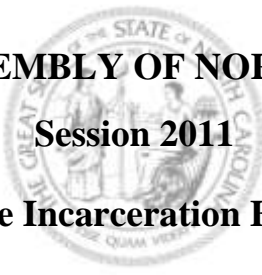


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2011**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** Senate Bill 268 (First Edition)

**SHORT TITLE:** Enhance Protection of Victims and Witnesses.

**SPONSOR(S):** Senators Stevens and McKissick

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>	<b><u>FY 2014-15</u></b>	<b><u>FY 2015-16</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>					
<b>Recurring</b>	-	\$205,462	\$423,211	\$433,665	\$444,463
<b>Judicial</b>	\$205,331	\$332,507	\$349,734	\$364,071	\$376,259
<b>TOTAL</b>					
<b>EXPENDITURES:</b>	\$205,331	\$537,969	\$772,945	\$797,736	\$820,722
<b>ADDITIONAL PRISON BEDS:</b>					
(cumulative)*	-	7	14	14+	14+
<b>POSITIONS:</b>					
(cumulative)	-	3	6	6+	6+
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b> December 1, 2011					
*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.					

## **BILL SUMMARY:**

The proposed legislation amends Rule 804(b) of the North Carolina Rules of Evidence, as set forth in G.S. 8C-1. A statement is not excluded as hearsay if the statement was made against a party that has engaged in wrongdoing, and the statement was intended to and did cause the unavailability of a witness who made the statement. The court shall determine admissibility by a preponderance of the evidence.

The act also amends G.S. 14-226(a) to make it a Class D felony to intimidate, deter, or otherwise interfere with any person summoned or acting as a witness in state court. The bill becomes effective December 1, 2011, and applies to offenses committed on or after that date.

*SOURCE: BILL DIGEST S.B. 268 (03/08/2011)*

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The 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**

In FY 2009-10, there were ten Class H felony convictions under G.S. 14-226. Due to the small number of convictions, a more detailed impact projection using the Structured Sentencing Simulation Model would not be reliable. Impact on the prison population will occur if Class H convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (36 percent for Class H compared to 100 percent for Class D) and longer average estimated time served (11 months for Class H compared to 63 months for Class D). Using threshold data, if these ten convictions were reclassified from Class H to Class D, this would result in the need for seven additional prison beds the first year and 14 additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations; however, that impact is unknown.

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 May 2010.

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<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.

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 S.B. 268. As shown, the Sentencing Commission estimates that this specific legislation will add at least 14 inmates to the prison system by the end of FY 2015-16.

	<b>June 30 2011</b>	<b>June 30 2012</b>	<b>June 30 2013</b>	<b>June 30 2014</b>	<b>June 30 2015</b>
1. Projected No. of Inmates Under Current Structured Sentencing Act <sup>2</sup>	44,147	45,114	45,922	46,914	47,806
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	40,532	42,296	42,296	42,296	42,296
3. Projected No. of Beds Over/Under Inmate Population	-4,059	-2,818	-3,626	-4,618	-5,510
<b>4. Projected No. of Additional Inmates Due to this Bill <sup>3</sup></b>	<i>N/A</i>	<i>7</i>	<i>14</i>	<i>14+</i>	<i>14+</i>
<b>5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill</b>	<i>N/A</i>	<i>7</i>	<i>14</i>	<i>14+</i>	<i>14+</i>

**POSITIONS:** It is anticipated that by FY 2013-14, at least six 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 2014-15. 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 S.B. 268; and, the estimated number of new beds required each year through FY 2018-19.

	<b>June 30 2016</b>	<b>June 30 2017</b>	<b>June 30 2018</b>	<b>June 30 2019</b>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-6,231	-6,957	-7,733	-8,533
<b>2. Projected No. of Additional Inmates Resulting From (S.B. 268)</b>	<i>14+</i>	<i>14+</i>	<i>14+</i>	<i>14+</i>
<b>3. Estimated No. of New Beds Required Under (S.B. 268)</b>	<i>14+</i>	<i>14+</i>	<i>14+</i>	<i>14+</i>

**DISTRIBUTION OF BEDS:** After analyzing S.B. 268, the Department of Correction estimates the following distribution of needed beds, by custody level:<sup>4</sup>

<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 2010.

<sup>3</sup> Criminal penalty bills effective December 1, 2010, should not affect prison population and bed needs until FY 2011-12 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

**Table 1:**

<b>Year</b>	<b>Close</b>	<b>Medium</b>	<b>Minimum</b>	<b>Total Additional Beds</b>
<b>1</b>	2	4	1	7
<b>2</b>	4	8	2	14

**CONSTRUCTION:** The estimated additional prison beds needed under the proposed legislation could be absorbed into existing prison facilities; therefore, there are no construction costs associated with the proposed legislation.

**OPERATING:** Operating costs are based on actual FY 2008-09 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. Table 2 provides the operating cost per day and per year to implement the proposed legislation. Table 3 provides the operating cost per year times the number of estimated beds. Fiscal Research applies an estimated inflation rate to these base costs, as shown in the recurring costs estimate in the Fiscal Impact table (p.1).<sup>5</sup>

**Daily Inmate Operating Cost per Custody Level, FY 2008-09**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$59.17	\$76.69	\$85.68	\$72.72

**Table 2:**

<b>Year</b>	<b>Inflation</b>	<b>Minimum</b>		<b>Medium</b>		<b>Close</b>	
		Per Day	Per Year	Per Day	Per Year	Per Day	Per Year
<b>FY 2012-13</b>	<b>3.05%</b>	\$66.56	\$24,294	\$78.54	\$28,669	\$91.09	\$33,246
<b>FY 2013-14</b>	<b>2.99%</b>	\$68.55	\$25,021	\$80.89	\$29,526	\$93.81	\$34,240
<b>FY 2014-15</b>	<b>2.47%</b>	\$70.24	\$25,639	\$82.89	\$30,255	\$96.13	\$35,086
<b>FY 2015-16</b>	<b>2.49%</b>	\$71.99	\$26,277	\$84.96	\$31,009	\$98.52	\$35,960

**Table 3:**

<b>Year</b>	<b>Minimum</b>		<b>Medium</b>		<b>Close</b>		<b>Total</b>	
	Beds	Costs	Beds	Costs	Beds	Costs	Beds	Costs
<b>FY 2012-13</b>	1	\$24,294	4	\$114,675	2	\$66,493	<b>7</b>	<b>\$205,462</b>
<b>FY 2013-14</b>	2	\$50,042	8	\$236,208	4	\$136,962	<b>14</b>	<b>\$423,211</b>
<b>FY 2014-15</b>	2	\$51,278	8	\$242,042	4	\$140,345	<b>14</b>	<b>\$433,665</b>
<b>FY 2015-16</b>	2	\$52,554	8	\$248,069	4	\$143,839	<b>14</b>	<b>\$444,463</b>

<sup>4</sup> Custody level is determined by a multi-factor assessment, including but not limited to: offense severity and history, institutional behavior (i.e. violence, rule disobedience), sentence length and portion served, job performance, and age. Infrastructure, personnel, and equipment needs are positively correlated with security levels and inmate risk assessments.

<sup>5</sup> Estimates based on consumer price index projections provided by Moody's economy.com (January 2011)

## Judicial Branch

The Administrative Office of the Courts 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.

In calendar year 2010, 253 defendants were charged with the existing Class H felony of intimidating a witness. The proposed legislation does not change the scope of the existing offense. Therefore, it is assumed that the same number of charges will occur after the passage of the bill.

Because the same defendants would have otherwise been charged with the existing Class H felony, the fiscal impact arising from this bill is the difference in cost between the two charge levels. If 253 defendants (the same number that were charged last year with the existing penalty) are charged with the elevated Class D felony, the total cost to the court system will be \$332,507 for 253 defendants, in the first full year of impact (FY 2012-13).

The table below shows the salaries, benefits, nonrecurring expenses for office furniture and equipment, operating costs such as supplies and training, and inflationary increases associated with the additional positions required to handle the increased workload anticipated from the proposed legislation.

Position Type	Positions	Position Cost				FY 2011-12 (Eff Dec. 1)			FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
		Salary	Soc Sec	Retirement	Health	R	NR	Total	Total	Total	Total	Total
<b>Inflation*</b>									<b>8.87%</b>	<b>8.68%</b>	<b>6.64%</b>	<b>5.24%</b>
Superior Court Judge	0.14	\$124,382	\$8,426	\$24,889	\$4,929	\$13,281	\$917	\$14,199	\$24,787	\$26,939	\$28,727	\$30,233
Deputy Clerk	0.14	\$27,888	\$2,134	\$2,932	\$4,929	\$3,094	\$367	\$3,461	\$5,774	\$6,275	\$6,692	\$7,043
Court Reporter	0.14	\$47,772	\$3,655	\$5,021	\$4,929	\$5,012	\$680	\$5,692	\$9,355	\$10,167	\$10,842	\$11,410
Assistant District Attorney	1	\$70,946	\$5,428	\$7,457	\$4,929	\$51,777	\$3,739	\$55,516	\$96,633	\$105,021	\$111,994	\$117,863
Victim Witness Legal Assistant	1	\$37,364	\$2,859	\$3,927	\$4,929	\$28,629	\$5,155	\$33,784	\$53,432	\$58,070	\$61,926	\$65,171
<b>Subtotal Court Personnel</b>	<b>2.42</b>							<b>\$112,652</b>	<b>\$189,981</b>	<b>\$206,472</b>	<b>\$220,182</b>	<b>\$231,719</b>
<b>Other Costs**</b>												
<b>Inflation</b>									<b>3.05%</b>	<b>2.99%</b>	<b>2.47%</b>	<b>2.49%</b>
Operating Expenses								\$23,916	\$24,645	\$25,382	\$26,009	\$26,657
Jury Fees								\$6,813	\$11,680	\$11,680	\$11,680	\$11,680
Indigent Defense								\$61,950	\$106,200	\$106,200	\$106,200	\$106,200
<b>Total Costs</b>								<b>\$205,331</b>	<b>\$332,507</b>	<b>\$349,734</b>	<b>\$364,071</b>	<b>\$376,256</b>

\*Positions were inflated based on the Moody's economy.com (Jan. 2011) inflation rate estimates for salaries and wages. Operating expense inflation estimates based on consumer price index projections provided by Moody's economy.com (Jan. 2011). The jury fees and indigent defense costs were not inflated, as these amounts are set in the General Statutes.

Jury Fees: Estimated average trial length for Class H felonies is 2.33 days, compared to 4.38 days for a Class D felony, based on 2009 survey data. Based on 2010 data, the trial rate for a Class D felony is 4.4 percent, compared to 2.0 percent for the current trial rate for the Class H felony offense of intimidating a witness. Jury costs are based on an estimated jury pool of 30 for the first

day and, for subsequent days, the 12-person jury plus two alternates. Jury compensation, set in G.S. 7A-312, is \$12 for the first day, \$20 for day two to five, and \$40 for additional days. For criminal cases, jury costs come to \$360 for the first day, \$280 for day two to five, and \$560 for the days over five.

Current Law: 253 cases x 2.0% trial rate x 3 days = \$4,600  
Proposed Law: 253 cases x 4.4% trial rate x 5 days = \$16,280  
**Net Increase: \$11,680**

Indigent Defense: A 2005 study of indigent defense fee applications found the average cost of a Class H felony case, at \$75 per hour, is \$540, compared to \$920 for a Class D felony. AOC data from 2010 indicate that the indigency rate for defendants charged with intimidating a witness was 70 percent.

Current Law: 253 cases x 70% indigency rate x \$540 = \$95,580  
Proposed Law: 253 cases x 70% indigency rate x \$920 = \$201,780  
**Net Increase: \$106,200**

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 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; and North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** May 19, 2011



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