

**NORTH CAROLINA GENERAL ASSEMBLY**

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

**BILL NUMBER:** HB 38 1<sup>st</sup> Edition  
**SHORT TITLE:** Felony/Strike Law Officer  
**SPONSOR(S):** Rep. Dedmon

**FISCAL IMPACT**

Yes (X)      No ( )      No Estimate Available ( )

No direct fiscal impact due to this bill for the Department of Correction because DOC can absorb the additional inmates within current prison bed capacity. However there is an indirect cost to add additional inmates to the prison system since otherwise funds could be used for other purposes; see page 4 of this note for calculation of that cost.

	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>
<b>REVENUES:</b>					
<b>Judicial</b>					
Court Fees	\$6,869	\$11,775	\$12,093	\$12,419	\$12,755
<b>EXPENDITURES:</b>					
<b>Judicial</b>					
Indigent Defense	\$53,550	\$91,800	\$95,013	\$98,528	\$102,470
Personnel	203,101	290,148	300,303	311,414	323,871
Jury Fees	48,356	82,896	82,896	82,896	82,896
<b>Total</b>	<b>\$305,007</b>	<b>\$464,844</b>	<b>\$478,212</b>	<b>\$492,838</b>	<b>\$509,237</b>
<b>NET EXPENDITURES:</b>					
<b>Judicial</b>	<b>\$298,138</b>	<b>\$453,069</b>	<b>\$466,119</b>	<b>\$480,419</b>	<b>\$496,482</b>
<b>POSITIONS:</b>					
<b>Judicial</b>	(4)	(4)	(4)	(4)	(4)

**Correction**      HB38 would not require additional beds to be constructed until FY 2004-05. This could require funding for construction as early as FY 2001-02.

**PRINCIPAL DEPARTMENT (S) & PROGRAM (S) AFFECTED:** Dept. of Correction; Judicial Branch

**EFFECTIVE DATE:** December 1, 1999

**BILL SUMMARY:**

*TO MAKE IT A FELONY TO ASSAULT A LAW ENFORCEMENT OFFICER.* Adds new GS 14-34.8 to make assault on a law enforcement officer a Class I felony if the assault occurs while the officer is engaging in his or her official duties. (Assault on a law enforcement officer is a Class F felony if the assault occurs while the officer is engaging in his or her official duties and the assault inflicts serious injury.) Effective Dec. 1, 1999; applies to offenses committed on or after that date.

Monday, March 22, 1999 Source: Daily Bulletin, Institute of Government, February 4, 1999.

**ASSUMPTIONS AND METHODOLOGY:**Judicial Branch

According to the Administrative Office of the Courts (AOC), there were 3,878 defendants charged under current law with assaulting a government official or employee. An estimated 90% (3,490 defendants) were charged with assaulting a law enforcement officer as opposed to any other government employee and would be charged with a Class I felony under the bill. However, the AOC estimates that some of these defendants would also be charged with other crimes that would already put the trial in superior court and only 90% (3,141 defendants) would be tried in superior court for the Class I felony. Further, an estimated 70% would either plead guilty or the case would be dismissed. The remaining 30% (942 defendants) would represent possible additional superior court trials. Of this 30%, an estimated 25% (785 defendants) would enter guilty pleas in superior court and an estimated 5% (157) would result in a trial.

For the 785 cases involving guilty pleas, the AOC estimates that an additional hour would be spent in preparing the case above what would be spent for the same case as a Class A1 misdemeanor. Because approximately 65% of these cases are anticipated to involve indigent defendants, there would be an additional cost of **\$25,500** per year to cover the additional indigent defense costs. (510 defendants x 1 hour x \$50/hour).

For the 157 cases going to trial, the AOC estimates the additional costs would include four new personnel statewide to handle the additional workload, indigent defense costs, and jury fees. If each trial lasts nine hours (1 ½ days), an additional 1,413 in-court hours (157 defendants x 9 hours) would result in the need for four new personnel: a superior court judge, an assistant district attorney, a deputy clerk, and a court reporter. The total personnel cost would be **\$290,148** for the first full year. However, these personnel costs represent the estimated additional workload anticipated on a centralized, statewide level when in reality the additional caseload would be spread across the state.

An estimated 65% (102) of the defendants would be indigent and need court-appointed counsel. Assuming the felony charge would demand an additional four hours of preparation over the misdemeanor charge and nine hours in court, the AOC estimates incremental indigent defense costs of **\$66,300** in the first full year. (102 defendants x 13 extra hours x \$50/hour). The first full year of jury fees are expected to be **\$82,896**.

Some additional court costs would be collected. Superior court fees are \$25 higher than district court fees. If a maximum of 942 defendants were convicted in superior court and the rate of collection was 50%, annual revenues would be **\$11,775**. (942 defendants x \$25 x 0.5). However, the rate of collection of court fees may vary widely from about one-third to two-thirds due to the indigency rate, the rate of court cost assessment, and the ability of defendants to pay. Indigent defendants may also repay part of the attorney fees but there is no estimate available on the revenue possible.

Department of Correction

The following chart shows, for the end of each fiscal year, prison beds estimated to be available, the projected inmate population, the deficit or surplus of available beds compared to population, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (In the following chart, rows 4 and 5 are specific to this bill.)

	<b><u>June 30</u></b> <b><u>2000</u></b>	<b><u>June 30</u></b> <b><u>2001</u></b>	<b><u>June 30</u></b> <b><u>2002</u></b>	<b><u>June 30</u></b> <b><u>2003</u></b>	<b><u>June 30</u></b> <b><u>2004</u></b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>1</sup>	31,467	31,472	31,936	32,750	33,685
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>2</sup>	34,493	34,717	34,717	34,717	34,717
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+3,026	+3,245	+2,781	1,967	+1,032
<b>4. No. of Projected Additional Inmates Due to this Bill</b>	<b>+25</b>	<b>+320</b>	<b>+327</b>	<b>+334</b>	<b>+340</b>
<b>5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 1,346 inmates to the prison system by the end of FY 2003-04. It is assumed that the first inmates convicted under this bill would be admitted during June 2000. The Sentencing Commission anticipates that only 6.3% of the defendants charged would initially receive an active prison sentence and the rest of the inmates would result from the revocation of probation. There is no direct fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. However, even though costs can be absorbed due to available bed capacity, there is a daily cost for each

<sup>1</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The population projections used for incarceration fiscal notes are based on January, 1999 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.

<sup>2</sup> Projected number of prison beds based on Department of Correction estimates of available prison bed Expanded Operating Capacity (EOC) for beds completed or funded and under construction as of 2/19/99. The EOC is the number of beds above 100% capacity (Standard Operating Capacity). The EOC is authorized by previous court consent decrees or departmental policy. These bed capacity figures do not include any State prison beds that are contracted through local jails or any beds that would be lost to the system if any proposals to close small prisons are approved by the General Assembly during the 1999 Session.

inmate added to the system that will have to be expended in lieu of using available funds for other purposes or reverting these funds. The average cost per day for one inmate was the following in 1997-98:

**DAILY INMATE COST**

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (97-98)	\$51.27	\$67.44	\$78.64	\$62.41

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

**NOTE:**

This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly. Other criminal penalty bill enhancements being considered by the General Assembly reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

**FISCAL IMPACT BEYOND FIVE YEARS:**

Fiscal Notes look at the impact of a bill for a five year period. 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>2004-5</u>	<u>2005-6</u>	<u>2006-7</u>	<u>2007-8</u>
Inmates Due to This Bill	346	346	355	360
Available Beds	117	-757	-1,708	-2,557
New Beds Needed	<b>229</b>	<b>346</b>	<b>355</b>	<b>360</b>

**DISTRIBUTION OF BEDS BEYOND FIVE YEARS:**

After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill after 2004:

- Close Custody – 22%
- Medium Custody – 30%
- Minimum Custody – 48%

Currently, 13% of the close custody Class I felons were due to the limited options for female and youthful offenders. The Division of Prisons expects to continue to house a greater percentage of Class I felons in close custody for this reason.

The Department of Correction maintains that there will be enough minimum and medium custody beds when present construction is completed and that the true need is for more close custody beds. 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 1998-99 costs for each custody level as provided by the Office of State Construction on February 4, 1999. 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 98-99	\$31,752	\$60,464	\$93,713

A 5% per year inflation rate would be applied to the above capital costs to determine the non-recurring costs after 2004. This rate was recommended by the Office of State Construction based on current inflationary trends for construction projects.

Funds for the close custody beds are budgeted 3 years in advance, while funds for the medium and minimum custody beds are budgeted 2 years in advance, to allow adequate time for planning and construction. This bill would impact the state budget as early as 2001-02 when construction funds would be needed to provide close custody beds by 2004. Construction costs are estimated at \$108,485 per close custody bed in 2001-02 and \$69,995 per medium and \$36,757 per minimum in 2002-03. However, because fiscal notes are limited to a five-year horizon, that cost is not included in the summary box on page 1.

**SOURCES OF DATA:**

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

**TECHNICAL CONSIDERATIONS:**

**FISCAL RESEARCH DIVISION**

**733-4910**

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**DATE:** March 22, 1999



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