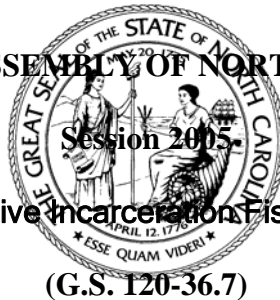


GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

REVISED

**BILL NUMBER:** House Bill 1215 (Second Edition)

**SHORT TITLE:** Adjust B1 - E Felony Penalties.

**SPONSOR(S):** Representative Haire

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>
<b>GENERAL FUND</b>					
<b>Correction*</b>					
<b>Recurring</b>					
Prisons (operating)	-	\$ 912,068	\$ (2.07 M)	\$ (4.68 M)	\$ (6.91 M)
Community Correction	-	-	\$ 282,164	\$ 748,212	\$ 748,212
<b>Nonrecurring</b>					
Prisons (construction)	\$ (9.28 M)	\$ (5.79 M)	\$ (4.30 M)	\$ (6.74 M)	\$ (7.47 M)
Community Correction	-	-	\$ 27,568	\$ 32,162	-
<b>Judicial</b>	Exact amount cannot be determined; minor impact anticipated.				
<b>PRISON BEDS ADDED (SAVED) [cumulative]:</b>	-	39	(75)	(168)	(241)
<b>POSITIONS ADDED (SAVED) [cumulative]:</b>					
Prisons	-	16	(30)	(67)	(96)
Community Correction	-	-	6	14	14
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> December 1, 2006.					
* <i>H.B. 1215 would generate prison savings beginning in FY 2006-07, due to foregone construction costs; savings due to foregone operating costs would begin in FY 2008-09. Projected savings are denoted by parentheses.*</i>					
<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.</i>					

**BILL SUMMARY:** H.B. 1215 would reallocate three months from the minimum sentences for felony offense classes B1 through E to the maximum sentences, for the purpose of increasing the period of imprisonment following revocation of post-release supervision from nine months to twelve months. It would also lengthen the period of post-release supervision (Classes B1 through E felons) from nine months to twelve months.

Offenders in felony offense classes B1 through E comprise the majority of those convicted for violent crimes, and who therefore receive longer active sentences. In general, this proposal would transfer three months from the current active sentence requirements for these classes to the accompanying mandatory period of post-release supervision, thereby shortening the period of active imprisonment and lengthening the period of post-release supervision for offenses committed on or after December 1, 2006. It does not alter offense classes, nor does it alter the types of punishment prescribed under the structured sentencing grid (active or intermediate punishment).

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Correction – Division of Prisons**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill that could impact the State's incarcerated population. Based on these projections, the Department of Correction estimates the bill's impact on inmate custody levels.

The net effect of this proposed reallocation, by shortening active sentences and lengthening post-release supervision, is to reduce the prison population over future years, since more of an offender's sentence will be served under community supervision. However, increasing the period of imprisonment upon revocation from nine months to 12 months could increase the prison population in the short term. Accordingly, *it is projected that H.B. 1215 would increase prison operating and construction costs in the short-term, but would result in net savings over future years by reducing the inmate population and need for additional prison beds* (see fiscal impact table, p.1).<sup>1</sup>

Table I (see p.3) compares the projected inmate population to the available prison bed capacity system-wide to demonstrate the estimated impact of H.B.1215. 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 or beyond.*

Rows four and five in the chart show the impact of this specific bill. As shown in bold, the Sentencing Commission estimates that *this specific legislation will reduce the inmate population by approximately **241** persons, by the end of FY 2010-11. The cumulative effect of H.B. 1215 is to reduce the population, and number of beds required, by **437** inmates, as of FY 2013-14.*

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<sup>1</sup> For H.B. 1215, the Commission assumed no deterrent or incapacitative effects as a result, nor did it assume any change in judicial or prosecutorial behavior. Given an effective date of December 1, 2006, and the time elapsed between when an offense is committed and an offender is sentenced, FY 2007-08 was assumed as the first full year of implementation. Projections were based on preliminary post-release supervision and revocation data from the Department of Correction, assuming the same revocation rate as experienced in FY 2004-05.

**TABLE I. PROJECTED IMPACT ON PRISON POPULATION**

	<b>June 30 <u>2007</u></b>	<b>June 30 <u>2008</u></b>	<b>June 30 <u>2009</u></b>	<b>June 30 <u>2010</u></b>	<b>June 30 <u>2011</u></b>
1. Projected # of Inmates Inmates Under Current Structured Sentencing Act <sup>2</sup>	38,616	39,114	39,674	40,444	41,276
2. Projected # of Prison Beds (DOC Expanded Capacity) <sup>3</sup>	37,973	38,869	38,869	38,869	38,869
3. Projected # of Beds Under Capacity (Current Structured Sentencing Act)	-643	-245	-805	-1,575	-2,407
<b>4. Estimated # Additional/or Fewer Inmates <u>Due to this Bill</u> <sup>4</sup></b>		<b>39</b>	<b>-75</b>	<b>-168</b>	<b>-241</b>
<b>5. Projected Bed Deficit with Ratification of H.B. 1215</b>	<b>-643</b>	<b>-284</b>	<b>-730</b>	<b>-1407</b>	<b>-2166</b>

**Positions:** It is anticipated that approximately **96** fewer positions would be needed by FY 2010-11, due to the projected reduction in inmate population. This figure includes security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. The ratio is the combined average for the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

**Incarceration Impact, Beyond Five Years:** Table II depicts the projected number of available beds, reduction in inmates, beds saved, positions saved, and net savings as result of H.B. 1215. The reduction is represented in the fiscal impact table (see p.1) as foregone expenditures for the Department of Correction.

**TABLE II. IMPACT BEYOND FIVE YEAR HORIZON**

	<b>First 5 Years (FY 2007 – FY 2011)</b>	<b>Next 3 Years (FY 2012 – FY 2014)</b>	<b>8-Year Horizon (FY 2007 – FY 2014)</b>
Projected Number of Available Beds	-2,407	-2,620	-5,027
Reduction in Inmates Due to H.B. 1215	241	196	437
Available Beds with H.B. 1215	-2,166	-2,424	-4,590
<i>Beds Saved</i>	<b>241</b>	<b>196</b>	<b>437</b>
<i>Positions Saved</i>	<b>96</b>	<b>78</b>	<b>174</b>
<b>Projected Net Savings</b> <i>(foregone operating and construction costs)</i>	<b>\$ 46.33 M</b>	<b>\$ 51.41 M</b>	<b>\$ 97.74 M</b>

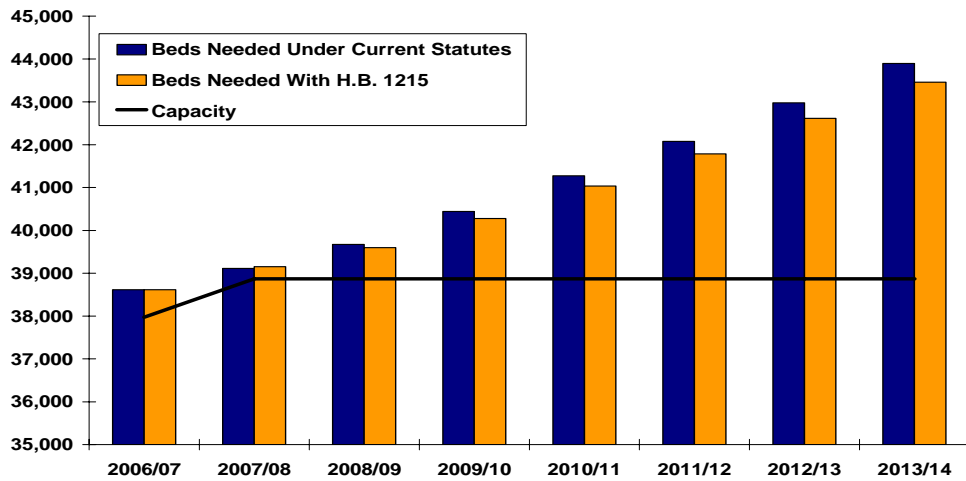
<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2006 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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, under construction, or authorized for construction as of December 19, 2005. The number of beds is based on operation at Expanded Operating Capacity (EOC).

<sup>4</sup> Figure is derived from Sentencing Commission projections and DOC estimates by custody level. DOC estimates vary slightly from Sentencing Commission projections due to rounding.

Chart I illustrates projected long-term bed savings under H.B. 1215. “Beds needed under current statutes” depicts the projected prison population, whereas “Beds needed with H.B. 1215” demonstrates the revised projection if H.B. 1215 is enacted. “Capacity” is the total number of beds available, including those provided by three new, 1,000 bed prisons: Maury (FY 06), Bertie (FY 07), and Columbus (FY 08). *As is shown, the cumulative effect of H.B. 1215 is to reduce bed requirements by 437 beds, as of FY 2013-14. Based on these projections and estimated costs, the State would forego approximately \$46.15 million, cumulative, in operating costs by FY 2014; and, approximately \$51.60 million, cumulative, in construction costs by FY 2014.*

**CHART I. BED NEEDS: CURRENT STRUCTURED SENTENCING VS. H.B. 1215**



**Distribution of Beds:** After analyzing the proposed legislation, the Department of Correction estimates that cumulative bed savings (as of FY 2014) resulting from H.B. 1215 would be distributed over the three custody levels as follows:

- 17% Close Custody
- 62% Medium Custody
- 21% Minimum Custody

**Construction:** Construction costs for new prison beds are based on estimated FY 2005-06 costs for each custody level, as provided by the Department of Correction and shown in Table III. The cost figures are the midpoint of the estimated cost range. An inflation rate of eight percent (8%) per year is applied to future years (Office of State Construction March 24, 2006). Cost figures assume: (1) stand-alone facilities built for expanded operating capacity; (2) single cells for close custody prisons; and, (3) dormitories for medium and minimum custody.

**TABLE III. CONSTRUCTION COSTS BY CUSTODY LEVEL**

	Minimum	Medium	Close
Construction Cost Per Bed (FY 2005-06)	\$56,500	\$60,500	\$104,500

Construction costs are calculated by multiplying projected annual bed needs for each custody level (with respect to prior year needs) by the corresponding construction costs for those custody levels, adjusting for inflation.<sup>5</sup> Where applicable, construction costs are shown as non-recurring costs in the *fiscal impact table on the first page* of this note. These costs assume that funds to construct prison beds should be budgeted three years in advance, since building a prison typically requires three years for planning, design, and construction.

Because the net effect of H.B. 1215 would reduce the number of inmates and prison beds required, the State would not need as many new prisons, or need them as quickly, as in the absence of this sentencing change. The fiscal impact table (p.1) illustrates this effect as a reduction in nonrecurring expenditures. The reduction in bed need over the five year fiscal note horizon is as follows:

- Foregone construction in 2006-07: 129 beds (net savings, FY 2008 - FY 2010)
- Foregone construction in 2007-08: 73 beds (FY 2011)
- Foregone construction in 2008-09: 49 beds (FY 2012)
- Foregone construction in 2009-10: 72 beds (FY 2013)
- Foregone construction in 2010-11: 75 beds (FY 2014)

**Operating:** Operating costs are based on actual FY 2004-05 costs for each custody level, as provided by the Department of Correction and shown in Table IV. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent annual inflation rate is assumed. The fiscal impact table (p.1) illustrates the projected reduction in recurring expenditures due to foregone operating costs. As with construction costs, operating costs are calculated by multiplying the projected annual bed needs (cumulative) for each custody level by the corresponding operating costs for those custody levels, adjusting for inflation.<sup>6</sup>

**TABLE IV. OPERATING COSTS BY CUSTODY LEVEL**

	<b>Minimum</b>	<b>Medium</b>	<b>Close</b>
Daily Cost Per Inmate (FY 2004-05)	\$51.25	\$68.90	\$74.52

**Department of Correction – Division of Community Corrections**

Increasing the mandatory period of post-release supervision from nine months to 12 months would increase the post-release supervision population and require additional resources to accommodate supervision needs. This lengthened period of supervision would apply only to offenders who commit offenses on or after December 1, 2006.

<sup>5</sup> For example, the DOC estimates that in FY 2011, seventeen (17) fewer minimum custody beds will be required, relative to FY 2010. Adjusting for inflation, foregone construction costs for this reduced need would total approximately \$1.12 million for FY 2008.

<sup>6</sup> For example, the DOC estimates that by FY 2011, 53 fewer minimum custody beds will be required. Adjusting for inflation, foregone operating costs for this reduced need would total approximately \$1.18 million for FY 2011.

On average, approximately six months elapses between the date of an offense and the date an offender is sentenced and placed in the custody of the Department of Correction. *Based on the 20 month minimum sentence (presumptive range) for a Class E felon with no prior record points, H.B. 1215 would begin to impact the post-release population in FY 2009.* However, current sentencing practice suggests that most of the impact would occur over later years. With the exception of some sentences in the mitigated range, felons convicted of Class D or higher offenses would not be affected until FY 2011, at the earliest; Class B1 felons would not be affected until FY 2021.

The following table shows both the projected increase in the post-release population and the estimated resource needs due to HB 1215. The primary basis for these figures are DCC projections and cost estimates. FRD adjusted the projections and costs for FY 2008-09 to reflect our estimate of slower population growth in FY 2008-09. FRD also allocated non-recurring costs more evenly between FY 2008-09 and FY 2009-10 to match the number of new positions each year.

**TABLE V. POST-RELEASE SUPERVISION POPULATION AND RESOURCE NEEDS**

	<b>June 30 2007</b>	<b>June 30 2008</b>	<b>June 30 2009</b>	<b>June 30 2010</b>	<b>June 30 2011</b>
<b><i>Population (increase)</i></b>	-	-	<b>210<sup>7</sup></b>	<b>472</b>	<b>489</b>
Probation/Parole Intermediate Officer	-	-	4	12	12
Chief Probation/Parole Officer	-	-	1	1	1
Office Assistant IV	-	-	1	1	1
<b><i>Total Positions</i></b>	-	-	<b>6</b>	<b>14</b>	<b>14</b>
<b><i>Expenditures</i></b>	-	-	<b>\$ 309,732</b>	<b>\$ 780,374</b>	<b>\$ 748,212</b>
Recurring	-	-	\$ 282,164	\$ 748,212	\$ 748,212
Non-recurring	-	-	\$ 27,568	\$ 32,162	-

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of a specific bill. For such 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.

Though H.B. 1215 would lengthen maximum sentences for felony offense classes B1 through E, the AOC does not anticipate a significant change in litigation tactics, as defendants would face sentences of the same general magnitude. However, this proposal would also lengthen the post-release supervision period from nine months to twelve months, thereby increasing the opportunity for revocation. To the extent that judicial officials or contractual hearing officers are used for revocation hearings, H.B. 1215 could generate additional costs for the court system. It is not known exactly how revocation rates or litigation tactics may change. Thus, potential costs cannot be quantified.

<sup>7</sup> Fiscal Research estimate is adjusted from DOC Post-Release projections. Actual population increase may vary from this estimate due to the time of offense, length of sentence, and/or presence of aggravating or mitigating factors for future Class E offenses.

## COMBINED IMPACT: H.B. 1215 AND H.B. 1187

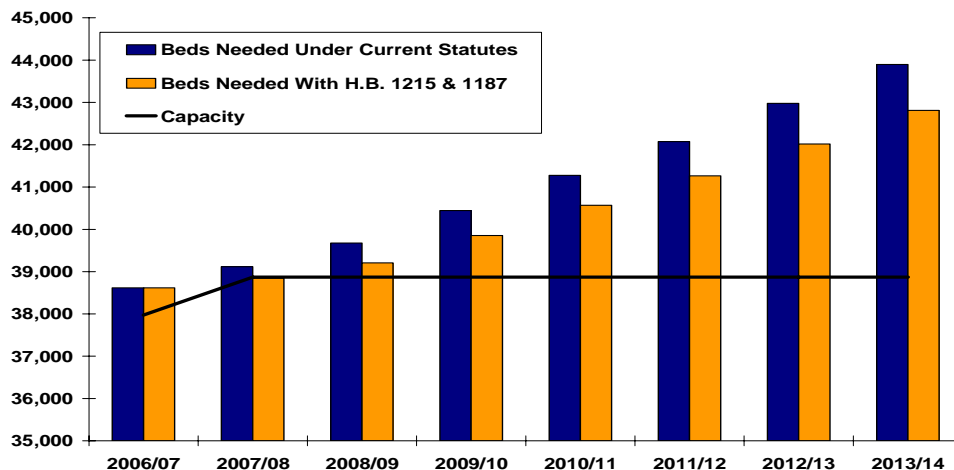
In addition to the proposed adjustments contained in H.B. 1215, the North Carolina Sentencing and Policy Advisory Commission developed another alternative for reducing prison population. The alternative restructures the Prior Record Level point ranges in order to slow prison population growth, consistent with the principals of public safety and structured sentencing. This complimentary proposal, H.B. 1187, would interact with H.B. 1215 to further reduce the need for additional prison beds, thereby foregoing the accompanying costs of prison bed operation and construction.

Table VI and Chart II illustrate the combined impact of these bills. As is shown, *the cumulative effect is to save 1,085 beds by FY 2014. Based on current costs and projections, implementation of both bills could save the State approximately \$249.75 million, cumulative, in foregone operating and construction costs.*

TABLE VI. COMBINED FISCAL IMPACT: DIVISION OF PRISONS

H.B. 1215 & 1187	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Projected Number of Available Beds	38,616	39,114	39,674	40,444	41,276	42,076	42,977	43,896
Expanded Operating Capacity	37,973	38,869	38,869	38,869	38,869	38,869	38,869	38,869
Bed Deficit Under Current Statutes	-643	-245	-805	-1,575	-2,407	-3,207	-4,108	-5,027
<b>Bed Deficit: H.B. 1215 &amp; H.B. 1187</b>	<b>-643</b>	<b>25</b>	<b>-338</b>	<b>-984</b>	<b>-1,698</b>	<b>-2,396</b>	<b>-3,150</b>	<b>-3,942</b>
<i>Beds Saved</i>	NA	270	467	591	709	811	958	1,085
<i>Positions Saved</i>	NA	108	187	236	284	324	383	434
<b>Projected Fiscal Impact</b>	<b>37.45 M</b>	<b>15.63 M</b>	<b>20.66 M</b>	<b>29.27 M</b>	<b>31.97 M</b>	<b>35.32 M</b>	<b>38.22 M</b>	<b>41.23 M</b>
<i>Recurring</i>	NA	6.42 M	11.78 M	15.55 M	19.38 M	23.00 M	28.18 M	32.99 M
<i>Non-recurring</i>	37.45 M	9.21 M	8.88 M	13.72 M	12.59 M	12.32 M	10.04 M	8.24 M

CHART II. BED NEEDS: CURRENT STRUCTURED SENTENCING vs. H.B. 1215 & 1187



**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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**DATE:** July 27, 2006

**Signed Copy Located in the NCGA Principal Clerk's Offices**