

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 79 (4th Edition)

SHORT TITLE: DNA Registry

SPONSOR(S): Representative Alexander

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>

REVENUES *Anticipated federal grants will be paid directly to private vendors for analysis of convicted offender samples. Those analysis costs are excluded from the expenditures below.*

EXPENDITURES

Correction	\$234,981	\$326,648	\$272,962	<i>\$274,977 or less annually</i>	
Justice (R)	\$341,174	\$363,572	\$337,576	\$339,422	\$341,305
(NR)*	\$606,000	-	-	-	-
DHHS	\$16	\$2	\$2	\$2	\$2
Local government	Exact amount cannot be determined, will vary by county				

POSITIONS (cumulative):

Correction	9.0	9.0	7.0	7.0	<i>7.0 or less</i>
Justice	5.0	5.0	5.0	5.0	5.0

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Correction (DOC), SBI Crime Lab, DHHS, counties

EFFECTIVE DATE: December 1, 2003

This analysis assumes that all felony offenders in DOC prisons on December 1, 2003 will have DNA samples taken by December 1, 2004.

*The SBI will need to renovate or build additional lab space to accommodate DNA analysts. See technical considerations for a full discussion of nonrecurring costs.

BILL SUMMARY: Current law requires that a DNA sample be taken from offenders convicted of certain violent, assaultive, or sexual crimes. House Bill 79 would expand the pool of individuals required to supply a DNA sample to all convicted felons, as well as offenders convicted of assaults on handicapped persons or stalking. The bill would be effective December 1, 2003, and would apply to the specified population convicted on or after that date or convicted and incarcerated before that date, prior to parole or release. In addition, the bill would apply to individuals found not guilty by reason of insanity for the same offenses and committed to a mental health facility. For individuals found not guilty by reason of insanity before December 1, 2003, the bill requires DNA analysis from these individuals prior to their release from the mental health facility. The third and fourth editions specify that a DNA sample may not be taken if the offender has provided a sample under a previous conviction, and that sample was entered into the State DNA database and has not been expunged.

The bill also requires the State Bureau of Investigation to continue its current practice of providing DNA sample collection kits for non-incarcerated felons and outlines procedures and time requirements for obtaining samples from those felons.

The fourth edition of this bill modifies Section 4, which specifies that DNA records or samples collected under this section shall be used only for criminal justice purposes; the bill also retains language permitting the use of the DNA records to identify victims of mass disasters or missing persons. Prior editions of the bill listed specific non-criminal justice groups who were not permitted access to the DNA samples or records and omitted the exception for mass disasters and missing persons.

Please see technical considerations on page 7 for more detail.

ASSUMPTIONS AND METHODOLOGY:

The following table outlines the types of costs associated with HB 79:

New Task	Responsibility	Grants?
Convicted Felons		
Expand sample collection from presently incarcerated felons.	DOC Prisons - <i>One-time increase to current workload</i>	No
Expand sample collection from felons convicted on or after December 1.	DOC Prisons & DCC/local law enforcement* - <i>Increase to current workload</i>	No
Analyze samples from expanded number of convicted felons	SBI (outsource or in-house) - <i>Increase to current workload</i>	Yes**
Upload additional convicted felon DNA into CODIS	SBI - <i>Increase to current workload</i>	No
Not Guilty by Reason of Insanity (NGRI) – felony offenses, stalking, assaults on handicapped		
Collect DNA samples from NGRIs prior to discharge from State psychiatric hospital.	DHHS Forensic Units – <i>New responsibility</i>	No
Collect DNA samples from NGRIs found not guilty on or after December 1.	DHHS Forensic Units – <i>New responsibility</i>	No
Analyze samples from NGRIs.	SBI – <i>Increase to current workload (new group, same analysis process)</i>	No
Create, maintain, and update DNA database for NGRIs.	SBI - <i>New responsibility</i>	No

***Local Impact:** Probation officers send offenders to local jails to obtain the DNA samples required under current law, and would probably continue to do so under HB 79. While the majority of offenders required to supply samples under current law receive active sentences, there would be a much greater pool of probationers required to provide samples under HB 79. (Please note: the bill does not require DNA samples from felons currently on probation/parole.)

****Federal Grants:** The National Institute of Justice offers grant funds to states to reduce the backlog of convicted offender DNA samples. Funds are available to states based on the size of their backlog, and cover most types of expenses, with the exception of personnel and physical space. The SBI uses this grant to outsource the analysis of convicted offender samples and to purchase supplies and equipment related to uploading these samples into CODIS. If HB 79 were to pass, the SBI anticipates that it would apply for, and receive, a larger grant amount for FY 2003-04 to cover the increase in the number of offender samples. It is possible that the SBI could obtain other NIJ grant funds to purchase analysis equipment.

Collection Costs

Current statute requires that DNA blood samples be drawn from certain convicted offenders. Each DNA blood sample is collected in a kit and mailed to the SBI crime lab. The SBI provides kits to county sheriffs free of charge, and we assume that it would continue to do so under HB 79. The cost to the SBI is \$1.98 per kit, and sheriffs pay \$0.50 to package and mail each kit. The Division of Prisons in the DOC uses its own kits, which cost \$2.12 each, plus \$1.88 for associated supplies (i.e. fingerprint supplies and gloves) and \$0.50 to package and mail.

Prison Inmates: DOC Division of Prisons

The Department of Correction currently contracts with a vendor for phlebotomists to draw blood from inmates. However, new correctional healthcare standards will allow prison nursing staff to draw blood for DNA samples. Thus, for new prison entries, current nursing staff will be able to take DNA samples during routine medical exams at the diagnostic centers. Nurses or contract phlebotomists must also visit individual prisons to take samples from current inmates. The Department anticipates the following expenses:

- 7 correctional officers (one per felon diagnostic center): \$210,000 recurring
- 3,500 correctional officer hours (for current population): \$60,000 - \$79,000 nonrecurring
- 3,500 nurse/phlebotomist hours (for current population): \$62,000 - \$96,000 nonrecurring

New admissions: Using DOC population figures and applying a two percent growth rate,¹ we estimate that that, beginning in FY 2004-05, there will be approximately 12,200 new prison admissions requiring a DNA sample as a result of HB 79. This annual figure will gradually decline as former inmates and probationers re-enter the DOC system, leveling out at approximately one-sixth of new entries, or 2,100 plus a growth factor of two percent per year. The Department believes that it will also need seven additional correctional officers, one per felon diagnostic center, to maintain a constant view of the DNA samples for chain of custody, at a cost of \$210,000 annually. As the number of admissions requiring a DNA sample decreases over time, these additional officers may become unnecessary.

Current population: For the current population of approximately 14,000 felons that will require DNA samples under HB 79, nurses or contract phlebotomists will need to visit individual prisons to draw the samples. In addition, there will be a need for correctional officers to supervise the sampling procedures and maintain control of the samples. The Department estimates that it would take 3,500 hours each for correctional officers and nurses to complete these samples. Using overtime, the Department estimates a cost of \$95,800 for staff nurses and \$79,000 for correctional officers; alternatively, contract phlebotomist costs would be between \$62,000 and \$89,000, depending on the contract negotiated, and two correctional officer positions would cost \$60,000. These estimates are dependent on the speed with which the samples are taken, and assume that all 14,000 inmates will be sampled in 12 months.

¹ The Sentencing Commission's Forecasting Technical Advisory Group has predicted a two percent growth rate for felony convictions.

Probationers: Local Law Enforcement & SBI

The majority of offenders required to provide samples under current law serve active sentences. Increasing the requirement to all convicted felons would broaden the sampling pool to a greater number of offenders serving community or intermediate sentences. By statute, offenders required to provide DNA samples and sentenced to non-active sanctions must be tested at a jail or prison facility. In practice, probation officers refer offenders to the county jails for DNA sampling. Due to some disagreement over responsibility under current law, some probationers who are required to provide DNA samples do not in fact do so. This legislation would clarify that responsibility. *The calculations in this section refer only to the probationers who are not required to provide samples under current law and would be required to provide samples under this legislation.*

Collection kits. The SBI provides DNA sample collection kits free to local law enforcement. The kits cost \$1.98 each, for a total of approximately \$39,000 per year in State costs, decreasing slightly in later years. County sheriffs pay \$0.50 in postage per kit, for a cost of approximately \$8,000 per year to counties. Assuming that the cost of associated supplies, such as fingerprinting supplies and gloves, are similar to those incurred by DOC, there will be additional costs of approximately \$1.88 per sample taken, for a total of approximately \$30,000 per year to counties.

Population. In 2002, there were 17,632 felony admissions to DCC programs. The Department estimates that approximately 1,399 entering probationers in 2002 were required to provide DNA samples under existing law. In actuality, DOC records indicate that only 316 of these offenders had provided DNA samples (some under prior convictions) and SBI records indicate that approximately samples from this group were submitted for analysis in 2002. (*See technical considerations.*) Under HB 79, all 16,584 untested probationers would have been required to provide samples. Assuming that all probationers required to submit a sample would in fact submit one, we estimate that HB 79 would increase the annual number of probationers tested by approximately 15,200. In later years, the number of probationers tested will decrease slightly to 13,000 or fewer (plus two percent growth per year) as felons who were previously tested reenter the system.

The full cost to local law enforcement has not been determined. It is possible that additional trained medical personnel would be needed in order to obtain the probationer DNA samples at the county jails. Some counties do not have full-time medical staff, and may depend on the local health departments or other agencies for medical services. However, the larger, urban counties would receive the bulk of these probationers, and it is also possible that the increased workload in each county will be small enough that it can be absorbed with existing personnel. The Sheriff's Association has indicated that county sheriffs can absorb these costs.

Not Guilty by Reason of Insanity: DHHS & SBI

The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, within DHHS, operates a single statewide forensic unit at Dorothea Dix Psychiatric Hospital in Raleigh. The Division is planning to open a second forensic unit at Broughton Psychiatric Hospital in Morganton by FY 2005-06. Currently, the forensic unit at Dix Hospital houses 31 individuals who were found not guilty by reason of insanity. DHHS anticipates the number of residents to increase by 3 persons per year. This growth assumption is based on existing growth trends in the unit. Since the facilities are staffed with medical personnel, it appears that the cost to DHHS to collect and transmit DNA samples would be minimal. This note assumes that the SBI would supply collection kits and DHHS would be responsible for postage costs.

Analysis and Database Costs

The SBI crime lab is responsible for analyzing, storing, and entering DNA samples into the database. Currently, the lab sends DNA samples from convicted offenders to a private vendor, who analyzes the samples and returns them, along with an electronic copy of DNA profiles, to the lab. The SBI applies for grant funds from the National Institute of Justice annually; these funds are paid directly to the private vendor for analysis costs. The SBI lab maintains quality control by reanalyzing 5 percent of the samples. A computer analyst uploads the DNA profiles into the state and national Combined DNA Index System (CODIS).

The SBI has stated that it has little lab space remaining, and it will not be able to accommodate additional analysts in its existing, furnished lab space. If the SBI were to continue to outsource convicted felon DNA samples, it would require two molecular geneticists sworn agents, two evidence control technicians, and one computer analyst, with associated supplies, equipment, and training costs, to maintain quality control and upload the additional samples. The SBI can accommodate the required staff by renovating and equipping storage space in the lab. *See technical considerations for further discussion of lab space.*

The sworn molecular geneticists would be trained to analyze samples, confirm and process CODIS hits, and write and serve search warrants to collect suspect samples based on CODIS hits. The SBI anticipates that, with the increase in DNA profiles in CODIS, these two positions will spend the majority of their time serving search warrants and collecting new samples to confirm CODIS hits. The evidence control technicians would run most of the quality control samples. The sworn molecular geneticists will require one year of training – six months at the SBI Academy for sworn agent training and six months in the lab for DNA analysis and CODIS training. The evidence control technicians will require six months of DNA analysis training.

Overall, under SB 79 the SBI would outsource approximately 43,300 additional DNA samples in FY 2003-04 and 30,000 additional DNA samples in FY 2004-05 and subsequent years, with an eventual reduction in the number of samples due to recidivism. The small number of DNA samples from individuals found not guilty by reason of insanity could be analyzed in-house along with the quality control samples, but the SBI would need to create and maintain a separate database of those DNA profiles, which cannot be uploaded into CODIS. The total estimated SBI analysis and database cost in FY 2002-03 is a little more than \$1 million. The majority of these expenditures are nonrecurring – approximately \$755,000 would be spent on renovation, equipment, and training. Annual costs after the first year would be around \$305,000. The major expenditures are as follows:

- \$516,000 (nonrecurring) to renovate laboratory space, including a water treatment system and autoclave, and \$25,000 (recurring) to rent storage space for displaced supplies.
- \$85,000 (nonrecurring) in equipment and software to conduct quality control analyses, upload DNA profiles into CODIS, and create and maintain a small database of DNA profiles from individuals found not guilty by reason of insanity.
- Approximately \$60,000 annually, or between \$32 and \$48 per sample analyzed in-house for supplies and reagents for training (year 1), quality control, and NGRI sample analysis.
- \$220,261 in salaries and benefits for five additional SBI staff, including two sworn agents.

SOURCES OF DATA: Department of Justice, Department of Correction, NC Sheriff's Association, Administrative Office of the Courts, Department of Health and Human Services.

TECHNICAL CONSIDERATIONS:

1. In order to begin checking and uploading DNA profiles, the SBI will need to build or renovate additional lab space, hire new analysts, and provide the analysts with six months of training. The effective date of this bill is December 1, 2003, and the lab would receive samples beginning shortly thereafter. The SBI will apply to the National Institute of Justice for grant funding based on the anticipated number of DNA samples. Once the application is approved, the SBI will begin sending DNA samples to NIJ-approved private vendors for analysis. If the SBI does not have trained analysts in place when the analyzed samples are returned from the private lab, there will be an immediate backlog of DNA profiles awaiting quality control and CODIS entry.
2. There have been several bills introduced that would affect the workload of the Molecular Genetics section of the SBI lab. SB 7, SB 11, HB 27, and HB 79 (this bill) would increase the number of convicted offender samples processed. SB 13, SB 28, and HB 154 would increase the number of rape kits analyzed. In anticipation of an increase in the number of DNA analyst positions to respond to this additional workload, the Department of Justice has proposed to build a new wing onto the existing SBI lab building. Preliminary cost estimates indicate capital construction costs of \$3.6 million for an addition that would house 24 molecular geneticists and additional technical staff. If this wing were constructed, the SBI would not need to renovate the lab storage space to implement this bill. However, if the laboratory construction were approved, it would take at least one year to complete the addition, and another six months to train the new analysts.
3. The Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, as ratified on June 30, 2003, includes an appropriation for the departments of Correction and Justice to fund the expenditures outlined in this note. That appropriation is available to the departments upon the passage of legislation, such as this bill, that would expand the State's DNA database of convicted offenders.

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