

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1077 (PCS 6/2/98)

SHORT TITLE: Amend Burglary

SPONSOR(S): Senator Dalton

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 3 of this note for calculation of that cost.

(in millions)

	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
GENERAL FUND					
Correction					
Recurring					
Nonrecurring					
Judicial					
Jury Fees	\$66,960	\$68,969	\$71,038	\$73,169	\$75,364
Indigent Defense Expenses	<u>\$116,850</u>	<u>\$120,356</u>	<u>\$123,966</u>	<u>\$127,685</u>	<u>\$131,516</u>
TOTAL EXPENDITURES	\$183,810	\$189,325	\$195,004	\$200,854	\$206,880

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

EFFECTIVE DATE: December 1, 1998

Since the above expenses include salaried and non-salaried expenses, a constant 3% inflation rate is used to project future costs.

BILL SUMMARY: TO AMEND THE OFFENSES OF FIRST AND SECOND DEGREE BURGLARY. Amends GS 14-51 to define the offenses of first and second degree burglary (now, offenses are defined by common law, and this statute describes the punishment only). Deletes present common-law requirements for burglary that there be a breaking *and* an entering, and that the breaking and entering must occur in the night-time. Defines first-degree burglary as breaking *or* entering, with intent of committing a larceny or felony, without consent a dwelling house or a room used as a sleeping apartment in any building, and any person is actually occupying any part of the dwelling house or sleeping apartment at the time of the entry. Defines second-degree burglary as

breaking or entering, with intent of committing a larceny or felony, without consent a dwelling house or sleeping apartment not actually occupied by anyone at the time of the entry, or if the person enters any house within the curtilage of a dwelling house or in any building not a dwelling house, but in which is a room used as a sleeping apartment and not actually occupied as such at the time of the entry.

ASSUMPTIONS AND METHODOLOGY: 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)

	<u>June 30</u> <u>1999</u>	<u>June 30</u> <u>2000</u>	<u>June 30</u> <u>2001</u>	<u>June 30</u> <u>2002</u>	<u>June 30</u> <u>2003</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ¹	31,177	30,475	30,743	31,228	31,828
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	34,120	34,936	34,936	34,936	34,936
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+2,943	+4,461	+4,193	+3,708	+3,108
4. No. of Projected Additional Inmates Due to this Bill	+34	+1,033	+1,563	+2,107	+2,660
5. No. of Additional Beds Need Each Fiscal Year Due to this Bill	0	0	0	0	0

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 2,660 inmates to the prison system by the end of FY 2002-03. The number of inmates added by this bill is slightly lower than when the bill was introduced in 1997, primarily because the Sentencing Commission has new data

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The population projections used for incarceration fiscal notes are based on January, 1998 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.

² 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 4/8/98. The EOC is approximately 130% of standard operating capacity and 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 the Governor's proposal to close nine small prisons (at a loss of 666 EOC beds) is approved by the General Assembly during the 1998 Session.

reflecting inmates sentenced under Structured Sentencing. 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 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 1996-97:

DAILY INMATE COST

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (96-97)	\$53.63	\$67.85	\$79.96	\$63.27

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 through the year 2003. 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. As the chart indicates, new beds would be needed in 2003-04 as a result of this bill.

	<u>2003-4</u>	<u>2004-5</u>	<u>2005-6</u>	<u>2006-7</u>
Inmates Due to This Bill	3,145	3,517	3,771	4,027
Available Beds	2,467	1,689	951	271
New Beds Needed	678	1,828	2,820	3,756

CONSTRUCTION: Construction costs are based on actual 1997-98 costs for each custody level as provided by the Office of State Construction on May 26, 1998. Based on these costs, the following per bed/cell construction would apply:

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 97-98	\$31,752	\$60,464	\$89,250

A 5% per year inflation rate is used to project capital costs in future years. This rate was recommended by the Office of State Construction based on current inflationary trends for construction projects.

Because funds for the close custody beds are budgeted 3 years in advance and funds for the medium and minimum custody beds are budgeted 2 years in advance, this bill technically has an impact on the state budget as early as 2000-01, when construction funds would be needed to provide close custody beds by 2003. Construction costs are estimated at \$103,318 per close custody bed in 2000-01 and \$73,494 per medium and \$38,595 per minimum in 2001-02. However, since fiscal notes are limited to a five-year horizon, that cost is not included in the summary box on page 1.

ASSUMPTIONS AND METHODOLOGY: Judicial Department

Number of Cases

The Administrative Office of the Courts anticipates this bill would result in additional burglary filings, mainly involving offenses committed during the day that are currently prosecuted as felony breaking and entering. 1997 department data indicates approximately 10,067 defendants were charged with felonious breaking and entering of buildings. According to 1996 SBI data, 66% of burglaries are of residential structures. Applying this percentage to all defendants charged with felony breaking or entering of buildings results in an estimated 6,644 defendants (10,067 X 66%) charged with residential breaking or entering. SBI data indicates that approximately 61% of burglary cases were committed during the day. Thus, it is estimated that 4,053 defendants (6,644 X 61%) were charged with felony breaking or entering of dwellings during the daytime. The AOC estimates 40% of these cases would be for first degree burglary, while 60% would be for second degree burglary, yielding an estimated **1,621 additional defendants** (4,053 X 40%) charged with first degree and **2,432 additional defendants** (4,053 X 60%) charged with second degree burglary. There will also be a corresponding decrease in the number of defendants charged with the lesser charge of breaking and entering.

Trials and Court Personnel

Based on manner of disposition data for cases disposed during FY 1995-96, the AOC estimates an overall trial rate of 6% for the additional first degree burglary cases (represents a new incremental increase of 4.8% with shift from class H to class D felony). The AOC estimates an incremental trial rate of 1% for the additional second degree burglary cases. These incremental trial rates suggest an additional 78 trials (1,621 defendants X 4.8%) in superior court first degree burglary and an additional 24 trials (2,432 defendants X 1%) for second degree burglary. The AOC estimates an average trial length of 2 ½ days for first degree cases and 2 days for second degree cases. Thus, it is estimated that additional court time would total 195 days (78 trials X 2.5 days), or 1,170 hours (195 days X 6 hours/day) for the first degree cases, and 48 days (24 trials X 2 days), or 288 hours (48 days X 6 hours/day) for the second degree cases. These two figures yield an estimated increase of **102 trials** and **1,458 hours** of superior court time statewide. **At this time, the Fiscal Research Division believes this additional workload statewide could be absorbed within existing judicial department resources.** However, this note measures the impact of this bill alone; the cumulative effect of all criminal penalty bills passed in this legislative session might warrant additional court personnel.

Jury Fees

The increase in court trials also increases jury expenses. Each 2 ½ day trial costs the state \$696 in jury fees, while 2 day trials incur \$528. Using these figures, the AOC estimates that the 78 additional first degree burglary trials will incur \$54,288 (78 X \$696) in jury fees, while the 24 additional second degree burglary trials will incur \$12,672 (24 X \$528). In total, the additional 102 trials will cost the state **\$66,960** in jury fees.

Indigent Defense and Guilty Pleas

The AOC assumes that 75% of the additional defendants who would go to trial, or 59 first degree defendants (78 X 75%) and 18 second degree defendants (24 X 75%), would be represented by court-appointed counsel at an average fee of \$50 per hour. The 59 first degree cases, assuming 15 additional hours of in-court time and 5 additional hours for case preparation, yields additional indigent defense costs totaling \$59,000 (59 defendants X 20 additional hours X \$50/hour). Similarly, for the 18 second degree cases, assuming 12 additional hours of in-court time and 5 additional hours for case preparation, yields additional indigent costs totaling \$15,300 (18 defendants X 17 additional hours X \$50/hour). Thus, the estimated indigent defense expenditures for the 102 new burglary trials during a one-year period is **\$74,300**.

The AOC assumes that 70% of the new first and second degree burglary cases, or 2,837 defendants (4,053 X 70%), would be disposed by guilty plea. Of these 2,837 defendants, 1,135 (2,837 X 40%) would be first degree cases, while 1,702 would be second degree cases (2,837 X 60%). Since the first degree defendants would be prosecuted as Class D felons (instead of second degree defendants prosecuted as less serious Class G felons), it is believed that attorneys would devote an additional hour of preparation time. The AOC estimates that there will be 851 first degree indigent defendants (1,135 X 75%) needing additional preparation time, increasing indigent expenses by **\$42,550** (851 defendants X 1 additional hour X \$50/hour). In total, the additional indigent defense expenditures are estimated to be **\$116,850**.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Elisa Wolper and Matt Bronson

APPROVED BY: Tom L. Covington

DATE: June 15, 1998



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