

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 831

SHORT TITLE: POSSESS FIREARM/DRUG OFFENSE

SPONSOR(S): SENATOR RAND

FISCAL IMPACT: **Expenditures:** **Increase (x)** **Decrease (**
)

FUNDS AFFECTED: **General Fund (x)** **Highway Fund ()**
 Local Fund () **Other Fund ()**

BILL SUMMARY: "AN ACT TO PROVIDE ENHANCED PUNISHMENT FOR A FELON WHO USES, DISPLAYS, OR THREATENS TO USE OR DISPLAY A FIREARM DURING THE COMMISSION OF A FELONIOUS DRUG OFFENSE. Amends G.S. 15A-1340.16A as title indicates.

EFFECTIVE DATE: December 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:

Judicial Branch
Department of Correction

FISCAL IMPACT: JUDICIAL BRANCH

	INDIGENT DEFENSE TOTAL	OTHER STATE FUNDS
12/1/95-6/30/96	\$35,160	\$127,484
	\$162,644	
FY 96-97	\$64,277	\$226,394
	\$290,671	
FY 97-98	\$68,776	\$233,186
	\$301,962	
FY 98-99	\$73,591	\$240,181
	\$313,772	
FY 99-00	\$78,742	\$247,387
	\$326,129	

The figures above show an estimated 7% annual increase in indigent defense costs and an annual 3% increase in other state costs.

DEPARTMENT OF CORRECTION

Two alternatives are provided for the possible fiscal impact on the Department of Correction.

Alternative 1 assumes that the number of beds over the currently projected prison population could be utilized to partially fulfill the requirements of the proposed legislation. The fiscal impact of Alternative 1 shows the cost associated with constructing and operating facilities in addition to those currently available.

DEPARTMENT OF CORRECTION: FISCAL IMPACT: ALTERNATIVE 1(*)

	RECURRING	NON-RECURRING	TOTAL
FY 95/96			
FY 96/97			
FY 97/98		\$5,147,449	\$5,147,449
FY 98/99		\$7,723,096	\$7,723,096
FY 99/00	\$6,497,923		\$6,497,923

Alternative 2 assumes that all of the beds required by the proposed legislation would have to be provided through the construction and operation of new facilities.

DEPARTMENT OF CORRECTION: FISCAL IMPACT: ALTERNATIVE 2(*)

	RECURRING	NON-RECURRING	TOTAL
FY 95/96	\$ 41,581	\$18,220,093	\$18,261,674
FY 96/97	\$ 6,347,390	\$20,137,110	\$26,484,500
FY 97/98	\$16,305,899	\$24,357,505	\$40,663,404
FY 98/99	\$25,805,051	\$29,478,498	\$55,283,549
FY 99/00	\$35,213,211	\$17,045,703	\$52,258,914

(*) The North Carolina Sentencing and Policy Advisory Commission notes that the five year weapon enhancement was applied only if the drug offender was also charged with a firearm offense. It is suspected that a large number of drug offenders possess firearms at the time of the offense but are not charged with carrying a concealed weapon because it is only a Class 2 misdemeanor. Since offenders are not always charged for the firearm offense, these figures may underestimate the actual impact.

NOTE: If funded, the Governor's proposal for constructing and operating 2,424 new prison beds would meet and exceed the number of beds estimated to be needed if SB 831 is ratified. However, there are some differences between SB 831 and the Governor's proposal in the type of beds needed (i.e. minimum, medium, close custody levels). The Governor is requesting in his 1995-97 Capital Improvement budget, the construction of 2,424 beds at the cost of \$86,000,000 in 1995-96 and \$14,000,000 in 1996-97. The

estimated annualized operating costs for these beds is \$50,000,000. See Appendix C for a list of the proposed facilities and their related construction costs.

ASSUMPTIONS AND METHODOLOGY: JUDICIAL BRANCH

The proposed legislation amends G.S. 15A-1340.16A to provide for a five-year sentence enhancement for defendants convicted of a G.S. 90-95 drug felony during which they use, display, or threaten to use or display a firearm. Under current law, the five-year sentence enhancement is only applicable to Class A through E felons.

Under the proposed legislation, defendants would be less likely to plead guilty knowing that a five-year mandatory prison term will be added to their sentence (if they receive an active sentence). The principal effect of the proposed legislation would be an increase in the trial rate of those newly eligible for the sentence enhancement.

The Administrative Office of the Courts estimates that in 1994, approximately 17,088 defendants were charged with felony drug offenses under G.S. 90-95. Of these, district attorneys estimated that about 4% (684) would be eligible for the enhancement due to their use of a firearm. However, district attorneys estimated that 23% (157) of these defendants would have been eligible for the enhancement under current law by virtue of being charged with Class E or higher offenses, leaving 527 (684 - 157) defendants eligible for the enhancement under the proposed bill.

District attorneys estimated that under current law, approximately 7% of these defendants (37) would have asked for a jury trial, which would last an estimated 1.5 days. Under the proposed legislation, district attorneys estimated that 45% (237) of these defendants would ask for a jury trial, which they estimated would last 1 3/4 days. Thus, SB 831 could result in 200 additional trials (237-37).

The majority of district attorneys surveyed felt that they would have more leverage in plea bargaining. Thus, the Administrative Office of the Courts reduced the estimated number of trials (200) by 50%, to arrive at 100 new 1 3/4-day trials as a result of the proposed legislation.

The cost each new trial would be approximately \$2,198. The Administrative Office of the Courts estimates that 70% (70) of the defendants would be indigent, with 25% represented by public defender (at an average of \$416 per trial) and 75% by assigned counsel (at an average of \$1,000 per case). At current rates, these 100 trials would cost an estimated \$219,800 in court time and \$60,072 for indigent defense.

ASSUMPTIONS AND METHODOLOGY: DEPARTMENT OF CORRECTION

ALTERNATIVE 1

Alternative 1 assumes that the prison beds currently available, those available over-and-above the number required under Structured Sentencing and the repeal of the prison cap, could be utilized to partially fulfill the requirements of SB 831.

The following chart shows, for the end of each fiscal year, the total number of inmates projected to under Structured Sentencing effective October 1, 1994 and the number of additional inmates resulting from the repeal of the prison cap 1/1/96, the number of beds projected to be available, the number of additional inmates projected to be incarcerated under SB 831, and the additional beds needed as a result of this bill:

	June 30 June 30 <u>1996</u>	June 30 <u>1997</u>	June 30 <u>1998</u>	June 30 <u>1999</u>
<u>2000</u>				
No. of Inmates	31,375 31,241	32,029	31,387	31,133
Under Structured Sentencing Effective 10/1/94 and Repealing the Prison Cap 1/1/96				
Projected Beds Available at 130% Capacity of 50 Sq. Ft./Inmate*	29,198 31,214	31,214	31,214	31,214
Projected Beds Available In-State 0	360	0	0	0
Projected Beds Available Due to Double-Bunking in Selected Single Cells 656	656	656	656	656
Projected Beds Available by Outside Providers 578	578	578	578	578
No. of Beds Over/(Under) Projected Population 1,207	842	419	1,061	1,315

No. of Projected Additional Inmates Due to this Bill 1,480	2	276	701	1,097
No. of Additional Beds Needed Due to SB 831 273	0	0	0	0

* The projected prison bed capacity also includes 827 beds gained through the most recent modification of Small v. Martin.

As shown in the Fiscal Impact Table on page 2, the impact of this bill is the actual cost of providing 273 additional beds by June 30, 2000.

Alternative 1 does not include the 2,424 beds which are being requested in the Governor's 1995-97 Capital Improvement Budget.

THE NUMBER OF ADDITIONAL BEDS NEEDED DUE TO SB 831 BY CUSTODY LEVEL

BY JUNE 30, 2000

CLOSE	73
MEDIUM	117
MINIMUM	83
TOTAL	273

See Appendix A for the detailed cost analysis for Alternative 1.

ALTERNATIVE 2

Alternative 2 assumes that all of the beds required by SB 831 would have to be provided through the construction and operation of new facilities. The following tables show the prison bed needs by custody level for Alternative 2 for FY 95/96 through FY 99/00 (*).

ALTERNATIVE 2: THE NUMBER OF ADDITIONAL BEDS NEEDED DUE TO THIS BILL

	FY 95/96	FY 96/97	FY 97/98	FY 98/99	FY 99/00
CLOSE	0	74	187	292	394
MEDIUM	1	118	301	471	635
MINIMUM	1	84	213	334	451
TOTAL	2	276	701	1,097	1,480

* The projections for Alternative 2 do not include the 2,424 beds which are being requested in the Governor's 1995-97 Capital Improvement budget.

See Appendix B for the detailed cost analysis for Alternative 2.

SOURCES OF DATA: Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission

FISCAL RESEARCH DIVISION (733-4910)

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DATE: June 19, 1995

[FRD#003]



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**APPENDIX A
ALTERNATIVE 1**

THE NUMBER OF ADDITIONAL BEDS NEEDED DUE TO SB 831 BY CUSTODY
LEVEL

BY JUNE 30, 2000

CLOSE	73
MEDIUM	117
MINIMUM	83

FY 99/00: 73 CLOSE SECURITY BEDS - STATE FACILITIES

Construction (FY 97/98): $\$70,513 \times 73 = \$5,147,449$
Operation: $\$27,958 \times 73 = \$2,040,934$

117 MEDIUM SECURITY BEDS - STATE FACILITIES

Construction (FY 98/99): $\$42,719 \times 117 = \$4,998,123$
Operation: $\$24,367 \times 117 = \$2,850,939$

83 MINIMUM SECURITY BEDS - STATE FACILITIES

Construction (FY 98/99): $\$32,831 \times 83 = \$2,724,973$
Operation: $\$19,350 \times 83 = \$1,606,050$

**APPENDIX B
ALTERNATIVE 2**

The time required for the State to find a site, draw up the plans, and construct each of the custody level prisons are as follows:

Close Custody -	30 months
Medium Custody -	24 months
Minimum Custody -	21 months

ALTERNATIVE 2: THE NUMBER OF ADDITIONAL BEDS NEEDED DUE TO THIS BILL

	FY 95/96	FY 96/97	FY 97/98	FY 98/99	FY 99/00
CLOSE	0	74	187	292	394
MEDIUM	1	118	301	471	635
MINIMUM	1	84	213	334	451
TOTAL	2	276	701	1,097	1,480

CLOSE CUSTODY COST ANALYSIS: ALTERNATIVE 2

The State would be unable to meet the demand for close security beds in FY 96/97. Therefore, the costs associated with the construction and operation of the close security facilities in FY 96/97 are only hypothetical in nature. These numbers are included so as to encompass the full cost of the legislation. However, it would not be possible to construct and begin operation of close security facilities within this time-frame.

FY 96/97: 74 CLOSE SECURITY BEDS - STATE FACILITIES - HYPOTHETICAL

Construction (FY 95/96):	\$62,757 X 74 = \$4,644,018
Operation:	\$27,015 X 74 = \$1,999,110

FY 97/98: 187 CLOSE SECURITY BEDS - STATE FACILITIES

Construction (FY 95/96):	\$62,757 X 113 = \$7,091,541
Operation:	\$27,326 X 187 = \$5,109,962

FY 98/99 292 CLOSE SECURITY BEDS - STATE FACILITIES

Construction (FY 96/97):	\$66,522 X 105 = \$6,984,810
Operation:	\$27,640 X 292 = \$8,070,880

FY 99/00 394 CLOSE SECURITY BEDS - STATE FACILITIES

Construction (FY 97/98):	\$70,513 X 102 = \$ 7,192,326
Operation:	\$27,958 X 394 = \$11,015,452

FY 00/01 497 CLOSE SECURITY BEDS - STATE FACILITIES
 Construction (FY 98/99): \$74,744 X 103 = \$7,698,632

FY 01/02 565 CLOSE SECURITY BEDS - STATE FACILITIES
 Construction (FY 99/00): \$79,229 X 68 = \$5,387,572

MEDIUM CUSTODY COST ANALYSIS: ALTERNATIVE 2

The State would be unable to meet the immediate demand for medium security beds resulting from the proposed legislation if all of the beds required by the proposed legislation had to be supplied through additional resources. Thus, it is assumed that medium security private provider beds would be needed at the rate of \$59.46 per inmate/per day. Since these are long-term contracts, it is assumed that the individuals housed by private providers in FY 95/96 would remain in private facilities throughout the time-period covered by this fiscal note.

MEDIUM SECURITY PRIVATE PROVIDER RATE (*)

 \$50.00 per day/inmate
 \$ 3.56 administrative cost
 \$ 4.84 extraordinary medical
 \$.88 day/clothing
 \$.18 SIPs for employees/office supplies
 \$59.46 Total per day

(*) - There is not an inflation factor included in the private provider rates.

FY 95/96: 1 MEDIUM SECURITY BED - PRIVATE PROVIDER
 \$59.46 x 1 x 365 = \$21,703

FY 96/97: 117 MEDIUM SECURITY BEDS - STATE FACILITIES
 Construction (FY 95/96): \$35,868 X 117 = \$4,196,556
 Operation: \$23,545 X 117 = \$2,754,765
 1 MEDIUM SECURITY BED - PRIVATE PROVIDER
 \$59.46 x 1 x 365 = \$21,703

FY 97/98: 300 MEDIUM SECURITY BEDS - STATE FACILITIES
 Construction (FY 96/97): \$38,020 X 183 = \$6,957,660

Operation: $\$23,816 \times 300 = \$7,144,800$
 1 MEDIUM SECURITY BED - PRIVATE PROVIDER
 $\$59.46 \times 1 \times 365 = \$21,703$
 FY 98/99: 470 MEDIUM SECURITY BEDS - STATE FACILITIES
 Construction (FY 97/98): $\$40,301 \times 170 = \$6,851,170$
 Operation: $\$24,090 \times 470 = \$11,322,300$
 1 MEDIUM SECURITY BED - PRIVATE PROVIDER
 $\$59.46 \times 1 \times 365 = \$21,703$
 FY 99/00: 634 MEDIUM SECURITY BEDS - STATE FACILITIES
 Construction (FY 98/99): $\$42,719 \times 164 = \$7,005,916$
 Operation: $\$24,367 \times 634 = \$15,448,678$
 1 MEDIUM SECURITY BED - PRIVATE PROVIDER
 $\$59.46 \times 1 \times 365 = \$21,703$
 FY 00/01: 800 MEDIUM SECURITY BEDS - STATE FACILITIES
 Construction (FY 99/00): $\$45,282 \times 166 = \$7,516,812$

MINIMUM CUSTODY COST ANALYSIS: ALTERNATIVE 2

The State would be unable to meet the immediate demand for minimum security beds resulting from the proposed legislation if all of the beds required by the proposed legislation had to be supplied through additional resources. Thus, it is assumed that minimum security private provider beds would be needed at the rate of \$54.46 per inmate/per day. Since these are long-term contracts, it is assumed that the individuals housed by private providers in FY 95/96 would remain in private facilities throughout the time-period covered by this fiscal note.

MINIMUM SECURITY PRIVATE PROVIDER RATE (*)

$\$45.00$ per day/inmate
 $\$ 3.56$ administrative cost
 $\$ 4.84$ extraordinary medical
 $\$.88$ day/clothing
 $\$.18$ SIPs for employees/office supplies
 $\$54.46$ Total per day

(*) - There is not an inflation factor included in the private provider rates.

FY 95/96: 1 MINIMUM SECURITY BED - PRIVATE PROVIDER
\$54.46 X 1 X 365 = \$19,878

FY 96/97: 83 MINIMUM SECURITY BEDS - STATE FACILITIES
Construction (FY 95/96): \$27,566 X 83 = \$2,287,978
Operation: \$18,698 X 83 = \$1,551,934
1 MINIMUM SECURITY BED - PRIVATE PROVIDER
\$54.46 X 1 X 365 = \$19,878

FY 97/98: 212 MINIMUM SECURITY BEDS - STATE FACILITIES
Construction (FY 96/97): \$29,220 X 212 = \$6,194,640
Operation: \$18,913 X 212 = \$4,009,556
1 MINIMUM SECURITY BED - PRIVATE PROVIDER
\$54.46 X 1 X 365 = \$19,878

FY 98/99: 333 MINIMUM SECURITY BEDS - STATE FACILITIES
Construction (FY 97/98): \$30,973 X 333 = \$10,314,009
Operation: \$19,130 X 333 = \$6,370,290
1 MINIMUM SECURITY BED - PRIVATE PROVIDER
\$54.46 X 1 X 365 = \$19,878

FY 99/00: 450 MINIMUM SECURITY BEDS - STATE FACILITIES
Construction (FY 98/99): \$32,831 X 450 = \$14,773,950
Operation: \$19,350 X 450 = \$ 8,707,500
1 MINIMUM SECURITY BED - PRIVATE PROVIDER
\$54.46 X 1 X 365 = \$19,878

FY 00/01: 569 MINIMUM SECURITY BEDS - STATE FACILITIES
Construction (FY 99/00): \$34,801 X 119 = \$4,141,319

APPENDIX C

GOVERNOR'S PROPOSAL - CONSTRUCTION COSTS OF NEW FACILITIES

624 Bed Medium Custody Unit with 40 Segregation Cells

Office of State Construction Revised Estimated Cost:
\$26,335,300

Department of Correction Original Estimate:
\$26,375,800

624 Bed Medium Custody Unit with 40 Segregation Cells

Office of State Construction Revised Estimated Cost:
\$26,335,300

Department of Correction Original Estimate:
\$26,832,200

336 Bed Close Custody Unit with 40 Bed Segregation Unit

Office of State Construction Revised Estimated Cost:
\$33,578,500

Department of Correction Original Estimate:
\$34,212,000

Expand Warren - 168 Medium Security Cells with 40 Segregation
cells

Office of State Construction Revised Estimated Cost: \$9,628,300
Department of Correction Original Estimate: \$9,718,200

60 Bed Boot Camp for Females

Office of State Construction Revised Estimated Cost: \$2,041,100
Department of Correction Original Estimate: \$2,048,800

104 Bed Minimum Custody Unit for Females

Office of State Construction Revised Estimated Cost: \$2,183,000
Department of Correction Original Estimate: \$2,203,400

Expand Polk - 104 Bed Dorm and 144 Single Cells

Office of State Construction Revised Estimated Cost: \$7,615,400
Department of Correction Original Estimate: \$7,759,100

Polk - Supermax - 100 Cells

Office of State Construction Revised Estimated Cost: \$8,565,200
Department of Correction Original Estimate: \$8,645,200

TOTALS

Office of State Construction Revised Estimated Cost:

\$116,282,100

Department of Correction Original Estimate:

\$117,794,700