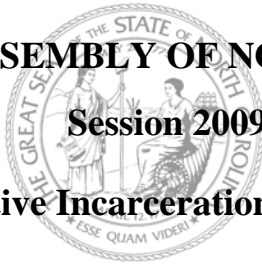


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2009**

**Legislative Incarceration Fiscal Note**

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

**BILL NUMBER:** House Bill 1403 (Fifth Edition)

**SHORT TITLE:** Collect DNA Sample on Arrest.

**SPONSOR(S):** Representatives Neumann, Burris-Floyd, McCormick, and Tillis

| <b>FISCAL IMPACT</b>  |   |                          |                                  |                          |                          |
|---|---|--------------------------|----------------------------------|--------------------------|--------------------------|
|   | <b>Yes (X)</b>  | <b>No ( )</b>            | <b>No Estimate Available ( )</b> |                          |                          |
|   | <b><u>FY 2010-11</u></b>  | <b><u>FY 2011-12</u></b> | <b><u>FY 2012-13</u></b>         | <b><u>FY 2013-14</u></b> | <b><u>FY 2014-15</u></b> |
| <b>REVENUE:</b>   | -   | -                        | -                                | -                        | -                        |
| <b>EXPENDITURES:</b>  |   |                          |                                  |                          |                          |
| <b>Department of Justice (DOJ)</b>  | \$1,371,549   | \$2,170,971              | \$2,316,795                      | \$2,471,368              | \$2,617,592              |
| <b>Correction</b>   | Exact amount cannot be determined**   |                          |                                  |                          |                          |
| <b>Judicial Branch</b>  | Exact amount cannot be determined; Scenarios show costs of approximately \$112,000 annually beginning in FY 2011-12** |                          |                                  |                          |                          |
| <b>POSITIONS:</b>   |   |                          |                                  |                          |                          |
| <b>(cumulative)</b>   | 5   | 10                       | 10                               | 10                       | 10                       |
| <i>**See Assumptions and Methodology</i>  |   |                          |                                  |                          |                          |
| <b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Justice- State Bureau of Investigation (SBI); Department of Correction; Judicial Branch   |   |                          |                                  |                          |                          |
| <b>EFFECTIVE DATE:</b> January 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:**

House Bill 1403 requires that a DNA sample be taken from any person arrested for an offense listed in the act and amends current statutes pertaining to the collection of DNA upon conviction. The bill, entitled the "DNA Database Act of 2010," would make two significant changes to the State's laws on DNA sampling: DNA samples would be taken from persons upon arrest for specified offenses, and the general method of sampling would be changed from blood sample to cheek swab for all DNA sampling. This act becomes effective January 1, 2011.

## **ASSUMPTIONS AND METHODOLOGY:**

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

The Department of Justice (DOJ) reported to the Fiscal Research Division that they expect the proposed bill to require the purchase and distribution of DNA kits to all law enforcement agencies throughout North Carolina, so that a sample can be collected from all persons arrested in connection with specific felonies. Each individual for which a DNA kit is collected must have their personal information entered into a database and each sample must be genetically analyzed so that a suitable DNA profile can be uploaded into the database. The analysis of each sample must be reviewed by a qualified SBI analyst prior to entry into the DNA database. In the event that a person can legally remove their DNA profile from the database, the SBI will be responsible for removing the information (expungement) as required by court order or other legal means. The SBI will also be responsible for the long-term storage of the arrestee database samples.

The Department of Justice estimates that in FY 2010-11, approximately 51,000 individuals will be arrested for offenses covered under this bill. The effective date of the proposed legislation is January 1, 2011, so only individuals arrested in the last six months of the first fiscal year would be required to provide DNA upon arrest. Therefore, DOJ anticipates that 25,529 individuals will be arrested for offenses covered under this bill, requiring the purchase of approximately 25,529 DNA/cheek swab collection kits. All the costs associated with the DNA/cheek swab collection kits would be prorated in FY 2010-11 to reflect the January 1, 2011, effective date.

In the first full year, DOJ states that the proposed bill will require the purchase of approximately 54,122 DNA/cheek swab collection kits. DOJ's data source for the estimated number of samples is the SBI Computerized Criminal History system that is integrated into the Statewide Automated Fingerprint System (SAFIS) which captures current arrestee fingerprint records across the state. By using the SBI Computerized Criminal History system, DOJ was able to count the specific arrests that would precipitate collection of DNA. DOJ's reported numbers count distinct State Identifier Numbers (SID's) as opposed to individual arrest charges. The SID is a number unique to a person and assigned by the fingerprint system (SAFIS) based on the person's biometric identity. Also, SID is propagated through many other state and federal criminal justice information systems, including the SBI Computerized Criminal History system.

The DNA collection kits cost an average of \$6.00 per kit. The kits will be distributed to local law enforcement agencies across the state, so DOJ would include \$0.98 for self-addressed paid postage on each kit sent to the local agencies. Therefore, 54,122 kits at an average cost of \$6.98 per kit would equate to a total expense of \$411,563 in FY 2011-12. DOJ anticipates that the number of DNA/cheek swab collection kits collected will increase about 6% each year.

Once DNA samples are collected from the local law enforcement agencies, DOJ would send them to a third-party laboratory at a cost of \$27 per sample, for an expense of \$1,592,005 in FY 2011-12. Based on DNA grant expenditures over the last few fiscal years, DOJ anticipates that \$698,451 in federal grant funding would support a portion of the outsourced lab analysis expenses.

DOJ estimates that it will need ten additional staff members to handle the additional requirements of this bill. These include seven Molecular Geneticists, one Latent Print Examiner and two Information Processing Technicians. DOJ calculated their workload estimates from a 2006 OSBM study of crime control lab operations, which estimated twenty-one minutes were needed to process a DNA CODIS type sample. DOJ adjusted this workload review to twenty-four minutes on average per sample, to compensate for staff time devoted to eliminating duplicate samples.

Since, the effective date of the proposed legislation is January 1, 2011, DOJ will only need six months of positions for FY 2010-11.

The additional positions are included in the chart below:

| <b>Position Classification</b>   | <b>FTE</b> | <b>Annual Salary</b> | <b>Annual Benefits</b> | <b>Total Salary &amp; Benefits for FY 10-11 6 months</b> | <b>Total Salary &amp; Benefits for FY 11-12</b> |
|--|------------|----------------------|------------------------|--|---|
| 2 Information Processing Technicians to order, distribute, and receive the collection kits | 2          | \$39,000             | \$12,011               | \$50,872   | \$108,450                                       |
| 7 Molecular Geneticists to review and upload genetic information into the database         | 7          | \$44,000             | \$12,919               | \$199,218  | \$422,342                                       |
| 1 Latent Evidence Examiner to verify fingerprints  | 1          | \$44,000             | \$12,919               | \$28,381   | \$60,545  |
| <b>TOTAL:</b>  | <b>10</b>  | <b>\$127,000</b>     | <b>\$37,850</b>        | <b>\$278,470</b>   | <b>\$591,337</b>                                |

Although the samples would be outsourced, the additional Geneticists will be needed in order to hand process every sample to get them to the point of outsource. Hand processing would include entering identity information for the specimen into DOJ's in-house information management system, taking a cutting (if bloodstain) or punch (if buccal swab), and sending the samples to the vendor laboratory. The vendor laboratory will then extract, amplify, and run the DNA on a CE instrument, generate a data file, and send the data back to the SBI. The SBI will then perform a quality assurance review of every profile analyzed by the vendor, upload the profile into CODIS (federal DNA database), and respond to DNA database hits to cold cases which will require working with local law enforcement agencies. When an individual is arrested, they will also submit a set of limited fingerprints which will also be included in the local agency DNA collection kit as a secondary resource to confirm identity.

The Information Processing Technicians' duties would include ordering, distributing, and receiving the collection kits. The Latent Evidence Examiner's primary duties would be to expedite the response to local and state law enforcement agencies. The Latent Evidence Examiner's work includes the fingerprint comparison, verification and quality control that is done with every DNA confirmation when a CODIS hit occurs. The DNA, as well as the prints, are verified and confirmed with each DNA database hit of an offender to DNA crime scene evidence that has yet to be linked to any suspect. This position would also serve as back-up for the molecular geneticist staff during periods of peak demand to ensure efficient and accurate processing of DNA samples.

In addition, DOJ states that they would need \$445,000 in non-recurring information system development costs to support revisions to existing Criminal History Systems that can interface with SAFIS statewide fingerprint systems. Of the \$445,000, \$250,000 would be used to revise and modify the State SAFIS fingerprint system to be able to integrate with fingerprint and DNA booking and processing procedures. Modifying the SAFIS equipment software would allow local agency booking staff to complete data entry on a single unified system and to process fingerprint scan records and buccal swab bar code mailing sheets in a straightforward process that minimizes error and confusion. DOJ states that local agency staff would also be able to easily query SAFIS and criminal database tables to verify whether a DNA profile is already on record for an arrest suspect, which is not effectively accomplished with the existing limited CODIS DNA system. Also, \$150,000 would be used for the new DNA Specimen Management System and changes to other DOJ systems with which the DNA system would interact. This will support bar coding and tracking of all specimens and ensure offender data is integrated with Computerized Criminal History (CCH) files and related central DOJ IT systems. This system will also support secure connections to private vendor labs, so they can electronically transfer completed DNA profiles to SBI crime lab staff for quality review and final uploading to State and national DNA databanks. Finally, \$45,000 would be used for local agency fingerprint equipment updates, so local agencies can interface with new DNA system components.

DOJ estimates that approximately \$359,348 in additional scientific and start-up equipment would also be needed. The \$359,348 would equate to \$77,500 for scientific equipment, \$16,760 for computers, \$175,000 for moveable equipment, \$55,000 for cubicles, \$11,088 for software, and \$24,000 for one vehicle. Other expenses related to the vehicle and traveling include \$5,000 for in-state lodging and \$3,328 for gasoline, car maintenance, and general utilities. The vehicle and various traveling expenses would be used for the following:

- Deliver buccal swab kits
- Provide hands on training and technical assistance to local agencies
- Attend technical staff training classes
- Assist local law enforcement agencies on DNA related search warrants and arrest activities that cannot be completed on the phone
- Deliver swabs or samples to private vendor labs
- Participate in quality assurance reviews of local agencies and private labs
- Attend court proceedings throughout the state as required

DOJ also requests \$30,000 in non-recurring funds for SBI local agency training. DOJ would have one day regional workshops in major metro areas, such as Charlotte, Raleigh, Greensboro, and Wilmington. Staff from all one hundred counties would be invited to a regional workshop for four employees per county, for an estimate of 400 local people targeted for training. For each regional workshop, expenses would include:

- Sample kits/education supplies = \$30.00 per student
- Training facility rental for one day = \$1,200
- Snacks/lunch/Coffee = \$10.00 to \$15.00 per student
- \$5,000 cost for DVD production/ancillary training that can be distributed to interested counties.

Training would be coordinated with training curricula and classes would be offered through the NC Justice Academy.

Additional requests from DOJ include \$22,000 for utility and energy services, \$7,200 for telephone charges, \$5,250 for additional postage, \$4,064 for professional training for the Molecular Geneticist staff a year, and \$5,250 for general office supplies. Also, DOJ requests \$104,500 beginning in FY 2011-12 for IT maintenance contracts, so new IT equipment and systems, as well as crime lab equipment, can be calibrated each year or receive software and hardware maintenance updates. The department estimates that \$8,631 would be needed for crime lab clothing, \$107,994 for SBI crime lab supplies, and \$11,088 in intangible assets.

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

| <b>PURCHASED SERVICES</b>                       | <b>FY 2010-11</b> | <b>FY 2011-12</b> | <b>FY 2012-13</b> | <b>FY 2013-14</b> | <b>FY 2014-15</b> |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| Contractual Services                            |                   |                   |                   |                   |                   |
| DNA Sample Testing \$27/sample                  | \$628,871         | \$1,592,005       | \$1,679,683       | \$1,772,621       | \$1,878,979       |
| Info System Development                         | \$445,000         |                   |                   |                   |                   |
| Utility/Energy Services                         | \$22,000          | \$22,000          | \$22,000          | \$22,000          | \$22,000          |
| Maintenance Agreements                          |                   | \$104,500         | \$104,500         | \$104,500         | \$104,500         |
| Travel & Training                               | \$35,000          | \$5,000           | \$5,000           | \$5,000           | \$5,000           |
| Communications & Data Processing                |                   |                   |                   |                   |                   |
| Telephone Charges                               | \$7,200           | \$7,200           | \$7,200           | \$7,200           | \$7,200           |
| Additional Postage                              | \$5,250           | \$5,250           | \$5,250           | \$5,250           | \$5,250           |
| Other Services                                  | \$4,064           | \$4,064           | \$4,064           | \$4,064           | \$4,064           |
| <b>SUPPLIES</b>                                 |                   |                   |                   |                   |                   |
| General Admin Supplies                          | \$5,250           | \$5,250           | \$5,250           | \$5,250           | \$5,250           |
| Vehicle/Equipment Operating Supplies            | \$3,328           | \$3,328           | \$3,328           | \$3,328           | \$3,328           |
| Clothing and Recreational Supplies              | \$8,631           |                   |                   |                   |                   |
| Research/Development & Educational Supplies     |                   |                   |                   |                   |                   |
| DNA Collection Kits \$6.98/kit                  | \$162,575         | \$411,563         | \$434,229         | \$458,255         | \$458,255         |
| SBI crime lab supplies                          | \$117,926         | \$117,926         | \$117,926         | \$117,926         | \$117,926         |
| <b>PROPERTY, PLANT AND EQUIPMENT</b>            |                   |                   |                   |                   |                   |
| Equipment (Furniture, Office Equip., Computers) | \$359,348         |                   |                   |                   |                   |
| Intangible Assets                               | \$11,088          |                   |                   |                   |                   |
|   |                   |                   |                   |                   |                   |
| Operating Costs                                 | \$1,815,530       | \$2,278,085       | \$2,388,429       | \$2,505,393       | \$2,611,751       |
| Staff Costs                                     | \$278,470         | \$591,337         | \$626,817         | \$664,426         | \$704,292         |
| Total Staff & Operating Costs                   | \$2,094,000       | \$2,869,422       | \$3,015,246       | \$3,169,819       | \$3,316,043       |
| Less Receipts - Federal Grants                  | -\$698,451        | -\$698,451        | -\$698,451        | -\$698,451        | -\$698,451        |
| Net State Funds Needed                          | \$1,395,549       | \$2,170,971       | \$2,316,795       | \$2,471,368       | \$2,617,592       |
| Number of FTE                                   | 5.00              | 10.00             | 10.00             | 10.00             | 10.00             |

After reviewing the DOJ analysis for H1403, the following adjustments have been made by the Fiscal Research Division (FRD):

- 1) DOJ estimates they will need \$24,000 for a new vehicle. However, the Department should be able to implement the proposed legislation with the existing vehicles assigned to the crime lab. Therefore, the updated cost of equipment including furniture, office equipment, and computers would equal \$335,348.

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

| <b>PURCHASED SERVICES</b>                       | <b>FY 2010-11</b> | <b>FY 2011-12</b> | <b>FY 2012-13</b> | <b>FY 2013-14</b> | <b>FY 2014-15</b> |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| Contractual Services                            |                   |                   |                   |                   |                   |
| DNA Sample Testing \$27/sample                  | \$628,871         | \$1,592,005       | \$1,679,683       | \$1,772,621       | \$1,878,979       |
| Info System Development                         | \$445,000         |                   |                   |                   |                   |
| Utility/Energy Services                         | \$22,000          | \$22,000          | \$22,000          | \$22,000          | \$22,000          |
| Maintenance Agreements                          |                   | \$104,500         | \$104,500         | \$104,500         | \$104,500         |
| Travel & Training                               | \$35,000          | \$5,000           | \$5,000           | \$5,000           | \$5,000           |
| Communications & Data Processing                |                   |                   |                   |                   |                   |
| Telephone Charges                               | \$7,200           | \$7,200           | \$7,200           | \$7,200           | \$7,200           |
| Additional Postage                              | \$5,250           | \$5,250           | \$5,250           | \$5,250           | \$5,250           |
| Other Services                                  | \$4,064           | \$4,064           | \$4,064           | \$4,064           | \$4,064           |
| <b>SUPPLIES</b>                                 |                   |                   |                   |                   |                   |
| General Admin Supplies                          | \$5,250           | \$5,250           | \$5,250           | \$5,250           | \$5,250           |
| Vehicle/Equipment Operating Supplies            | \$3,328           | \$3,328           | \$3,328           | \$3,328           | \$3,328           |
| Clothing and Recreational Supplies              | \$8,631           |                   |                   |                   |                   |
| Research/Development & Educational Supplies     |                   |                   |                   |                   |                   |
| DNA Collection Kits \$6.98/kit                  | \$162,575         | \$411,563         | \$434,229         | \$458,255         | \$458,255         |
| SBI crime lab supplies                          | \$117,926         | \$117,926         | \$117,926         | \$117,926         | \$117,926         |
| <b>PROPERTY, PLANT AND EQUIPMENT</b>            |                   |                   |                   |                   |                   |
| Equipment (Furniture, Office Equip., Computers) | \$335,348         |                   |                   |                   |                   |
| Intangible Assets                               | \$11,088          |                   |                   |                   |                   |
|   |                   |                   |                   |                   |                   |
| Operating Costs                                 | \$1,791,530       | \$2,278,085       | \$2,388,429       | \$2,505,393       | \$2,611,751       |
| Staff Costs                                     | \$278,470         | \$591,337         | \$626,817         | \$664,426         | \$704,292         |
| Total Staff & Operating Costs                   | \$2,070,000       | \$2,869,422       | \$3,015,246       | \$3,169,819       | \$3,316,043       |
| Less Receipts - Federal Grants                  | -\$698,451        | -\$698,451        | -\$698,451        | -\$698,451        | -\$698,451        |
| Net State Funds Needed                          | \$1,371,549       | \$2,170,971       | \$2,316,795       | \$2,471,368       | \$2,617,592       |
| Number of FTE                                   | 5.00              | 10.00             | 10.00             | 10.00             | 10.00             |

### **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.

An analysis of selected sections of H1403 affecting the Department of Correction follows:

## **Section 10:**

This section amends G.S. 15A-266.11, Unauthorized uses of DNA Databank; penalties. This section amends subsection (a) to broaden the scope of the offense and reclassify it. This section also amends subsection (b) to reclassify the existing offense.

Currently, G.S. 15A-266.11(a) provides that any person who, by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a Class 1 misdemeanor. This section expands the scope of subsection (a) by amending the statute to read that any person who has possession of or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner is guilty of the offense. This section then reclassifies the offense from a Class 1 misdemeanor to a Class H felony.

Currently, G.S. 15A-266.11(b) provides that any person who, without authorization, obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a Class 1 misdemeanor. This section reclassifies the existing offense from a Class 1 misdemeanor to a Class H felony.

The Administrative Office of the Courts (AOC) currently does not have specific offense codes for violations of G.S. 15A-266.11(a) or G.S. 15A-266.11(b). The lack of AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently results in convictions. In FY 2008-09, 35% 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.

### **Judicial Branch**

The bill 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. New 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 new 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 3 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.” [NOTE: See Technical Considerations (T.C.)]

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.

**Workload:**

The Department of Justice (DOJ) estimates that in FY 2010-11 approximately 51,000 arrestees would be required to provide DNA samples upon arrest. The effective date of the proposed legislation is January 1, 2011, so only individuals arrested in the last six months of the first fiscal year would be required to provide DNA upon arrest. The delay between charge and conviction is also approximately six months for felony cases (median age at disposition is 203 days). Most workload associated with expunction will not occur until a case has been disposed. Therefore, AOC anticipates a six-month lag between the act of taking the DNA sample and the court workload associated with expunction. Thus, AOC’s starting figure for FY 2011-12 impact is the DOJ estimate of arrestees for FY 2010-11: 51,000. Approximately 35% of those would already have DNA on file from a prior conviction. For the purposes of court workload, the critical figures are not the number of arrests but:

- (a) the number of arrestees who are not subsequently convicted of an eligible offense and request expunction of the DNA record;
- (b) the number of arrestees in (a) who are ineligible for expunction due to another felony conviction, or due to another pending charge;
- (c) the number of arrestees who are ineligible for expunction due to conviction on the current charge, but who nevertheless request expunction; and
- (d) the number in (b) and (c) who are denied expunction and move for a hearing.

AOC reports to the SBI felony charges and dispositions on those charges. The SBI, through its use of fingerprint records, is able to relate charges to individuals. At the request of AOC, the Department of Justice reviewed arrest and disposition data for prior years to determine the number of arrestees for an offense that would require DNA sampling upon arrest under the proposed legislation, and the number of individuals adjudicated to date on an eligible offense for which an arrest was made in the specified fiscal year. *Their analysis was based on a previous version of the proposed legislation that did not include the offense of receiving or transferring stolen vehicles; the same percentage will be used and the numbers adjusted accordingly.* DOJ found the following:

|  | FY 2006-07 |      | FY 2007-08 |            |
|--|------------|------|------------|------------|
|  | #          | %    | #          | %          |
| Arrested for an eligible offense   | 34,402     | 100% | 37,219     | 100%       |
| No court disposition recorded to date:   | 5,042      | 15%  | 6,983      | 19%        |
| Disposition recorded:  | 29,360     | 85%  | 30,236     | 81%        |
| No conviction for an eligible offense:   | 21,295     | 62%  | 22,034     | 59%        |
| No conviction for an eligible offense or other felony:   | 13,106     | 47%  | 13,422     | 45%        |
| No conviction for an eligible offense or other felony and do not have prior conviction that required a DNA sample: | *          | *    | 12,965     | <b>35%</b> |

While all felony arrests require fingerprinting, only certain misdemeanor arrests require fingerprints. For most misdemeanors, fingerprinting is discretionary. As an example of the impact of this



distinction, in a previous version of this bill, the offense of cyberstalking was included. DOJ reported 105 cyberstalking arrests in FY 2008-09. During the same period, AOC charge data, collapsed to defendants, shows 434 defendants charged with cyberstalking. While cyberstalking is excluded in the 5<sup>th</sup> edition, other misdemeanors are included, most notably misdemeanor breaking and entering and misdemeanor stalking. The total number of defendants charged with misdemeanors that do not require fingerprinting in FY 2008-09 is 6,455. Using the assumption that three-quarters of those defendants would not have been fingerprinted, AOC added 4,481 arrestees to the number provided by DOJ.

Many of the offenders eligible under this bill to *request* expunction would be ineligible for expunction due to a conviction for another felony offense. For example, an offender charged with breaking and entering and felony larceny could have the breaking and entering charge dismissed and a conviction for larceny. DNA would be taken on arrest for breaking and entering, but not for larceny. However, DNA would be taken on conviction for the larceny conviction, so an expunction request would be denied. Many offenders also have DNA on file from a previous felony conviction.

In addition, AOC examined current expunction data to estimate the rate at which expunction requests are denied. In 2009, 13,811 individuals requested expunction of criminal records, and 11,956 expunctions (87%) were ordered. The requests and orders were primarily under G.S. 15A-146, which permits one expunction of criminal charges per person, if the charges were dismissed or a finding of not guilty was entered, and if the person has no prior convictions.

### **Workflow:**

District attorney staff will verify whether the defendant is eligible for expunction under G.S. 15A-266.3A(f)(1). If the defendant is eligible for DNA expunction under G.S. 15A-266.3A(f)(1), district attorney staff will submit the form to the District Attorney (DA) or a judge for their signature, make a copy or copies, file the original, and transmit a copy of the signed form to the State Bureau of Investigation (SBI).

If it is determined that the defendant does not qualify for DNA expunction, the district attorney's staff will so notify the defendant in writing and retain a copy for the file. The defendant may file a motion with the court to review the State's denial of the defendant's request, or if the State fails to act on the request within 30 days of receipt.

DNA Expunction Request: Estimate 10 minutes per request for DA staff, 1 minute per approved request for a DA or judge

- For every request, there would be work required for assistant district attorneys or victim witness legal assistants to review the case and possibly review the defendant's criminal history and any pending charges.
- For requests that will be verified, 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 may be further communications between the SBI and the court system if clarification is needed for any case. There would also be time incurred by judges and/or district attorneys to review and sign the verification forms.

- For requests that will not be granted, the DA staff must prepare, copy, and mail a letter to the defendant.

Courtroom Personnel: Estimate 20 minutes per hearing

- If the request is not granted or a response is not given within the required timeframe, the defendant may move for a hearing. This would involve a judge (presumably a Superior Court judge given the majority of the charges in question are felony charges), a deputy clerk, a court reporter, and an assistant district attorney, and potentially indigent defense counsel. This analysis does not include costs for indigent defense.

Position Costs (salaries, benefits, and related operating costs):

| Position                          | First Year |         |           | Second Year |
|-----------------------------------|------------|---------|-----------|-------------|
|                                   | (R)        | (NR)    | Total     | (R)         |
| DA Victim Witness Legal Assistant | \$57,477   | \$5,155 | \$62,632  | \$57,477    |
| Assistant District Attorney       | \$108,523  | \$3,739 | \$112,262 | \$108,523   |
| Superior Court Judge              | \$183,654  | \$6,553 | \$190,207 | \$183,654   |
| Deputy Clerk                      | \$45,646   | \$2,620 | \$48,266  | \$45,646    |
| Court Reporter                    | \$68,620   | \$4,857 | \$73,477  | \$68,620    |

**Impact Scenario:**

Based on the median time to disposition for a felony case of 203 days, AOC would not anticipate significant impact from this legislation until FY 2011-12. Because the number of hearings cannot be projected with any certainty, AOC assumed a minimal number for the purposes of illustrating costs.

| Scenario: 75% of eligible arrestees and 7% of ineligible will request expunction; 10% of denied requestors will move for a hearing | FY 2011-12       |           | FY 2012-13       |           |
|--|------------------|-----------|------------------|-----------|
|  | Costs            | Positions | Costs            | Positions |
| Petitions  | \$85,371         | 1         | \$89,382         | 1         |
| Hearings   | \$26,799         |           | \$28,139         |           |
| <b>Total</b>   | <b>\$112,170</b> | <b>1</b>  | <b>\$117,521</b> | <b>1</b>  |

**Impact of Criminal Penalties:**

The proposed legislation would increase the criminal penalty in GS 15A-266.11 for willfully obtaining identifiable DNA information from the State DNA databank from a Class 1 misdemeanor to a Class H felony, and expand the available data in the State DNA databank. AOC cannot project the number of charges that would occur due to this legislation. The increased and expanded Class H felony could potentially shift some work from district court to superior court, as well as generating new work for superior court. (It should also be noted that pleas to Class H and I felonies are handled in district court in some judicial districts.)

| Penalty        | Cost per Trial | Cost per Plea | Indigent Defense* |
|----------------|----------------|---------------|-------------------|
| Class H Felony | \$7,794        | \$559         | \$540             |

\*Average cost per indigent defendant

**Other workload impacted by this legislation would be as follows:**

- Impact on the workload of the criminal forms subcommittee and full forms committee:  
The court system uses standardized forms for judgments, etc., available online. This legislation would require AOC to modify form CR-319, the form for Judicial Findings As To Required DNA Sample. It is the mechanism by which a judge finds that a defendant has been convicted of an offense requiring a DNA sample and orders the defendant to provide the sample.  
AOC would also create a new form (per new 15A-266.3A(f), “form promulgated by the AOC”) to be printed and submitted by the defendant when requesting expunction of their DNA record. This legislation would also require modification of another form to add a new condition of pretrial release.
- The second edition adds a new condition for pretrial release – the defendant must provide a DNA sample if charged with an eligible offense. This condition will require magistrates to determine whether the defendant is required to provide a DNA sample. While this determination will be relatively straightforward for most offenses, for some charges it will require that the magistrate review the defendant’s criminal history. For example, the offense of peeping is a reportable offense for a second or subsequent offense, and would therefore require DNA if the defendant had been previously convicted of peeping.
- 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.

**SOURCES OF DATA:** Department of Justice; North Carolina Sentencing and Policy Advisory Commission; Judicial Branch

**TECHNICAL CONSIDERATIONS:**

1. DOJ received \$221,156 for four positions in S.L. 2010-31C. The four positions were appropriated to provide the State Bureau of Investigation (SBI) Crime Lab with additional professional staff to analyze DNA samples.
2. There is the potential for North Carolina to receive federal funding through JAG-Byrne grants for enacting the proposed legislation. According to the United States Department of Justice’s website, the state of North Carolina received \$8,659,769 for the Governor’s Crime Commission to administer during federal fiscal year 2010, which began October 1, 2009. Another \$4,393,965 was awarded directly to local and county governments in North Carolina. Under the JAG-Byrne program, several localities within a state are pre-determined by the United States Department of Justice to receive a certain amount of funds. Then, the state receives the remainder to administer according to internal processes. The Governor’s Crime Commission sets priorities on this funding through an exhaustive process, and the money is awarded accordingly through competitive grant applications and awards.

Under the current program guidelines authorized by the United States Department of Justice, a 10% increase in JAG-Byrne grants can be administered to states that have DNA on arrest laws. The federal authorization changes from year to year, so this could change depending upon what the federal government chooses to prioritize in future years. If the state received a 10% increase in the JAG-Byrne grants for enacting the proposed legislation, this would equate to 10% of \$8,659,769, or about \$800,000.

Additionally, DOJ could potentially receive federal funding through the Convicted Offender and/or Arrestee DNA Backlog Reduction Program. The objective of the FY 2010 Convicted Offender and/or Arrestee DNA Backlog Reduction Program was to accelerate the analysis of convicted offender and/or arrestee DNA samples collected by states pursuant to applicable law for DNA database samples, in order to provide timely Combined DNA Index System (CODIS) compatible data for all 13 CODIS core STR loci (“profile”) for state and national DNA databases. Funds were to be used by a state's designated existing and accredited DNA database laboratory to reduce the number of DNA database samples pending DNA analysis (“backlog”) in one of three ways:

1. Through in-house analysis. The DNA database laboratory will determine what its backlog is and may apply for no more than \$35.00 per sample to be analyzed.
2. Through sending samples to be tested by accredited fee-for-service laboratories. The DNA database laboratory will determine what its backlog is and may apply for up to \$35.00 per sample to be analyzed.
3. Through data review of sample profiles generated by an accredited laboratory. If the database laboratory lacks funding to ensure timely review of the profiles generated, it may apply for up to \$5.00 per DNA profile reviewed.

Eligible applicants are states with a designated existing crime laboratory that conducts analysis of DNA database samples, provided the designated DNA database laboratory meets all of the following requirements:

- The laboratory is accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community.
- The laboratory is a participant in the National DNA Index System (NDIS).
- The laboratory undergoes external audits, not less than once every 2 years, to demonstrate compliance with the requirements of the Quality Assurance Standards for DNA Databasing Laboratories established by the Director of the Federal Bureau of Investigation.
- If the laboratory requests assistance with analysis of samples in-house, then the laboratory must possess sufficient in-house DNA analysis capacity to analyze at least 50 percent of its annual receipt of DNA database samples or a minimum of 5,000 DNA database samples per month.

Total awards did not exceed \$40.00 per DNA database sample analyzed, reviewed, and uploaded to NDIS. Funds were awarded only for sample analysis and data review above and beyond that

which a state can accomplish using current sources of funding. The total amount of funding requested by eligible applicants may also affect award amounts.

All awards were subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law. Total funding for solicitation and the number of awards made depended on the availability of funds, the quality of the applications, and other pertinent factors.

The deadline to apply for the FY 2010 Convicted Offender and/or Arrestee DNA Backlog Reduction Program was April 19, 2010. Therefore, DOJ would need to apply for the FY 2011 Convicted Offender and/or Arrestee DNA Backlog Reduction Program in April of 2011. If the proposed legislation is implemented, DOJ met all the eligibility requirements, and DOJ was awarded the federal funding, the Department would begin receiving funds in September 2011. DOJ estimates they will collect 54,122 additional DNA samples in FY 2011-12. Therefore, the Department could receive a maximum of \$40 a sample through this federal program, or an additional \$2,164,880 under the proposed legislation. **It is also important to note that the federal government includes a non-supplant clause as part of the eligibility requirements. As a result, federal funding will not be provided to states that are already using existing state funding.**

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**DATE:** July 8, 2010



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