

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 884 (2<sup>nd</sup> Edition)

**SHORT TITLE:** Innocence Protection Act

**SPONSOR(S):** Representatives Hackney, Blue, et al.

<b>FISCAL IMPACT</b>					
	Yes ( )	No (X)	No Estimate Available (X)		
	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>
<b>REVENUES</b>					
<b>EXPENDITURES</b>					
<b>DOJ, SBI Crime Lab</b>	<b>No fiscal impact</b>				
<b>Judicial Branch</b>	<b>No estimate available</b>				
<b>Indigent Defense</b>	<b>No estimate available</b>				
<b>POSITIONS:</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Justice, State of Bureau of Investigation, Judicial Branch, Indigent Defense					
<b>EFFECTIVE DATE:</b> This act becomes effective December 1, 2001, and applies to all offenses committed on or after that date and all actions and proceedings pending in the courts of this State on or after that date.					

**BILL SUMMARY:**

(1) Amends GS 15A-266.5 by adding a subsection to provide that, for criminal defense purposes, a defendant in a criminal action or proceeding shall have access to DNA laboratory reports provided to the district attorney by SBI revealing DNA matches to the defendant's.

(2) Add new GS 15A-148 to require expungement of DNA analysis, record and samples upon the issuance of reversal or dismissal of conviction or granting of a pardon.

(3) Adds GS 15A-267 to provide that a criminal defendant or the defendant's representative must have access before trial to any DNA samples and analyses performed in connection

with the case. It requires, further, the court, in response to defendant's motion, to order SBI to perform forensic DNA testing and DNA database comparisons on any biological material collected from the crime scene or the defendant's residence or property that has not been DNA tested in connection with the case in which the defendant is charged.

(4) Adds new 15A-268 to require a governmental entity that, during a criminal investigation, collects evidence containing DNA to preserve any biological material relating to the case for the period of time the person is incarcerated in connection with that case. Further, the governmental entity may dispose of biological material before incarceration is over only if certain conditions outlined in the section are met.

(5) New GS 15A-269 requires the court, upon a motion by the defendant, to order DNA testing of any biological material related to investigation or prosecution, if material was not tested, or new test would provide results that are more accurate or contradict prior test results.

(6) New GS 15A-270 requires the court to conduct a hearing to determine if the results of any post-conviction DNA testing are favorable or unfavorable to the defendant. If DNA results are favorable to applicant, the court can 1) vacate or set aside the judgment; 2) discharge the defendant if in custody; 3) pre-sentence the defendant; or 4) grant a new trial. Additionally, it provides that if the results are unfavorable, the court may assess applicant costs of testing if applicant is not indigent

#### **ASSUMPTIONS AND METHODOLOGY:**

**Department of Justice, State Bureau of Investigation (SBI)** – House Bill 884 enacts several provisions dealing with DNA evidence and the role of the SBI Crime Lab therein. DOJ officials have worked closely with the sponsors and the General Assembly staff attorney to ensure that this bill would create minimal, if not any, fiscal impact on the Crime Lab. Thus, Fiscal Research estimates that any increase in workload from this bill can be absorbed with existing resources.

**Administrative Office of the Courts**– House Bill 884 amends G.S. 15A-266.10 to require a defendant's DNA files and samples to be expunged when an order of expungement has been issued. However, AOC indicates there is no data available on the number of motions for expungement now being made or the number of cases this bill would affect. Therefore, Fiscal Research is unable to estimate the impact of this provision on the court system.

Various sections of the bill also provide for various pre- and post-trial motions, all of which could result in substantial additional workload for the court system. These motions could be costly to the court system, but again Fiscal Research is unable to estimate the number of additional motions as a result of this bill.

Current law (GS 15A-266.4) requires DNA testing for 22 sections of statute that include 36 AOC offense codes. AOC offense code data indicate there were approximately 4,686 defendants convicted in calendar year 2000 under these offense codes. This number represents the offenses covered by the offense codes, not necessarily all the offenses under the statutes sections listed in G.S. 15A-266.4, if you include all possible subsections and those statute sections for which an offense code does not exist.) Thus, this number

illustrates a ceiling number of defendants who were required to supply DNA samples and who, in theory, could file motions under this bill.

The costs of providing representation for indigent defendants as provided for in GS15A-267 and GS 15A-269 could be costly to the court system as well. However, Indigent Defense Services is unable to quantify the potential impact.

**TECHNICAL CONSIDERATIONS:** In Section 3 of the bill adding G.S. 15A-270(c)(3), it is unclear what “presentencing the defendant” means. If this should read “re-sentencing the defendant”, there may be additional impact on the court system than indicated herein.

**FISCAL RESEARCH DIVISION 733-4910**

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**DATE:** June 11, 2001



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