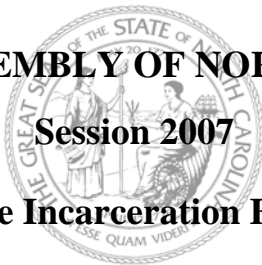


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 2066 (First Edition)

SHORT TITLE: Adjust B1-E Felony Penalties.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
GENERAL FUND					
Correction					
Recurring					
Prisons (operating)	N/A	\$647,533	(\$2,368,418)	(\$5,396,834)	(\$7,605,409)
Community Corrections			\$375,528	\$375,528	\$375,528+
Nonrecurring					
Prisons (construction)	(\$19,470,715)	(\$6,045,358)	(\$7,198,347)	(\$7,860,905)	(\$7,060,004)
Community Corrections			\$134,760		
Judicial	Minor fiscal impact anticipated; exact amount cannot be determined				
NET SAVINGS:	(\$19,470,715)	(\$5,397,825)	(\$9,056,477)	(\$12,882,211)	(\$14,279,885)
PRISON BEDS ADDED/ SAVED (cumulative)*:					
	N/A	25	(77)	(172)	(236)
POSITIONS: ADDED/ SAVED (cumulative):					
	-	10	(31)	(69)	(94)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 2008

***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: S.B. 2066 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, 2008.

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. 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.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of January 2008.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* However, this bill would reduce the projected population over the long term. Row four in the chart demonstrates the bed impact resulting from Senate Bill 2066 and row five demonstrates the remaining bed deficit. As shown, the Sentencing Commission estimates that this specific legislation will subtract 236 inmates from the prison system by the end of FY 2012-13.

¹ 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.

	June 30 2009	June 30 2010	June 30 2011	June 30 2012	June 30 2013
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	40,402	41,073	41,698	42,698	42,518
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	39,908	39,908	40,664	40,664	40,664
3. Projected No. of Beds Over/Under Inmate Population	-494	-1,165	-1,034	-1,854	-2,759
4. Projected No. of Additional Inmates Due to this Bill ³	<i>N/A</i>	<i>25</i>	<i>-77</i>	<i>-172</i>	<i>-236</i>
5. Remaining bed deficit	<i>N/A</i>	<i>-1,190</i>	<i>-957</i>	<i>-1,682</i>	<i>-2,523</i>

*Data provided by the Sentencing Commission for this analysis is based on average impact projections for FY2000/01 through FY 2005/06.

POSITIONS: This population reduction will decrease prison bed demand, resulting in foregone operating costs. It is anticipated that by FY 2012-13, approximately 94 positions would be foregone under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This 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.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2012-13. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of beds saved due to Senate Bill 2066; and, the remaining bed deficit for each year through FY 2016-17.

	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Available Beds (Over/Under) Under Current Structured Sentencing	-3,593	-4,423	-5,261	-6,137
2. Projected No. of Additional Inmates Resulting From <u>SB 2066</u>	-300	-373	-447	-507
3. Remaining Bed Deficit	-3,293	-4,050	-4,814	-5,630

DISTRIBUTION OF BEDS: After analyzing Senate Bill 2066, the Department of Correction estimates the following distribution of saved beds in FY 2016/17, by custody level:⁴

- Close Custody - 107
- Medium Custody - 298
- Minimum Custody - 102

² 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 February 2008.

³ Criminal penalty bills effective December 1, 2008, should not affect prison population and bed needs until FY 2009-10 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

⁴ Custody level is determined by a multi-factor assessment, including but not limited to: offense severity and history, institutional behavior (i.e. violence, rule disobedience), sentence length and portion served, job performance, and age. Infrastructure, personnel, and equipment needs are positively correlated with security levels and inmate risk assessments.

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;⁵ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”⁶ 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.

Estimated Construction Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$55,000	\$63,000	\$114,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$73,500

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.⁷ As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

Accordingly, given a decrease of 236 inmates, bed provision through construction of a “stand alone” facility could save approximately **\$47.6 million** by FY 2012-13; provision through “add-on” could save approximately **\$27.5 million**.

OPERATING: Operating costs are based on actual FY 2006-07 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 three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$57.48	\$74.71	\$88.93	\$71.52

⁵ 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).

⁶ 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).

⁷ Office of State Construction, March 24, 2006.

Summary of Potential Fiscal Impact on Division of Prisons

The table below illustrates projected savings outside of the five year window displayed in page 1. Projected prison bed savings and positions saved represent 10 full years of applicability beginning in FY 2009/10 and continuing through FY 2018/19. Potential savings due to foregone capital and operating costs are projected through FY 2014/15. This is because any prison bed needed in FY 2018/19 would have to be budgeted in FY 2014/15.

S.B. 2066 Fiscal Impact: Division of Prisons			
	First 5 Years of Applicability (FY 2010-FY 2014)	Next 5 Years of Applicability (FY 2015-FY 2019)	10-Year Horizon** (FY 2010-FY 2019)
Projected Bed Savings	236	271	593
Positions Saved	94	108	237
	First 5 Fiscal Years (FY 2009-FY 2013)	Next 2 Fiscal Years*** (FY 2014-2015)	7-Year Horizon*** (FY 2009-2015)
Prisons: Foregone Construction Costs*			
Stand-Alone	\$47,635,329	\$11,194,563	\$58,829,892
Add-On	\$27,504,365	\$12,387,449	\$39,891,814
Prisons: Foregone Operating Costs	\$14,723,128	\$22,802,344	\$37,525,472
Total Cost: Prisons*	\$62,358,457	\$33,996,907	\$96,355,364

* 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.

** 10 Year Horizon numbers assume prison bed deficits although current projections do not extend that far

*** Add-On Prison costs reflect savings for FY 2015/16 because these facilities are budgeted 3 years in advance unlike Stand Alone facilities which must be budgeted 4 years in advance

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 six additional Probation/Parole Officers (four Intermediate Officers and two Special OPS) will be needed by FY 2011-12, at a total cost of \$225,465.⁸* While these positions have different caseloads, pay grade is the same for both positions.

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 2010-11. 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 2014 (e.g. Class B1 felons would not have an impact until roughly FY 2023-24).

⁸ *DOC Research and Planning post-release population projections are only available for the current five year period (FY08-12); therefore, projections and resource estimates are not yet available for FY 2011-12. Table III (FY 2012-13 figures) depicts the potential for continued population increases and additional resource needs.*

Table III. S.B. 933 Fiscal Impact: Division of Community Corrections					
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
Population (increase)	-	-	297	305	305+
Special OPS Officer			2	2	2+
Intermediate Special Operations Officer	-	-	4	4	4+
Total Positions	-	-	6	6	6+
Expenditures	-	-	\$510,288	\$375,528	\$375,528+
Recurring	-	-	\$375,528	\$375,528	\$375,528+
Non-recurring	-	-	\$134,760	-	-

Judicial Branch

Though S.B. 2066 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 hearing on supervision violations, S.B. 933 could generate additional costs for the court system. The potential 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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