

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

BILL NUMBER: SB 209
SHORT TITLE: Adjust Penalties B1 to E Offenses
SPONSOR(S): Senator Gulley

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND	<i>Note: () denotes savings</i>				
Correction					
Recurring					
Prisons (operating)	\$ -	\$200,000	(\$2.4 M)	(\$4.9 M)	(\$7.0 M)
Community Correction	\$ -	\$ -	\$ -	\$568,664	\$662,441
Nonrecurring					
Prisons (construction)	(\$7.0 M)	(\$7.4 M)	(\$6.0 M)	(\$5.8 M)	(\$7.0 M)
Community Correction	\$ -	\$ -	\$ -	\$92,769	\$15,057
Judicial	Exact amount cannot be determined; impact anticipated.				
<i>This bill will generate additional savings – recurring and nonrecurring – beyond the first five years. See Charts 2, 5, 7, and 8 for details.</i>					
PRISON BEDS					
ADDED (SAVED)*	0	8	(90)	(181)	(251)
POSITIONS					
ADDED (SAVED):					
Prisons		3	(36)	(72)	(100)
Community Corr.		0	0	12	14
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch					
EFFECTIVE DATE: 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 207, and SB 208. All three bills were based on alternatives included in the May 2002 Sentencing Commission report.</i>					

BILL SUMMARY: This bill would reallocate three months from the minimum sentence of Classes B1 through E to the maximum sentence, for the purpose of increasing the term of post-release supervision from nine months to twelve months. The offenders in these offense classes comprise the majority of those committing serious, violent crimes (and receiving longer active sentences). The bill does not change the class or nature of the punishment (active or intermediate).

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.

While the bill changes a length of maximum sentence within a felony class, AOC does not anticipate a significant change in litigation tactics as defendants face sentences generally of the same magnitude. Because this bill would lengthen the post-release supervision period from nine months to 12 months, the additional three-month period increases the opportunity for post-release supervision revocations. Data from the N.C. Department of Correction show that, of the 912 offenders exiting post-release supervision in 2000-01, 127 (14%) exited due to revocations. More offenders may exit due to revocations with the three-month extension of post-release supervision. Initial revocation hearings may be held before contractual hearing officers. However, to the extent that judicial officials are used as hearing officers for additional revocation hearings, the bill will have an impact on court costs. The Sentencing Commission has noted that nine months appears to represent the peak in terms of the likelihood of increased revocations, so it does not expect many new violations under the bill, and the courts should not see many new revocation hearings.

Department of Correction

The chart below (Chart 1) 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 Years 2 through 5 (FY 2004-05 through 2007-08) of the projection and later years reflect a long-term reduction in the number of beds needed due to this bill.**

Rows 4 and 5 in Chart 1 show the impact of this specific bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will reduce the inmate population in the prison system by 251 inmates by the end of FY 2007-08.

CHART 1	June 30 <u>2004</u>	June 30 <u>2005</u>	June 30 <u>2006</u>	June 30 <u>2007</u>	June 30 <u>2008</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	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
4. No. of Projected Additional or Fewer Inmates/Beds <u>Due to this Bill³ (Cumulative)</u>		8	-90	-181	-251
5. Bed Deficit with Ratification of SB 209 (Cumulative)		-2066	-2920	-3777	-4577

¹ 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.

² 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.**

³ 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.

POSITIONS: It is anticipated that, by FY 2007-08, approximately 100 fewer positions would be needed to supervise the reduced number of inmates housed under this bill. 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 this bill is to reduce the number of prison beds needed by 522 beds by FY 2011-12. (There is a projected cumulative reduction of 613 beds by the end of FY 2013-14.)

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes look at the impact of a bill for five years. However, there is information available on the impact of this bill in later years. The chart below shows the reduction in inmates due to this bill, the projected available beds, and beds saved due to this bill. **As shown below, this bill would reduce the number of new beds needed by 522 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.**

CHART 2	First 5 Years 2003-2008	Next 4 Years 2008-2012	9-Year Horizon 2003-2012
Reduction in Inmates Due to This Bill	(251)	(271)	(522)
Available Beds	(4,828)	(2,856)	(7,684)
Available Beds with SB 209	(4,577)	(2,585)	(7,162)
Beds Saved	251	271	522
Positions Saved	100	108	209

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:

- 25% Close Custody
- 57% Medium Custody
- 18% Minimum Custody

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2001-02 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>Minimum</u>	<u>Medium</u>	<u>Close</u>
<u>Custody Level</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 1 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 1 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 391 beds by June 30, 2011:

- 90 beds saved in 2005-06 (construction beginning in 2003-04)
- 91 beds saved in 2007-08 (construction beginning in 2004-05)
- 70 beds saved in 2008-09 (construction beginning in 2005-06)
- 65 beds saved in 2009-10 (construction beginning in 2006-07)
- 75 beds saved in 2010-11 (construction beginning in 2007-08)

The chart (Chart 5) on the following page 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 77 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 1.

Daily Inmate Operating Cost 2001-02

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2001-02)	\$50.04	\$65.17	\$80.19	\$62.43

CHART 5

Savings in Prison Operating & Construction Expenditures from SB 209: 5-year Outlook

	2003-04	2004-05	2005-06	2006-07	2007-08
Total Operating Expenditures: All prison beds needed					
Current Statutes	\$ 892.7 M	\$ 943.5 M	\$ 996.9 M	\$ 1,052.6 M	\$ 1,108.6 M
This Bill	\$ 892.7 M	\$ 943.7 M	\$ 994.6 M	\$ 1,047.8 M	\$ 1,101.6 M
<i>Net Savings*</i>	\$ -	\$ 0.2 M	(\$ 2.3 M)	(\$ 4.9 M)	(\$ 7.0 M)
Total Construction Expenditures: All prison beds needed**					
Current Statutes	\$ 232.3	\$ 76.8 M	\$ 74.0 M	\$ 70.4 M	\$ 67.8 M
This Bill	\$ 225.3	\$ 69.4 M	\$ 68.1 M	\$ 64.6 M	\$ 60.8 M
<i>Net Savings*</i>	(\$ 7.0 M)	(\$ 7.2 M)	(\$ 6.0 M)	(\$ 5.8 M)	(\$ 7.0 M)
Total Savings*	(\$ 7.0 M)	(\$ 7.2 M)	(\$ 8.3 M)	(\$ 10.7 M)	(\$ 14.1 M)
Cum. Savings*	(\$ 7.0 M)	(\$ 14.1 M)	(\$ 22.5 M)	(\$ 33.2 M)	(\$ 47.3 M)

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

**Uses medium custody bed construction. Construction costs in each fiscal year reflect beds that will be needed three years later.

Chart 6

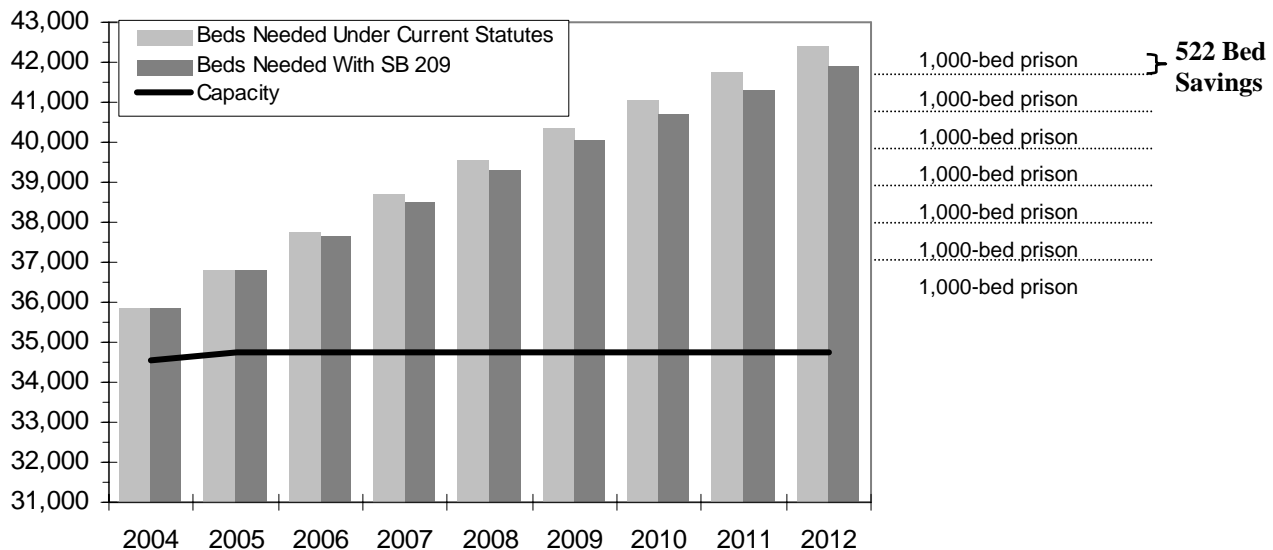


Chart 6 (above) illustrates the long-term savings in beds with SB 209. “Beds needed under current statutes” refers to the projected prison population under the status quo. “Beds needed under SB 209” refers to the revised projections for the prison population if SB 209 is enacted. “Capacity” is the total 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 522 prison beds by 2012.**

With current costs and projections, by 2011-12 the State will have saved \$65.7 million, cumulative, in operating costs. The State will have saved \$46.8 million, cumulative, in foregone construction costs by 2009-10 (projections for construction costs cannot extend beyond 2009-10).

Impact on Post-Release Supervision

Increasing post-release supervision periods from nine months to 12 months will increase the post-release supervision population and the resources needed to supervise that population. The increased supervision period applies only to those Class B1 through E felons who commit offenses on or after December 1, 2003. On average, approximately six months elapses between the date of the offense and the date that the offender is sentenced and placed in the custody of the Department of Correction. The lowest presumptive sentence an offender could receive is 20 months (Class E felon with no prior record points). As a result, this bill will impact some Class E felons beginning in FY 2006-07. With the exception of certain sentences in the mitigated range, felons convicted of Class D and higher offenses will not be affected by this bill until FY 2008-09 at the earliest; Class B1 felons will not be affected until FY 2015-16 at the earliest. Over the five-year window shown in the front page box, the following impact is projected:

CHART 7 Impact of SB 209 on Post-Release Supervision Population & Resources

Increase:	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008
<i>Population</i>	-	-	<i>Small**</i>	285	292
Intensive Teams*	-	-	-	5	6
Probation Officer II	-	-	-	2	2
Probation Officer I	-	-	-	0	0
<i>Total Positions</i>	-	-	-	12	14
Expenditures					
Recurring	\$ -	\$ -	\$ -	\$568,664	\$662,441
Nonrecurring	\$ -	\$ -	\$ -	\$92,769	\$15,057

* 1 intensive team = 1 intensive case officer + 1 surveillance officer

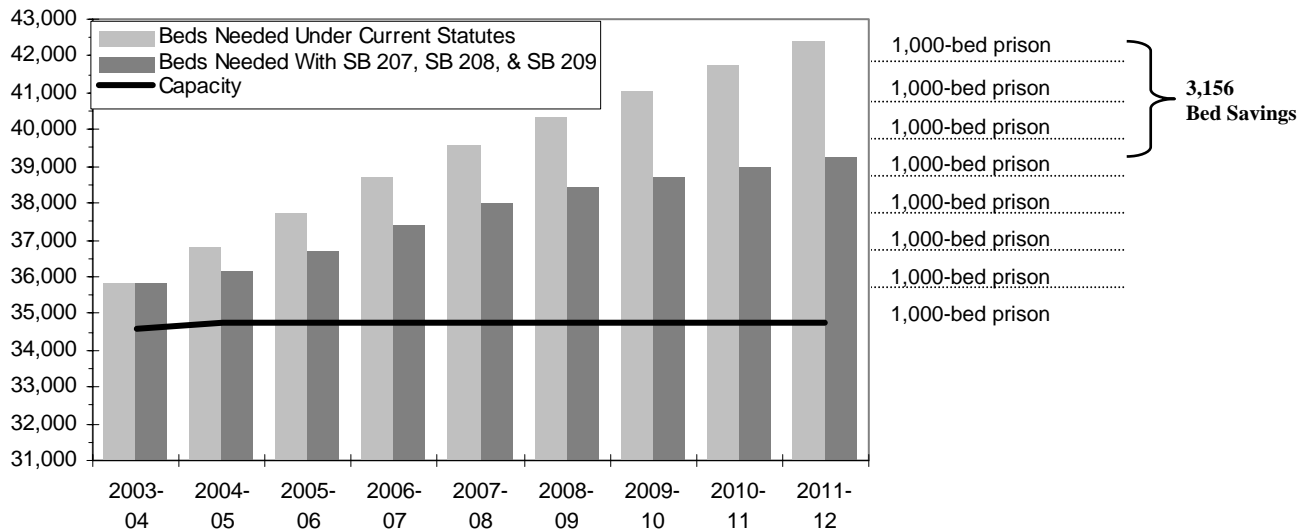
** There will be a few Class E offenders released in 2006, but not enough to significantly impact community corrections workload.

This projection assumes that post-release supervisees assigned to intensive supervision will continue be supervised by two-man intensive teams consisting of an intensive case officer (PPO III) and a surveillance officer. DOC has recently shifted resources so that, in urban settings, one surveillance officer may share a caseload with more than one intensive case officer. Depending on the geographic distribution of the increased caseload, it is possible that fewer surveillance officers would be needed.

Combined Impact of SB 209 and Other Sentencing Bills Introduced in the NC Senate in 2003

In addition to SB 209, 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 207 (Restructure Prior Criminal Record Points) and SB 208 (Sentence Lengths). 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 8



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 9

Combined Prison Savings from Sentencing Bills

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Prison Beds Saved (Cumulative)	-	-651	-1037	-1274	-1535	-1911	-2369	-2786	-3156
Positions Saved (Cumulative)	-	-260	-415	-510	-614	-764	-948	-1114	-1262
Operating Expenditures Saved if SB 207, 208, and 209 are Ratified (Mil)	-	(\$16.70)	(\$27.39)	(\$34.66)	(\$43.02)	(\$55.16)	(\$70.43)	(\$85.32)	(\$99.55)
Construction Expenditures* Saved if SB 207, 208, and 209 are Ratified (Mil)	(\$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 2005-06, current projections indicate that the State will need to construct more than 700 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

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