



that may allow drug trafficking conspirators to be considered for intermediate punishments.

Section 2: The proposed legislation would amend G.S. 90-95(h) so that any person who sells, manufactures, delivers, transports, or possesses 10 or more pounds of marijuana would be guilty of "trafficking marijuana" and would be punishable as a Class H felon and sentenced to prison for a minimum of 25 months and a maximum term of 30 months with a fine of not less than \$5,000. Currently, 50 pounds of marijuana is the threshold for trafficking.

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

**SECTION 1:** The Administrative Office of the Courts estimates that 89 defendants would be convicted of drug trafficking conspiracy statewide within a year. Of these 89 defendants, it is unlikely that many of them would qualify for extraordinary mitigation. Thus, the Administrative Office of the Courts believes that the proposed legislation would affect very few defendants. Those few (if any) defendants who had in the past qualified for extraordinary mitigation would now be facing the regular trafficking penalties.

Likewise, section 1 of the proposed legislation is not anticipated to have a significant fiscal impact on the Department of Correction due to the small number of cases involving defendants who had in the past qualified for extraordinary mitigation and who would now be facing the regular trafficking penalties.

**SECTION 2:** The Administrative Office of the Courts estimates that there are approximately 7,706 defendants charged with the manufacture, sale, delivery, or possession with intent to manufacture, sell or deliver marijuana per year. The North Carolina Sentencing and Policy Advisory Commission, based on information provided by narcotics law enforcement officials and by State Bureau of Investigation lab analysts, estimates that no more than 5% of marijuana convictions involve amounts between 10 and 50 pounds. A survey of district attorneys conducted by the Administrative Office of the Courts also indicated that 5% of defendants charged with the relevant marijuana offenses involved amounts between 10 and 50 pounds.

Thus it is estimated that approximately 385 additional defendants per year would be charged with trafficking in marijuana. The trial rate for all trafficking offenses is currently 4% and most district attorneys surveyed indicated that the trial rate for trafficking would stay the same if this section were enacted.

Using a trial rate of 4%, the Administrative Office of the Courts estimates that there would be approximately 16 new trafficking trials associated with the proposed change in statute. The survey

of district attorneys indicated that trials for trafficking in marijuana last about two and one-half days.

In Superior Court, the Administrative Office of the Courts estimates that 60% of these defendants would be found indigent, with 75% of them represented by assigned counsel and 25% by the public defender., In FY 95-96 (December to June), superior court trial costs (excluding defense costs) would be \$27,729 and defense costs (assigned counsel and public defender) would be \$2,494, for a total cost of \$30,223. Assigned counsel costs that would have been incurred in the absence of the proposed legislation for disposition by plea have been deducted from the previous and following estimates. In FY 96-97, trial costs would be \$50,775 and defense costs would be \$5,337, for a total of \$56,112. Estimates for years following FY 95-96 assume a 7% annual increase in indigent defense costs, and a 3% increase in other costs. These figures do not adjust for any possible future increases in marijuana trafficking.

SECTION 2: Department of Correction

Two alternatives are provided for the possible fiscal impact on the Department of Correction. Alternative 1 assumes that the current beds available could be utilized to fulfill the requirements of the proposed legislation. Alternative 2 assumes that all of the beds required by the proposed legislation would have to be supplied by the construction and operation of new facilities or the utilization of private provider beds.

**ALTERNATIVE 1: FISCAL IMPACT: DEPARTMENT OF CORRECTION**

NO FISCAL IMPACT

After analyzing the proposed legislation thoroughly, the Department of Correction estimates the following distribution of beds as needed under the proposed legislation:

Close Custody - 24%  
Medium Custody - 43%  
Minimum Custody - 33%

The time required to site, design, and construct each type of facility is listed below:

Close Custody - 30 months  
Medium Custody - 24 months  
Minimum Custody - 21 months

**ALTERNATIVE 1** - assumes that the current beds available could be utilized to fulfill the requirements of this proposed bill.

With present beds, beds that have been funded but not completed, and beds retained by renovating the existing Polk Youth Center, enough beds are projected to be available at 130% capacity of 50 square feet per inmate until June 30, 2000, for inmates incarcerated under the Structured Sentencing Act which became effective October 1, 1994.

The following chart shows, for the end of each fiscal year, the above-noted projected beds to be available, the number of inmates projected under Structured Sentencing effective October 1, 1994, the surplus beds, and the additional beds needed as a result of this bill:

	June 30	June 30	June 30	June 30	June 30
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
No. of Inmates Under Structured Sentencing Effective 10/1/94	25,822 27,694	25,936	26,143	26,738	
Projected Beds Available at 130% Capacity of 50 Sq. Ft./Inmate*	29,854 31,870	31,870	31,870	31,870	
No. of Beds Over/(Under)		4,032 4,176	5,934	5,727	5,132
No. of Inmates Due to Structured Sentencing					
<b>No. of Projected Additional Inmates Due to this Bill</b>	16	47	65	72	75
<b>No. of Additional Beds Needed Due to this Bill</b>	0	0	0	0	0

\* The projected prison bed capacity also includes 656 beds likely to be funded by the 1995 General Assembly that will be added due to double-bunking in selected single cells, and 827 beds gained through the most recent modification of Small v. Martin.

Alternative 1: It is not anticipated that the proposed legislation would have a significant fiscal impact on the Department of Correction. Based on the North Carolina Sentencing and Policy Advisory Commission projections of prison population, including the impact of the proposed legislation, and the Department of Correction estimated prison bed capacity, the Fiscal Research Division believes that the proposed legislation would not have any fiscal impact on the Department of Correction at this time.

**Other Assumptions:**

This fiscal note does not account for the Repeal Prison Cap legislation and its related potential use of many of the currently available prison beds. The effect of repealing the cap is not considered since no decision has been made by the General Assembly as to the effective date of the legislation. It is necessary to have an effective date prior to incorporating the related bed utilization into the fiscal analysis of 1995 Session proposed legislation.

These projections do not include the 2,424 beds which are being requested in the Governor's 1995-97 Capital Improvement budget at a cost of \$86,000,000 in 1995-96 and \$14,000,000 in 1996-97. The estimated annualized operating costs for these beds is \$50,000,000.

**ALTERNATIVE 2** - Alternative 2 assumes that all of the beds required by the proposed legislation would have to be provided through the construction and operation of new facilities.

**ALTERNATIVE 2: FISCAL IMPACT: DEPARTMENT OF CORRECTION**

	RECURRING	NON-RECURRING	TOTAL
FY 95/96	\$ 358,142	\$1,244,000	\$1,602,142
FY 96/97	\$1,068,555	\$1,144,700	\$2,635,970
FY 97/98	\$1,491,270	\$ 253,362	\$1,744,632
FY 98/99	\$1,560,770	\$ 75,550	\$1,636,320
FY 99/00	\$1,671,330	\$ 79,229	\$2,067,475

See Appendix A for the detailed cost analysis for alternative 2.

**SOURCES OF DATA:** Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION**

**733-4910**

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**APPENDIX A: ALTERNATIVE 2 - COST ANALYSIS**

The state would be unable to meet the immediate demand for beds resulting from the proposed legislation. Thus, the minimum and medium security beds required in FY 95-96 are costed out at the private provider rates of \$54.46 and \$59.46 respectively. Since these are long-term contracts, it is assumed that the individuals housed by private providers in FY 95-96 would remain in private facilities throughout the time-period covered by this fiscal note.

In addition, the costs associated with the construction and operation of the close security facility in FY 95-96 and FY 96-97 are only hypothetical in nature. These numbers are included so as to encompass the full cost of the legislation. However, it would not be possible to construct and begin operation of close security facilities within this time frame.

Fiscal Year	Total Beds Minimum	Annual Bed Increase	Close	Medium	
FY 95-96	16	16	4	7	5
FY 96-97	47	31	8	13	10
FY 97-98	65	18	4	8	6
FY 98-99	72	7	2	3	2
FY 99-00	75	3	1	1	1

**FY 95/96:** 16 Additional Inmates: 4 close security beds  
7 medium security beds  
5 minimum security beds

Minimum Security		Medium Security	
\$45.00 per day/inmate		\$50.00 per day/inmate	
\$ 3.56 administrative cost		\$ 3.56 administrative	
cost			
\$ 4.84 extraordinary medical		\$ 4.84 extraordinary	
medical			
\$ .88 day/clothing		\$ .88 day/clothing	
\$ .18 SIPs for employees/		\$ .18 SIPs for	
employees/			
office supplies		office supplies	
<b>\$54.46 Total per day</b>		<b>\$59.46 Total per day</b>	



MINIMUM AND MEDIUM SECURITY:

Per Diem Rate (*):	FY 95-96:	\$54.46 X 5 X 365 = \$ 99,390
		\$59.46 X 7 X 365 = \$151,920
FY 96-97:	\$54.46 X 5 X 365 = \$ 99,390	
	\$59.46 X 7 X 365 = \$151,920	
FY 97-98:	\$54.46 X 5 X 365 = \$ 99,390	
	\$59.46 X 7 X 365 = \$151,920	
FY 98-99:	\$54.46 X 5 X 365 = \$ 99,390	
	\$59.46 X 7 X 365 = \$151,920	
FY 99-00:	\$54.46 X 5 X 365 = \$ 99,390	
	\$59.46 X 7 X 365 = \$151,920	

(\*) - No inflationary cost is included in these costs.

Hypothetical new close security facility would house 4 inmates in FY 95-96.

Construction:	FY 95-96:	\$62,757 X 4 = \$251,028
Operation:	FY 95-96:	\$26,708 X 4 = \$106,832
	FY 96-97:	\$27,015 X 4 = \$108,060
	FY 97-98:	\$27,326 X 4 = \$109,304
	FY 98-99:	\$27,640 X 4 = \$110,560
	FY 99-00:	\$27,958 X 4 = \$111,832

**FY 96/97:** 31 Additional inmates: 8 close security beds  
 13 medium security beds  
 10 minimum security beds

Construction:	Minimum:	FY 95/96:	\$27,566 X 10 = \$275,660
	Medium:	FY 95/96:	\$35,868 X 13 = \$466,284
Operating:	Minimum:	FY 96/97:	\$18,698 X 10 = \$186,980
		FY 96/97:	\$23,545 X 13 = \$306,085
	Medium:	FY 97/98:	\$18,913 X 10 = \$189,130
		FY 97/98:	\$23,816 X 13 = \$309,608
	Minimum:	FY 98/99:	\$19,130 X 10 = \$191,300
		FY 98/99:	\$24,090 X 13 = \$313,170
	Medium:	FY 99/00:	\$19,350 X 10 = \$193,500
		FY 99/00:	\$24,367 X 13 = \$316,771

Hypothetical new close security facility would house 8 inmates in FY 96-97.

Construction:	FY 96-97:	\$66,522 X 8 = \$532,176
Operation:	FY 96-97:	\$27,015 X 8 = \$216,120
	FY 97-98:	\$27,326 X 8 = \$218,608
	FY 98-99:	\$27,640 X 8 = \$221,120
	FY 99-00:	\$27,958 X 8 = \$223,664

**FY 97/98:** 18 Additional inmates: 4 close security beds  
8 medium security beds  
6 minimum security beds

Construction:	Minimum:	FY 96/97:	\$29,220 X 6 = \$175,320
	Medium:	FY 96/97:	\$38,020 X 8 = \$304,160
	Close:	FY 95/96:	\$62,757 X 4 = \$251,028

Operating:	Minimum:	FY 97/98:	\$18,913 X 6 = \$113,478
	Medium:	FY 97/98:	\$23,816 X 8 = \$190,528
	Close:	FY 97/98:	\$27,326 X 4 = \$109,304

	Minimum:	FY 98/99:	\$19,130 X 6 = \$114,780
	Medium:	FY 98/99:	\$24,090 X 8 = \$192,720
	Close:	FY 98/99:	\$27,640 X 4 = \$110,560

	Minimum:	FY 99/00:	\$19,350 X 6 = \$116,100
	Medium:	FY 99/00:	\$24,367 X 8 = \$194,936
	Close:	FY 99/00:	\$27,958 X 4 = \$111,832

**FY 98/99:** 7 Additional inmates: 2 close security beds  
3 medium security beds  
2 minimum security beds

Construction:	Minimum:	FY 97/98:	\$30,973 X 2 = \$ 61,946
	Medium:	FY 97/98:	\$40,301 X 3 = \$120,903
	Close:	FY 96/97:	\$66,522 X 2 = \$133,044

Operating:	Minimum:	FY 98/99:	\$19,130 X 2 = \$38,260
	Medium:	FY 98/99:	\$24,090 X 3 = \$72,270
	Close:	FY 98/99:	\$27,640 X 2 = \$55,280

	Minimum:	FY 99/00:	\$19,350 X 2 = \$38,700
	Medium:	FY 99/00:	\$24,367 X 3 = \$73,101
	Close:	FY 99/00:	\$27,958 X 2 = \$55,916

**FY 99/00:** 3 Additional inmates: 1 close security bed  
1 medium security bed  
1 minimum security bed

Construction: Minimum: FY 98/99: \$32,831 X 1 = \$32,831  
Medium: FY 98/99: \$42,719 X 1 = \$42,719  
Close: FY 97/98: \$70,513 X 1 = \$70,513

Operating: Minimum: FY 99/00: \$19,350 X 1 = \$19,350  
Medium: FY 99/00: \$24,367 X 1 = \$24,367  
Close: FY 99/00: \$27,958 X 1 = \$27,958



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