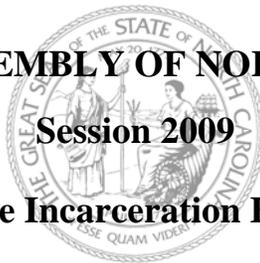


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 490 (First Edition)

**SHORT TITLE:** Adjust B1-E Felony Penalties.

**SPONSOR(S):** Senator Kinnaird

<b>FISCAL IMPACT</b>					
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
<b>EXPENDITURES</b>					
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring</b>	-	\$598,444	(\$2,467,326)	(\$5,945,377)	(\$8,706,915)
<b>Probation</b>	-	-	\$379,113	\$489,209	\$489,209
<b>Judicial</b>	Indeterminate fiscal impact, minimal impact anticipated				
<b>ADDITIONAL PRISON BEDS:</b>					
<b>(cumulative)*</b>	-	43	(76)	(182)	(258)
<b>POSITIONS:</b>					
<b>(cumulative)</b>	-	17	(25)	(66)	(96)
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> December 1, 2009					
<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:**

This bill seeks to reallocate three months from the minimum sentence of Classes B1 through E to the maximum sentence, and to increase the period of post-release supervision from nine months to 12 months. Amends G.S. 15A-1340.17 to reduce by three months the minimum sentences for Class B1 through E felonies and to increase by three months the corresponding maximum sentences. Amends G.S. 15A-1368.2(a) to provide that a prisoner not awarded earned time must be released for post-release supervision on the date equivalent to the prisoner’s maximum prison term less 12 months (was, nine months). Increases the post-release supervision period in G.S. 15A-1368.2(c) from nine to 12 months. Makes conforming changes. Effective for offenses committed on or after December 1, 2009.

**ASSUMPTIONS AND METHODOLOGY:**

**General**

The North Carolina 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**

This bill reallocates three months from the minimum sentence in Class B1 through E to the maximum sentence for the purpose of increasing the period of imprisonment following revocation of post-release supervision from nine months to twelve months. It also increases the period of post-release supervision from nine months to twelve months.

The anticipated impact on the prison population resulting from the passage of this bill is shown in the table below.

<b>Projected Prison Bed Impact</b>	
<b>Fiscal Year</b>	<b>Bed Impact</b>
2010-11	43
2011-12	-76
2012-13	-182
2013-14	-258
2014-15	-325
2015-16	-419
2016-17	-494
2017-18	-555
2018-19	-601
2019-2020	-635

Source: NC Sentencing and Policy Advisory Commission, FY 2007-08 Felony Simulation Data

The data shown in the table above is an estimate of impact assuming an effective date of December 1, 2009, with FY 2010-11 as the first full year of implementation due to the gap between the time a felony offense is committed and the offender is sentenced. In preparing this data, the Sentencing Commission assumes no changes in judicial or prosecutorial behavior and assumes no deterrent or incapacitative effects. The post-release supervision revocation rate is assumed to remain the same as it was in FY 2007-08. This data reflects the change in the length of prison time imposed for revocation of post-release supervision from nine months (current law) to 12 months (proposed law).

The Sentencing Commission provided the following background statistical information:

Background Statistical Information			
Offense Class	Number of Active Sentences	Current Grid	Reallocation: 3 months Reduction of Minimum Sentences for Offense Classes B1-E
		Average Estimated Time Served	Average Estimated Time Served
B1	151	283.0	280.1
B2	297	189.1	186.0
C	1,076	94.4	91.3
D	808	70.7	67.5
E	654	29.9	26.7
<b>TOTAL</b>	<b>2,986</b>	<b>92.8</b>	<b>89.7</b>

Note: This table excludes violent habitual felon and drug trafficking convictions.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of January 2009.

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.* Rows four and five in the chart demonstrate the impact of SB 490. As shown, the Sentencing Commission estimates that this specific legislation will result in 258 fewer inmates in the prison system by the end of FY 2013-14.

	June 30 2010	June 30 2011	June 30 2012	June 30 2013	June 30 2014
1. Projected No. of Inmates Under Current Structured Sentencing Act <sup>2</sup>	42,296	43,165	44,024	44,987	45,998
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	40,014	42,022	42,282	42,282	42,282
3. Projected No. of Beds Over/Under Inmate Population	-2,282	-1,143	-1,742	-2,705	-3,716
<b>4. Projected No. of Additional Inmates Due to this Bill <sup>3</sup></b>	<i>N/A</i>	<b>43</b>	<b>(76)</b>	<b>(182)</b>	<b>(258)</b>
<b>5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill</b>	<i>N/A</i>	<b>1,186</b>	<b>1,666</b>	<b>2,523</b>	<b>3,458</b>

**POSITIONS:** It is anticipated that by FY 2013-14, approximately 103 fewer positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and

<sup>1</sup> 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.

<sup>2</sup> 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 January 2009.

<sup>3</sup> Criminal penalty bills effective December 1, 2009, should not affect prison population and bed needs until FY 2010-11 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

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 2013-14. 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 490; and, the estimated number of new beds required each year through FY 2017-18.

	<b>June 30 <u>2015</u></b>	<b>June 30 <u>2016</u></b>	<b>June 30 <u>2017</u></b>	<b>June 30 <u>2018</u></b>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,655	-5,600	-6,541	-7,488
2. <i>Projected No. of Additional Inmates Resulting From SB 490</i>	(325)	(419)	(494)	(555)
3. <i>Estimated No. of New Beds Required Under SB 490</i>	<b>4,330</b>	<b>5,181</b>	<b>6,047</b>	<b>6,933</b>

**DISTRIBUTION OF BEDS:** Fiscal Research asked DOC’s Office of Research and Planning to project the impact of proposed SB 490 on inmate custody levels. Research and Planning staff used the information provided by the Sentencing Commission to prepare the following estimates.

To prepare these estimates, Research and Planning staff applied the distribution of current custody assignments for each crime class to the projected populations by crime class. Current custody assignment practice is the basis for this projection, therefore any changes to current Division of Prisons’ inmate custody assignment practices will affect these estimates.

The table below contains an estimate of the net change allocated to each custody level for FY 2010-11 through FY 2019-20 if SB 490 is enacted. Any difference between the Sentencing Commission’s population projections and those shown in the tables below are due to rounding.

<b>Fiscal Year</b>	<b>Close</b>	<b>Medium</b>	<b>Minimum</b>	<b>Total Beds</b>
2010-11	3	15	25	43
2011-12	-13	-55	-8	-76
2012-13	-29	-117	-36	-182
2013-14	-47	-160	-51	-258
2014-15	-63	-196	-65	-324
2015-16	-85	-248	-86	-419
2016-17	-103	-289	-102	-494
2017-18	-117	-322	-116	-555
2018-19	-128	-347	-126	-601
2019-20	-138	-366	-132	-636

Source: NC Department of Correction, Office of Research and Planning

**OPERATING:** Operating costs are based on actual FY 2007-08 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	\$60.87	\$79.27	\$89.17	\$74.77

**Department of Correction – Division of Community Corrections**

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used level for the post-release population – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration. 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.

The population of offenders serving on post-release supervision can be expected to grow proportionally since offenders will be spending 50% more time on supervision than is currently the case. DCC staff reported to Fiscal Research that due to the lag time between the bill’s effective date and full realization of the bill’s effects, no additional probation officer resources will be needed for FY 2009-10 and 2010-11. In FY 2011-12, DCC anticipates that five additional probation officers will be needed at a cost of \$379,113, and in FY 2012-13, seven additional probation officer positions will be needed at a cost of \$489,209.

**Judicial Branch**

The Administrative Office of the Courts (AOC) 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 does not anticipate an impact on the courts from the reduction in active time imposed. However, an impact could result from the lengthening of the post-release supervision period if it leads to an increase in supervision violations. Preliminary hearings on post-release supervision violations are conducted by a judicial official or a hearing officer designated by the Commission. To the extent that judicial officials are used as hearing officers for these new proceedings, there would be an impact on the courts.

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

**TECHNICAL CONSIDERATIONS:** None

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