attachment A, results in an estimate of 8 new superior court jury trials, requiring 0.07 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters, about \$5,000 in additional indigent defense costs and \$5,568 in additional juror fees.

Changes to G.S. 90-95(h)(3)c.: the mandatory active sentence for cocaine trafficking involving 400 grams or more is increased from 175-219 months to 350-400 months; the fiscal analysis, summarized in Column I of Attachment A, results in an estimate of 5 new superior court jury trials, requiring 0.05 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters, about \$3,450 in additional indigent defense costs and \$3,480 in additional juror fees.

Addition of G.S. 90-113.47 et seq., relating to drug dealer felons

Section 2 of HB 1079 provides that defendants charged with a "drug dealer felony" who have a prior conviction for such a felony, may be charged in a separate indictment with being a drug dealer felon. If convicted for the current drug dealer felony, the same jury may then consider the separate indictment and, if found to have committed the prior drug dealer felony, the defendant shall be sentenced as a Class B2 felon. Drug dealer felonies include the manufacture, sale or delivery, or possession with intent to sell or deliver a controlled substance under G.S. 90-95(a)(1), or a counterfeit controlled substance under G.S. 90-95(a)(2), any trafficking offense under G.S. 90-95(h), any conspiracy or attempt to commit those offenses, and any conviction for a substantially equivalent offense in other state or federal courts.

It is critical to note that the fiscal analysis relevant to drug dealer felons attempts to estimate the incremental impacts of section 2 of the bill, over and above impacts already predicted due to the bill's earlier increases in felony levels and punishments. Independent analyses of these provisions, which estimate the impact of the drug dealer felon provisions in isolation, without regard to any other provisions of the bill, are substantially higher than those shown here, and are available upon request.

The fiscal impacts estimated here assume, based on DA responses to the AOC, that there will be increases in the trial rate for *all* offenses that qualify as drug dealer felonies, both at the time of the first prosecution for such an offense *and* at the time of prosecution for any second such offense. AOC estimates that there were 22,114 eligible drug dealer felonies charged in superior court during 1996. Based on DA responses and Sentencing Commission data, 25% of these charges, or 5,529 charges, involved defendants who had previously been convicted of an eligible drug dealer felony. Thus, if convicted of this second charge, such defendants may be sentenced as B2 felons. AOC assumes that the remaining 75% of the 22,114 charges, or 16,585 charges, involve defendants who have no prior drug dealer felony convictions. The fiscal impacts are summarized separately below for defendants with second drug dealer felonies, and for those with their first drug dealer felony.

Second drug dealer felony: The fiscal analysis relevant to defendants who are charged with a drug dealer felony, and who have a prior conviction for a drug dealer felony, are summarized in Column J of Attachment A. It applies an incremental increase in the trial rate, over and above that already estimated for these cases from earlier provisions of HB 1079. Specifically, across all eligible drug dealer felonies in which there was a prior conviction, AOC estimates an incremental trial rate of 14.2% . This analysis results in an estimate of 221 new superior court jury trials, requiring some 2.34 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters, about \$152,950 in additional indigent defense costs and \$153,816 in additional juror fees.

First drug dealer felony: The fiscal analysis relevant to defendants who are charged with a drug dealer felony, and who do not have a prior conviction for a drug dealer felony, are summarized in Column K of Attachment A. Again, we apply an incremental increase in the trial rate, 3.7%. This analysis results in an estimate of 173 new superior court jury trials, requiring some 1.53 positions each for superior court judges, assistant district attorneys, deputy clerks, and court reporters, about \$104,000 in additional indigent defense costs and \$120,408 in additional juror fees.

TOTAL ESTIMATED MINIMUM FISCAL IMPACTS:

Summing across all of the above subsections results in an estimated total of 1,661 new superior court jury trials, requiring an additional 14 superior court judges, 14 assistant district attorneys, 14 deputy clerks, and 14 court reporters. Since HB1079 would be effective December 1, 1997, positions would begin on that date. The cost analysis is based on the current positions costs and assumes no increases between now and 2002. The table below shows the total projected cost on the Judicial Branch.

	1997-8	1998-9 – 2001-2
Personnel Costs	\$ 2,231,517 R 205,650 NR	\$3,825,458
Jury Fees	\$ 633,178	\$1,085,448
Indigent Fees	\$ 627,463	\$1,075,650
TOTAL	\$3,697,808	\$5,986,556

SOURCES OF DATA: Department of Correction, Judicial Branch; North Carolina Sentencing and Policy Advisory Commission. Judicial Branch analysis based on Survey of district attorneys; AOC data, including from the Court Information System; data from the Sentencing Commission; N.C. General Statutes

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Elisa Wolper

APPROVED BY: Tom L. Covington



Signed Copy Located in the NCGA Principal Clerk's Offices

DATE: May 22, 1997	COLUMN A: G.S. 90-95(b)(1)	COLUMN B: G.S. 90-95(b)(2)	COLUMN C: G.S. 90-95(d)(1)	COLUMN D: G.S. 90-95(d)(2)
Superior court charges during 1996	13,685	5,293	262	4,848
Defendants charged (above / 1.6)	8,553	3,308	164	3,030
% GPAC under current law	45.0%	45.0%	45.0%	45.0%
# GPAC under current law	3,849	1,489	74	1,364

NEW TRIALS

Court personnel time:

% of above GPAC tried instead under HB 1079	19.6%	14.0%	10.5%	14.0%
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# New trials	754	208	8	191
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Court days per trial (6 hours/day)	2.5	2.0	2.0	2.0
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Total incremental in-court hours	11,310	2,496	96	2,292
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Number trial court positions (each-for superior court judge, ADA, court reporter, & deputy clerk)	6.28	1.39	0.05	1.27
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Juror fees:

Juror fees per trial	\$696	\$528	\$528	\$528
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Total additional juror fees	\$524,784	\$109,824	\$4,224	\$100,848
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Indigent defense:

Indigent trials (60% of trials)	452	125	5	115
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Incremental indigent in-court hours	6,780	1,500	60	1,380
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Additional preparation hours per trial (compared to GP)	5	5	5	5
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Total additional preparation hours for trials	2,260	625	25	575
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Total additional indigent hours for trials	9,040	2,125	85	1,955
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Trial indigent defense costs	\$452,000	\$106,250	\$4,250	\$97,750
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NON-TRIAL DISPOSITIONS

# Defendants in non-tried GPAC cases (GPAC minus new trials)	3,095	Not included	Not included	Not included
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# Indigent non-trials (60%)	1,857	--	--	--
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Additional preparation hours per non-trial disposition	1	--	--	--
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Total additional preparation hours	1,857	--	--	--
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Non-trial indigent defense costs	\$92,850	--	--	--
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Total trial and non-trial indigent defense costs	\$544,850	\$106,250	\$4,250	\$97,750
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	COLUMN E: G.S. 90-95(h)(1)a.	COLUMN F: G.S. 90-95(h)(1)b.
Superior court charges for G.S. 90-95(a)(1), Schedule VI, during 1996	5,182	5,182
% of charges with weight of: 3-10 pounds [G.S. 90-95(h)(1)a.], & 10-50 pounds [G.S. 90-95(h)(1)b.]	3.0%	4.0%
Superior court charges during 1996	155	207
Defendants charged (above / 1.6)	97	129
% GPAC under current law	45.0%	45.0%
# GPAC under current law	44	58
NEW TRIALS		
Court personnel time:		
% of above GPAC tried instead under HB 1079--this provision only	24.5%	31.5%
Earlier estimated increase in trial rate for these defendants based on other provisions of HB 1079	14.0%	14.0%
Incremental trial rate (difference)	10.5%	17.5%
# New trials	5	10
Court days per trial (6 hours/day)	2.0	2.5
Total incremental in-court hours	60	150
Number trial court positions (each--for superior court judge, ADA, court reporter, & deputy clerk)	0.03	0.08
Juror fees:		
Juror fees per trial	\$528	\$696
Total additional juror fees	\$2,640	\$6,960
Indigent defense:		
Indigent trials (60% of trials)	3	6
Incremental indigent in-court hours	36	90
Additional preparation hours per trial (compared to GP)	5	5
Total additional preparation hours for trials	15	30
Total additional indigent hours for trials	51	120
Trial indigent defense costs	\$2,550	\$6,000
NON-TRIAL DISPOSITIONS		
# Defendants in non-tried GPAC cases (GPAC minus new trials)	39	48
# Indigent non-trials (60%)	23	29
Additional preparation hours per non-trial disposition	1	1
Total additional preparation hours	23	29
Non-trial indigent defense costs	\$1,150	\$1,450
Total trial and non-trial indigent defense costs	\$3,700	\$7,450

	COLUMN G: G.S. 90- 95(h)(3)a.	COLUMN H: G.S. 90- 95(h)(3)b.	COLUMN I: G.S. 90-95(h)(3)c.
Superior court charges for G.S. 90-95(h)(3) during 1996	1,261	1,261	1,261
% of charges with weight of: 28-200g. [G.S. 90-95(h)(3)a.], 200-400g. [G.S. 90-95(h)(3)b.], & 400g. and over [G.S. 90-95(h)(3)c.]	87.0%	9.0%	4.0%
Superior court charges during 1996	1,097	113	50
Defendants charged (above / 1.6)	686	71	31
% GPAC under current law	35.0%	35.0%	35.0%
# GPAC under current law	240	25	11

NEW TRIALS

Court personnel time:

% of above GPAC tried instead under HB 1079	31.5%	31.5%	42.0%
# New trials	76	8	5
Court days per trial (6 hours/day)	2.5	2.5	3.0
Total incremental in-court hours	1,140	120	90
Number trial court positions (each-- for superior court judge, ADA, court reporter, & deputy clerk)	0.63	0.07	0.05

Juror fees:

Juror fees per trial	\$696	\$696	\$696
Total additional juror fees	\$52,896	\$5,568	\$3,480

Indigent defense:

Indigent trials (60% of trials)	46	5	3
Incremental indigent in-court hours	690	75	54
Additional preparation hours per trial (compared to GP)	5	5	5
Total additional preparation hours for trials	230	25	15
Total additional indigent hours for trials	920	100	69
Trial indigent defense costs	\$46,000	\$5,000	\$3,450

NON-TRIAL DISPOSITIONS

# Defendants in non-tried GPAC cases (GPAC minus new trials)	Not included	Not included	Not included
# Indigent non-trials (60%)	--	--	--
Additional preparation hours per non-trial disposition	--	--	--
Total additional preparation hours	--	--	--
Non-trial indigent defense costs	--	--	--
Total trial and non-trial indigent defense costs	\$46,000	\$5,000	\$3,450

**COLUMN J:
SECOND DRUG DEALER
FELONY UNDER NEW
G.S. 90-113.47 et seq.**

**COLUMN K:
FIRST DRUG DEALER
FELONY UNDER NEW
G.S. 90-113.47 et seq.**

Superior court charges for "drug dealer felonies" during 1996	22,114	22,114
% of above that are for the second/first drug dealer felony	25.0%	75.0%
Superior court charges during 1996, by second/first drug dealer felony	5,529	16,585
Defendants charged (above / 1.6)	3,456	10,366
% GPAC under current law	45.0%	45.0%
# GPAC under current law	1,555	4,665

NEW TRIALS

Court personnel time:

% of above GPAC tried instead under HB 1079--this provision only	31.5%	21.0%
Earlier estimated increase in trial rate for these defendants based on other provisions of HB 1079	17.3%	17.3%

Incremental trial rate (difference)	14.2%	3.7%
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# New trials	221	173
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Court days per trial (6 hours/day)	3.0	2.5
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Total incremental in-court hours	3,978	2,595
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Number trial court positions (each--for superior court judge, ADA, court reporter, & deputy clerk)	2.34	1.53
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Juror fees:

Juror fees per trial	\$696	\$696
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Total additional juror fees	\$153,816	\$120,408
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Indigent defense:

Indigent trials (60% of trials)	133	104
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Incremental indigent in-court hours	2,394	1,560
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Additional preparation hours per trial (compared to GP)	5	5
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Total additional preparation hours for trials	665	520
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Total additional indigent hours for trials	3,059	2,080
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Trial indigent defense costs	\$152,950	\$104,000
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NON-TRIAL DISPOSITIONS

# Defendants in non-tried GPAC cases (GPAC minus new trials)	Not included	Not included
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Total trial and non-trial indigent defense costs	\$152,950	\$104,000
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