

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

**BILL NUMBER:**       —SB 919 —2nd Edition

**SHORT TITLE:**       Homicide Prevention Act/Domestic Violence

**SPONSOR(S):**       Senator Rand

	<b>FISCAL IMPACT</b>				
	<b>Yes (<u>X</u>-)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring</b>		<u>Unable to determine exact amount.</u>			
<b>Nonrecurring</b>					
<b>Judicial</b>					
<b>Recurring</b>		<u>Unable to determine exact amount.</u>			
<b>Nonrecurring</b>					
<b>TOTAL</b>			<b>0</b>		
<b>EXPENDITURES:</b>		<u>Unable to determine exact amount.</u>			
			<b>0</b>		
			<b>0</b>		
			<b>0</b>		
<b>ADDITIONAL PRISON BEDS*</b>		<u>Unable to determine exact amount.</u>			
<b>POSITIONS: (cumulative)</b>		<u>Unable to determine exact amount.</u>			
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction ( <u>DOC</u> ); Judicial Branch					
<b>EFFECTIVE DATE:</b> <u>Effective When It Becomes Law</u>					
<p><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></p>					

**BILL SUMMARY<sup>1</sup>:** This bill expands current G.S. 14-269.8, which prohibits a person subject to a Chapter 50B order from purchasing a firearm. This bill also expands Chapter 50B by creating a Class H felony for a defendant subject to a domestic violence order to possess or purchase a firearm. Under this bill, a court must order a defendant to surrender his firearms to the sheriff if he poses a threat to himself or others; under current law, this action is discretionary. This does not apply to law enforcement or military employees who possess or use firearms as part of their official duties.

Current G.S. 14-269.8 provides that it is a Class H felony for any person to purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in effect a Chapter 50B domestic violence order prohibiting the person from purchasing a firearm. This bill expands current G.S. 14-269.8 by (1) making it unlawful to also own, possess, receive, and attempt to own, possess, purchase, or receive a firearm; and (2) adding machine gun, ammunition, and permits to purchase or carry concealed firearms in place of “gun”, “rifle” and “pistol.”

The second edition of the bill requires the sheriff, instead of the defendant, to apply for an order of disposition of firearms. It also adds a provision pertaining to the sale of firearms if the sheriff conducts a sale of firearms surrendered by a defendant. In these circumstances, the sheriff must give any proceeds from the sale (after deducting costs associated with the sale) to the defendant. Under current law, the sheriff must, within 30 days after the sale, pay any proceeds to the treasurer of the county board of education in which the sale is made.

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<sup>1</sup> AOC Research and Planning

## ASSUMPTIONS AND METHODOLOGY:

### General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

### Department of Correction

#### Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos 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. 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. The number of beds needed will always be equal to the projected number of inmates due to a bill.

The Sentencing Commission notes that in 2001-2002, there were no convictions for violations of G.S. 14-269.8 for purchase or attempt to purchase any gun, rifle, pistol, or other firearm while a protective order is in place. However, it is not known how many additional Class H convictions will result from adding conduct to G.S. 50B-3.1(c) that is not currently illegal under G.S. 14-269.8.

It is also not known how many new felony charges would occur as a result of amending G.S. 14-269.8 to include “own, possess, receive or attempt to own, possess, or receive a machine gun, ammunition, or permits to purchase or carry concealed weapons if ordered by the court” and to include successive protective orders. If, for example, there were three additional Class H convictions per year due to the proposed broadening of the above statutes, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. In 2001-2002, 34 percent of Class H felony offenders were sentenced to active sentences, 50 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders were sentenced to a minimum of ten and a maximum of twelve months.

The chart below 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 (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add \_\_\_ inmates to the prison system by the end of FY 2007-08.

	<b>June 30</b> <b>2004</b>	<b>June 30</b> <b>2005</b>	<b>June 30</b> <b>2006</b>	<b>June 30</b> <b>2007</b>	<b>June 30</b> <b>2008</b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>2</sup>	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>3</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
4. No. of Projected Additional Inmates Due to this Bill <sup>4</sup>					
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill <sup>3</sup>					

<sup>2</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>3</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>4</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.

**POSITIONS:** It is anticipated that approximately \_\_\_ positions would be needed to supervise the additional inmates housed under this bill by 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.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal Notes look at the impact of a bill through the year FY 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 each year.

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Inmates Due to —This Bill				
Available Beds (over/under)	-5,616	-6,339	-7,039	-7,684
New Beds Needed				

**DISTRIBUTION OF BEDS:** After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

- \_\_\_\_\_ Close Custody \_\_\_\_\_
- \_\_\_\_\_ Medium Custody \_\_\_\_\_
- \_\_\_\_\_ 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.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2002-0203	\$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.

**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

~~Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2004 and 2005, this is based on the assumption assumes that Correction cannot build prisons quickly enough to house additional offenders before 2005-06 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.~~

~~In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.~~

#### **~~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.

AOC data for calendar 2002 indicate that there were approximately 27,680 Chapter 50B protective orders issued, and 2two defendants were charged under current G.S. 14-269.8 for purchasing a firearm in violation of a domestic violence order. Since this bill expands current G.S. 14-269.8 and creates many more opportunities for violations, the AOC anticipates an increase in the number of charges under this statute. However, the AOC has no data from which to estimate the number of new felony charges that would arise from this bill.

The AOC notes that SB 919 makes mandatory one form of relief under Chapter 50B that is currently issued at the court's discretion. Under current G.S. 50B-3.1(a)(11), the court or magistrate may specify in the protective order that the offender is prohibited from purchasing a firearm for a time fixed in the order. On the ex parte domestic violence protective order and domestic violence protective order forms, the judge can designate that the defendant is prohibited from possessing firearms, from purchasing firearms, and/or the defendant's concealed handgun permit is suspended for the effective period of the order.

The AOC does not anticipate this bill to increase the length or complexity of such hearings as judges currently make determinations in the hearings as to whether a defendant possesses a firearm and whether he poses a threat to himself or others. However, since this bill broadens the items that can be confiscated and broadens the circumstances under which firearms can be disposed, the AOC notes that the bill could potentially increase the number of motions and hearings. District court judges would be required to conduct hearings and issue orders with respect to these new proceedings; clerks would incur additional workload in processing orders and complying with notice requirements.

With respect to the new Class H felonies created under Chapter 50B, the AOC has no data from which to estimate the number of new felony charges that would occur as a result of this bill. For offenses that are brought to trial as Class H felonies, the estimated court cost is \$6,066. For Class H felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$352.

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

**TECHNICAL CONSIDERATIONS:** The bill date is effective when it becomes law. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The NC Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and thus assume that the legislation will not impact the prison system until the beginning of 2004-05. If the bill becomes effective prior to December 1, there will be an impact on prison system in the 2003-04 fiscal year.

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