

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

**BILL NUMBER:** HB 243 1st Edition (CORRECTED COPY)  
**SHORT TITLE:** Reclassify Statutory Rape/Sex Offenses - AB  
**SPONSOR(S):** Representative Haire

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<u><b>FY 2003-04</b></u>	<u><b>FY 2004-05</b></u>	<u><b>FY 2005-06</b></u>	<u><b>FY 2006-07</b></u>	<u><b>FY 2007-08</b></u>
<b>GENERAL FUND</b> <i>Note: ( ) denotes savings</i>					
<b>Correction</b>					
<b>Recurring<sup>1</sup></b>					
<b>(operating)</b>	--	(\$50,000)	(\$200,000)	(\$300,000)	(\$500,000)
<b>Judicial</b>					
<b>Recurring</b>		No substantial impact anticipated.			
<b>ADDITIONAL PRISON BEDS (cumulative)*</b>	--	(2)	(8)	(12)	(17)
<b>POSITIONS: (cumulative)</b>	--	(1)	(3)	(5)	(7)
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction (DOC); Judicial Branch					
<b>EFFECTIVE DATE:</b> December 1, 2003					
<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. See Charts 5 and 6 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>					

<sup>1</sup> Money amounts in the original incarceration note were incorrect due to a typographical error.

## **BILL SUMMARY:**

This bill would amend G.S. 14-27.7A(b) to reclassify statutory rape or sexual offense of a victim 13, 14, or 15 years of age, for cases in which the offender is more than four but less than six years older than the victim. In these cases, the offense would be a Class F felony, rather than a Class C felony. The Sentencing Commission believes that most of these cases involve teenagers engaging in consensual relationships.

## **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.

AOC data indicates that during calendar year 2002, 170 defendants were charged and 8 were convicted of statutory rape. Of 182 cases disposed in Superior Court, the vast majority of convictions were by guilty plea (48 to statutory rape or a lesser offense) with only one trial. Because the bill would reduce the punishment for statutory rape, the AOC does not anticipate that this bill will have a substantial impact on court costs.

### **Department of Correction**

The chart on the next page (Chart 1) 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. **The negative figures for additional inmates and beds needed in Year 5 (FY 2007-08) of the projection and later years reflect a long-term reduction in the number of beds needed due to this bill.**

Rows 4 and 5 in Chart 1 show the impact of this specific bill, HB 243. **As shown in bold in the chart, the Sentencing Commission estimates this specific legislation will reduce the inmate population in the prison system by 17 inmates by the end of FY 2007-08.**

<b>CHART 1</b>	<b>June 30 2004</b>	<b>June 30 2005</b>	<b>June 30 2006</b>	<b>June 30 2007</b>	<b>June 30 2008</b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>2</sup>	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>3</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>4</sup> (Cumulative)</b>		<b>-2</b>	<b>-8</b>	<b>-12</b>	<b>-17</b>
5. Bed Deficit With Ratification of HB 243 (Cumulative)		-2056	-3002	-3,946	-4,811

**POSITIONS:** It is anticipated that approximately 7 positions would be needed to supervise the additional inmates housed under this bill by 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 243 is to reduce the number of prison beds needed by 24 by FY 2011-2012. (There is a projected cumulative reduction of 25 beds by FY 2013-2014.)

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal Notes look at the impact of a bill for five years. 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**

<sup>2</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>3</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>4</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.

by 24 beds by FY 2011-12. This reduction is not sizable enough to impact the number of prisons constructed; thus, only reductions in operating costs are shown in the box on the first page.

<b>CHART 2</b>	<b>First 5 Years 2003-2008</b>	<b>Next 4 Years 2008-2012</b>	<b>9-Year Horizon 2003-2012</b>
Reduction in Inmates Due to This Bill	(17)	(7)	(24)
Available Beds	(4,828)	(2,856)	(6,205)
Available Beds with HB 253	(4,811)	(2,849)	(6,181)
<b>Beds Saved</b>	<b>17</b>	<b>7</b>	<b>24</b>
<b>Positions Saved</b>	<b>7</b>	<b>3</b>	<b>10</b>

**DISTRIBUTION OF BEDS:** After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

- 21% Close Custody
- 63% Medium Custody
- 17% 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.

**CHART 3: Construction Cost Per Bed 2002-2003**

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

**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 1.

**CHART 4: Daily Inmate Operating Cost 2001-02**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2001-02)	\$50.04	\$65.17	\$80.19	\$62.43

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2004 and 2005, this assumes that Correction cannot build prisons quickly enough to house additional offenders before 2005-06 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

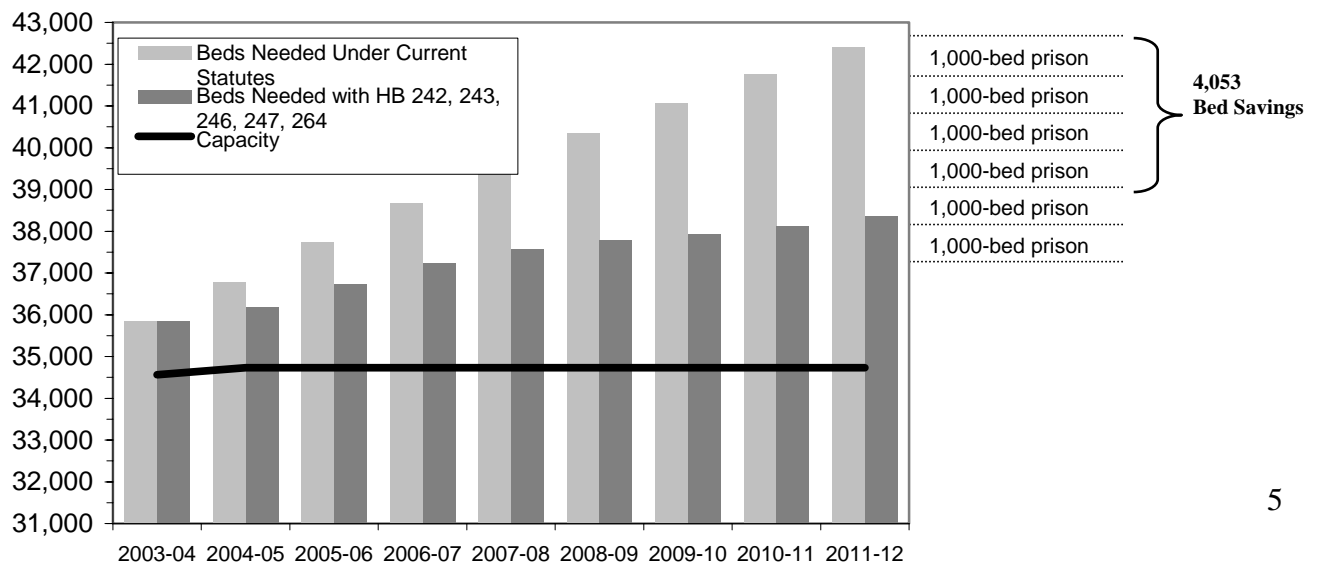
The cumulative effect is to save the need for 24 beds by 2012. With current costs and projections, by 2011-12 the State will have saved \$3.9 million, cumulative, in operating costs.

**Combined Impact of HB 243 and Other Related Bills Introduced in the NC House in 2003**

In addition to HB 243, 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 242 (Amend Habitual Felon Law), HB 246 (Adjust B1-E Felony Penalties), HB 247 (Restructure 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 the house bills. **(Please note that the impact of HB 243 is much smaller than the impact of the other four bills introduced in the House.)**

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 6).

**CHART 5**



**CHART 6**

**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)	(\$36.54)	(\$44.4)	(\$52.3)	(\$53.9)	(\$48.85)	(\$47.89)	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

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Jim Mills, Chloe Gossage, and Nicole Kreiser

**APPROVED BY:** James D. Johnson, Director, Fiscal Research Division

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