

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 187
SHORT TITLE: Amend Prior Record Level Calculations
SPONSOR(S): Representative Bowie

FISCAL IMPACT

Yes () No (X) No Estimate Available (X)

(in millions)

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

GENERAL FUND

Correction

No Fiscal Impact

Recurring
Nonrecurring

Judicial

No Reliable Estimate Available

Recurring
Nonrecurring

TOTAL EXPENDITURES

POSITIONS: It is anticipated that approximately 0 positions would be needed to supervise the additional inmates housed under this bill. This is based on inmate to employee ratios, provided by the Division of Prisons, for close, medium, and minimum custody facilities (These position totals include security, program, and administrative personnel.).

Close – 2 to 1
Medium – 3 to 1
Minimum – 4 to 1

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch.

EFFECTIVE DATE: December 1, 1997; applies to offenses sentenced on or after that date.

BILL SUMMARY:

AMEND PRIOR RECORD CALCULATIONS. TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATIONS TO PROVIDE THAT MULTIPLE PRIOR CONVICTIONS ARISING OUT OF SEPARATE TRANSACTIONS SHALL BE USED IN CALCULATING PRIOR RECORD LEVELS IF THOSE CONVICTIONS ARE NOT TRANSACTIONALLY RELATED OFFENSES. Amends GS 15A-1340.14(d) to provide that in determining the prior record level for felony sentencing, if the offender is convicted of more than one offense in a single session of district court, only the conviction for the offense with the highest point total is used (now, only one of such convictions may be used, but statute does not specify that highest-point conviction be used). Also provides that when offender is convicted of more than one offense in single superior court during one calendar week or in single session of district court, each such conviction may be counted separately if the offenses were not “transactionally related.”

Adds GS 15A-1340.15(c) to define “transactionally related convictions” as follows. Unless otherwise specified by court, if offender is convicted of more than one offense in single superior court during one calendar week or in single session of district court, the offenses are transactionally related. At time of conviction state may request that court find, by preponderance of evidence, that current offenses are not transactionally related. In determining whether offenses are transactionally related, court must consider whether the offenses were of similar character; based on same act or transaction; based on two or more acts of transactions connected as parts of common scheme; or committed at single time or in temporally continuous actions. Provides that any offense that threatens or results in bodily injury or death is not transactionally related. Also specifies that first- and second-degree rape and sexual offense, as well as intercourse and sexual offenses with certain victims under GS 14-27.7, are deemed to result in bodily injury for this purpose. Sentencing court’s judgment must contain its finding as to whether the multiple offenses were transactionally related.

Makes analogous changes to GS 15A-1340.21(d) and 15A-1340.22 to provide for the same treatment of transactionally related multiple prior offenses in misdemeanor sentencing.
Applies to offenses committed on or after Dec. 1, 1997.¹

ASSUMPTIONS AND METHODOLOGY:

¹ *Daily Bulletin*, Institute of Government, UNC-Chapel Hill: Vol. 1997, No. 11.

Department of Correction

The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

	<u>June 30</u> <u>1998</u>	<u>June 30</u> <u>1999</u>	<u>June 30</u> <u>2000</u>	<u>June 30</u> <u>2001</u>	<u>June 30</u> <u>2002</u>
Projected No. of Inmates Under Current Structured Sentencing Act ²	31,762	30,371	30,060	30,610	31,259
Projected No. of Prison Beds (DOC Expanded Capacity) ³	34,133	35,599	35,599	35,599	35,599
No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+2,371	+5,228	+5,539	+4,989	+4,430
No. of Projected Additional Inmates Due to this Bill	0	115	243	399	508
No. of Additional Beds Need Each Fiscal Year Due to this Bill	0	0	0	0	0

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 508 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02, based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);
2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;

² The Sentencing Commission's revised prison population projections (dated December 1996) were estimated under three scenarios: High, Best, and Low. The differences in these scenarios reflect varying assumptions on incarceration rates under Structured Sentencing, probation and revocation rates, and the decline of the stock population. The projections outlined above are included in the "Best scenario" since the Sentencing Commission and the Department of Correction believe this scenario is most likely to occur.

³ Projected number of prison beds based on Department of Correction estimates of expanded bed capacity as of 1/11/97. These numbers do not include the number of beds requested in the Governor's 1997-99 Capital Improvement budget.

3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,
4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

Note: The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

Judicial Branch

The Judicial Branch notes three areas where they may be some fiscal impact. The first area concerns how information on transactional relationships among multiple convictions will be incorporated and made accessible for prior record level point calculations. The Judicial Branch believes it may take both additional staff and more time for district attorneys to conduct manual searches of paper files to ascertain whether prior convictions were transactionally related. Instead of conducting these manual searches of paper files, the Judicial Branch would prefer to have this information in the Administrative Office of the Courts (AOC) Court Information System. However, the Information Services Division advises that to modify the current system to capture the transactional relationships among multiple convictions for a given defendant may be an expensive and time-consuming effort because the logic underlying the current system needs revising. They estimate it would require about nine months to accomplish, at a cost of \$300,000 (9 months for 3 programmers at \$60/hour), and may result in delays of other planned projects.

Secondly, the Judicial Branch cannot estimate the number of defendants who may be exposed to potentially longer sentences at the trial court level under the proposed bill. The Judicial Branch notes they do not have data of this nature, and even if they did, quantifying the specific statewide impacts of the proposal would be difficult. Because the bill carries the threat of more severe punishment, some defendants may be more likely to insist on having trials. On the other hand, district attorneys may find the issue of whether offenses are transactionally related to be a valuable bargaining tool that encourages defendants to enter guilty pleas. The Judicial Branch cannot estimate how often district attorneys would move the court to find that current offenses are not transactionally related. Whenever they make such motions, however, addressing the issue at sentencing hearings may require additional court time, for both superior and district court criminal cases. Another difficulty in making estimates is the lag time before the impacts may be felt.

A final area of potential fiscal impact involves the likelihood that certain provisions of the bill which supports more than one interpretation would generate a significant number of appeals for clarification in the appellate courts. For example, the bill does not clearly define a standard for determining whether two offenses are transactionally related. The language providing that any offense which "threatens or results in bodily injury or death" is not transactionally related is subject to a wide range of interpretations. Non-transactional determinations may be appealed, based on the judge's findings, and the more definite standard and the proper procedure may be established by the appellate courts. Again, the Judicial Branch is unable to estimate costs from such appeals to the Court of Appeals.

Reliable estimates of additional costs to the Judicial Branch cannot be determined, at this time, because of the three preceding areas which have been highlighted. Due to the lack of available data and the assumptions outlined by the Judicial Branch, Fiscal Research staff cannot reliably estimate the fiscal impact this bill will have on the Judicial Branch.

SOURCES OF DATA: Department of Correction, Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS:

The Judicial Branch notes that the proposed language of House Bill 187 is unclear as to whether an “offense that threatens or results in bodily injury or death” will be determined to be not transactionally related only upon a motion by the prosecutor or whether such an offense is defined by the bill to be not transactionally related, regardless of whether the district attorney has moved the court for a determination.

FISCAL RESEARCH DIVISION

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