

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

BILL NUMBER: —SB 226 —46th Edition

SHORT TITLE: Unauthorized Admin. Meds. By Child Care Fac.

SPONSOR(S): Senator Purcell

FISCAL IMPACT					
	Yes (<u>X</u> -)	No ()	No Estimate Available (-)		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
Correction					
Recurring		<u>Unable to determine exact amount.</u>			
Nonrecurring					
Judicial					
Recurring		<u>Unable to determine exact amount.</u>			
Nonrecurring					
TOTAL			0		
EXPENDITURES:		<u>Unable to determine exact amount.</u> 0			
			0		
			0		
			0		
ADDITIONAL PRISON BEDS*		<u>Unable to determine exact number of beds.</u>			
POSITIONS: (cumulative)		<u>Unable to determine exact amount.</u>			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; <u>local governments.</u>					
EFFECTIVE DATE: <u>December 1, 2003</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.					

BILL SUMMARY: SB 226 amends Chapter 110 of the General Statutes by adding a new section making it a Class H ~~felony~~A1 misdemeanor for an employee, owner, household member.

volunteer, or operator of a licensed or unlicensed child care facility, including child care facilities operated by public schools but not including kindergarten through twelfth-grade classes, to intentionally willfully administer any type of prescription or over-the-counter medication to a child attending the child care facility without first obtaining prior written authorization from the child's parent or guardian, except when the unauthorized administration of medicines results in a serious injury to the child which is punishable by a Class F felony. Written authorization is defined to include the child's name, date, dosage instructions, and signature of the child's parent or guardian.

In addition, the ebill provides an exception for emergency medical conditions when the child's parent or guardian is unavailable. It is not unlawful to administer medication to a child for emergency medical conditions without written authorization from his or her parent if the medication is administered with the authorization and in accordance with instructions from a "bona fide medical provider". Emergency medical condition is defined as circumstances where a prudent layperson acting reasonably would have believed that an emergency medical condition existed. A "bona fide medical provider" is defined to include any person who is licensed, certified, or otherwise authorized to prescribe medicine.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

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. 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 226 creates a new offense, 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 for this proposed offense. ~~If there were three Class H felony convictions under the proposed statute per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.~~ Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions under the Class A1 subsection of this proposed statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. ~~In 2001-2002, the statewide average operating cost for one inmate was \$62.43/day or \$22,786.95/year.~~ Furthermore, because it is not known how many of these offenses would result in serious injury, it is not known how many offenders might be sentenced for violations of a Class F felony. If, for example, there were three convictions of the Class F subsection under this proposed statute per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In 2000-2001, the average estimated time served for an offender convicted of a Class F felony was a minimum of 18 months and a maximum of 22 months. In 2001-2002, the statewide average operating cost for one inmate was \$62.43/day or \$22,786.95/year.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) 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 SB 226 provides for two new felony offenses, AOC is unable to estimate the number of new felony charges. 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.

	<u>June 30</u> <u>2004</u>	<u>June 30</u> <u>2005</u>	<u>June 30</u> <u>2006</u>	<u>June 30</u> <u>2007</u>	<u>June 30</u> <u>2008</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	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 Due to this Bill ³					

1 Administrative Office of the Courts Research and Planning Division. ¹The 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.

²Projected 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.***

³Criminal 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.

~~5. No. of Additional
Beds Needed Each Fiscal
Year Due to this Bill³~~

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.

Because the Division of Child Development does not have data on how often medications are administered without prior authorization¹ nor is able to estimate the number of serious injuries that may result, AOC is unable to estimate the number of charges that could arise from the amended statute. For Class H felony/A1 misdemeanor- offenses that are brought to trial, the estimated court cost per trial is \$3,512 is \$4,986. For Class H felony offenses-A1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$24881. For Class F felony offenses that are brought to trial, the estimate court cost per trial is \$6,629. For Class F felony offenses that are not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$320.

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.

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

~~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 assumes 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.~~

~~**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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~~**DATE:** April-July 17, 2003~~



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