

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 2067 (First Edition)
SHORT TITLE: Even Out Prior Criminal Record Point Ranges.
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					
Operating		(\$7,403,443)	(\$10,027,187)	(\$11,448,667)	(\$13,289,200)
Capital	(\$33,402,197)	(\$5,263,077)	(\$7,973,826)	(\$5,490,879)	(\$4,613,044)
Judicial	Potential small fiscal impact; amount cannot be determined				
<u>NET SAVINGS:</u>	(\$33,402,197)	(\$12,666,520)	(\$18,001,013)	(\$16,939,546)	(\$17,902,244)
PRISON BEDS SAVED:					
(cumulative)*		(282)	(363)	(398)	(444)
POSITIONS SAVED:					
(cumulative)		(113)	(145)	(159)	(178)
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:

Senate Bill 2067 amends GS 15A-1340.14(c) to modify the points allocated to prior record levels for felony sentencing. The proposed bill increases the points for Level I from 0 points to not more than 1 point; for Level II from 1-4 points to 2-5 points; for Level III from 5-8 points to 6-9 points; for Level IV from 9-14 points to 10-13 points; for Level V from 15-18 points to 14-17 points; and for Level VI, from 19 points or more to 18 points or more. Makes conforming changes to the punishment chart included in GS 15A-1340.17(c). Changes apply to offenses committed on or after December 1, 2008.

Source: *Bill Digest S.B. 2067 (05/28/0200)*

Changes are illustrated by the table below:

Current Prior Record Level Points Range					
I	II	III	IV	V	VI
0	1-4	5-8	9-14	15-18	19+
Points	Points	Points	Points	Points	Points

Proposed Prior Record Level Points Range					
I	II	III	IV	V	VI
0-1	2-5	6-9	10-13	14-17	18+
Points	Points	Points	Points	Points	Points

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.* Therefore, the *projected bed deficit* (row five) reflects the difference between the current bed projection deficits and *beds saved* resulting from this bill (row four). Rows four and five in the chart demonstrate the impact of Senate Bill 2067. **As shown, the Sentencing Commission estimates that this specific legislation will save 444 beds 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.

	<u>June 30 2009</u>	<u>June 30 2010</u>	<u>June 30 2011</u>	<u>June 30 2012</u>	<u>June 30 2013</u>
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 Beds Saved <u>Due to this Bill</u> ³	<i>N/A</i>	<i>(282)</i>	<i>(363)</i>	<i>(398)</i>	<i>(444)</i>
5. Projected Bed Deficit After Savings due to SB 2067	<i>N/A</i>	<i>-883</i>	<i>-671</i>	<i>-1,456</i>	<i>-2315</i>

POSITIONS: It is anticipated that by FY 2012-13, there would be approximately 178 foregone positions due to 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 and the projected number of beds saved due to Senate Bill 2067.

	<u>June 30 2014</u>	<u>June 30 2015</u>	<u>June 30 2016</u>	<u>June 30 2017</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-3,593	-4,423	-5,261	-6,137
2. Projected No. of Beds Saved Resulting From <u>SB 2067</u>	<i>(500)</i>	<i>(581)</i>	<i>(634)</i>	<i>(672)</i>
3. Projected Bed Deficit after Savings due to SB 2067	<i>-3,093</i>	<i>-3,842</i>	<i>-4,627</i>	<i>4,565</i>

DISTRIBUTION OF BEDS: After analyzing Senate Bill 2067, the Department of Correction estimates the following distribution of saved beds in FY 2016/17, by custody level:⁴

- Close Custody - 96
- Medium Custody - 337
- Minimum Custody - 239

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 672 inmates by FY 2016/17, approximately \$56.74 million in construction costs could be saved by FY 2012-13 if “stand alone” facilities were built. For additional details on anticipated savings, see summary table (p.5).

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 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. Potential savings are based on Sentencing Commission projected prison population, with DOC custody breakdown, due to SB 2067.

Summary Table S.B. 933 Fiscal Impact: Division of Prisons			
	First 5 Years of Applicability	Next 5 Years of Applicability	10-Year Horizon**
	(FY 2010-FY 2014)	(FY 2015-FY 2019)	(FY 2010-FY 2019)
Projected Bed Savings	500	236	736
Positions Saved	200	94	294
	First 5 Fiscal Years	Next 2 Fiscal Years***	7-Year Horizon***
	(FY 2009-FY 2013)	(FY 2014-2015)	(FY 2009-2015)
Prisons: Foregone Construction Costs*			
Stand-Alone	\$56,743,022	\$8,440,996	\$65,184,018
Add-On	\$37,622,382	\$8,890,418	\$46,512,800
Prisons: Foregone Operating Costs	\$42,168,498	\$34,411,810	\$76,580,308
Total Cost: Prisons*	\$98,911,520	\$42,852,806	\$141,764,326

* 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; ** Also applies to these figures

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.⁸

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter.

⁸ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Any projected reduction in prison beds as a result of this bill does not necessarily translate into a lower court workload. A defendant would still face the same charge and, if convicted, a sentence of roughly similar type and magnitude. Fiscal Research does not anticipate a significant change in litigation strategies resulting from this modification of points where the defendant's Prior Record Level classification would remain the same. For those defendants who would move into a higher Prior Record Level classification, however, one would expect the increased punishment to be accompanied by more vigorous defense and prosecution, resulting in increased court time and costs to dispose of these cases. Overall, Fiscal Research would not expect this bill to have a net substantial impact on the court system.

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: Scott Tesh and Douglas R. Holbrook

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: June 10, 2008



Signed Copy Located in the NCGA Principal Clerk's Offices