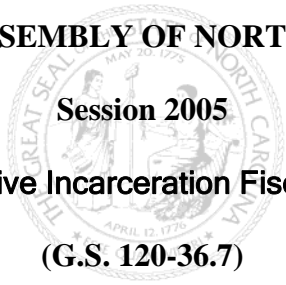


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2005**

**Legislative Incarceration Fiscal Note**

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

**REVISED**

**BILL NUMBER:** Senate Bill 1741 (Second Edition)  
**SHORT TITLE:** Modify Appropriations Act of 2005.  
**SPONSOR(S):** Senators Garrou, Dalton, and Hagan

	<b>FISCAL IMPACT</b>				
	<b>Yes ( )</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>
<b>GENERAL FUND</b>					
<b>Correction (Prisons)</b>	\$326,398	\$700,396	At least \$700,396; cannot project population or cost with available data-		
<b>Judicial</b>	\$48,000 for year one; cannot estimate years 2-5 with available data				
<b>Community Corrections *</b>					
<b>Recurring</b>	\$1,626,448	\$2,094,560	\$2,157,396	\$2,222,118	\$2,288,782
<b>NonRecurring</b>	\$80,770				
<b>TOTAL EXPENDITURES:</b>	\$2,033,616	\$2,799,956			
<b>REVENUE</b>	Cannot be determined but likely to be minimal				
<b>ADDITIONAL PRISON BEDS*</b>	12	25	Cannot determine	Cannot determine	Cannot determine
<b>POSITIONS:</b>	12 (5 prisons;	17 (10			
<b>(cumulative)</b>	7 Comm Cor)	Prisons)			
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>*NOTE:</b> Costs for Community Corrections shown in Note are funded in SB 1741					
<b>EFFECTIVE DATE:</b>					

*\*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 title of the act is the Current Operations and Capital Improvements Appropriations Act of 2006.

*The Fiscal Note is only on Section 16.7, GPS Monitoring of Most Serious Sex Offenders. G.S. 120-36.7 requires an incarceration note on any bill or resolutions creating or changing criminal penalties that could increase prison incarceration rates.*

Section 16.7 establishes a program in the Department of Correction that uses a satellite based monitoring system to monitor the most serious sex offenders (system also known as Global Positioning System or GPS). Active (24 hour real time) monitoring must be used unless technology is unworkable (estimated at 10% of cases)

Two categories of offenders will be monitored: (1) Sex offenders convicted of a reportable conviction as defined in G.S. 14-208.6.4 and required to register on the lifetime sex offender registry. These offenders are classified either as sexually violent predators, recidivists, or have been convicted of aggravated offenses in GS 14-208.36 and (2) Sex offenders who meet multiple criteria including offenses involving minors and identification through the DOC risk assessment program as requiring the highest possible level of supervision and monitoring

Section 16.7 also requires that the first category of offenders continue on GPS monitoring after completion of their terms of parole, post release, or probation for the offender's life. An offender in this category may, after completing one year of the lifetime supervision requirement, request termination from the GPS program. The Post Release Supervision and Parole Commission is authorized to review these requests and to terminate monitoring if a number of criteria are met, including a finding that person is not likely to pose a threat to the safety of others

Section 16.7 also assesses the offenders a \$90 one-time fee, with terms of payment to be determined by probation officer

Section 16.7 establishes two new criminal penalties (1) Class E felony for failure to enroll in a satellite based system and (2) Class C felony for intentionally tampering with removing or vandalizing GPS monitoring devices.

Section 16.7 is effective when it becomes law but enrollment in the GPS program by offenders is not required until January 1, 2007 when the program is in place. Any offenders paroled or released to Post Release Supervision between the date the bill becomes law and January 1, 2007 will be required to enroll January 1, 2007

## **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**

The chart below 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).

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 25 inmates to the prison system by the end of FY 2007-2008.

	<b><u>June 30 2007</u></b>	<b><u>June 30 2008</u></b>	<b><u>June 30 2009</u></b>	<b><u>June 30 2010</u></b>	<b><u>June 30 2011</u></b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>1</sup>	38,616	39,114	39,674	40,444	41,276
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>2</sup>	37,973	38,869	38,869	38,869	38,869
3. No. of Beds Over/Under Current Structured Sentencing Act	-643	-245	-805	-1,575	-2,407
4. No. of Projected Additional Inmates <u>Due to this Bill</u>	<b>12</b>	<b>25</b>	<b>cannot determine</b>		
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	12	25			

**POSITIONS:** It is anticipated that approximately 10 positions would be needed to supervise the additional inmates housed under this bill by 2007-08. 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 seven prisons opened by DOC. Two of the prisons were medium custody and five were close custody

**Sentencing Commission Projections**

<sup>1</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2006 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.

<sup>2</sup> Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 19, 2005. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

**Eligible Pool:** Data from the NC Department of Correction's Division of Community Corrections indicate that there would be 300 offenders required to enroll in a satellite monitoring program in the first year. It is not known how many of these 300 offenders would still be enrolled in a satellite monitoring program in the second year or how many additional offenders would be required to enroll in the second year. It is also not known how many offenders would be released from prison without DCC supervision who would meet the criteria for enrollment under 14-208.33(a)(2). [Note: In FY 2004-05, there were 309 reportable convictions that received an active sentence and would not be subject to subsequent DCC supervision upon release (Class F-I felonies and Class A1 misdemeanors).]

**New Offenses:** Section 16.7 establishes General Statute 14-208.37(a) to make it a Class E felony for any person required to enroll in a satellite-based monitoring program to fail to enroll. *Since the proposed bill 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 under the proposed bill. In FY 2004-05, 47% of Class E convictions resulted in active sentences, with an average estimated time served of 30 months. If, for example, there were two Class E convictions under this proposed bill 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. [Note: The estimate for the second year is currently based on a 2% growth rate for felony convictions. The second year estimate may need to be revised upward based on DOC's estimate of growth.]

*Based on discussions with DCC, Fiscal Research believes the new Class E felony would have little or no impact on the prison system. Current practice for regular electronic monitoring is for the DCC officer to attach the device at the time of release from prison or placement on probation. It is assumed the same practice would be used for GPS so "failure to enroll" is unlikely.*

GS 14-208.37(b) makes it a Class C felony for any person to intentionally tamper with, remove, or vandalize a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program. *Since the proposed bill 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 under the proposed bill. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2004-05 the average estimated time served for an offender convicted of a Class C offense was 97 months. If, for example, there were one conviction for this offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year.

*However, while an official projection cannot be made by the Commission, Fiscal Research asked the Commission to provide prison population estimates based on DCC data on the current numbers of sex offenders who abscond from probation, parole, or post release supervision. This number is between 3 and 5% of the total cases.*

Using this approach, of the 300 sex offenders estimated to be required to enroll in GPS, DOC estimates that 3-5% may be charged with intentionally tampering with, removing, or vandalizing electronic monitoring equipment. If, for example, there were 9 (or 3% of 300) Class C convictions

for this offense per year, the combination of active sentences and probation revocations would result in the need for 9 additional prison bed the first year and 19 additional prison beds the second year. If, for example, there were 12 (or 4% of 300) Class C convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for 12 additional prison bed the first year and 25 additional prison beds the second year. If, for example, there were 15 (or 5% of 300) Class C convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for 15 additional prison bed the first year and 31 additional prison beds the second year. [Note: The estimate for the second year is currently based on a 2% growth rate for felony convictions. The second year estimate may need to be revised upward based on DOC's estimate of growth.]

*Fiscal Research used the middle range for estimating prison beds and costs – a 4% “tampering” rate which could potentially result in the need for 12 prison beds the first year and 25 the second year. Given this is a new offense, projecting population beyond year 2 is not feasible at this time.*

**Sections 16.7(b), (d), (e), (g), and (h)**

Sections 16.7(b), (d), (e), (g), and (h) amend the conditions of probation, post-release supervision, parole, and delegated authority to include satellite based monitoring for offenders described in 14-208.33(a)(1) and (a)(2). Violation could result in modification or revocation. The proposed amendments may have some impact on the prison population through revocations for violations of probation, post-release supervision, or parole relating to this new condition. However, its impact cannot be determined.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal notes look at the impact of a bill through FY 2011. However, if there is information available on the impact of this bill in later years, it will be provided. 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>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
Inmates Due to This Bill				
Available Beds (over/under)	Cannot be determined			
New Beds Needed				

*For SB 1741, Section 16.7 the fiscal impact beyond the five year window cannot be determined since the Sentencing Commission does not have data that allows for estimates beyond the first two years.*

**CONSTRUCTION:** Construction costs for new prison beds, as listed in the following chart, are based on estimated 2005-06 costs for each custody level as provided by the Department of Correction. The cost figures are the midpoint of the estimated cost range. An inflation rate of eight percent per year is applied to future years (Office of State Construction March 24, 2006). Assumptions used for cost figures include: (1) stand-alone facilities built for expanded operating

capacity; (2) single cells for close custody prisons; and, (3) dormitories for medium and minimum custody.

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2005-06	\$56,500	\$60,500	\$104,500

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on page one of this note. These costs assume 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.

*For SB 1741, construction cost is estimated at \$82,500 per bed, the average combined cost of medium and close custody beds. If construction of new beds were an option, the cost of constructing 25 beds would be \$2,062,500. It is unlikely that construction will occur for this small number of beds but jail backlog, at a cost of \$40 a day paid to counties, could increase.*

**OPERATING:** Operating costs are based on actual 2004-05 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 2004-05 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

**Daily Inmate Operating Cost 2004-05**

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<b>Statewide Average</b>
Daily Cost Per Inmate (2004-05)	\$51.25	\$68.90	\$74.52	\$63.56

*For SB 1741, second edition, it is assumed the cost per bed will be \$74.52 a day or \$27,200 annually since these are sex offenders convicted of a high level felony –Class C. The cost for 12 beds in 2006-07 is \$326,398 and \$700,396 for 25 beds by Year 2. (Costs include inflation) Position totals will be 10 by year 2 at the ratio of 2.5 positions per inmate.*

**Department of Correction – Division of Community Corrections**

The cost of the legislation to DCC is to (1) establish the sex offender GPS monitoring program by January 1, 2007 for the two categories of sex offenders, as defined in Section 16.7, that will be on parole, post-release supervision, or probation supervision and (2) continue the GPS monitoring

program for the life of the offender if the offender is in the highest risk category (lifetime registrant/ sexually violent predator, recidivist, or convicted of certain aggravated offenses

For #1, DCC estimates the following cost:

For sex offenders, as defined in Section 16.7, estimated costs for 2006-07 are \$1,236,448 recurring and \$70,770 non-recurring. For 2007-08 annualized costs are \$1,704,560. This is based on estimated number of 300 sex offenders to be covered under the basic program. Primary cost is for 5 positions, on-call and overtime pay for probation/parole officers, and 6 months contractual services (\$487, 613) with a GPS vendor to operate the technology component of the system.

For the continued lifetime supervision, FRD estimates an additional \$10,000 recurring and \$390,000 recurring. This is based on limited data available to project the number of offenders on lifetime GPS

*Total cost estimate is \$1,626, 448 recurring (7 positions) and \$80,770 non recurring for 06/07 and \$2,094,560 recurring. This amount is funded in the SB 1741, second edition*

### **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.

*For SB 1741, second edition, using AOC estimated costs for a Class B2 felony, adjusted downward slightly for Class C by Fiscal Research, the cost of 12 trials (convictions) at \$13,000 per trial would be \$156,000. This includes court time, district attorney preparation, and indigent defense. The cost for pleas, instead of trials would be approximately \$1,000 per case or \$12,000. Assuming 3 cases go to trial, and nine are plead down, the cost would be \$48,000 the first year.*

**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:** May 24, 2006



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