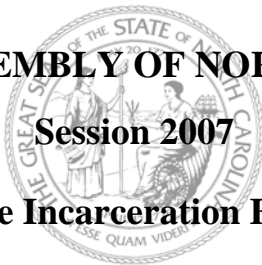


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 222 (Second Edition)

SHORT TITLE: Armed Robbery/Apparent Firearms.

SPONSOR(S): Senator Goodall

	FISCAL IMPACT				
	Yes (xx)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction					
Recurring		\$540,414	\$1,437,053	\$2,881,621	\$4,149,117
Nonrecurring	\$10,867,500 (127 beds)				
Judicial					
Recurring	Impact cannot be determined.				
Nonrecurring					
TOTAL					
EXPENDITURES:	\$10,867,500	\$540,414	\$1,437,053	\$2,881,621	\$4,149,117
ADDITIONAL PRISON BEDS:					
(cumulative)*		18	47	91	127
POSITIONS:					
(cumulative)		7	19	36	51
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2007					
<i>*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.</i>					

BILL SUMMARY:

February 20, 2007

S 222. ARMED ROBBERY/APPARENT FIREARMS. Filed 2/20/07. TO AMEND THE CRIMINAL OFFENSE OF ROBBERY WITH FIREARMS OR OTHER DANGEROUS WEAPONS TO INCLUDE APPARENT FIREARMS. Amends GS 14-87 (robbery with firearms or other dangerous weapons) to include apparent firearms. Also requires only that a reasonable person believe that his or her life is endangered or threatened (was, required that the life of a person is endangered or threatened). Effective for offenses committed on or after December 1, 2007.

May 17, 2007

S 222. ARMED ROBBERY/APPARENT FIREARMS. Filed 2/20/07. Senate committee substitute makes the following changes to 1st edition. Rather than amending subsection (a) of GS 14-87 (robbery with firearms or other dangerous weapons), adds a new subsection (a1) to make it a Class D felony to commit or aid and abet robbery while possessing, using, or threatening to use anything that a reasonable person would believe to be a deadly weapon, so that a reasonable person would believe that his or her life was endangered or threatened

Source: Bill Digest S.B. 222 (02/20/0200).

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.

According to the Sentencing Commission's analysis, the conduct addressed in this legislation may be covered under the current robbery statute (G.S. 14-87.1). The bill expands the conduct covered by including an element that "requires the life of a person actually be endangered or threatened to require that a reasonable person under the circumstances would believe that his or her life was endangered or threatened."

Department of Correction – Division of Prisons

Common Law Robbery

There were 885 convictions related to common law robbery, including 782 completed common law robbery convictions and 103 attempted common law robbery convictions. The Fiscal Research Division requested that the Sentencing and Policy Advisory Commission develop scenarios to gauge the potential impact of this change. The Commission observes that they "do not know how many offenders would move from Class G to D but we did find in looking at the data that about half of the offenders convicted of common law robbery were charged with armed robbery. That does not mean any of them had an apparent firearm." The Commission developed three broad scenarios (5%, 10%, and 25%--see table below). Using the minimum scenario of 5%, this proposed change would require a projected 127 additional beds by 2011-12, including a mix of medium and close custody beds because of the seriousness of Class D convictions. The minimum scenario would require capital costs of \$10.9 million to construct 64 medium and 63 close custody prison beds. In addition, the annual operating costs of 64 medium and 63 close custody beds would be \$9 million by 2011-12.

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS		
	Scenario A: 5% (n=45)	Scenario B: 10% (n=89)	Scenario C: 25% (n=222)
2008-09	18	36	88
2009-10	47	98	245
2010-11	91	184	446
2011-12	127	265	651

Attempted Robbery

It is unknown how many Class H convictions for attempted common law robbery had an apparent firearm, and would be reclassified as Class D felonies. For example, if three Class H felonies were reclassified as Class D felonies, then the combination of active sentences (all Class D convictions serve active time) and probation revocations would result in the need for two additional prison beds in the first year and five additional prison beds in the second year.

The proposed bill would treat all attempts and completed convictions as Class D felonies, but there is no data available to know how many additional convictions may result. For example, if there were one additional Class D conviction, then the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and two additional prison beds in the second year.

Conspiracies

Finally, conspiracies would be sentenced as Class E felonies. It is not known how many additional convictions may result from the expansion of the current statute. For example, if there were two additional Class E convictions, then the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and three additional prison beds in the second year.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 6, 2006. Official Department of Correction capacity projections also assume the General Assembly will fund 500 additional prison beds, generated by partial double-celling of the future Tabor City facility (inmate admission FY 2008-09). However, Fiscal Research does not include these 500 beds in capacity estimates (row two), since these beds have not been authorized for funding.

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 SB 222. As shown, the Sentencing Commission’s most conservative scenario estimates that this specific legislation will add inmates to the prison system by the end of FY 2011-12.

¹ 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.

	<u>June 30 2008</u>	<u>June 30 2009</u>	<u>June 30 2010</u>	<u>June 30 2011</u>	<u>June 30 2012</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	39,621	40,236	41,021	41,848	42,718
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	38,505	39,353	39,353	39,353	39,353
3. Projected No. of Beds Over/Under Inmate Population	-1,116	-883	-1,668	-2,495	-3,365
4. Projected No. of Additional Inmates Due to this Bill ³	<i>N/A</i>	<i>18</i>	<i>47</i>	<i>91</i>	<i>127</i>
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	<i>N/A</i>	<i>18</i>	<i>47</i>	<i>91</i>	<i>127</i>

POSITIONS: It is anticipated that by FY 2011-12, approximately **51 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 2011-12. 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 SB 222; and, the estimated number of new beds required each year through FY 2015-16.

	<u>June 30 2013</u>	<u>June 30 2014</u>	<u>June 30 2015</u>	<u>June 30 2016</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,234	-5,117	-5,996	-6,866
2. Projected No. of Additional Inmates Resulting From SB 222	165	198	220	237
3. Estimated No. of New Beds Required Under SB 222	165	198	220	237

DISTRIBUTION OF BEDS: Our estimates assumes half Close custody and half Medium custody beds

Close Custody	63
Medium Custody	64

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

² 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 December 2006.

³ Criminal penalty bills effective December 1, 2007 should not affect prison population and bed needs until FY 2008-09, due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;⁴ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”⁵ Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

Estimated Construction Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$56,000	\$63,000	\$109,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$71,000

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.⁶ As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

Accordingly, given an increase of 127 inmates, bed provision through construction of a “stand alone” facility could cost approximately \$10,867,500 by FY 2011-12; provision through “add-on” could cost approximately \$6,949,500.

OPERATING: Operating costs are based on actual FY 2005-06 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 (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2005-06

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$54.81	\$70.83	\$79.72	\$66.87

Department of Correction – Division of Community Corrections

A period of Post-Release Supervision follows a release from prison for offenders convicted of B1-E felonies; there will be some impact on the caseloads and prison beds because of revocations.

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court.

⁴ New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

⁵ Close and medium custody “add-on” facilities are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. Add-on facilities built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁶ Office of State Construction, March 24, 2006.

Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.⁷

General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$7.71 to \$14.97, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.97 for the initial six-month intensive duration, and \$1.96 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

Judicial Branch

The Administrative Office of the Courts (AOC) 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.

AOC is unable to determine the number of cases that involve the proposed changes. Presently, the AOC estimates a cost of \$11,876 per trial for a charge of Class D, and the cost per plea is an estimated \$606 for the same offense. The cost of a Class E trial is \$10,551, and the cost per plea is \$560 for the same offense. AOC cost estimates account for 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: June 26, 2007



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⁷ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.