

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 929 (Third Edition)

SHORT TITLE: Prison Escape/Juvenile Detention Facility.

SPONSOR(S):

FISCAL IMPACT					
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
<b>GENERAL FUND</b>					
<b>Correction</b>	Exact cost and impact cannot be determined; will be small increase in payments to county jails for holding misdemeanants.				
<b>Judicial</b>	\$14,415	\$24,711	\$25,947	\$27,244	\$28,606
<b>Juvenile Justice</b>	No impact anticipated.				
<b>LOCAL GOVERNMENTS</b>	Exact amount cannot be determined; will likely increase local jail population and costs but no substantial fiscal impact anticipated.				
<b>ADDITIONAL PRISON BEDS*</b>	Exact amount cannot be determined; no substantial impact anticipated.				
<b>POSITIONS: (cumulative)</b>	Exact amount cannot be determined; no substantial impact anticipated.				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Judicial Branch; Local Governments; Department of Juvenile Justice and Delinquency Prevention; Department of Correction					
<b>EFFECTIVE DATE:</b> December 1, 2005					
<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:** This bill would amend G.S. 14-256 to 1) raise the penalty for county/municipal jailbreaks or escapes from custody from Class 1 to Class A1 misdemeanors and, 2) expand the statute to include breaks or escapes from juvenile facilities (Youth Development Centers and Detention Centers). The Second Edition restricted the offense to breaks or escapes from juvenile facilities by offenders age 18 or older still in the custody of DJJDP. The Third Edition eliminates this proposed age limitation, making the offense applicable to any juvenile that escapes from the custody of the Department.

## ASSUMPTIONS AND METHODOLOGY:

### Summary

Adults: Elevating the penalty from misdemeanor Class 1 to A1 for offenders who break county jails or lockups could result in longer sentences and increased costs to local jails and the Department of Correction. Costs to the Courts to process charges for these offenses would also be expected to increase due to more vigorous defense and prosecution as a result of the more severe penalty. The projected Court costs are relatively low, however, because of the small pool of offenders. While costs could not be determined for DOC or local jails, the cost should not be substantial.

Additionally, as a chargeable offense, an adult who assists a juvenile in an escape could be prosecuted for aiding and abetting. Although the number of escapes in which the escapee was assisted by an adult is not known, as the total number of escapes in 2004 was relatively small, any additional charges and convictions for aiding and abetting would not be expected to have a substantial impact on the Courts or local jails.

Juveniles: This bill is expected to have little to no impact on the Department of Juvenile Justice and Delinquency Prevention, as the Department is already authorized under current law to extend the term of commitment for juveniles that escape from custody. Offenders age 16 and over under DJJDP custody are a potential new group of escapees that could be prosecuted as adults under this bill. In 2004, 24 of the 36 escapes from juvenile facilities involved individuals 16 years of age or older. These cases would not affect DJJDP resources but would rather impact the Courts, county jails, and DOC.

General: The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

### Department of Correction/Local Jails

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 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. 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.*

It is expected that this bill could result in a higher active sentence rate and longer sentences than the typical A1 misdemeanor:

- In FY 2003-04, 19 percent of Class 1 misdemeanants received active sentences, with an average sentence length of 31 days. By contrast, the 39 Class 1 misdemeanor convictions

under current G.S. 14-256 resulted in a 72 percent active rate (28 cases) and an average sentence length of 53 days.

- In FY 2003-04, 24 percent of Class A1 misdemeanors resulted in active sentences and the average time served was 53.8 days. However, given the percentage of active time imposed for escapes now as Class 1 misdemeanors (72% active time), it is likely that the active rate for escapes will be much higher than the typical A1 misdemeanor. It is also likely that the ability to charge offenders with an A1 misdemeanor will result in judges *giving longer active sentences for escapes than for the typical A1 offense*.
- Given the potential for more active sentences and longer sentences there would be increased costs to counties and to DOC, which reimburses counties for housing misdemeanants sentenced to thirty days or more at a rate of \$18 per day per offender. However, as there is a relatively small pool of offenders, the cost is not likely to be significant.
- For those Class A1 misdemeanants sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.
- The addition of language in SB 929 creating a Class A1 misdemeanor for escape from a law enforcement officer could result in additional fiscal impact but costs could not be determined.
- As a chargeable offense, an escape from the custody of DJJDP could lead to the prosecution (for aiding and abetting) of adults that assist in the escape. Although the specific cost cannot be determined due to lack of data on the number of escapes involving adult assistance, the impact is not expected to be substantial.

### **Department of Juvenile Justice and Delinquency Prevention (DJJDP)**

As the Department is already authorized under current law to extend the term of commitment for any juvenile that escapes from custody, this bill is expected to have little to no impact on DJJDP. In 2004 there were 32 escapes by juveniles from state-operated Youth Development Centers and 4 escapes from state-operated detention facilities.

Juveniles in the custody of the Department that are age 16 or older would be prosecuted as adults if charged with a Class A1 misdemeanor for an escape under this bill. Of the 36 escapes in 2004, 24 involved juveniles 16 years of age or older. These cases would impact local jails, DOC, and the Courts, but would not affect DJJDP resources.

### **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 for calendar year 2004 indicates that 113 defendants were charged with Class 1 misdemeanors under G.S. 14-256 for breaking a county jail, lockup, or prison. In addition to these 113 charges, DJJDP data indicates that 24 juveniles age sixteen or older escaped from a state-operated Youth Development Center or detention facility and would also face Class A1 misdemeanor charges under this bill.

AOC estimates the cost to dispose of 113 charges reclassified as Class A1 misdemeanors and 24 new Class A1 misdemeanor charges at \$24,711. For those charges elevated from Class 1 misdemeanors, the cost increase reflects presumed increases in trial length, attorney preparation time, and trial rates, and a decrease in dismissal rates. These 113 charges would cost an estimated \$17,613, of which \$11,288 would be for attorney preparation and court costs, and \$6,325 would be for indigent defense. The new Class A1 misdemeanor charges would cost an estimated \$7,098, of which \$3,816 would be for attorney preparation and court costs, and \$3,282 would be for indigent defense. The figures in the box on the first page reflect the total cost of processing these charges (\$24,711), inflated at a rate of five percent annually, and adjusted in the first year to reflect the seven months for which the bill would be effective.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Juvenile Justice and Delinquency Prevention

**TECHNICAL CONSIDERATIONS:** None

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

**PREPARED BY:** Aaron Paul and Jim Mills

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



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