

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

**BILL NUMBER:** SB 996 ——— 3<sup>rd</sup> ——— Edition  
**SHORT TITLE:** ABC-Sexually Explicit Conduct Banned  
**SPONSOR(S):** Senator Garrou

	<b><u>FISCAL IMPACT</u></b>				
	<b><u>Yes (X)</u></b>	<b><u>No ( )</u></b>	<b><u>No Estimate Available ( )</u></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><u>GENERAL FUND</u></b>					
<b><u>Correction</u></b>					
<b><u>Recurring</u></b>	<u>Unable to determine exact amount.</u>				
<b><u>Judicial</u></b>					
<b><u>Recurring</u></b>	<u>Unable to determine exact amount.</u>				
<b><u>ABC Commission</u></b>	<u>No General Fund impact.</u>				
<b><u>TOTAL</u></b>					
<b><u>EXPENDITURES:</u></b>					
<u>Unable to determine exact amount.</u>					
<b><u>ADDITIONAL PRISON BEDS*</u></b>					
<u>It is likely that misdemeanants sentenced to an active sentence under this bill would be housed in local jails because only Class 1 offenders falling in Prior Record Level III may receive active sentences that might be served in the state prison system.</u>					
<b><u>POSITIONS:</u></b>					
<b><u>(cumulative)</u></b>					
<u>Unable to determine exact amount.</u>					
<b><u>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</u></b>					
<u>Department of Correction (DOC); Judicial Branch; Alcoholic Beverage Control Commission</u>					
<b><u>EFFECTIVE DATE:</u></b>					
<u>Upon ratification. <del>December 1, 2003</del></u>					
<i><u>*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.</u></i>					

**BILL SUMMARY:** The bill amends G.S. 18B-1005 (conduct on licensed premises) of Chapter 18B (alcoholic beverages) to remove the prohibition against certain conduct or entertainment deemed sexually explicit on ABC licensed premises. The bill creates new section 18B-1005.1 to prohibit the sexually explicit conduct or entertainment deleted from G.S. 18B-1005 under the bill as well as certain other conduct. The bill also makes it unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued. The law does not apply to theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances and are engaged in matters of serious literary, artistic, scientific, or political value.

**ASSUMPTIONS AND METHODOLOGY:**

**Alcoholic Beverage Control Commission**

Current law regulates sexually explicit conduct at ABC permittee sites; however, the courts have enjoined further enforcement of the existing statute as unconstitutionally vague and overbroad. The bill is intended to address constitutional flaws that federal courts have identified with current law by rewriting the law with more detailed language so that it is not vague or overbroad, restoring the prior understanding of what the law requires. **No additional fiscal impact to the ABC Commission is anticipated as a result of this legislation.**

**BILL SUMMARY:**

**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**

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.

Because SB 996 creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill. In FY 2001-2002, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served was 35.2 days. It is likely that misdemeanants sentenced under this bill would be housed in local jails but paid for by the State at a cost of \$18/day. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days). Because only Class 1 offenders falling in Prior Record Level III receive active sentences that might be served in the state prison system, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jails is unknown.

**Department of Correction**

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>June 30</b>	<b>June 30</b>	<b>June 30</b>	<b>June 30</b>
	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
1. Projected No. Of Inmates Under Current					

Structured Sentencing Act <sup>1</sup>	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>2</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 <u>Due to this Bill<sup>3</sup></u>					
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill<sup>3</sup></u>					

<sup>1</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>2</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% of 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>3</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 <u>2002-0203</u>	\$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 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 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.

The AOC notes that the bill broadens the scope of the current prohibition to include conduct or entertainment not specifically disallowed under the current law. As such, more conduct is prohibited under bill than under the current law, and more violations may be expected.

Under current G.S. 18B-102, any person who violates any provision of Chapter 18B is guilty of a Class 1 misdemeanor unless a different punishment is otherwise expressly stated. AOC data for calendar year 2002 show 53 defendants charged under G.S. 18B-102. However, the AOC data do not show how many of those defendants were charged for allowing certain sexually explicit conduct or entertainment (as specified under the bill) on the premises licensed by the ABC Commission. Thus, the AOC is unable to estimate the number of new Class 1 misdemeanors that could result as a result of this bill. For Class 1 misdemeanor offenses that are brought to trial, the estimated court cost per trial is \$3,144. For Class 1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$279.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; ~~and, Office of State Construction;~~ Alcoholic Beverage Control Commission-

**~~TECHNICAL CONSIDERATIONS:~~** None

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**APPROVED BY:** James D. Johnson, Director, Fiscal Research Division

**DATE:** ~~April 29, 2003~~ July 19, 2003



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