

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

BILL NUMBER: — HB 1048

— 2nd Edition

SHORT TITLE: Juvenile Code Revisions/-Ct. Improvement

SPONSOR(S): Representative Ross

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<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>
GENERAL FUND					
Correction					
Recurring					<u>Unable to determine exact amount.</u>
Judicial					
Recurring					<u>Unable to determine exact amount.</u>
TOTAL			0		
EXPENDITURES:			<u>Unable to determine exact amount.</u>	0	
			0		
			0		
			0		
ADDITIONAL PRISON BEDS*					<u>Unable to determine exact amount.</u>
POSITIONS: (cumulative)					<u>Unable to determine exact amount.</u>
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: <u>Effective when it becomes law, except for Section 10, which is effective December 1, 2003.</u>					
<p><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></p>					

BILL SUMMARY:¹ HB 1048 makes various changes to Subchapter 1 of Chapter 7B (Juvenile Code – Abuse, Neglect, and Dependency). –In addition, new G.S. 7B-408 requires the clerk to provide a copy of the petition and notices of hearings to the local guardian ad litem office immediately after a petition has been filed. The bill also requires the court to verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile. The bill would permit the court to terminate the parental rights upon finding that the parent is incapable of providing proper care and supervision of the juvenile and the parent lacks an appropriate alternative child care arrangement.

HB 1408 also expands the definition of “court officer” under G.S. 14-16.01(1) to include: (1) an attorney or other individual employed by or acting on behalf of the department of social services in juvenile abuse, neglect, and dependency cases; and (2) an attorney or other individual appointed as a guardian ad litem or employed by the Administrative Office of the Court’s guardian ad litem program. This provides for an increased penalty for endangering persons involved in juvenile abuse, neglect, and dependency actions, by including those persons in the definition of court personnel.

¹ AOC Research and Planning and NC General Assembly Research Division

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 (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts 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. 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.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

The Sentencing and Policy Advisory Commission notes that there were no convictions in FY 2001-2002 under G.S. 14-16.6 and one conviction under G.S. 14-16.7. **However, it is not known how many additional convictions would result by broadening the scope of the existing statute to include attorneys employed by the Department of Social Services, Guardian ad Litem Services Division, or appointed by the court to represent a juvenile.**

If, for example, there were ten additional Class I 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. In FY 2001-2002, 55 percent of Class I felons received community sentences, 36 percent received intermediate sentences, and nine percent received active sentences. If, for example, there were two additional Class F convictions under the 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 two additional prison beds the second year. In FY 2001-2002, 55 percent of Class F felons received intermediate sentences and 45 percent received active sentences. In 2001-2002, costs for community and intermediate sanctions ranged from \$1.83 to \$11.47 per offender per day, and the statewide average operating cost for one prison inmate was \$62.43/day (\$22,787/year).

Department of Correction

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for 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 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add ___ inmates to the prison system by the end of FY 2007-08.

	June 30	June 30	June 30	June 30	June 30
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ⁱ	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) ⁱⁱ	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	1,290	2,058	3,010	3,958	4,828
4. No. of Projected Additional Inmates <u>Due to this Bill</u> ⁱⁱⁱ					
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³					

POSITIONS: It is anticipated that approximately ___ positions would be needed to supervise the additional inmates housed under this bill by 2007-08. These position totals include 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 three prisons opened by DOC and the three new prisons under construction.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal Notes look at the impact of a bill through the year FY 2008. 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>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Inmates Due to —This Bill				
Available Beds (over/under)	-5,616	-6,339	-7,039	-7,684
New Beds Needed				

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

- _____ Close Custody _____
- _____ Medium Custody _____
- _____ Minimum Custody _____

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2002-03 costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2002-0203	\$38,595	\$73,494	\$85,444

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on Page 1 of this note. These costs assume that funds to construct prison beds should be budgeted in advance. Based on previous prison construction projects we are assuming it will typically require three years for planning, design and construction of new beds.

OPERATING: Operating costs are based on actual 2001-02 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 3% annual inflation rate will be added each year to the base costs for FY 2002 shown below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1.

Daily Inmate Operating Cost 2001-02

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2001-02)	\$50.04	\$65.17	\$80.19	\$62.43

~~Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2004 and 2005, this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2005-06 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.~~

~~In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, FRD will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.~~

ASSUMPTIONS AND METHODOLOGY:

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 data for calendar year 2002 reveal that three defendants were charged under current G.S. 14-16.6(a) for assaulting an executive, legislative, or court officer and two defendants were charged under current G.S. 14-16.6(b) for assaulting an executive, legislative, or court officer with a weapon. However, the AOC does not expect a significant increase in the number of charges as a result of this bill since assault of DSS attorneys/personnel and guardians ad litem is currently proscribed under various assault statutes. For offenses of G.S. 14-16.6 that are brought to trial as Class F felonies, the estimated court cost per trial is \$7,969. For Class F felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$387.

In addition, AOC data for calendar year 2002 reveal that seven defendants were charged with a Class I felony under current G.S. 14-16.7 for threatening an executive, legislative, or court officer. Again, the AOC does not expect a significant increase in the number of charges as a result of this bill since making threats against DSS attorneys/personnel and guardians ad litem is proscribed under current G.S. 14-277.1. However, the AOC has no data from which to estimate the number of additional charges that would arise by including DSS attorneys/personnel and guardians ad litem under G.S. 14-16.7. For offenses that are brought to trial as Class I felonies, the estimated

court cost per trial is \$5,687. For Class I felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$323.

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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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Signed Copy Located in the NCGA Principal Clerk's Offices

ⁱ~~The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts 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.~~

ⁱⁱ~~Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.~~

ⁱⁱⁱ~~Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.~~