

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

**BILL NUMBER:** SB 207 1st Edition  
**SHORT TITLE:** Restructure Prior Crim. Record Points  
**SPONSOR(S):** Senator Gulley

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<u><b>FY 2003-04</b></u>	<u><b>FY 2004-05</b></u>	<u><b>FY 2005-06</b></u>	<u><b>FY 2006-07</b></u>	<u><b>FY 2007-08</b></u>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring (operating)</b>	\$ 0	(\$17.23)	(\$25.3)	(\$29.8)	(\$33.8)
<b>Nonrecurring (construction)</b>	(\$73.77)	(\$11.26)	(\$9.4)	(\$12.8)	(\$15.3)
<b>Judicial</b>	No substantial impact anticipated.				
<i>This bill will generate additional savings – recurring and nonrecurring – beyond the first five years. See Charts 2, 5, and 6 for details.</i>					

<b>ADDITIONAL PRISON BEDS*</b>	(672)	(956)	(1,095)	(1,205)
<b>POSITIONS (cumulative):</b>	(269)	(382)	(438)	(482)
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch				
<b>EFFECTIVE DATE:</b> December 1, 2003				
* <i>These figures are 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. See Charts 7 and 8 for the combined impact of this bill, SB 208, and SB 209. All three bills were based on alternatives included in the May 2002 Sentencing Commission report.</i>				

**BILL SUMMARY:** SB 207 amends G.S. 15A-1340.14(c) and G.S. 15A-1340.17(c) to increase point ranges by two points each in Prior Record Levels I through IV for felony sentencing. Prior Record Levels V and VI are not changed. Under current statute, Prior Record Level I applies to some offenders with prior misdemeanor convictions. Under the proposed legislation, Prior Record Level I would include offenders with a prior Class H or I felony conviction, two prior countable misdemeanor convictions, or a prior countable misdemeanor conviction and a status point.

	<b>Current Law</b>	<b>SB 207</b>
Prior Record Level I	0 points	0 – 2 points
Prior Record Level II	1 – 4 points	3 – 6 points
Prior Record Level III	5 – 8 points	7 – 10 points
Prior Record Level IV	9 – 14 points	11 – 14 points
Prior Record Level V	15 – 18 points	15 – 18 points
Prior Record Level VI	19+ points	19+ points

Some offenders could receive less severe punishments under the bill than under current law, relating to changes in the punishment options (i.e., community, intermediate, and active). For example, an offender convicted of a Class E felony with five Prior Record Level points under current law must be given an active sentence based on the current structured sentencing grid. Under this bill, however, the same offender could be given an intermediate *or* active sentence.

**ASSUMPTIONS AND METHODOLOGY:**

**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.

The proposed legislation does not alter the felony class under which the offender is charged, and convicted offenders will face sentences of similar type and magnitude. The AOC does not expect the bill to have a significant impact on litigation strategies or court workload.

**Department of Correction**

The chart on the next page 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 is always equal to the projected additional inmates due to a bill. **The negative figures for additional inmates and beds needed in Year 5 (FY 2007-08) of the projection and later years reflect a long-term reduction in the number of beds needed due to this bill.**

Row 4 in the chart shows the impact of this specific bill, SB 207. Row 5 shows the remaining bed deficit if SB 207 was ratified. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will reduce the number of inmates in the prison system by 1,205 inmates by the end of FY 2007-08.

<b>CHART 1</b>	<b>June 30 <u>2004</u></b>	<b>June 30 <u>2005</u></b>	<b>June 30 <u>2006</u></b>	<b>June 30 <u>2007</u></b>	<b>June 30 <u>2008</u></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
<b>4. No. of Projected Additional or Fewer Inmates/Beds Due to this Bill<sup>3</sup> (Cumulative)</b>		<b>-672</b>	<b>-956</b>	<b>-1,095</b>	<b>-1,205</b>
<b>5. Bed Deficit With Ratification of SB 207 (Cumulative)</b>		<b>-1,386</b>	<b>-2,054</b>	<b>-2,863</b>	<b>-3,623</b>

**POSITIONS:** It is anticipated that approximately 482 fewer positions would be needed to supervise inmates because of the reduced number of inmates to be housed under this bill by the end of FY 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.

**PRISON BED COST SAVINGS: The cumulative effect of SB 207 is to reduce the number of prison beds needed by 1,750 beds by FY 2011-12.** (There is a projected cumulative reduction of 1,916 beds by the end of FY 2014.)

<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.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal Notes look at the impact of a bill through the year 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. **As shown below, this bill would reduce the number of new beds needed by 1,750 beds by FY 2011-12. This reduction is sizable enough to impact the number of prisons constructed, and is shown in the box on the first page as a reduction in nonrecurring Correction expenditures due to foregone construction costs.**

<b>CHART 2</b>	<b>First 5 Years 2003-2008</b>	<b>Next 4 Years 2008-2012</b>	<b>TOTAL 2003-2012</b>
Reduction in Inmates Due to This Bill	(1,205)	(545)	(1,750)
Available Beds	(4,828)	(2,856)	(7,684)
Available Beds with SB 207	(3,623)	(2,311)	(5,934)
<b>Beds Saved</b>	<b>1,205</b>	<b>545</b>	<b>1,750</b>

**DISTRIBUTION OF BEDS:** After analyzing the proposed legislation, the Department of Correction estimates that the bed savings under this bill will be distributed over the three custody levels as follows:

- 13% Close Custody
- 46% Medium Custody
- 41% 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.

**CHART 3**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2002-03	\$38,595	\$73,494	\$85,444

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on page one 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. For this bill, the reduction in inmates means that the State will not need as many new prisons as quickly. For this

reason, the box on page one shows a reduction in nonrecurring expenditures due to foregone construction costs. That reduction is due to a projected decrease in the need for prison beds by 1,506 beds by June 30, 2011:

- 956 beds saved in 2005-06 (construction beginning in 2003-04)
- 110 beds saved in 2006-07 (construction beginning in 2004-05)
- 143 beds saved in 2007-08 (construction beginning in 2005-06)
- 163 beds saved in 2008-09 (construction beginning in 2006-07)
- 134 beds saved in 2009-10 (construction beginning in 2007-08)

Chart 5 below illustrates the savings due to the reduction in prison beds. Beyond the five-year horizon shown in the box on the front page and in Chart 5, an additional 105 beds will be saved in FY 2011-12, and later years will see further reductions in prison beds needed. The State can therefore postpone construction of these 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 one.

**Daily Inmate Operating Cost 2001-02**

**CHART 4**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2000-01)	\$50.04	\$65.17	\$80.19	\$62.43

**CHART 5**

**Savings in Prison Operating & Construction Expenditures from SB 207: 5-year Outlook**

	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>
<b>Total Operating Expenditures: All prison beds needed</b>					
Current Statutes	\$ 892.7 M	\$ 943.5 M	\$ 996.9 M	\$ 1,052.6 M	\$ 1,108.6 M
SB 207	\$ 892.7 M	\$ 926.2 M	\$ 971.7 M	\$ 1,022.8 M	\$ 1,074.8 M
<i>Net Savings*</i>	\$ -	(\$ 17.23 M)	(\$ 25.3 M)	(\$ 29.8 M)	(\$ 33.8 M)
<b>Total Construction Expenditures: All prison beds needed**</b>					
Current Statutes	\$ 232.3 M	\$ 76.8 M	\$ 74.0 M	\$ 70.4 M	\$ 67.8 M
SB 207	\$158.5 M	\$ 65.6 M	\$ 64.7 M	\$ 57.6 M	\$ 52.5 M
<i>Net Savings*</i>	(\$ 73.8 M)	(\$ 11.3 M)	(\$ 9.4 M)	(\$ 12.8 M)	(\$ 15.3 M)
<b>Total Savings*</b>	(\$ 73.77 M)	(\$ 28.5 M)	(\$ 34.6 M)	(\$ 42.6 M)	(\$ 49.1 M)
<b>Cum. Savings*</b>	(\$ 73.77 M)	(\$ 102.3 M)	(\$ 136.9 M)	(\$ 179.4 M)	(\$ 228.5 M)

\*Figures in ( ) are savings. Figures not in parentheses are costs.

\*\*Based on DOC's projected distribution of bed savings resulting from SB 207, the analysis uses medium custody construction costs. Construction costs in each fiscal year reflect beds that will be needed three years later.

**CHART 6**

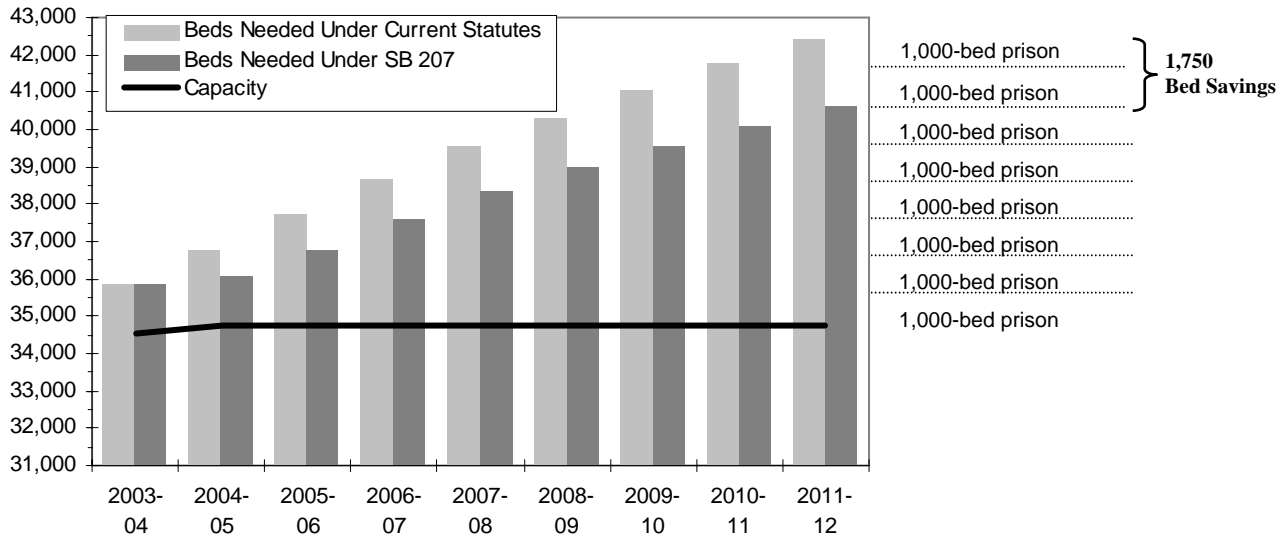


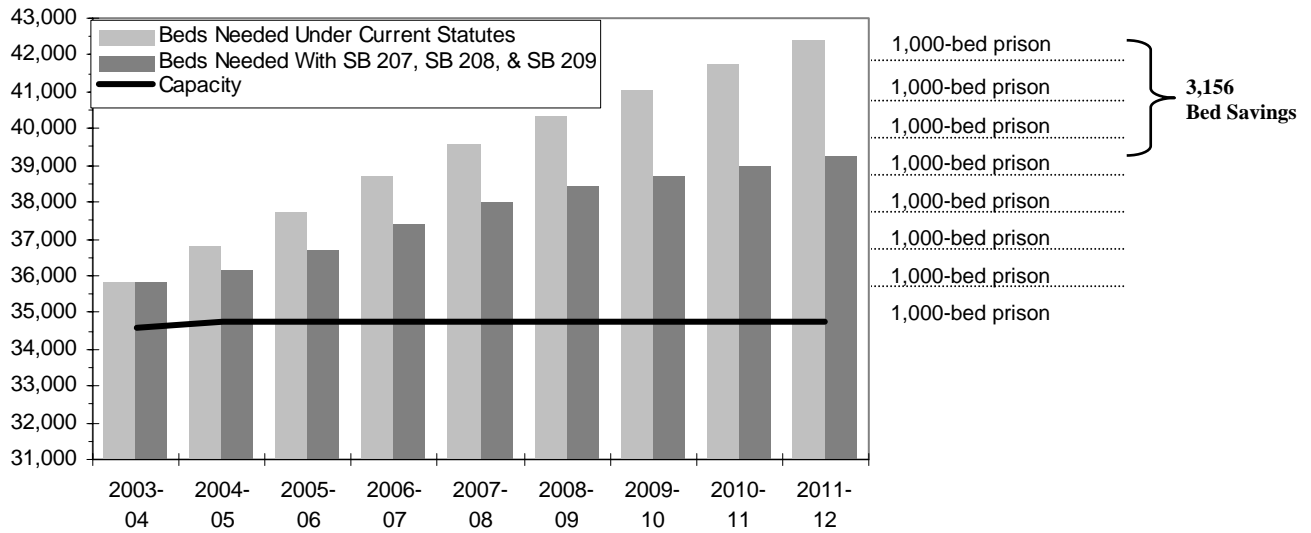
Chart 6 (above) illustrates the long-term savings in beds with SB 207. “Beds needed under current statutes” refers to the projected prison population under the status quo. “Beds needed under SB 207” refers to the number of beds constructed if SB 207 is ratified. “Capacity” is the total number of beds available (34,729) once the three new prisons authorized in 2001 are complete. **The cumulative effect is to save the need for 1,750 beds by 2012.**

With current costs and projections, by 2011-12, the State will save \$55.2 million in operating costs. The State will have saved \$147.63 million, cumulative, in foregone construction costs by 2009-10 (projections for construction costs cannot extend beyond 2009-10).

**Combined Impact of SB 207 and Other Sentencing Bills Introduced in the NC Senate in 2003**

In addition to SB 207, two other bills introduced in the North Carolina Senate address the NC Sentencing and Policy Advisory Commission alternatives for slowing prison population growth consistent with the principles of structured sentencing and public safety. These bills are SB 208 (Sentence Lengths) and SB 209 (Adjust B1-E Felony Penalties). Because the sentencing provisions of these bills interact, the combined impact of the three bills is different from the sum of their individual impact. **The combined impact of SB 207, SB 208, and SB 209 is to save 3,156 prison beds by 2011-2012.** Chart 7 displays the combined impact of SB 207, SB 208, and SB 209.

**CHART 7**



The cumulative effect of the combined sentencing bills is to save the need to save 3,156 prison beds by 2011-2012. With current costs and projections, by 2011-2012, the State will have saved \$432.2 million, cumulative, in operating costs. The State will have saved \$281.24 million, cumulative, in forgone construction costs by 2009-2010 (projections for construction costs cannot extend beyond 2009-2010).

**CHART 8**

**Combined Prison Savings from Sentencing Bills**

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
<b>Prison Beds Saved (Cumulative)</b>	-	-651	-1037	-1274	-1535	-1911	-2369	-2786	-3156
<b>Positions Saved (Cumulative)</b>	-	-260	-415	-510	-614	-764	-948	-1114	-1262
<b>Operating Expenditures Saved if SB 207, 208, and 209 are Ratified (Mil)</b>	-	(\$16.70)	(\$27.39)	(\$34.66)	(\$43.02)	(\$55.16)	(\$70.43)	(\$85.32)	(\$99.55)
<b>Construction Expenditures* Saved if SB 207, 208, and 209 are Ratified (Mil)</b>	(\$80.02)	(\$19.20)	(\$22.05)	(\$33.59)	(\$42.96)	(\$41.07)	(\$42.18)	Unable to project**	Unable to project**

\* Based on DOC's projected distribution of bed savings resulting from SB 207, 208, and 209, the analysis uses medium custody construction costs. Construction costs in each fiscal year reflect beds that will be needed three years later.

\*\*Unable to project construction expenditures; prison population projections are only available through 2011-2012.

**Methodology**

Operating costs were calculated by multiplying the statewide average operating cost, adjusted for inflation, by the number of beds added to the prison system each year by the bill(s). Negative operating costs reflect a reduction in the number of beds needed due to the bill(s).

Based on current prison population projections, the State will need to construct an additional 3,010 beds by FY 2005-06. Assuming that beds take three years to construct, construction expenditures for these beds would be budgeted in FY 2003-04. Because these bills reduce the prison population by 2005-06, the State will be able to begin construction of fewer beds in 2003-04. Beyond FY 2006-07, current projections indicate that the State will need to construct more than 400 new beds each year. Foregone construction expenditures were calculated by multiplying the cost of constructing a medium custody bed, adjusted for inflation, times the number of beds that would not be needed due to this bill. Construction *savings* each year reflect the reduction in beds needed three years later.

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

**TECHNICAL CONSIDERATIONS:** None

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

**PREPARED BY:** Jim Mills, Chloe Gossage, and Nicole Kreiser

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

**DATE:** March 25, 2003



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