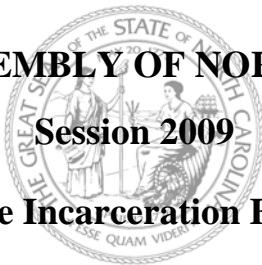


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 489 (First Edition)
SHORT TITLE: Even Out Prior Criminal Record Points.
SPONSOR(S): Senator Kinnaird

	FISCAL IMPACT				
	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>
EXPENDITURES:					
GENERAL FUND					
Correction					
Recurring	-	(\$3,564,218)	(\$9,621,213)	(\$11,273,392)	(\$13,280,802)
Judicial		Indeterminate fiscal impact, minimal impact anticipated			
ADDITIONAL PRISON BEDS:					
(cumulative)*	-	(256)	(328)	(373)	(423)
POSITIONS:					
(cumulative)	-	(102)	(131)	(149)	(169)
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2009					
<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>					

BILL SUMMARY:

This bill seeks to restructure the prior record level point ranges in order to expand the points in Prior Record Level I and to even out the remaining ranges. Amends GS 15A-1340.14(c) to modify the points allocated to prior record levels for felony sentencing. Increases the points for Level I from 0 points to not more than 1 point; for Level II from 1–4 points to 2–5 points; for Level III from 5–8 points to 6–9 points; for Level IV from 9–14 points to 10–13 points; for Level V from 15–18 points to 14–17 points; and for Level VI, from 19 points or more to 18 points or more. Makes conforming changes to the punishment chart included in GS 15A-1340.17(c). Changes apply to offenses committed on or after December 1, 2009
Source: Bill Digest S.B. 489 (03/09/0200).

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 restructures the prior record level point ranges in order to expand the points in Prior Record Level I and evens out the remaining ranges. It also expands Prior Record Level I to include up to one prior record point. It makes Prior Record Levels II through V consistent by covering four points each.

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

Projected Prison Bed Impact	
Fiscal Year	Bed Impact
2010-11	-256
2011-12	-328
2012-13	-373
2013-14	-423
2014-15	-486
2015-16	-583
2016-17	-645
2017-18	-673
2018-19	-714
2019-2020	-736

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 data also contains the following two assumptions:

- *Disposition:* Assumes that a conviction moving to a new prior record level will be treated like all other convictions in the new prior record level in terms of the type of disposition imposed.

- *Estimated Sentence Length:* For convictions moving to a new prior record level, the relative location of the minimum sentence within the current sentencing range was calculated and applied to the new sentencing range to determine the estimated minimum sentence. For example: an offender falls in Class G with Prior Record Level II and receives a minimum sentence of 14 months. The relative location of this minimum sentence falls in the 50th percentile of the sentencing range for this cell on the felony punishment chart. Give the assumption, if this offender is reclassified to Prior Record Level I, the estimated minimum sentence imposed would fall in the 50th percentile of the Class G, Prior Record Level I range, resulting in an estimated minimum sentence of 12 months.

The Sentencing Commission provided the following background statistical information:

Prior Record Level (PRL)	Prior Record Point Distribution	
I	0	0-1
II	1-4	2-5
III	5-8	6-9
IV	9-14	10-13
V	15-18	14-17
VI	19+	18+

Background Statistical Information			
Offense Class	Number of Active Sentences	Current Grid	Increase in Sentence Length: 15% between Prior Record Levels
		Average Estimated Time Served	Average Estimated Time Served
A	100	600.0	600.0
VHF	1	600.0	600.0
B1	151	283.0	272.9
B2	297	189.1	182.8
C	1,086	95.0	81.3
D	856	74.0	68.2
E	686	32.4	30.8
F	1,445	23.5	23.4
G	2,148	18.8	18.8
H	4,604	10.4	10.4
I	1,385	6.2	6.2
TOTAL	12,759	37.6	35.6

Note: For analysis purposes, the sentence length imposed for convictions resulting in life or death sentences was estimated at 600 months. VHF is Violent Habitual Felon.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ 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.* Therefore, the number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of SB 489. As shown, the Sentencing Commission estimates that this specific legislation will add 423 fewer inmates to 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 ²	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
4. Projected No. of Additional Inmates Due to this Bill ³	N/A	(256)	(328)	(373)	(423)
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	N/A	887	1,414	2,332	3,293

POSITIONS: It is anticipated that by FY 2013-14, approximately 169 fewer positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and 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 489; and, the estimated number of new beds required each year through FY 2017-18.

	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,655	-5,600	-6,541	-7,488
2. Projected No. of Additional Inmates Resulting From SB 489	(486)	(583)	(645)	(673)
3. Estimated No. of New Beds Required Under SB 489	4,169	5,017	5,896	6,815

¹ 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.

² 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.

³ 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.

DISTRIBUTION OF BEDS: Fiscal Research asked DOC’s Office of Research and Planning to project the impact of proposed SB 489 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 489 is enacted. Any difference between the Sentencing Commission’s population projections and those shown in the tables below are due to rounding.

Fiscal Year	Close	Medium	Minimum	Total Beds
2010-11	-19	-102	-135	-256
2011-12	-25	-146	-158	-329
2012-13	-33	-170	-168	-371
2013-14	-46	-196	-178	-420
2014-15	-62	-231	-192	-485
2015-16	-83	-284	-214	-581
2016-17	-99	-317	-232	-648
2017-18	-106	-332	-237	-675
2018-19	-115	-352	-247	-714
2019-20	-120	-364	-252	-736

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

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.

This bill would have the effect of making some offenders eligible for shorter sentences or non-active time, and some offenders eligible for longer sentences and/or ineligible for non-active sentences, compared to current law. However, defendants would still face the same charge, and most would face the potential, if convicted, of sentences that are generally of the same type and similar magnitude. As such, *AOC would not anticipate significant changes in litigation tactics, or, therefore, the time and cost of court workload.* For

those offenders who receive a non-active sentence instead of an active sentence as a result of this bill, *there is the potential for a future increase in court workload for increased probation violation hearings.*

In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. A typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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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