

**NORTH CAROLINA GENERAL ASSEMBLY  
LEGISLATIVE FISCAL NOTE  
(INCARCERATION NOTE G.S. 120-36.7)**

**BILL NUMBER:** HB 242 1st Edition  
**SHORT TITLE:** Amend Habitual Felon Law  
**SPONSOR(S):** Representative Haire

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring (operating)</b>	\$ --	\$ 30,000	(\$ 1.3 M)	(\$ 6.1 M)	(\$ 14.3 M)
<b>Nonrecurring (construction)</b>	\$ --	(\$ 3.94 M)	(\$ 14.1 M)	(\$ 24.3 M)	(\$ 32.8 M)
<b>Judicial</b>	No substantial impact anticipated.				
<i>This bill will generate additional savings – recurring and nonrecurring – beyond the first five years. See Charts 2, 5, and 6 for details.</i>					

<b>ADDITIONAL PRISON BEDS*</b>	<b>1</b>	<b>(51)</b>	<b>(225)</b>	<b>(511)</b>
<b>POSITIONS (cumulative):</b>	<b>-</b>	<b>(20)</b>	<b>(90)</b>	<b>(204)</b>
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction (DOC); Judicial Branch				
<b>EFFECTIVE DATE:</b> December 1, 2003				
* <i>These figures are 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. See Charts 7 and 8 for the combined impact of this bill as well as other related bills introduced in the NC House. All five bills were based on alternatives included in the May 2002 Sentencing Commission report.</i>				

**BILL SUMMARY:** HB 242 amends G.S. 14-7.6, which addresses the sentencing of habitual felons. Under current law, a habitual felon is sentenced as a Class C felon, unless he is sentenced at a higher class (A, B1 or B2). This bill would change that law so that the felon would be sentenced three classes higher than the principal current felony, but not higher than Class C. (Thus, if the current conviction principal felony is Class G, H, or I, a habitual felon would be sentenced as a Class D, E, or F felon respectively, rather than the current Class C.) It also provides that, notwithstanding the sentencing dispositions available under structured sentencing, the felon shall be sentenced to an active sentence, rather than an intermediate or community penalty.

**ASSUMPTIONS AND METHODOLOGY:**

**Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) 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.

The AOC anticipates less workload in some cases due to this bill, but cannot quantify the amount.

**Department of Correction**

The box on the front page shows a net savings from HB 242 each year. *It is important to note that while the operating savings from this bill are moderate in the first few years, operating savings increase dramatically after the first five years.* This is a result of current law, where the estimated time served for habitual felons is 101 months (8.4 years). Under HB 242, the average estimated time served would be 68.2 months (5.7 years). Based on the average estimated time served, the majority of the impact would not begin until approximately the fifth year of the sentencing commission projection (2008-2009). Because some offenders receive sentences lower than the average, there would be some savings prior to 2008-2009. Additionally, the increase of one prison bed projected for FY 2004-2005 (with operating costs equal to \$30,000) may be a theoretical impact. This is due to the way the prison population is projected in the NC Sentencing and Policy Advisory Commission's prison bed projection model. However, this theoretical impact is slight compared to the actual bed savings the model projects for subsequent years.

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. 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.* That means the number of beds needed is always equal to the projected additional inmates due to a bill. Row 4 in the chart shows the impact of this specific bill, HB 242. Row 5 shows the remaining bed deficit if HB 242 was ratified. As shown in bold in the chart below, the Sentencing Commission estimates **this specific legislation will reduce the number of inmates in the prison system by 511 inmates by the end of FY 2007-08.**

<b>CHART 1</b>	<b>June 30 <u>2004</u></b>	<b>June 30 <u>2005</u></b>	<b>June 30 <u>2006</u></b>	<b>June 30 <u>2007</u></b>	<b>June 30 <u>2008</u></b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>1</sup>	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>2</sup>	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,290	-2,058	-3,010	-3,958	-4,828
<b>4. No. of Projected Additional or Fewer Inmates/Beds Due to this Bill<sup>3</sup> (Cumulative)</b>		<b>1</b>	<b>-51</b>	<b>-225</b>	<b>-511</b>
<b>5. Bed Deficit With Ratification of HB 242 (Cumulative)</b>		<b>-2,059</b>	<b>-2,959</b>	<b>-3,733</b>	<b>-4,317</b>

<sup>1</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

<sup>2</sup> Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.**

<sup>3</sup> Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

**POSITIONS:** It is anticipated that approximately 204 fewer positions would be needed to supervise inmates because of the reduced number of inmates to be housed under this bill by the end of FY 2007-08. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

**PRISON BED COST SAVINGS:** The cumulative effect of HB 242 is to reduce the number of prison beds needed by 511 beds by FY 2011-12. (There is a projected cumulative reduction of 1,763 beds by the end of FY 2014.)

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal notes look at the impact of a bill through the year 2008. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill. **As shown below, this bill would reduce the number of new beds needed by 1,572 beds by FY 2011-12. This reduction is sizable enough to impact the number of prisons constructed, and is shown in the box on the first page as a reduction in nonrecurring Correction expenditures due to foregone construction costs.**

<b>CHART 2</b>	<b>First 5 Years 2003-2008</b>	<b>Next 4 Years 2008-2012</b>	<b>TOTAL 2003-2012</b>
Reduction in Inmates Due to This Bill	(511)	(1,061)	(1,572)
Available Beds	(4,828)	(2,856)	(7,684)
Available Beds with HB 242	(4,317)	(1,795)	(6,112)
<b>Beds Saved</b>	<b>511</b>	<b>1,061</b>	<b>1,572</b>

**DISTRIBUTION OF BEDS:** After analyzing the proposed legislation, the Department of Correction estimates that the bed savings under this bill will be distributed over the three custody levels as follows:

- 21% Close Custody
- 69% Medium Custody
- 10% Minimum Custody

**CONSTRUCTION:** Construction costs for new prison beds, as listed in the following chart, are based on estimated 2002-03 costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.

<b>CHART 3</b>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
<u>Custody Level</u>			
Construction Cost Per Bed 2002-03	\$38,595	\$73,494	\$85,444

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on page one of this note. These costs assume that funds to construct prison beds should be budgeted in advance. Based on previous prison construction projects, we are assuming it will typically require three years for planning, design and construction of new beds. For this bill, the reduction in inmates means that the State will not need as many new prisons as quickly. For this reason, the box on page one shows a reduction in nonrecurring expenditures due to foregone construction costs. That reduction is due to a projected decrease in the need for prison beds by 1,200 beds by June 30, 2010:

- 51 beds saved in 2005-06 (construction beginning in 2003-04)
- 174 beds saved in 2006-07 (construction beginning in 2004-05)
- 286 beds saved in 2007-08 (construction beginning in 2005-06)
- 367 beds saved in 2008-09 (construction beginning in 2006-07)
- 322 beds saved in 2009-10 (construction beginning in 2007-08)

Chart 5 below illustrates the savings due to the reduction in prison beds. Beyond the five-year horizon shown in the box on the front page and in Chart 5, an additional 144 beds will be saved in FY 2011-12, and later years will see further reductions in prison beds needed. The State can therefore postpone construction of these beds.

**OPERATING:** Operating costs are based on actual 2001-02 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate will be added each year to the base costs for FY 2002 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

**Daily Inmate Operating Cost 2001-02**

**CHART 4**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2000-01)	\$50.04	\$65.17	\$80.19	\$62.43

## CHART 5

### Savings in Prison Operating & Construction Expenditures from HB 242: 5-year Outlook

	2003-04	2004-05	2005-06	2006-07	2007-08
<b>Total Operating Expenditures: All prison beds needed</b>					
Current Statutes/					
Status Quo*	\$ 892.7 M	\$ 943.47 M	\$ 996.9 M	\$ 1,052.6 M	\$ 1,108.6 M
HB 242	\$ 892.7 M	\$ 943.50 M	\$ 995.6 M	\$ 1,046.5 M	\$ 1,094.3 M
<i>Net Savings**</i>	\$ -	\$ 30,000	(\$ 1.3 M)	(\$ 6.1 M)	(\$ 14.3 M)
<b>Total Construction Expenditures: All prison beds needed***</b>					
Current Statutes/					
Status Quo*	\$ 232.3 M	\$ 76.8 M	\$ 74.0 M	\$ 70.4 M	\$ 67.8 M
HB 242	\$228.3 M	\$ 62.7 M	\$ 49.7 M	\$ 37.6 M	\$ 37.6 M
<i>Net Savings**</i>	(\$ 3.94 M)	(\$ 14.10 M)	(\$ 24.3 M)	(\$ 32.8 M)	(\$ 30.2 M)
<b>Total Savings**</b>	(\$ 3.94 M)	(\$ 14.1 M)	(\$ 25.7 M)	(\$ 38.9 M)	(\$ 44.5 M)
<b>Cum. Savings**</b>	(\$ 3.94 M)	(\$ 18.0 M)	(\$ 43.7 M)	(\$ 82.6 M)	(\$ 127.1 M)

\* Refers to the projected prison population under the status quo

\*\*Figures in ( ) are savings. Figures not in parentheses are costs.

\*\*\* Uses medium custody construction costs based on DOC's projected distribution of beds. Construction costs in each fiscal year reflect beds that will be needed three years later.

## CHART 6

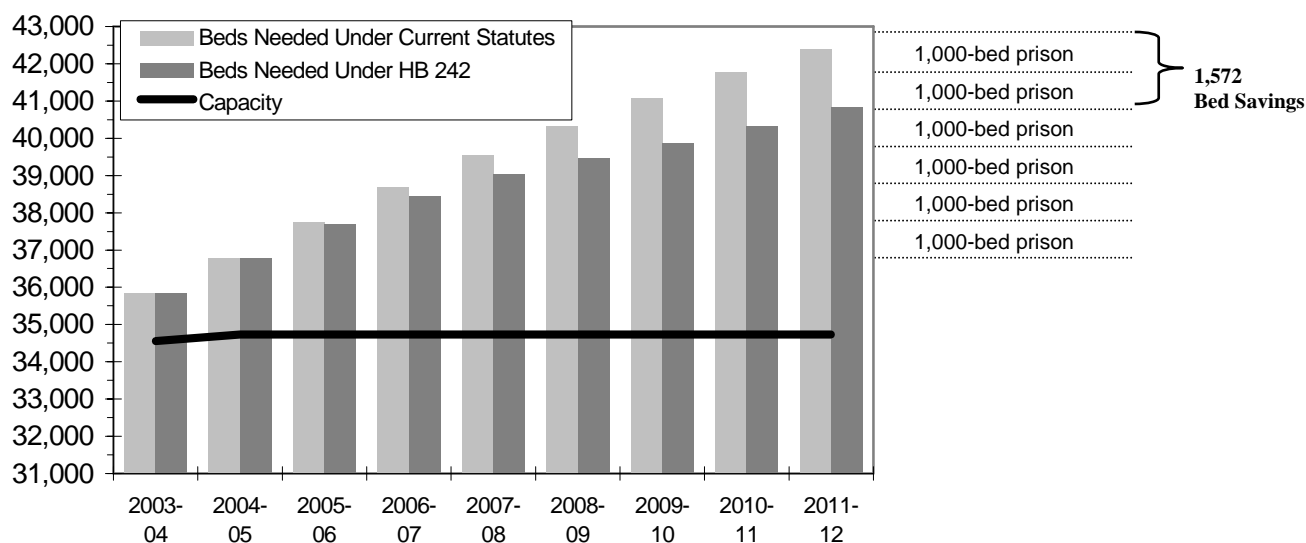


Chart 6 (above) illustrates the long-term savings in beds with HB 242. “Beds needed under current statutes” refers to the projected prison population under the status quo. “Beds needed under HB 242” refers to the number of beds constructed if HB 242 is ratified. “Capacity” is the total number of beds available (34,729) once the three new prisons authorized in 2001 are complete. **The cumulative effect is to save the need for 1,572 beds by 2012.**

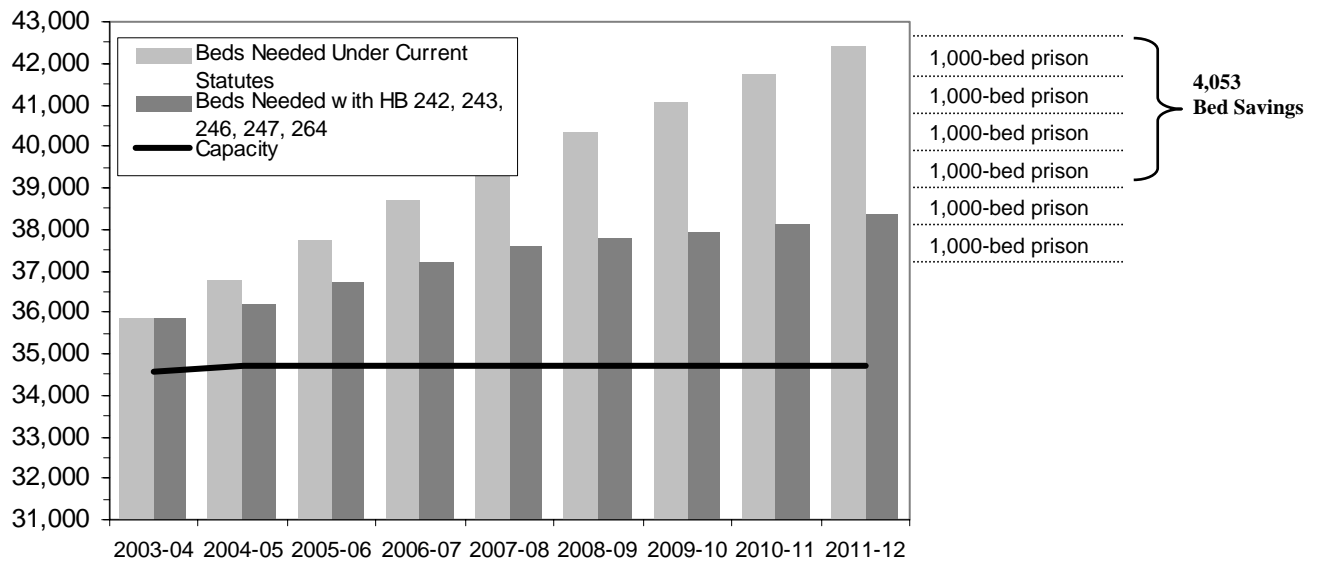
With current costs and projections, by 2011-12, the State will save \$176.1 million, cumulative, in operating costs. The State will have saved \$144.23 million, cumulative, in foregone construction costs by 2009-10 (projections for construction costs cannot extend beyond 2009-10).

### **Combined Impact of HB 242 and Other Related Bills Introduced in the NC House in 2003**

In addition to HB 242, four other bills introduced in the North Carolina Senate address the NC Sentencing and Policy Advisory Commission alternatives for slowing prison population growth consistent with the principles of structured sentencing and public safety. These bills are HB 243 (Reclassify Statutory Rape/Sex Offense), HB 246 (Adjust B1-E Felony Penalties), HB 247 (Prior Criminal Record Points) and HB 264 (Sentence Lengths). Because the sentencing provisions of these bills interact, the combined impact of the five bills is different from the sum of their individual impact. **The combined impact of HB 242, HB 243, HB 246, HB 247, and HB 264 is to save 4,053 prison beds by 2011-2012.** Chart 7 displays the combined impact of the House bills.

#### **CHART 7**

The cumulative effect of the combined bills is to save the need for 4,053 prison beds by 2011-2012. With current costs and projections, by 2011-2012, the State will have saved \$543 million, cumulative, in operating costs. The State will have saved \$361.37 million, cumulative, in forgone construction costs by 2009-2010 (projections for construction costs cannot extend beyond 2009-2010 – See Chart 8).



## CHART 8

### Combined Prison Savings

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
<b>Prison Beds Saved (Cumulative)</b>	-	-594	-1,003	-1,454	-1,976	-2,562	-3,137	-3,633	-4,053
<b>Positions Saved (Cumulative)</b>	-	-238	-401	-582	-790	-1,025	-1,255	-1,453	-1,621
<b>Operating Expenditures Saved if HB 242, 243, 246, 247, and 264 are Ratified (Mil)</b>	-	(\$15.23)	(\$26.5)	(\$39.6)	(\$55.4)	(\$74.0)	(\$93.3)	(\$111.3)	(\$127.8)
<b>Construction Expenditures* Saved if HB 242, 243, 246, 247, and 264 are Ratified (Mil)</b>	(\$77.4)	(\$36.5)	(\$44.4)	(\$52.3)	(\$53.9)	(\$48.9)	(\$47.9)	Unable to project**	Unable to project**

\* Uses medium custody construction costs based on DOC's projected distribution of beds. Construction costs in each fiscal year reflect beds that will be needed three years later.

\*\*Unable to project construction expenditures; prison population projections are only available through 2011-2012.

### Methodology

Operating costs were calculated by multiplying the statewide average operating cost, adjusted for inflation, by the number of beds added to the prison system each year by the bill(s). Negative operating costs reflect a reduction in the number of beds needed due to the bill(s).

Based on current prison population projections, the State will need to construct an additional 3,010 beds by FY 2005-06. Assuming that beds take three years to construct, construction expenditures for these beds would be budgeted in FY 2003-04. Because these bills reduce the prison population by 2005-06, the State will be able to begin construction of fewer beds in 2003-04. Beyond FY 2006-07, current projections indicate that the State will need to construct more than 400 new beds each year. Foregone construction expenditures were calculated by multiplying the cost of constructing a medium custody bed, adjusted for inflation, times the number of beds that would not be needed due to this bill. Construction *savings* each year reflect the reduction in beds needed three years later.



**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

**TECHNICAL CONSIDERATIONS:** None

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