

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1039 (First Edition)
SHORT TITLE: Increase Penalties/2nd Degree Rape.
SPONSOR(S): Senator Jenkins

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction ⁺					
Recurring	-	\$481,453 ⁺	\$917,611 ⁺	\$1,393,532 ⁺	\$2,255,176 ⁺
Non-Recurring	There are no available prison beds during this timeframe. This note assumes that contractual beds will be used in the short run. In the long term, the state will need to construct new cells at an average cost of \$108,596 per bed.				
Judicial (Recurring)	\$249,800 ⁺	\$428,228 ⁺	\$449,639 ⁺	\$472,121 ⁺	\$495,727 ⁺
TOTAL EXPENDITURES:	\$249,800 ⁺	\$909,681 ⁺	\$1,367,250 ⁺	\$1,865,653 ⁺	\$2,750,903 ⁺
ADDITIONAL PRISON BEDS*	-	7 ⁺	15 ⁺	24 ⁺	40 ⁺
	Long-term increases in bed needs are expected. By FY 2013-14, the Sentencing Commission projects a need for 301 additional prison beds due to this bill.				
POSITIONS: (cumulative)	-	3 ⁺	6 ⁺	10 ⁺	16 ⁺
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: December 1, 2005					
⁺ Costs reflect only the impact of enhancing the penalty for second-degree rape and sexual offense and for the use of "date rape drugs." There would be an indeterminate number of additional prison beds and costs to the Administrative Office of the Courts (AOC) and the Department of Correction (DOC) as a result of removing "force" as an element of the offenses of second-degree rape and second-degree sexual offense.					
*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: This bill would remove force as an element of the offenses of second-degree rape (G.S. 14-27.3) and second-degree sexual offense (G.S. 14-27.5), raise the offense class for both from Class C to Class B2, and enhance sentences for certain sex offenses by 60 months for the use of “date rape drugs.”

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction – Division of Prisons

Section 1 amends G.S. 14-27.3 to remove the use of force as an element of second-degree rape and reclassify the offense from a Class C to Class B2 felony (which would also raise attempted second-degree rape from Class D to Class C). In FY 2003-04 there were 81 convictions for second-degree rape. If these offenders were sentenced as Class B2 rather than Class C felons, the average estimated time served would increase from 90 to 186 months. For offenders convicted of attempted second-degree rape (21 convictions in FY 2003-04), the average estimated time served would increase from 71 to 95 months. As such, the Sentencing Commission projects that raising the penalty for this offense would increase the number of prison beds needed each year, resulting in the need for an additional 21 prison beds by FY 2009-10.

Section 2 amends G.S. 14-27.5 to remove the use of force as an element of a second-degree sexual offense and reclassify the offense from a Class C to Class B2 felony (also raising an attempted second-degree sexual offense from Class D to Class C). In FY 2003-04 there were 41 convictions for second-degree sexual offenses. If these offenders were sentenced as Class B2 rather than Class C felons, the average estimated time served would increase from 92 to 186 months. For offenders convicted of an attempted second-degree sexual offense (16 convictions in FY 2003-04), the average estimated time served would increase from 57 to 87 months. As such, the Sentencing Commission projects that raising the penalty for this offense would increase the number of prison beds needed each year, resulting in the need for an additional 17 prison beds by FY 2009-10.

In addition to lengthening the average sentences for these offenses, eliminating the requirement that force must be proved could increase the number of offenders convicted of second-degree or attempted second-degree rape or sexual offense. However, the Sentencing Commission is unable to model the degree to which this change would increase prison population and bed needs. As a result, a + symbol is used throughout this fiscal note to indicate that additional beds would be needed above the numbers projected.

Section 3 enacts new G.S. 15A-1340.16E, to provide that the sentence for a person convicted of first or second-degree rape or sexual offense (including an attempt) would be increased by 60 months if the offense was committed through the use of “date rape drugs” (see Technical Considerations). This sentence enhancement would not apply if the use of a date rape drug is

needed to prove an element of the underlying felony or if the offender is not sentenced to an active punishment. Table 1 below outlines convictions for applicable offenses during FY 2003-04. Due to the long sentences for these offenses, the impact of the 60-month enhancement would primarily occur beyond the five-year fiscal note horizon.

Table 1: FY 2003-04 Convictions for Selected Sexual Offenses

	Offense Class	Offense	Convictions	Increase in Average Estimated Time Served (months)
§ 14-27.2	B1	<i>First Degree Rape</i>	31	322 → 382
	B2	<i>Attempted First Degree Rape</i>	8	137 → 197
§ 14-27.3	C	<i>Second Degree Rape</i>	81	90 → 150
	D	<i>Attempted Second Degree Rape</i>	21	71 → 131
§ 14-27.4	B1	<i>First Degree Sexual Offense</i>	57	328 → 388
	B2	<i>Attempted First Degree Sexual Offense</i>	21	134 → 194
§ 14-27.5	C	<i>Second Degree Sexual Offense</i>	41	92 → 152
	D	<i>Attempted Second Degree Sexual Offense</i>	16	57 → 117
	Total		276	

As it is not known how many of these offenses were committed through the use of “date rape drugs,” we cannot estimate the specific number of sentences that would be increased by 60 months due to this bill. The total projected bed needs, as shown on page one and the tables on the next page, include the additional impact if only one percent of these convictions were to receive the five-year enhancement.¹ However, the additional prison beds needed beyond FY 2009-10 due to this sentence enhancement may be slightly reduced if some of the offenders are already being sentenced as Class G felons under 14-401.16 (see below).

Under G.S. 14-401.16, it is a Class H felony to knowingly contaminate any food, drink, or other edible or potable substance with a controlled substance that would render a person mentally incapacitated or physically helpless. If perpetrated with the intent to commit second-degree rape or sexual offense, the offense is punishable as a Class G felony. In FY 2003-04 there were no convictions for this offense.

The chart on the next page compares the projected inmate population to available prison bed capacity system-wide and shows 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 five) is always equal to the projected additional inmates due to a bill (row four).

¹ The exact impact of enhancing one percent of these sentences cannot be isolated due to interactions between Sections 1, 2, and 3 of the bill in the projection model used by the Sentencing Commission.

Rows four and five in the chart show the impact of this specific bill. As shown in bold in the chart below, the Sentencing Commission estimates that this specific legislation will add at least **40 inmates** to the prison system by the end of FY 2009-10.

	<u>June 30 2006</u>	<u>June 30 2007</u>	<u>June 30 2008</u>	<u>June 30 2009</u>	<u>June 30 2010</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	38,106	39,021	39,864	40,750	41,668
2. Projected No. of Prison Beds (DOC Expanded Capacity) ³	37,015	37,911	38,807	38,807	38,807
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,091	-1,110	-1,057	1,943	-2,861
4. No. of Projected Additional Inmates Due to this Bill⁴	-	7+	15+	24+	40+
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill ³	-	7+	15+	24+	40+

POSITIONS: It is anticipated that at least **16 positions** would be needed to supervise the additional inmates housed under this bill by 2009-10. This position total includes 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 five prisons opened by DOC and two prisons under construction. Two of the prisons were medium custody and five were close custody

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes look at the impact of a bill through FY 2010. 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>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
Inmates Due to This Bill*	78+	136+	210+	301+
Available Beds (over/under)	-3,787	-4,692	-5,574	-6,505
New Beds Needed	-3,865	-4,828	-5,784	-6,806
*Only part of the impact is quantifiable.				

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

³ Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 2004. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

⁴ Criminal penalty bills effective December 1, 2005 will not affect prison population and bed needs until FY 2006-07 due to the lag time between when an offense is committed and an offender is sentenced.

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction expects that, within the five-year projection horizon, a greater number of close custody beds and fewer medium and minimum custody beds would be needed to house offenders sentenced under this bill. Due to the increase in penalty, offenders convicted of these offenses would be expected to occupy a close custody bed for a greater amount of time before being downgraded to medium and then minimum custody.

OPERATING: Operating costs are based on the actual 2003-04 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 annual inflation rate will be added each year to the base costs for FY 2003-04 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

Daily Inmate Operating Cost 2003-04

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2003-04)	\$49.34	\$65.59	\$82.46	\$62.03

Operating costs, as shown in the Fiscal Impact Table on page one, are calculated under the anticipated change in custody needs as projected by DOC. The additional prison beds needed for each fiscal year represent the net increase in prison population due to increases in close custody population and decreases in medium and minimum custody population. Operating costs are calculated by subtracting the cost savings for medium and minimum custody from the cost of additional close custody beds. As an example, a detailed breakdown of the FY 2006-07 custody and cost projection is shown below.

FY 2006-07 Department of Correction Operating Cost Detail

Close Custody:	26 beds * \$90.11 per day ⁵ * 365 days =	\$855,144
Medium Custody:	- 3 beds * \$71.67 per day * 365 days =	- \$78,479
Minimum Custody:	- 15 beds * \$53.92 per day * 365 days =	- \$295,212
Net Cost:		\$481,453

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2004-05 costs for each custody level as provided by the Office of State Construction and the Department of Correction. An inflation rate of five percent per year is applied to future years. *The costs assume stand-alone facilities; single cells for close custody and dormitories for medium and minimum.*

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2004-05	\$45,500	\$73,500	\$98,500

⁵ Daily per inmate operating costs for each custody level are adjusted for inflation at a rate of 3 percent annually.

The cost to construct each bed required by this bill is shown in the Fiscal Impact Table on page one of this note. This cost is for 2006-07 and assumes that funds to construct prison beds should be budgeted three years in advance since building a prison typically requires three years for planning, design, and construction.

The total cost to construct new close custody beds to accommodate the 40+ inmates this bill is projected to add to the prison system by FY 2009-10 is estimated to be \$4.3 million. DOC would need to begin construction of these beds in FY 2006-07. By FY 2013-14, 301+ beds would be needed due to this legislation. The cost to construct the additional 261+ close custody beds beginning in FY 2010-11 would be \$34.5 million. These figures represent a FY 2004-05 average base cost per bed of \$98,500 adjusted for inflation at a rate of five percent annually.

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.

AOC expects that disposing of charges for second-degree rape and second-degree sexual offense would require additional court and attorney time under this bill, as a more vigorous defense and prosecution would be anticipated due to the increased penalty for these offenses. Table 2 below outlines the number of charges during calendar year 2004 for the affected offenses.

Table 2: CY 2004 Charges for Selected Sexual Offenses

	Offense Class	Offense	Charges
§ 14-27.2	B1	<i>First Degree Rape</i>	262
	B2	<i>Attempted First Degree Rape</i>	54
§ 14-27.3	C	<i>Second Degree Rape</i>	353
	D	<i>Attempted Second Degree Rape</i>	95
§ 14-27.4	B1	<i>First Degree Sexual Offense</i>	242
	B2	<i>Attempted First Degree Sexual Offense</i>	49
§ 14-27.5	C	<i>Second Degree Sexual Offense</i>	236
	D	<i>Attempted Second Degree Sexual Offense</i>	38
	Total		1,329

Sections 1 and 2 of the bill amend G.S. 14-27.3 and G.S. 14-27.5, respectively, to remove the use of force as an element of second-degree rape and second-degree sexual offense and reclassify the offenses from Class C to Class B2 felonies (which would also raise attempts from Class D to Class C). Additional court time and attorney preparation time would be expected to settle any charge increased by an offense class due to this bill.

As shown in Table 2 above, there were **589** Class C charges, in sum, for second-degree rape and second-degree sexual offenses in CY 2004. As detailed in Table 3 below, AOC estimates that the average increase in cost to settle these charges as Class B2 rather than Class C felonies would be

\$383,730 in the first full year. This increase in cost reflects anticipated increases in trial rates, trial length, plea rates, and attorney preparation time, as well as indigency rates of 50 percent.

Charges	Offense Class	Settled via Trial		Settled via Guilty Plea		Total
		Court/Attorney Costs	Indigent Defense	Court/Attorney Costs	Indigent Defense	
589	Class C	\$251,265	\$65,754	\$41,715	\$12,852	\$371,586
	Class B2	\$481,360	\$125,412	\$114,752	\$33,792	\$755,316
	Cost Increase	\$230,095	\$59,658	\$73,037	\$20,940	\$383,730

In sum, there were **133** Class D charges for attempted second-degree rape and attempted second-degree sexual offenses in CY 2004. As detailed in Table 4 below, AOC estimates that the average increase in cost to settle these charges as Class C rather than D felonies would be \$44,498 in the first full year. This increase in cost reflects anticipated increases in trial rates, trial length, and attorney preparation time, as well as indigency rates of 50 percent.

Charges	Offense Class	Settled via Trial		Settled via Guilty Plea		Total
		Court/Attorney Costs	Indigent Defense	Court/Attorney Costs	Indigent Defense	
133	Class D	\$19,317	\$6,578	\$10,298	\$3,458	\$39,651
	Class C	\$57,432	\$14,612	\$9,270	\$2,835	\$84,149
	Cost Increase	\$38,115	\$8,034	(\$1,028)	(\$623)	\$44,498

The costs in the box on the first page reflect the sum of these figures (**\$428,228**), inflated at a rate of 5 percent annually, and adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective.

Section 3 of the bill would be expected to generate additional workload in superior court for any case in which the use of “date rape drugs” is a contested issue as the defendant would face a five-year sentence increase if convicted. As AOC does not have data on the number of first and second-degree sexual offenses involving the use of “date rape drugs,” the additional workload and associated cost generated by this provision cannot be determined.

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

TECHNICAL CONSIDERATIONS: The term “date rape drugs” is not defined in statute.

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