

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

**BILL NUMBER:**       —SB 140 —1st Edition

**SHORT TITLE:**       Protection of Historic Monuments

**SPONSOR(S):**       Senator Horton

<b>FISCAL IMPACT</b>					
	Yes ( <u>X</u> -)	No ( )	No Estimate Available ( )		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring</b>	<u>Unable to determine exact amount; no substantial impact anticipated.</u>				
<b>Nonrecurring</b>					
<b>Judicial</b>					
<b>Recurring</b>	<u>Unable to determine exact amount; no substantial impact anticipated.</u>				
<b>Nonrecurring</b>					
<b>TOTAL</b>	<u>Unable to determine exact amount; no substantial impact anticipated.</u> <b>0</b>				
<b>EXPENDITURES:</b>	<b>0</b>				
	<b>0</b>				
	<b>0</b>				
	<b>0</b>				
<b>ADDITIONAL PRISON BEDS*</b>	<u>It is likely that misdemeanants sentenced under this bill would be housed in local jails because only A1 offenders falling in Prior Record Level III received active sentences that might be served in the state prison system.</u>				
<b>POSITIONS:</b> (cumulative)	<u>Unable to determine exact amount; additional positions not anticipated.</u>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; <u>Local Jails</u>					
<b>EFFECTIVE DATE:</b> <u>December 1, 2003</u>					

*\*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.*

**BILL SUMMARY:** The bill would add a new section to Chapter 121 of the General Statutes providing for the protection of historic monuments and materials located on public property of the State of North Carolina or any of its subdivisions. Persons relocating, removing, disturbing, or altering a monument, memorial, plaque, marker, or historic flag commemorating events, veterans, or persons of North Carolina history on public property of the State or any of its political subdivisions without the approval of the General Assembly, the North Carolina Historical Commission, or the public or private body responsible for the protection and preservation of such monuments are guilty of a Class A1 misdemeanor. The bill also makes it a Class A1 misdemeanor to deface historic monuments located on public property of the State or any of its subdivisions.

## ASSUMPTIONS AND METHODOLOGY:

### Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos 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. 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. The number of beds needed will always be equal to the projected number of inmates due to a bill.

Because the proposed bill creates a new offense, the Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill. However, data is available concerning the number of convictions for violations of G.S. 14-132 (writing or scribbling, marking, defacing, besmearing, or injuring the walls of a public building or facility, or any statute or monument situated in any public place). In FY 2001-2002, there were 14 convictions for violations of G.S. 14-132 (a Class 2 misdemeanor). Of the 14 convictions, 12 offenders were sentenced to community punishment and two received an active sentence. If any of these convictions were for defacing or for moving or altering monuments that commemorate North Carolina history, these convictions would be subject to the enhanced penalty of a Class A1 misdemeanor.

While offenders for both Class 2 and Class A1 misdemeanors are housed in county jails (offenders serving sentences of 90 days are housed in county jails), the enhanced penalty would result in the Department of Correction having to compensate local jails housing inmates serving active sentences. In FY 2001-2002, 20% of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served was 55.1 days. In contrast, 13 percent of Class 2 misdemeanor convictions for non-traffic offenses resulted in active sentences. The estimated time served was 15.1 days. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days). Convictions that increase Class 2 misdemeanors to Class A1 misdemeanors will result in longer active sentences served in local jails, but paid for by the State at a cost of \$18/day per inmate. Because offenders serving active sentences of 90 days or less are housed in county jails, convictions under this bill would not be expected to have a significant impact on the prison population. 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 (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add \_\_\_ inmates to the prison system by the end of FY 2007-08.

	<b>June 30</b> <b>2004</b>	<b>June 30</b> <b>2005</b>	<b>June 30</b> <b>2006</b>	<b>June 30</b> <b>2007</b>	<b>June 30</b> <b>2008</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
4. No. of Projected Additional Inmates Due to this Bill <sup>3</sup>					
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill <sup>3</sup>					

<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 \_\_\_ 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.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal Notes look at the impact of a bill through the year FY 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 each year.

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

- \_\_\_\_\_ Close Custody \_\_\_\_\_
- \_\_\_\_\_ Medium Custody \_\_\_\_\_
- \_\_\_\_\_ 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.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2002-0203	\$38,595	\$73,494	\$85,444

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on Page 1 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.

**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.

**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 is based on the assumption 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.~~

## ~~ASSUMPTIONS AND METHODOLOGY:~~

### **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.

Current G.S. 14-132 provides that it is a Class 2 misdemeanor to write or scribble on, mark, deface, besmear, or injure the walls of a public building or facility, or any statue or monument situated in any public place, including a place that is owned or controlled by the State or any of its subdivisions. This bill in effect would enhance the penalty for defacing monuments that commemorate North Carolina history to a Class A1 misdemeanor. Generally an increase in penalty would be accompanied by a more rigorous defense and prosecution, and could result in increased court time and costs to dispose of cases.

AOC data for calendar year 2002 indicate that 75 defendants were charged under G.S. 14-132 for defacing a public building. However, AOC is unable to determine how many of these charges, if any, involved a historic monument located on State property. AOC does not expect a significant increase in the number of charges for defacing as a result of this bill since the defacing of any monument (historic or otherwise) located on State property is already prohibited under current law. In addition, AOC does not anticipate additional charges for acts of relocating, removing, disturbing, or altering a monument on State property, as they would result in some charge under current law.

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

## **TECHNICAL CONSIDERATIONS:**

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

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