

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

BILL NUMBER: SB 1401 1st Edition
SHORT TITLE: Adjust Penalties B1 to E Offenses
SPONSOR(S): Senator Gulley

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
GENERAL FUND	<i>Note: () denotes savings</i>				
Correction					
Recurring					
Prisons (operating)	\$ --	\$ 161,516	(\$ 2,542,150)	(\$ 5,348,135)	(\$ 7,116,226)
Community Correction	\$ --	\$ 398,876	\$ 677,103	\$ 677,103	\$ 677,103
Nonrecurring					
Prisons (construction)	\$ --	(\$ 19,214,928)	(\$ 4,861,608)	(\$ 6,040,548)	(\$ 5,985,247)
Community Correction	\$ --	\$ 33,000	\$ 23,100		
Judicial	Exact amount cannot be determined; impact anticipated.				
<i>This bill will generate additional savings – recurring and nonrecurring – beyond the first five years. See Charts 2, 5, and 6 for details.</i>					

PRISON BEDS					
ADDED (SAVED)*		6	(96)	(195)	(249)
POSITIONS	Prisons	2	(38)	(78)	(100)
ADDED (SAVED):	Community Corr.	10	17	17	17

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 2002

**These figures are 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. See Charts 7 and 8 for the combined impact of this bill and other bills introduced in the 2002 Session that were included in the Sentencing Commission report dated May 2002.*

BILL SUMMARY:

This bill would reallocate three months from the minimum sentence of Classes B through E to the maximum sentence, for the purpose of increasing the term of post-release supervision from nine months to twelve months. The offenders in these offense classes comprise the majority of those committing serious, violent crimes (and receiving longer active sentences).

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.

This bill would lengthen the post-release supervision period from nine months to 12 months. The additional three-month period increases the opportunity for post-release supervision revocations. Data from the N.C. Department of Correction show that, of the 912 offenders exiting post-release supervision in 2000-01, 127 (14%) exited due to revocations. More offenders may exit due to revocations with the three-month extension of post-release supervision. Initial revocation hearings may be held before contractual hearing officers. However, to the extent that judicial officials are used as hearing officers for additional revocation hearings, the bill will have an impact on court costs. The Sentencing Commission has noted that nine months appears to represent the peak in terms of the likelihood of increased revocations, so it does not expect many new violations under the bill, and the courts should not see many new revocation hearings.

Department of Correction

The box on the front page shows a net savings from SB 1401 each year. Although prison operating costs increase slightly in the first year, they are outweighed by savings from foregone construction costs due to a decrease in the number of new beds that will have to be constructed each year to house the projected prison population. Assuming that construction expenditures are budgeted three years in advance of the anticipated need for new prison beds, this bill would eliminate construction expenditures for 447 beds by 2006-07, beginning in 2003-04 with the reduction of 249 beds that would have been needed in 2006-07 without this legislation. (See Chart 5 for more details.) These foregone construction expenditures also outweigh the cost of supervising the increased post-release offender population.

The chart below (Chart 1) 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). **The negative figures for additional inmates and beds needed in Years 2 through 5 (FY 2004-05 through 2006-07) of the projection and later years reflect a long-term reduction in the number of beds needed due to this bill.**

Rows 4 and 5 in Chart 1 show the impact of this specific bill, SB 1401. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will reduce the inmate population in the prison system by 249 inmates by the end of FY 2006-07.

CHART 1	June 30 2003	June 30 2004	June 30 2005	June 30 2006	June 30 2007
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	34,129	34,840	35,647	36,485	37,405
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	32,087	34,679	34,847	34,847	34,847
3. No. of Beds Over/Under No. of Inmates Under <u>Current</u> Structured Sentencing Act	-2,042	-161	-800	-1,638	-2,558
4. No. of Projected Additional or Fewer Inmates <u>Due to this Bill</u>³		6	-96	-195	-249
5. No. of Additional or Fewer Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³		6	-96	-195	-249

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on December 2001 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.

² Projected number of prison beds is based on beds completed or funded and under construction as of 12/13/01. 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 2002 Session to eliminate prison beds or close prisons.**

³ Criminal Penalty bills effective December 1, 2002 will only affect inmate population for one month of FY 2002-03, June 2003, due to the lag time between when an offense is committed and an offender is sentenced.

POSITIONS: It is anticipated that, by FY 2006-07, approximately 100 fewer Division of Prison (DOC) positions would be needed to supervise the reduced number of inmates housed under this bill. 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.

PRISON BED COST SAVINGS: The cumulative effect of SB 1401 is to reduce the number of prison beds needed by 509 beds by FY 2010-11. (There is a projected cumulative reduction of 591 beds by the end of FY 2012-13.)

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal Notes look at the impact of a bill for five years. However, there is information available on the impact of this bill in later years. The chart below shows the reduction in inmates due to this bill, the projected available beds, and beds saved due to this bill. **As shown below, this bill would reduce the number of new beds needed by 509 beds by FY 2010-11. This reduction is sizable enough to impact the number of prisons constructed, and is shown in the box on the first page as a reduction in nonrecurring Correction expenditures due to foregone construction costs.**

CHART 2	First 5 Years 2002-2007	Next 4 Years 2007-2011	9-Year Horizon 2002-2011
Reduction in Inmates Due to This Bill	(249)	(260)	(509)
Available Beds	(3,459)	(2,746)	(6,205)
Available Beds with SB 1401	(3,210)	(2,486)	(5,696)
Beds Saved	249	260	509
Positions Saved	100	104	204

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates that the bed savings under this bill will be distributed over the three custody levels as follows:

- 18% Close Custody
- 58% Medium Custody
- 25% Minimum Custody

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2000-01 costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.

CHART 3	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
<u>Custody Level</u>			
Construction Cost Per Bed 2001-02	\$36,757	\$69,994	\$81,375

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. For this bill, the reduction in inmates means that the State will not need as many new prisons as quickly. For this reason, the box on page one shows a reduction in nonrecurring expenditures due to foregone construction costs. That reduction is due to a projected decrease in the need for prison beds by 447 beds by June 30, 2010:

- 249 beds saved in 2006-07 (construction beginning in 2003-04)
- 60 beds saved in 2007-08 (construction beginning in 2004-05)
- 71 beds saved in 2008-09 (construction beginning in 2005-06)
- 67 beds saved in 2009-10 (construction beginning in 2006-07)

The chart (Chart 5) on the following page illustrates the savings due to the reduction in prison beds. Beyond the five-year horizon shown in the box on the front page and in Chart 5, an additional 62 beds will be saved in FY 2010-11, and later years will see further reductions in prison beds needed. The State can therefore postpone construction of these beds.

OPERATING: Operating costs are based on actual 2000-01 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 2001 shown below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1.

Daily Inmate Operating Cost 2000-01

CHART 4

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2000-01)	\$54.02	\$67.43	\$84.21	\$65.29

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 2003 and 2004; this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2004-05 and, (2) if the total number of beds needed (with or without this legislation) is anticipated to be less than 400 beds 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. **Under SB 1401, there will be a reduction in prison beds needed, particularly in later years.**

CHART 5

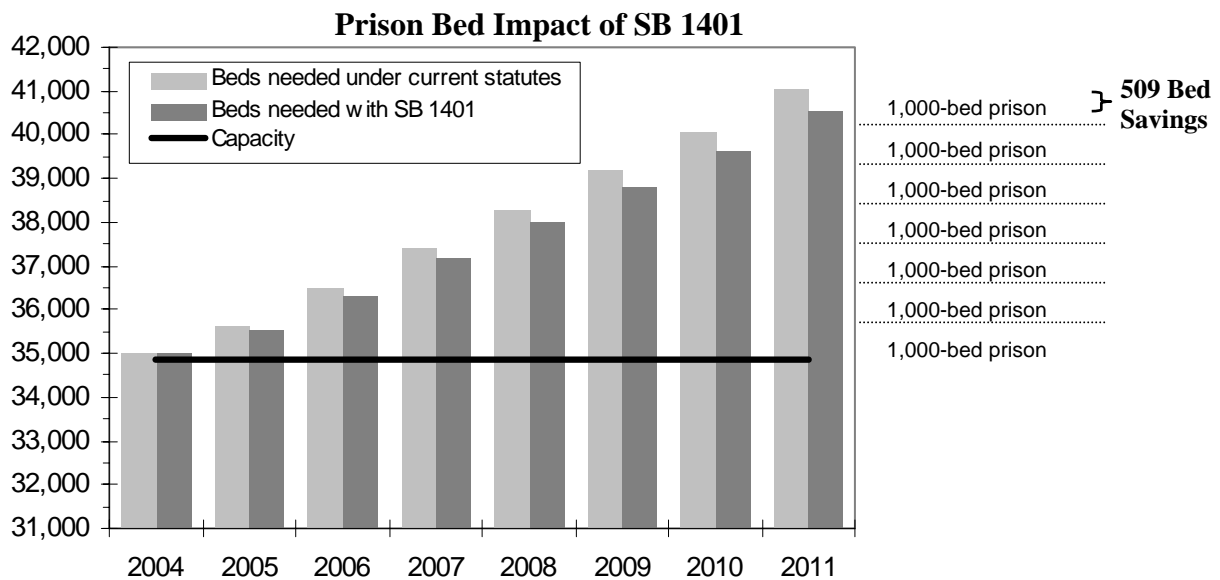
Savings in Prison Operating & Construction Expenditures from SB 1401: 5-year Outlook

	2002-03	2003-04	2004-05	2005-06	2006-07
Total Operating Expenditures: All prison beds needed					
Current Statutes	\$ 888.7 M	\$ 911.6 M	\$ 956.1 M	\$ 1,008.0 M	\$ 1,064.4 M
SB 1401	\$ 888.7 M	\$ 911.8 M	\$ 953.6 M	\$ 1,002.7 M	\$ 1,057.3 M
<i>Net Savings*</i>	\$ -	\$ 161,516	(\$ 2.5 M)	(\$ 5.3 M)	(\$ 7.1 M)
Total Construction Expenditures: All prison beds needed**					
Current Statutes	\$ -	\$ 197.4 M	\$ 73.0 M	\$ 76.3 M	\$ 78.1 M
SB 1401	\$ -	\$ 178.2 M	\$ 68.1 M	\$ 70.3 M	\$ 72.1 M
<i>Net Savings*</i>	\$ -	(\$ 19.2 M)	(\$ 4.9 M)	(\$ 6.0 M)	(\$ 6.0 M)
Total Savings*	\$ -	(\$ 19.1 M)	(\$ 7.4 M)	(\$ 11.4 M)	(\$ 13.1 M)
Cum. Savings*	\$ -	(\$ 19.1 M)	(\$ 26.5 M)	(\$ 37.8 M)	(\$ 50.9 M)

*Figures in () are savings. Figures not in parentheses are costs.

**Uses medium custody bed construction. Construction costs in each fiscal year reflect beds that will be needed three years later.

CHART 6



Sources: NC Sentencing and Policy Advisory Commission, Department of Correction

Chart 6 (above) illustrates the long-term savings in beds with SB 1401. “Beds needed under current statutes” refers to the projected prison population under the status quo. “Beds needed with SB 1401” refers to the revised projections for the prison population if SB 1401 is enacted. “Capacity” is the total number of beds available (34,847) once the three new prisons authorized in 2001 are complete. **The cumulative effect is to save the need for 509 prison beds by 2011.**

With current costs and projections, by 2010-11 the State will have saved \$66.5 million, cumulative, in operating costs. The State will have saved \$50.2 million, cumulative, in foregone construction costs by 2009-10 (projections for construction costs cannot extend beyond 2009-10).

Impact on Post-Release Supervision

Increasing post-release supervision periods from nine months to 12 months will increase the post-release supervision population and the resources needed to supervise that population. The following impact is projected:

CHART 7 Impact of SB 1401 on Post-Release Supervision Population & Resources

Increase:	June 30 2004	June 30 2005	June 30 2006
<i>Population</i>	364	383	401
Intensive Teams*	4	7	7
Probation Officer II	2	3	3
Probation Officer I	0	0	0
<i>Total Positions</i>	10	17	17
Expenditures			
Recurring	\$ 398,876	\$ 677,103	\$ 677,103
Nonrecurring	\$ 33,000	\$ 23,100	

* 1 intensive team = 1 intensive case officer + 1 surveillance officer

These costs are included in the Correction expenditures in the box on the front page. The first year costs include recurring and nonrecurring costs.

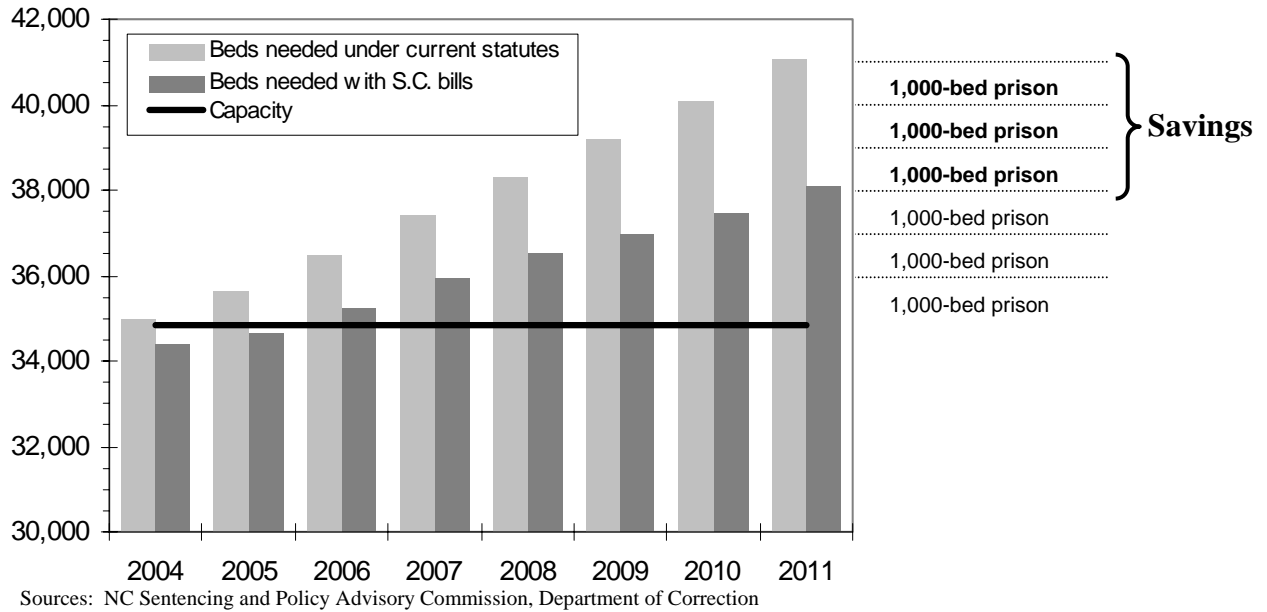
Combined Impact of SB 1401 and Selected Other Sentencing Bills Introduced in 2002

As directed by the 2001 General Assembly, the NC Sentencing and Policy Advisory Commission has provided several alternatives for slowing prison population growth consistent with the principles of structured sentencing and public safety. Legislation based on these alternatives has been introduced in one or both chambers to:

1. Restructure prior record levels (SB 1399/HB 1705);
2. Restructure sentence lengths (SB 1358/HB 1639);
3. Adjust penalties for B1 to E felonies (this bill, SB 1401/HB 1704); and
4. Reclassify certain cases of statutory rape (HB 1621).

Because the sentencing provisions in these bills interact, the combined impact of all four bills is different from the sum of their individual impact. The chart on the following page displays the simultaneous impact of all four bills. **(Please note that the impact of reclassifying statutory rape is small enough that there is no substantial difference between the combined impact of the bills introduced in both chambers versus those introduced only in the House.)**

CHART 8: Combined Prison Bed Impact of Sentencing Bills



The cumulative effect of the combined sentencing bills is to save the need for three 1,000-bed prisons by 2011. With current costs and projections, by 2010-11 the State will have saved \$410.5 million, cumulative, in operating costs. The State will have saved \$299.6 million, cumulative, in foregone construction costs by 2009-10 (projections for construction costs cannot extend beyond 2009-10).

CHART 9

Combined Savings from Sentencing Bills

	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Prison beds saved	-	(621)	(1,016)	(1,260)	(1,468)	(1,810)	(2,240)	(2,633)	(2,976)
Correction positions saved	-	(248)	(406)	(504)	(587)	(724)	(896)	(1,053)	(1,190)
Operating expenditures saved	\$ -	(\$15.2 M)	(\$25.5 M)	(\$33.3 M)	(\$40.3 M)	(\$52.0 M)	(\$67.0 M)	(\$81.7 M)	(\$95.7 M)
Construction expenditures saved*	\$ -	(\$113.3 M)	(\$27.7 M)	(\$36.6 M)	(\$35.1 M)	(\$32.2 M)	(\$29.3 M)	(\$25.4 M)	n/a

*Uses medium custody bed construction. Costs in each fiscal year reflect beds that will be needed three years later.

Methodology

Operating costs were calculated by multiplying the statewide average operating cost, adjusted for inflation, by the number of beds added to the prison system each year by the bill(s). Negative operating costs reflect a reduction in the number of beds needed due to the bill(s).

Based on current prison population projections, the State will need to construct an additional 2,558 beds by FY 2003-04. Assuming that beds take three years to construct, construction expenditures for these beds would be budgeted in FY 2003-04. Because these bills reduce the prison population by 2006-07, the State will be able to begin construction of fewer beds in 2003-04. Beyond FY 2006-07, current projections indicate that the State will need to construct more than 400 new beds each year. Foregone construction expenditures were calculated by multiplying the cost of constructing a medium custody bed, adjusted for inflation, times the number of beds that would not be needed due to this bill. Construction *savings* each year reflect the reduction in beds needed three years later.

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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