

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE (INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB123
SHORT TITLE: Increase 2nd Degree Arson Penalty
SPONSOR(S): Representatives Russell and Sherrill

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
(In millions)					
	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>
GENERAL FUND					
Correction					
Recurring	\$6,364	\$1,210,611	\$1,436,729	\$1,523,686	\$1,599,089
Judicial					
Recurring					
Jury Fees & Personnel	\$174	\$2,088	\$2,088	\$2,088	\$2,088
Indigent Defense	\$1,055	\$13,926	\$15,319	\$16,850	\$18,536
TOTAL EXPENDITURES	\$7,593	\$1,226,625	\$1,454,136	\$1,542,624	\$1,619,713
<p>POSITIONS: It is anticipated that approximately 22 positions would be needed to supervise the additional inmates housed under this bill by the year 2005-06. This is based on <u>inmate to employee ratios</u>, provided by the Division of Prisons, for close, medium, and minimum custody facilities. (These position totals include security, program, and administrative personnel). For 2001, it is recommended that a ratio of 2.5 inmates to one employee be used for each custody level.</p> <p>It is anticipated that approximately 0 positions would be needed for the Judicial Department</p> <p>PRINCIPAL DEPARTMENT (S) & PROGRAM (S) AFFECTED: Dept. of Correction; Judicial Branch</p> <p>EFFECTIVE DATE: December 1, 2001, applies to offenses committed on or after that date.</p>					

NOTE: *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:

Amends second-degree arson laws as follows: The bill increases the penalty under GS 14-58 for 2nd degree arson (burning of an unoccupied dwelling) from Class G to Class E felony.

ASSUMPTIONS AND METHODOLOGY: 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 56 inmates to the prison system by the end of FY 2005-06.

	<u>June 30</u> <u>2002</u>	<u>June 30</u> <u>2003</u>	<u>June 30</u> <u>2004</u>	<u>June 30</u> <u>2005</u>	<u>June 30</u> <u>2006</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	33,141	33,954	34,738	35,682	36,590
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	32,544	32,712	32,712	32,712	32,712
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-597	-1,242	-2,026	-2970	-3,878
<u>4. No. of Projected Additional Inmates Due to this Bill³</u>	3	46	53	55	56
<u>5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill³</u>	3	46	53	55	56

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January, 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rates forecast 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 1/11/01. 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 3,000 new beds proposed by the Department of Correction for operation in 2003 and 04 nor the potential loss in bed capacity due to any proposals in the 2001 Session to eliminate prison beds or close prisons.**

³Criminal Penalty bills effective December 1, 2001 will only affect inmate population for one month -- June of FY 2001-02 – due to lag time between when an offense is committed and an offender is sentenced.

FISCAL IMPACT BEYOND FIVE YEARS -- Fiscal Notes look at the impact of a bill through the year 2006. 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>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Inmates Due to This Bill	57	57	58	60
Available Beds	-4,848	-5,771	-6,688	-7,597
New Beds Needed	57	57	58	60

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 – 29%
 Medium Custody –44%
 Minimum Custody –27%

NOTE: *The Department of Correction indicates that the prison system is under capacity in close custody beds only. However, in assigning the true cost of this bill, the Fiscal Research Division considered the number of beds needed at each custody level due to this bill.*

CONSTRUCTION: Construction costs are based on estimated 2000-01 costs for each custody level as provided by the Office of State Construction. Based on these costs, the following per bed/cell construction costs are used:

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2000-01	\$35,007	\$66,661	\$77,500

A 5% per year inflation rate has been added to the above capital costs to determine the non-recurring costs estimated in the Fiscal Impact Table on page 1. The Office of State Construction recommended this rate based on recent and anticipated state construction projects.

NOTE: *Construction costs will be excluded if the number of beds is anticipated to be less than 100 since it is not practical to assume a prison with a capacity of fewer than 100 beds would be constructed, as in this case.*

OPERATING: Operating costs are based on actual 1999-2000 costs for each custody level as provided by the Department of Correction on November 1, 2000. A 3% per year inflationary rate has been added to these 99-2000 costs to determine the five-year recurring costs estimated in the Fiscal Impact Table on Page 1.

DAILY INMATE OPERATING COST 99-2000

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (99-2000)	\$52.52	\$68.13	\$75.32	\$63.65

These costs include security, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons.

NOTE: *Operating costs will be calculated as follows: number of offenders times daily cost per inmate for each custody level = total operating costs. For bills that increase inmate population in 2002 or 2003, only operating costs are included in the estimate of fiscal impact. This methodology is based on the following assumption. It is not practical to assume that Correction can build prisons quickly enough to house additional offenders before 2003-04. In practice, DOC will have to purchase additional beds out of state or in county jails or establish temporary beds until construction can be completed. Based on previous contract costs for purchasing beds, the DOC statewide average cost for 99-2000 will be the base cost of buying a prison bed.*

METHODOLOGY FOR CALCULATING PRISON BED COSTS FOR H123

Sentencing Commission projections (pg. 2) and DOC estimates of custody levels (pg. 3) were the basis for calculating the number of beds needed each year. Due to the gap between the time a felony offense is committed and the offender is sentenced, the effective date for prison impact is estimated to be 6/1/2002. Therefore, fiscal impact for FY 2002 is for the month of June only, or 1/12 of the annual bed operating cost. Fiscal Year 2003 represents the first full year.

Bed Type	2002	2003	2004	2005	2006
Close	1	12	2	1	-
Medium	1	19	3	1	1
Minimum	1	12	2	-	-
Total	3	43	7	2	1

Operating Costs					
Close	\$ 2,106	\$ 374,624	\$ 62,815	\$ 18,486	\$ -
Medium	\$ 2,890	\$ 514,122	\$ 86,205	\$ 25,369	\$ 29,693
Minimum	\$ 1,367	\$ 243,208	\$ 40,780	\$ -	\$ -
Total	\$ 6,364	\$ 1,131,954	\$ 189,800	\$ 43,854	\$ 29,693
Cumulative Total		\$ 1,210,611	\$ 1,436,729	\$ 1,523,686	\$ 1,599,089

ASSUMPTIONS AND METHODOLOGY: Judicial Branch

General

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.

Because any expected increase in Judicial Branch workload is spread statewide while most personnel are assigned to a specific district, Fiscal Research assumes that AOC can absorb any workload increase that is less than 3600 hours (3600 hours = 2 fulltime positions). Therefore, there would be no fiscal impact due to workload in these situations. However, expenditures for jury fees and indigent defense are assumed to create a fiscal impact in every case where court time is increased since these expenditures cannot be absorbed.

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As a result of the two felony class upgrade, convicted defendants would be more likely to serve longer, active sentences rather than intermediate sanctions. More importantly, the Administrative Office of the Courts (AOC) qualifies this offense as a violent habitual felony under G.S. 14-7.7(b). The conviction of two such felonies may result in prosecution as a violent habitual felon, which carries a sentence of life imprisonment without parole.

Trials and pleas would demand more court time and preparation time as a result of the harsher penalty under the proposed bill. Therefore, the assumptions and methodology of the impact on the courts are noted below.

Jury Trials

Using data on offenses charged and convicted during 2000, 113 defendants were charged with 2nd degree arson under G.S. 14-58. AOC estimates that 5% of the 113 defendants would go to trial due to the felony upgrade, for 6 felony trials, or an incremental increase of approximately 3 new felony trials. Of the new felony trials, they are estimated to last 2.5 days for a total of 7.5 additional court days. AOC estimates that each 2.5-day trial in superior court cost \$612 in jury fees, for a total of **\$1,836**.

As stated earlier, AOC estimates approximately 3 jury trials for 2nd degree arson offenses under current law. Additionally, they expect 3 hours of court time would be needed for a total increase of **\$252** in jury fees.

Indigent Defense

An estimated 75% of these defendants would be indigent and need court-appointed counsel. AOC estimates 15 in-court hours for new trials, 3 additional in-court hours under current law, and 1 additional hour for guilty pleas. Assuming 10 additional hours of preparation for each new trial, 1 additional hour of preparation time under current law, 2 hours of preparation for each guilty plea, and 87 additional in-court hours, additional hours of assigned counsel would be provided for a total of **\$12,660** in counsel fees (\$60 x 211 hours). Total indigent costs would increase by 10% annually in years two through five.

NOTE: AOC estimates that costs for a full year total \$43,094 including \$13,926 in additional indigent defense costs and \$29,168 for personnel costs and superior court jury fees. However, Fiscal Research does not include personnel costs in its calculation if the workload increase is less than 3600 hours (3600 hours = 2 fulltime positions). In this case, this bill would only increase the workload by 122 hours.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction

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