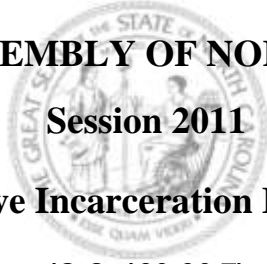


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

**(G.S. 120-36.7)
REVISED**

BILL NUMBER: House Bill 27 (Second Edition)

SHORT TITLE: Forensic Sciences Act.

SPONSOR(S): Representatives Glazier, Stam, Michaux, and Jackson

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>
EXPENDITURES:					
Department of Justice (DOJ)	\$72,995	\$15,245	\$15,245	\$15,245	\$15,245
Correction	*See Assumptions and Methodology*				
Probation	*See Assumptions and Methodology*				
Judicial Branch	*See Assumptions and Methodology*				
POSITIONS: (cumulative)	1	1	1	1	1
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice; Department of Correction; Judicial Branch					
EFFECTIVE DATE: Sections 1 through 5 and 7 through 11 are effective when this act becomes law, and Section 6 becomes effective July 1, 2011.					
<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 act would:

- 1) Create the North Carolina Forensic Science Advisory Board;
- 2) Encourage efforts to eliminate sources of human error in forensic examinations;
- 3) Require certification of forensic science professionals;
- 4) Rename the State Bureau of Investigation Laboratory as the North Carolina State Crime Laboratory;

- 5) Create the position of ombudsman in the North Carolina State Crime Laboratory within the North Carolina Department of Justice;
- 6) Clarify statutes that allow for the admissibility of forensic analyses into evidence;
- 7) Clarify the State's obligation to disclose to the defendant all information relating to the testing or examination of evidence and to penalize omission or misrepresentation relating to disclosure; and
- 8) Clarify that State Crime Laboratory personnel serve the public and the criminal justice system.

The provision creating an ombudsman is effective July 1, 2011. The remainder of the act is effective when it becomes law.

Source: Bill Summary of the First Edition prepared by the Research Division 02/04/2011.

The proposed legislation also clarifies in Section 6 that funds for the position of ombudsman shall be provided by the Department of Justice from other funds appropriated to the Department and from other grants or funding that are available. It also provides for an obstruction of justice offense where a person willfully omits or misrepresents information relating to the disclosure requirement.

ASSUMPTIONS AND METHODOLOGY:

Department of Justice

Section 2:

The proposed legislation creates the Forensic Science Advisory Board to review State Crime Laboratory operations and make recommendations concerning the services furnished to user agencies. The Board would serve as an advisory board within the Department of Justice (DOJ) and would consist of 16 members, including the State Crime Laboratory Director and 15 members appointed by the Attorney General.

Impact: The proposed legislation requires a minimum of four meetings throughout the year. Using the standard uniform expense methods for boards and commissions, the Fiscal Research Division estimates that \$15,245 in subsistence and travel expenses would be necessary to support the advisory board. This figure represents \$10,445 (\$116.05 daily per diem x 15 members x half of non-legislative members using two days of subsistence x 4 meetings) for non-legislative member subsistence and \$4,800 (\$80 round trip reimbursement x 15 members x 4 meetings) in travel expenses. DOJ can use existing support staff to provide clerical assistance to the board. If the board meets more than four times a year, there may be additional expenses.

Section 4:

The act requires that forensic science professionals at the State Crime Laboratory be certified consistent with international and ISO standards as soon as practicable, but no later than June 1, 2012, unless certification is not available. It also requires that all forensic science professionals have access to the certification process.

Impact: There are currently 145 forensic scientist positions established in the Crime Lab operating budget that would be subject to these certification requirements. DOJ estimates that

initial study and proficiency testing would require a onetime expense of \$52,400 for the 145 positions, an average expense of \$361 per position. Crime lab managers received current estimates from national associations who provide the training and testing. Examples of these organizations include the Association of Firearm and Tool Mark Examiners, the American Board of Criminalistics (ABC), and related professional associations. Initial non-recurring certification expenses would be \$5,350, or an average of \$37.00 per position. The Fiscal Research Division has included estimates for initial funding because this is a new requirement for existing employees. No recurring costs are included as it is assumed that certification will be a requirement for new hires. Historically, certification expenses have not been paid with State funds. For instance, State nurses and teachers pay for licensure and certification themselves.

DOJ estimated that recurring training would cost \$177,045 (145 forensic scientists x \$1,221 per position per year). However, the Fiscal Research Division believes this figure is overstated and is not certain what an appropriate cost would be at this time. Therefore, the cost of recurring training was not included in the chart on the front page of the note. The Fiscal Research Division presumes recurring training for the scientists could be funded by existing funds appropriated to DOJ for training.

The chart below shows the estimated cost for the certification of forensic scientists:

Non Recurring Expenses for Each Scientist					
Section	Number staff	Per Staff Cost Per Exam	NR Cost Certification Exams	Per Staff Annual Cert. Fee	Total NR Annual Cert. Fee
Digital Evidence	7.00	\$200.00	\$1,400.00	\$25.00	\$175.00
Audio / Video*	2.00	\$9,000.00	\$18,000.00	\$0.00	\$0.00
Firearms	11.00	\$250.00	\$2,750.00	\$25.00	\$275.00
Forensic Biology	45.00	\$250.00	\$11,250.00	\$40.00	\$1,800.00
Latent	10.00	\$150.00	\$1,500.00	\$30.00	\$300.00
Trace	12.00	\$250.00	\$3,000.00	\$40.00	\$480.00
Drugs	31.00	\$250.00	\$7,750.00	\$40.00	\$1,240.00
Triad Lab	13.00	\$250.00	\$3,250.00	\$40.00	\$520.00
Western Lab	14.00	\$250.00	\$3,500.00	\$40.00	\$560.00
Total	145.00		\$52,400.00		\$5,350.00

To the extent that any of these positions are currently vacant, this cost may be overstated.

Section 6:

The act formally creates the position of ombudsman in the North Carolina State Crime Laboratory within the Department of Justice. The primary purpose of the position would be to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officials, and the general public to ensure that all Laboratory practices are consistent with State and federal law, best forensic law practices, and are in the best interests of justice. Section 6A states that funds for the position of ombudsman shall be provided by DOJ from other funds appropriated to the Department and from other grants or funding that are available.

The salary and benefits for the position of ombudsman are included in the chart below:

Position Classification	FTE	Annual Salary	Social Security	Retirement	Health	Total Salary & Benefits for FY 11-12
Attorney III (ombudsman)	1	\$102,772	\$7,862	\$10,801	\$4,930	\$126,365

Impact: The position of ombudsman was previously created by DOJ in response to a recommendation from independent auditors and the Joint Select Committee on the Preservation of Biological Evidence. The position was filled by execution of a contract between DOJ and a former judge, who has already begun work. Therefore, the cost for the position has not been included in the total expenditures for DOJ on the front page of the note.

Sections 7 and 8:

Section 7 and 8 clarifies the statutes regarding the admissibility of forensic analyses in criminal proceedings and the statutes regarding the admissibility of chemical analyses for certain vehicular offenses. It removes the requirement that admissible forensic analyses be performed by a laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and instead provides that an admissible forensic analysis must be performed by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement for Testing.

Impact: Since 2007, DOJ certification costs paid to ASCLAD have averaged \$35,731 a year and have been funded by grant sources. Lab accreditation expenses have not historically been paid with State funds and no State funding has been appropriated by the General Assembly to support accreditation expenses.

Total Costs for the Department of Justice:

The chart below shows the total cost estimate to implement the proposed legislation:

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
PURCHASED SERVICES					
Contractual Services:					
NR Cost Certification Exams	\$ 52,400	\$ -	\$ -	\$ -	\$ -
Total NR Annual Certification Fee	\$ 5,350	\$ -	\$ -	\$ -	\$ -
Operating Costs	\$ 57,750	\$ -	\$ -	\$ -	\$ -
Staff Costs: Ombudsman Position	\$ 126,365	\$ 135,481	\$ 145,193	\$ 153,267	\$ 160,062
Advisory Board Costs	\$ 15,245	\$ 15,245	\$ 15,245	\$ 15,245	\$ 15,245
Total	\$ 199,360	\$ 150,726	\$ 160,438	\$ 168,512	\$ 175,307

The recurring cost for the ombudsman position has been inflated each year based on the projected growth estimated for salaries and benefits in the Fiscal Research Division's *Fiscal Note Inflation Rate Estimates*. The advisory board calculations are based on the rates set for this fiscal year.

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill.

In FY 2009-10, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2009-10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The overall impact of the proposed legislation cannot be determined. The legislation has the potential to impact the court system in the following ways:

- To the extent the bill as a whole will reduce the number of challenges to the work of the State Crime Lab by defendants, it may result in a reduction in time to process some cases investigated on or after the effective date of the bill.
- The ombudsman position may improve efficiency to the extent that any issues will be more quickly resolved. Conversely, it is possible that the new requirements may add additional steps, resulting in a longer turnaround time and prolonging the duration of the case.
- The amended discovery provisions may improve efficiency to the extent they result in fewer discovery challenges by defendants and fewer delays when a prosecutor learns of something later in the case and a continuance is necessary in order for the defendant to have time to analyze the newly-discovered information.
- New G.S. 15A-903(d) would expand the scope of the current common law Class 1 Misdemeanor Offense, Obstructing Justice, and the Class H Felony Offense, Obstructing

Justice if the act of obstructing justice was infamous, done in secrecy and malice, or with deceit and intent to defraud (G.S. 14-3). AOC cannot project the additional number of obstruction of justice charges that would occur due to the proposed legislation, but AOC does not anticipate a large number of charges. However, due to statewide shortages, AOC does not believe that any increase in workload could be absorbed by existing staff. During Calendar Year 2010, there were 127 defendants charged with 140 counts of the Class 1 Misdemeanor, Obstructing Justice, and 173 defendants were convicted of 184 charges. AOC does not have a separate offense code for the elevated charge of a Class H Felony. Thus, AOC is unable to provide an estimate of how many defendants were charged or convicted of the Class H felony offense.

In FY 2009-10, a typical felony case took approximately 206 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; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices