

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

**BILL NUMBER:** SB 93 1st Edition  
**SHORT TITLE:** Amend Special Probation Definition  
**SPONSOR(S):** Senator Gulley

<b>FISCAL IMPACT</b>					
	Yes ( )	No ( )	No Estimate Available (X)		
	<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>
<b>GENERAL FUND</b>					
<b>Correction</b>	Unable to determine exact amount; potential for small increase <i>or</i> decrease in prison or probation expenditures <i>depending on judicial practice in utilizing special probation</i>				
<b>Judicial</b>	Unable to determine exact amount.				
<b>TOTAL EXPENDITURES:</b>	Unable to determine exact amount.				
<b>ADDITIONAL PRISON BEDS*</b>	Unable to determine impact on prison beds.				
<b>POSITIONS:</b>	Unable to determine any increase or decrease in positions.				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> December 1, 2003					
<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:** Amends G.S. 15A-1344(e) and G.S. 15A-1351(a) to remove the six-month limit on the maximum length of an active sentence within special probation. Under Structured Sentencing, special probation is an intermediate sentencing option consisting of an active sentence followed by probation. Under present law, the active sentence cannot exceed the *lesser* of six months or one-fourth of the maximum sentence imposed. By removing the six-month limit, this bill would allow the active sentence to be up to one-fourth of the maximum sentence imposed.

**ASSUMPTIONS AND METHODOLOGY:**

This bill would only affect cases that fall into “I/A” cells of the Structured Sentencing grid, that is, where judges are authorized to impose intermediate or active sentences. Furthermore, it would only affect cases in “I/A” cells where the maximum sentence is greater than 24 months. If the maximum sentence is 24 months or less, the longest active sentence under special probation would be the same under current law and this bill. Thus, this bill affects only five of the 60 cells in the Structured Sentencing grid:

1. Class E felony, Prior Record Level II (all ranges)
2. Class E felony, Prior Record Level I (aggravated and presumptive ranges)
3. Class F felony, Prior Record Level III (aggravated and presumptive ranges)
4. Class F felony, Prior Record Level II (aggravated range only)
5. Class G felony, Prior Record Level IV (aggravated range only)

The longest maximum sentence in these cells is 43 months (Class E, Prior Record II, aggravated). Under SB 93, this would translate to a special probation of 11 months (one-quarter of 43), five months longer than the current cap of six months.

		Max. Active Sentence	Max. Active Sentence w/Special Probation	
			Current Law	SB 93
Class E Prior Record Level II	<i>aggravated</i>	43.2 months	6 months	10.8 months
	<i>presumptive</i>	34.8 months	6 months	8.7 months
	<i>mitigated</i>	27.6 months	6 months	6.9 months
Class E Prior Record Level I	<i>aggravated</i>	37.2 months	6 months	9.3 months
	<i>presumptive</i>	30.0 months	6 months	7.5 months
Class F Prior Record Level III	<i>aggravated</i>	31.2 months	6 months	7.8 months
	<i>presumptive</i>	25.2 months	6 months	6.3 months
Class F Prior Record Level II	<i>aggravated</i>	28.8 months	6 months	7.2 months
	<i>mitigated</i>	24.0 months	6 months	6.0 months
Class G Prior Record Level IV	<i>aggravated</i>	30.0 months	6 months	7.5 months
	<i>mitigated</i>	24.0 months	6 months	6.0 months

**Department of Correction**

There are two possible effects of this bill. First, if judges continue current practice in the use of special probation under SB 93, offenders in the affected cells would receive longer sentences, as illustrated in the chart above. This would result in the need for additional prison beds and increase Department of Correction (DOC) prison costs. In FY 2001, 3,521 felony offenders were sentenced to special probation and approximately 287 offenders would have been affected by this bill.

On the other hand, given that SB 93 increases the maximum sentence length for special probation, judges may be more inclined to use special probation rather than a straight active sentence. This practice would result in shorter sentences and reduced prison costs (but would increase probation costs). The Sentencing Commission anticipates that the latter case will be more frequent. However, the Fiscal Research Division (FRD) cannot estimate fiscal impact on the prison system

or probation because the Commission simulation model cannot project the use of intermediate punishments, such as special probation, by judges.

Whether sentences are lengthened or shortened overall, the vast majority of convictions will remain unaffected. In 2000-01, 438 of the 7,720 active sentences (5.7%) were in the five affected cells of the Structured Sentencing grid.

### **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.

AOC is unable to determine the number of defendants that will be affected by SB 93. Overall, it does not predict a substantial impact on court operations. When charged, the defendants would be facing potential punishments substantially similar to those under current law, and AOC would not expect the possibility of a longer active component to special probation, or the increased possibility for special probation to significantly change litigation strategies or decisions, or the time or cost involved. AOC also cannot speculate on the impact this bill may have on probation revocation rates.

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

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:** Jim Mills, Chloe Gossage, and Nicole Kreiser

**APPROVED BY:** James D. Johnson

**DATE:** March 11, 2003



**Signed Copy Located in the NCGA Principal Clerk's Offices**