

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

**BILL NUMBER:**       —SB 694 —1st Edition

**SHORT TITLE:**       Analogues/Schedule I Controlled Substance

**SPONSOR(S):**        Senator Thomas

	<b><u>FISCAL IMPACT</u></b>				
	<b><u>Yes (X)</u></b>	<b><u>No ( )</u></b>	<b><u>No Estimate Available ( )</u></b>		
	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>
<b><u>GENERAL FUND</u></b>					
<b><u>Correction</u></b>					
<b><u>Recurring</u></b>					<u>Unable to determine exact amount.</u>
<b><u>Nonrecurring</u></b>					
<b><u>Judicial</u></b>					
<b><u>Recurring</u></b>					<u>Unable to determine exact amount.</u>
<b><u>Nonrecurring</u></b>					
<b><u>TOTAL</u></b>					<u>Unable to determine exact amount.</u>
<b><u>EXPENDITURES:</u></b>					
<b><u>ADDITIONAL</u></b>					
<b><u>PRISON BEDS*</u></b>					<u>Unable to determine exact number of beds.</u>
<b><u>POSITIONS:</u></b>					
<b><u>(cumulative)</u></b>					<u>Unable to determine exact amount.</u>
<b><u>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</u></b> Department of					
Correction (DOC); Judicial Branch					
<b><u>EFFECTIVE DATE:</u></b> December 1, 2003					
<i><u>*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.</u></i>					

**BILL SUMMARY:** The bill add new section G.S. 90-89.1 to provide that controlled substance analogues, intended for human consumption, be treated as controlled substances in Schedule I under state law. The bill also amends G.S. 90-87 to clarify that the definition of controlled substance analogues is the same as that under federal law.

## **ASSUMPTIONS AND METHODOLOGY:**

Currently, state drug laws do not specifically address the treatment of controlled substance analogues, which may be similar in structure to or produce similar effects as controlled substances. However, federal law does provide that controlled substance analogues, intended for human consumption, be treated as controlled substances in Schedule I. According to a DEA pharmacologist, of the seven to ten controlled substance analogues detected in the last few years, only a couple appear on any schedule for controlled substances under federal law.<sup>1</sup>

### **General**

The Sentencing and Policy Advisory Commission 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.

### **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos 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. 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. The number of beds needed will always be equal to the projected number of inmates due to a bill.

The Sentencing Commission notes that the addition of controlled substance analogues as Schedule I controlled substances could create additional violations of manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance (G.S. 90-95(a)(1)) and possess a controlled substance (G.S. 90-95(a)(3)). Assuming these substances are not currently classified as controlled substances, there is no historical data from which to estimate impact on the prison population. It is not known how many offenders might be convicted under this proposed bill.

While there is no historical data from which to estimate impact on the prison population, data is available concerning the number of convictions for offenses involving Schedule I controlled substances. In FY 2001-2002 there were 188 convictions for offenses involving Schedule I controlled substances (excluding convictions for LSD and heroin, as indicated by specific offense codes for these controlled substances).

The Sentencing Commission notes:

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<sup>1</sup> AOC Research and Planning Division

- If the addition of these controlled substances resulted in two additional convictions for sale of a Schedule I controlled substance, which is currently a Class G offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.
- If the addition of these controlled substances resulted in three additional convictions for possession with intent to manufacture, sell or deliver a Schedule I controlled substance, which is currently a Class H offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.
- If the addition of these controlled substances resulted in ten additional convictions for simple possession of a Schedule I controlled substance, which is currently a Class I offense, this would result in the need for 1 prison bed the first year and three prison beds the second year.

**The addition of controlled substances as Schedule I controlled substances would likely create the need for additional prison beds, but an exact amount cannot be determined.** Under the structured sentencing grid, Class G felons receive intermediate or active sentences. In FY 2001-2002, 59 percent of Class G felons received intermediate punishment and 41 percent received active sentences. On average, offenders were sentenced to a minimum of 15 and a maximum of 19 months. Class H and I felons are eligible to receive community punishment, intermediate sanctions, or active sentences under the structured sentencing grid. In FY 2001-2002, Class H felons, on average, were sentenced to a minimum of 10 and a maximum of 12 months. Class I felons, on average, were sentenced to a minimum of nine and a maximum of 10 months.

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) 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.

Although SBI indicates that no data are available on how often controlled substance analogues are detected for Schedule I drugs, the AOC suggests there may be a substantial impact on the courts as a result of the bill. They note, there could be additional defendants charged under the state law with violations of the drug laws due to the addition of controlled substance analogues to Schedule I. (The penalties in Chapter 90 are most severe for Schedule I drugs.) As a result they would expect an increase in trials and court time. Additionally, to the extent that commonly used drug analogues result in drug charges that are not being filed now, the impact could be substantial.

~~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 \_\_\_ inmates to the prison system by the end of FY 2007-08.

	<b>June 30</b> <b>2004</b>	<b>June 30</b> <b>2005</b>	<b>June 30</b> <b>2006</b>	<b>June 30</b> <b>2007</b>	<b>June 30</b> <b>2008</b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>2</sup>	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>3</sup>	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 Due to this Bill <sup>4</sup>					
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill <sup>5</sup>					

<sup>2</sup> 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.

<sup>3</sup> 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.**

<sup>4</sup> 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. 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				
Available Beds (over/under)	-5,616	-6,339	-7,039	-7,684
New Beds Needed				

**DISTRIBUTION OF BEDS:** After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

- \_\_\_\_\_ Close Custody \_\_\_\_\_
- \_\_\_\_\_ Medium Custody \_\_\_\_\_
- \_\_\_\_\_ Minimum Custody \_\_\_\_\_

**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 <u>2002-0203</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 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.~~

**~~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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**DATE:** April 23, 2003

**Official  
Fiscal Research Division  
Publication**



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