

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 723 (Third Edition)

SHORT TITLE: UNC/Criminal Record Checks/Fee.-AB

SPONSOR(S): Representatives Glazier and Dickson

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND REVENUES					
Justice			Up to \$199,000 annually (see pgs. 2 - 4)		
GENERAL FUND EXPENDITURES					
Correction			Exact amount cannot be determined		
Judicial			Exact amount cannot be determined		
Justice			Up to \$202,000 annually (see pgs. 2 - 4)		
UNC			Up to \$199,000 annually (see pgs. 2 - 4)		
ADDITIONAL PRISON BEDS*			No significant impact anticipated		
POSITIONS: (cumulative)			No additional positions anticipated		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Justice; University of North Carolina System					
EFFECTIVE DATE: December 1, 2005					
<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 bill would add new G.S. 114-19.2A providing that the Department of Justice (DOJ) may provide a criminal record check to University of North Carolina (UNC) administrators concerning a person who has applied for employment or promotion in the UNC System, with the consent of the applicant. DOJ also may provide a criminal record check to UNC by fingerprint card from National Repositories of Criminal Histories, in accordance with G.S. 116-40.5A. The UNC Board of Governors would be required to adopt policies with respect to when criminal record checks will be required. It would be a Class A1 misdemeanor under this

bill to willfully furnish, supply or give false information on an employment application that is the basis for a criminal record check.

The second and third editions require that the Board of Governors adopt a policy to be applied uniformly to all constituent institutions of the University and the General Administration regarding when criminal record checks will be required and permit UNC to charge applicants for the cost of the criminal history and associated fingerprints. The third edition deletes the subsection providing that there is no liability for negligence on the part of the University, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this bill. The third edition also deletes the language permitting certain University law enforcement personnel to conduct criminal record checks to the extent permitted by law.

Source: Adapted from Bill Digest H.B. 723 (03/17/0200).

ASSUMPTIONS AND METHODOLOGY:

Department of Justice and University of North Carolina

The UNC System estimates that it could request as many as 5,266 criminal histories per year. This is the number of new employees hired in 2004. While the Department of Justice is authorized to conduct state and national background checks for the UNC System under this bill, it is unclear whether the UNC System could also request background checks from other sources (see Technical Considerations). UNC personnel have indicated that they will probably request state and national fingerprint background checks from DOJ only if the applicant has lived out of state. Otherwise, they anticipate requesting name checks through commercial vendors; some campuses already use commercial vendors for some background checks.

Costs of commercial background checks vary, and may not be permitted under this bill. If new G.S. 116-40.5A(c) in fact requires that all background checks on UNC employees be state and national fingerprint checks conducted through the Department of Justice, with the exception of those checks that UNC police can perform themselves, the following fees would apply:

NC Fingerprint Check:	\$14
<u>National Fingerprint Check:</u>	<u>\$24 (\$2 to DOJ, \$22 remitted to the FBI)</u>
Total:	\$38

The State Bureau of Investigation (SBI) in the Department of Justice conducts background checks for criminal justice and non-criminal justice agencies. For the latter group, the Department charges fees that are used to support the positions required to conduct the checks. In addition to the \$22 remitted to the Federal Bureau of Investigation for national checks, costs to the SBI per state and national check average \$16.33,¹ not including overhead or equipment. Each person in the fingerprint identification section can perform, on average, 10,000 checks per year. The number of checks anticipated by UNC would be the equivalent of one half-time position. The Department believes that this workload can be absorbed by existing personnel.

The UNC Police can access criminal history information on applicants for employment with the police department through a national name check, but they cannot share that information outside of the police department. As a law enforcement agency, UNC Police can also request state and

¹ In 2003, average cost was \$11.45 per electronic fingerprint check and \$17.95 per paper fingerprint check; approximately 25% of non-criminal justice fingerprint submissions were electronic.

national fingerprint criminal history checks on their employees from the SBI free of charge. The annual number of UNC Police applicants is unknown at this time.

In addition to the fees for criminal histories, local law enforcement agencies may charge for fingerprinting. Charges range from \$0 to \$15. The second edition of this bill permits UNC to pass the costs of criminal record checks and fingerprinting on to the applicants. In practice, UNC has indicated that it does not plan to charge applicants for either cost.

Alternative Background Check Costs: If this bill permits UNC to request other types of criminal histories or use other sources, options include (see Technical Considerations):

DOJ <i>Fingerprint</i> Checks: NC Only	\$14.00
DOJ <i>Fingerprint</i> Checks: NC and National (\$22 remitted to the FBI)	\$38.00
DOJ <i>Fingerprint</i> Checks: NC and National - UNC Police applicants	no charge
DOJ <i>Name</i> Checks	\$10.00
Clerks of Court <i>Name</i> Checks: single NC county	\$10.00
Private Vendor <i>Name</i> Checks: NC or Multi-State	varies
UNC Police <i>Name</i> Checks: UNC Police applicants only	internal cost

General – Criminal Penalties

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

As this bill would create a new Class A1 misdemeanor offense for intentionally falsifying information furnished in relation to a criminal history check performed prior to employment or promotion for selected positions within the North Carolina University System, no historical data is available to estimate the number of additional convictions that would result.

- In FY 2003-04, 24 percent of Class A1 misdemeanors resulted in active sentences and the average active sentence length was 73 days. Active sentences of less than ninety days are served in county jail, and DOC reimburses counties at a rate of \$18 per day for any sentence between thirty and ninety days in length.
- The remaining 76 percent of Class A1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because most Class A1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

As this bill would create a new Class A1 misdemeanor offense for intentionally falsifying information furnished in relation to a criminal history check concerning employment or promotion in the North Carolina University system, no historical data is available to estimate the number of additional convictions that would result. Of the additional background checks that would occur under this bill, it is not possible to estimate the number that would result in charges for intentionally falsifying information provided to conduct the criminal history check.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class A1 misdemeanor is \$3,589 per trial and \$286 per guilty plea. The trial cost includes an estimated \$2,087 in jury fees, costs of time in court, and attorney costs and an additional \$1,502 in indigent defense. Based on prior-year data, the majority of any new Class A1 misdemeanor charges that are not dismissed are likely to be settled by plea.

SOURCES OF DATA: Department of Correction, Judicial Branch, North Carolina Sentencing and Policy Advisory Commission, Office of State Budget and Management, Department of Justice, University of North Carolina

TECHNICAL CONSIDERATIONS: New G.S. 114-19.2A(a) states that DOJ *may* provide a criminal record check to UNC, and new 116-40.5A(c) states that DOJ *shall* provide a state and national criminal history of any applicant for any position that UNC has determined requires a criminal history check. It is unclear whether UNC is required under this bill to request all criminal history checks through the Department of Justice, and whether UNC must request a state and national fingerprint check on each applicant for whom a criminal history check is required. Maximum costs on the front page box assume that all checks will be state and national fingerprint checks conducted through the Department of Justice.

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DATE: June 9, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices