

(Return in triplicate)

FISCAL NOTE

577710-1991

Bill/Resolution No.: HB 1079 Amendment to: _____

Requested by Legislative Council Date of Request: 1-2-91

Please estimate the fiscal impact of the above measure for:

State general or special funds Counties Cities

In the following space note the fiscal effect in dollars of this measure:

Narrative:

Recently the Department of Corrections and Rehabilitation received a grant from the National Institute of Corrections to fund an impact analysis of SB 2332 passed by the 1989 Legislative Assembly. The impact analysis was done by Ricci Associates, a corrections consultant. It appears that the provisions of HB 1079 are very similar to the 1989 bill requiring mandatory prison terms for certain drug offenders. Therefore, this fiscal note is based upon the findings of the Ricci Associates study (attached).

It is estimated that in 1991 an additional 25-36 beds would be needed to house the additional drug offenders sentenced to the Penitentiary pursuant to HB 1079. Additional beds required in 1992 would be 31-45. Since the Penitentiary's population is close to capacity, we believe inmates sentenced to the Penitentiary pursuant to HB 1079 would need to be housed in other correctional facilities. Also, even though we are hopeful that the new replacement dorm at the State Farm will be funded, the 40 new beds there will be needed to house the general increase in the Penitentiary's population as forecasted by Ricci Associates.

State Fiscal Effect:

	<u>1991-92</u>		<u>1992-93</u>		<u>Biennium Total</u>	
	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>
\$40/day	\$438,000		\$554,800		\$992,800	
\$30/day	\$328,500		\$416,100		\$744,600	

County and City Fiscal Effect:

	<u>1991-92</u>		<u>1992-93</u>		<u>Biennium Total</u>	
	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>

If additional space is needed, attach a supplemental sheet.

Signed Elaine Little

Typed Name Elaine Little

Date Prepared: 1/7/91

Department Dept. of Corrections

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FISCAL NOTE

Bill/Resolution No.: HB 1079

Page 2

The Department of Corrections currently has contracts with some county facilities to house state inmates at \$30 per day. A number of county facilities, however, have indicated to the department that unless the per day reimbursement is increased it is not economical for them to contract to house state inmates. Therefore, this fiscal note calculates the cost of housing additional inmates sentenced to the Penitentiary pursuant to HB 1079 in county facilities at both a \$30 and \$40 per day rate. The fiscal impact shown below is based upon an average of 30 additional beds required in 1991 and 38 additional beds required in 1992.

This fiscal note does not address any costs that would be incurred by the state's court system. Also, we do not have information available to address whether there would be costs involved with the requirement that drug offenders undergo a drug addiction evaluation by an appropriate licensed addiction treatment program.

NORTH DAKOTA PRISON POPULATION ANALYSIS

4. LEGISLATIVE IMPACT ANALYSIS Impact Analysis

Findings

Projected Bedspace Requirements

<u>Year</u>	<u>Baseline Projections</u>	<u>w/Leg. Impact</u>	<u>Leg. Impact w/adjustments</u>
1990	586		
1991	596	631	619
1992	605	650	636
1993	615	666	650
1994	623	680	661
1995	633	695	675
2000	642	720	693

Note:

Bedspace projections include a 1.09 Utilization Factor.

Issues

The bedspace analysis incorporates a simulation modeling technique, which provides a mathematical calculation of bedspace requirements based on admission and length of stay criteria as established by the proposed legislation. The figures provided in the chart (2nd column) reflect this. These figures are indicative of a somewhat literal interpretation of the sentencing parameters. Other factors cannot be as readily interpreted. These have been defined as qualitative issues as opposed to quantifiable factors. Such variables have been identified and discussed with key department officials to assess their potential impact on the initial determination of bedspace needs (3rd column). These and other factors must be kept in mind when considering the overall impact of the legislation. They can be summarized as follows:

Increasing Impact

School Sale: The proposed legislation provides stringent penalties for sale of controlled substances within 1000 feet of a school. The term imposed would be consecutive to any other sentence imposed. In this regard, this piece of the legislation has the potential for increasing bedspace requirements substantially, as sentence lengths are significant (4 and 8 years, based on offense history). The impact of this offense was not factored into the bedspace analysis for several reasons. Discussion with the Attorney General's Office (Criminal Division and Drug Enforcement) indicated that incidence is extremely minimal. Secondly, it was assumed that, in reality, this clause would most likely be used as a "bargaining chip"

4. LEGISLATIVE IMPACT ANALYSIS

Impact Analysis

Issues

with defendants, and not literally imposed. Still, it must be identified as an increasing factor in the event that it is utilized.

Sale to Minor: Sale to a minor and use of minor in the sale of narcotics both carry penalties similar to above under the new legislation, but without benefit of parole. Under both situations, suspended portions (1/2) can apply. This variable was treated similar to that of school sale (discussed above).

Sentencing Practice: Analysis of existing practices indicated that, for some categories of offenses, judges currently sentence in excess of what the minimum requirement would be. When this was the case, an average sentence length was used in the calculations. The establishment of minimum terms has the potential for creating a "mindset" coming down hard on targeted drug offenders. In this regard a judicial response to the perceived public outcry for stiffer sentences may result in harsher penalties being imposed. Recognizing that judicial practices vary significantly from district to district, any change in practice could result in a cumulative need for additional beds.

Decreasing Impact

Suspended Portions: The legislation allows the judge to suspend up to one half of the mandatory minimum sentence for all first drug time offenders. If one assumes that this option would be employed for the sample of offenders who are currently receiving probation, then a resultant decrease in bedspace requirement would occur; but because length of prison stay for this population is minimal, the impact is minimal as well (+/- 10 beds).

Down-charging: This refers to the application of a formal charge on the defendant. Either at arrest, or as part of a plea-bargaining process, a charge may be reduced. Relative to the new legislation, there may be some down-charging activity as the system attempts to adjust -- of compensate -- for the new required terms. For example, this may occur in cases that are now "borderline" -- those currently showing up as relatively minor offenses (class C, first time offenders) who may later be down-graded to "possession" offenses and therefore not subject to the mandatory terms for "sale". Another example is the possible adjustment for cases who would require 10 or 20 year terms under the new legislation, but who, under current practices are receiving average terms of 1-2 years. Assuming

4. LEGISLATIVE IMPACT ANALYSIS

Impact Analysis

Issues

that even one half of these are "adjusted" by the system results in a decrease of overall beds that would be required (+/-15 beds).

Sentencing Practices: Judges would be required to impose minimum terms for certain drug offenses. However, the sentencing sample studied revealed that, for some cases, judges are currently sentencing in excess of the minimum requirement. (In these cases, the analysis incorporated the actual average term.) If judges change their orientation -- especially in those cases where historic sentences are higher -- and applied the minimum term instead, the amount of time served, on average, would decrease for those categories of offenders. Bedspace requirements would decrease accordingly.

Decreased Drug Activity: The analysis assumed a constant level of drug activity. However, tougher laws and drug education could both have a deterrent effect on drug activity in North Dakota. So could law enforcement trends, as available drug enforcement dollars fluctuate. Any or all of these factors could result in a net decrease in the system resources required.

Use of Alternatives: Judges do and will have the option to utilize county jails for sentencing purposes. Because jails must meet designated facility levels to house prisoners beyond a short term, many counties do not currently have the resources to accommodate sentenced offenders. Law Enforcement Centers in the more urban areas provide the only exception. However, some use of County Jails for offenders serving less than one year would have some impact, albeit minimal, on DOC bedspace requirements.

In summary, the impact of the proposed legislation must be evaluated both in terms of the minimum sentences that would be mandated, and qualitative system practice factors that may adjust the impact in an increasing or decreasing capacity. In this respect, bedspace requirements have been calculated literally and taking adjustment factors into account, where possible. This provides the Department of Corrections with a range covering the baseline (no new legislation) the impact (legislation imposed); and system adjustments (decreasing impact).