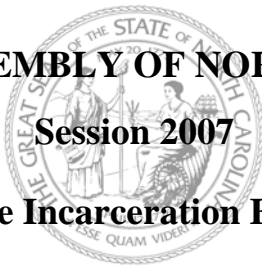


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 2068 (First Edition)
SHORT TITLE: Establish Proportionate Sentence Lengths.
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		\$357,481	\$1,391,687	\$365,944	(\$1,464,612)
Nonrecurring	(\$3,790,800)	(\$12,561,848)	(\$24,313,298)	(\$28,847,318)	(\$27,303,760)
Judicial	Little or no fiscal impact expected				
TOTAL					
SAVINGS:	(\$3,790,800)	(\$12,204,367)	(\$22,921,611)	(\$28,481,374)	(\$25,839,148)
ADDITIONAL PRISON BEDS:					
(cumulative)*	N/A	12	51	13	(44)
POSITIONS:					
(cumulative)	N/A	5	20	5	(18)
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2008					
<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 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.</i>					

BILL SUMMARY: Senate Bill 2068 makes the increase in sentence lengths between prior record levels more proportionate using a set percentage (15%) increment. The current sentence lengths in Prior Record Level I in each offense class would remain unchanged, serving as an anchor, while the sentence lengths between each subsequent prior record level would be increased by 15% in all classes except Classes H and I, which would remain unchanged. Under current law, the difference in sentence lengths is 20% between Levels I and II, 17% between Levels II and III, 14% between Levels III and IV, 13% between Levels IV and V, and 11% between Levels V and VI (excluding life without parole).

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 number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of SB 2068. As shown, the Sentencing Commission estimates that this specific legislation will subtract 44 inmates from the prison system by the end of FY 2012-13. **The last number in rows 4 and 5 represents the number of beds saved. A majority of the savings associated with this bill is outside of the 5 year window; see summary table (p5).**

	<u>June 30</u> <u>2009</u>	<u>June 30</u> <u>2010</u>	<u>June 30</u> <u>2011</u>	<u>June 30</u> <u>2012</u>	<u>June 30</u> <u>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. <i>Projected No. of Additional Inmates Due to this Bill</i> ³	<i>N/A</i>	<i>12</i>	<i>51</i>	<i>13</i>	<i>(44)</i>
5. <i>No. of Additional Beds Needed Each Fiscal Year Due to this Bill</i>	<i>N/A</i>	<i>12</i>	<i>51</i>	<i>13</i>	<i>(44)</i>

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.

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.

POSITIONS: It is anticipated that by FY 2012-13, there could be approximately 18 positions saved due to projected prison bed savings 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 additional inmates due to SB 2068, and the estimated number of new beds required each year through FY 2016-17. **Rows 4 and 5 illustrate the projected number of saved prison beds.**

	June 30 <u>2014</u>	June 30 <u>2015</u>	June 30 <u>2016</u>	June 30 <u>2017</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-3,593	-4,423	-5,261	-6,137
2. <i>Projected No. of Additional Inmates Resulting From <u>SB 2068</u></i>	(181)	(427)	(695)	(931)
3. <i>Estimated No. of New Beds Required Under <u>SB 2068</u></i>	<i>(181)</i>	<i>(427)</i>	<i>(695)</i>	<i>(931)</i>

DISTRIBUTION OF BEDS: After analyzing Senate Bill 2068, the Department of Correction estimates the following distribution of saved beds in FY 2016/17, by custody level:⁴

- Close Custody - 213
- Medium Custody - 520
- Minimum Custody - 198

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.

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.

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).

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 931 inmates by FY 2016/17, approximately \$96.82 million could be saved by FY 2012-13 due to foregone construction costs 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

Summary of Fiscal Impact on Division of Prisons

The Summary Table on the next page 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. **A majority of the potential savings produced by this bill occur outside of the five year window.** The Sentencing Commission projects that this bill will slightly increase the prison population in its first three full years of applicability. **As illustrated in the Summary Table, Senate Bill 2068 has the potential, by its tenth year of applicability, to reduce the prison population by 1277 inmates.**

⁷ Office of State Construction, March 24, 2006.

Summary Table . S.B. 933 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	181	1096	1277
Positions Saved	72	438	511
	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	\$96,817,024	\$45,047,665	\$141,864,689
Add-On	\$46,544,043	\$45,309,333	\$91,853,376
Prisons: Foregone Operating Costs	(\$650,500)	\$20,749,356	\$20,098,856
Total Savings: Prisons*	\$96,166,524	\$65,797,021	\$161,963,545

* 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. 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%.

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.

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.

AOC expects relatively little change in litigation strategies resulting from this modification of sentence lengths. Defendants would still face the same charge and, if convicted, a sentence of the same type and similar magnitude. Thus, Fiscal Research would not expect this bill to have a 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

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