

**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Fiscal Note**

**BILL NUMBER:** Senate Bill 933 (First Edition)

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

**SPONSOR(S):** Senator Kinnaird

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</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><u>FY 2011-12</u></b>
<b>GENERAL FUND</b>					
<b>Correction*</b>					
<b>Recurring</b>					
Prisons (operating)	N/A	\$ 861,669	\$ (2.25M)	\$ (5.10M)	\$ (7.31M)
Community Corrections	-	-	\$ 164,745	\$ 219,660	\$ 219,660+
<b>Nonrecurring</b>					
Prisons (construction)**	\$ (9.87M)	\$ (5.32M)	\$ (7.59M)	\$ (5.97M)	\$ (6.55M)
Community Corrections	-	-	\$ 17,415	\$ 5,805	-
<b>Judicial</b>	<b>Minor fiscal impact anticipated; exact amount cannot be determined.</b>				
<b>NET SAVINGS:</b>	<b><u>\$ (9.87M)</u></b>	<b><u>\$ (4.45M)</u></b>	<b><u>\$ (9.65M)</u></b>	<b><u>\$ (10.84M)</u></b>	<b><u>\$ (13.64M)</u></b>
<b>PRISON BEDS ADDED/ SAVED [cumulative]:</b>	N/A	35	(78)	(174)	(242)
<b>POSITIONS ADDED/ SAVED [cumulative]:</b>					
Prisons	N/A	14	(31)	(70)	(97)
Community Corrections	N/A	N/A	3	4	4+
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction – Division of Prisons and Division of Community Corrections; Judicial Branch.					
<b>EFFECTIVE DATE:</b> December 1, 2007.					
<i>*S.B. 933 would generate net prison savings beginning in FY 2007-08, due to foregone construction costs; savings due to foregone operating costs would begin in FY 2009-10. Projected savings are denoted in parentheses.</i>					
<i>**Construction costs are rounded, and assume “stand-alone” prison beds (See p. 2).</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 reduce 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:** S.B. 933 amends: 1) G.S. 15A-1340.17 to reallocate three months from the minimum sentences for Classes B1 through E felonies to the corresponding maximum sentences; 2) G.S. 15A-1368(a)(5) to provide that the maximum imposed term for a prisoner serving consecutive prison terms is the sum of all maximum terms imposed, less 12 months for each of the second/subsequent Classes B through E sentences (was, 9 months); 3) G.S. 15A-1368.2(a) to provide that a prisoner not awarded earned time must be released for post-release supervision on the date equivalent to the prisoner's maximum prison term, less 12 months (was, 9 months); and, 4) G.S. 15A-1368.2(c) to increase the mandatory post-release supervision period from 9 to 12 months. Effective for offenses committed on or after December 1, 2007.

**ASSUMPTIONS AND METHODOLOGY:**

By transferring three months from the prescribed minimum sentences for offense classes B1-E to the corresponding maximum sentences and lengthening the term of post-release supervision, this proposal will generally: 1) shorten the initial term of imprisonment for affected convictions; 2) lengthen the term of mandatory post-release supervision by three months (from 9 to 12 months); and, 3) lengthen the term of imprisonment upon revocation from post-release supervision (from 9 to 12 months) by three months.<sup>i</sup> The net effect of this proposal is to reduce the inmate population (and, prison bed needs) over future years and increase the supervised post-release population.

**Department of Corrections – Division of Prisons**

Based on Sentencing and Policy Advisory Commission prison population projections and DOC custody level estimates, the proposed reallocation (3 month minimum sentence reduction) will significantly reduce the projected population over the longer-term; however, lengthening the term of imprisonment (3 month increase) for post-release revocation could result in a slight short-term population increase. Table I demonstrates the estimated impacts of S.B. 933 on the prison population and bed needs, relative to the projected inmate population and estimated available bed capacity (system-wide). These capacity projections assume operation at Expanded Operating Capacity and represent the total number of beds in operation or authorized for construction or operation as of December 6, 2006. *As shown, by the end of FY 2011-12, S.B. 933 is projected to reduce the prison population by 242 inmates, cumulatively; this total increases to 464 inmates by FY 2014-15.*

**Table I. S.B. 933 Prison Population Impact**

	FY 07/08	FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Projected Inmate Population <sup>ii</sup>	39,621	40,236	41,021	41,848	42,718	43,587	44,470	45,349
Expanded Operating Capacity <sup>iii</sup>	38,505	39,353	39,353	39,353	39,353	39,353	39,353	39,353
Projected Bed <u>Deficit</u>	1,116	883	1,668	2,495	3,365	4,234	5,117	5,996
<i>S.B. 933 Impact</i> <sup>iv</sup>	<i>N/A</i>	<i>+35</i>	<i>-78</i>	<i>-174</i>	<i>-242</i>	<i>-332</i>	<i>-397</i>	<i>-464</i>
<b>Remaining Bed <u>Deficit</u></b>	<b>1,116</b>	<b>918</b>	<b>1,590</b>	<b>2,321</b>	<b>3,123</b>	<b>3,902</b>	<b>4,720</b>	<b>5,532</b>

Holding all other determinants constant, this population reduction will decrease prison bed demand, resulting in foregone construction and operating costs. As shown in Table II, S.B. 933 could generate net savings of approximately \$13.8 million in operating costs and \$35.3 million in construction costs (\$49.1m total) by FY 2011-12; these totals increase to \$52.2 million and \$52.6 million (\$104.9m) by FY 2014-15.

**Table II. S.B. 933 Fiscal Impact: Division of Prisons**

	First 5 Years (FY 2008 – FY 2012)	Next 3 Years (FY 2013 – FY 2015)	8-Year Horizon (FY 2008 – FY 2015)
<i>Projected Bed Savings</i>	242	222	464
<i>Positions Saved<sup>v</sup></i>	97	89	186
Prisons: Foregone Construction Costs*			
<i>Stand-Alone<sup>vi</sup></i>	\$ (35,288,927)	\$ (17,337,065)	\$ (52,625,992)
<i>Add-On<sup>vii</sup></i>	\$ (23,695,501)	\$ (11,803,590)	\$ (35,499,091)
Prisons: Foregone Operating Costs <sup>viii</sup>	\$ (13,798,956)	\$ (38,439,089)	\$ (52,238,045)
<b>Total Cost: Prisons*</b>	<b>\$ (49,087,883)</b>	<b>\$ (55,776,154)</b>	<b>\$ (104,864,037)</b>

\* Total cost estimates assume foregone construction of stand-alone prison beds, as shown in the Fiscal Impact Table (p.1). Costs are adjusted for annual inflation: 8% for prison bed construction, and 3% for bed operation.

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

Increasing the mandatory period of post-release supervision from nine months to 12 months will increase the supervised post-release population, and will necessitate additional supervisory resources. Table III demonstrates the projected impact on the post-release population and DCC resource needs. *As shown, DCC anticipates that **four additional Intermediate Special Operations Officers will be needed by FY 2010-11, at a total cost of \$225,465.***<sup>a</sup>

*Based on the proposed 17 month minimum sentence (presumptive range) for a Class E felon with no prior record points, and the average period between offense occurrence and sentencing, S.B. 933 would begin to impact the post-release population in FY 2009-10. 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 affect the post-release population until approximately FY 2012 (e.g. Class B1 felons would not have an impact until roughly FY 2022-23).*

**Table III. S.B. 933 Fiscal Impact: Division of Community Corrections**

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
<b>Population (increase)</b>	-	-	<b>185</b>	<b>190</b>	<b>190+</b>
Intermediate Special Operations Officer	-	-	3	4	4+
<b>Total Positions</b>	-	-	<b>3</b>	<b>4</b>	<b>4+</b>
<b>Expenditures</b>	-	-	<b>\$ 182,160</b>	<b>\$ 225,465</b>	<b>\$ 225,465+</b>
Recurring	-	-	\$ 164,745	\$ 219,660	\$ 219,660+
Non-recurring	-	-	\$ 17,415	\$ 5,805	-

**Judicial Branch**

Though S.B. 933 would lengthen maximum sentences for felony offense classes B1 through E, the Administrative Office of the Courts does not anticipate a significant change in litigation tactics, since defendants would face sentences of the same general magnitude. However, this proposal could increase the opportunity for revocation, by lengthening the post-release supervision period from nine months to twelve months. To the extent that judicial officials or contractual hearing officers are used for revocation hearings, S.B. 933 could generate additional costs for the court system. The potential

<sup>a</sup> DOC Research and Planning post-release population projections are only available for the current five year period (FY07-11); therefore, projections and resource estimates are not yet available for FY 2011-12. Table III (FY 2011-12 figures) depicts the potential for continued population increases and additional resource needs.

costs to the Courts are indeterminate, since it is not known how revocation rates or litigation tactics might change due to this proposal.

**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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Fiscal Research Division

**DATE:** May 24, 2007

<sup>i</sup> Offenders in felony offense classes B1 through E comprise the majority of those convicted for violent crimes, and who therefore receive longer active sentences.

<sup>ii</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in December 2006.

<sup>iii</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

*\* Official Department of Correction capacity projections assume the General Assembly will fund 500 additional prison beds through partial double-celling of the future Tabor City facility (inmate admission FY 2008-09). Fiscal Research does not include these 500 beds in capacity estimates, since these beds have not been authorized for funding.*

<sup>iv</sup> Criminal penalty bills effective December 1, 2007 should not affect the prison population/bed needs until FY 2008-09, due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System. Due to the long sentence lengths for Class B1-E convictions (minimum of 12 months under S.B. 933), population reductions are assumed to begin in FY 09-10.

<sup>v</sup> Position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates; ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

<sup>vi</sup> Entirely new, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

<sup>vii</sup> Close and medium custody “add-on” facilities are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. Add-on facilities built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

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<sup>viii</sup> Operating costs are based on actual FY 2005-06 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.