

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

BILL NUMBER: SB 402 2nd Edition

SHORT TITLE: Secret Peeping Changes

SPONSOR(S): Rep. Hackney

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
GENERAL FUND					
Correction					
Recurring	<i>May increase prison population slightly; exact amount can not be determined</i>				
Nonrecurring					
Justice					
Recurring					
Nonrecurring	<i>No Impact</i>				
Judicial					
Recurring	<i>May Slightly Increase Workload</i>				
Nonrecurring					
TOTAL EXPENDITURES:	0	0	0	0	0
ADDITIONAL PRISON BEDS*	<i>Exact Amount Can Not Be Determined</i>				
POSITIONS:	<i>Exact Amount Can Not Be Determined</i>				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Justice					
EFFECTIVE DATE: December 1, applies to offenses on or after that date.					

**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.*

BILL SUMMARY: SB 402 amends GS 14-201 to (1) expand the scope of current secret peeping law to include male as well as female persons; (2) creates new offense of secretly peeping while possessing a photographic device (Class A1 Misdemeanor); (3) creates a new offense of creating a photographic image while peeping (Class I felony); (4) creates a new offense of creating a photographic image under clothing (Class I felony); (5) creates a new offense of installing a photographic device for purposes of arousing sexual desire (Class I); (6) creates a new offense of possessing a photographic image obtained in violation of these laws (Class I); (7) creates a new offenses of disseminating images obtained in violation of this section (Class I felony); (8) second or subsequent felonies are to be punished 2 class higher; (9) allows for civil cause of action by victims of unauthorized capture of photographic image; (10) allows courts to decide if offender must satisfy requirements of the sex offender registry program; (11) allows judge to impose psychological evaluation and treatment on first offenders and requires it for second or subsequent offenses.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

SB 402 (PCS-S402-CSSA-44) broadens the definition of an existing Class 1 misdemeanor offense of secretly peeping to include male as well as female victims. According to the Administrative Office of the Courts (AOC), there were 130 defendants charged under the existing law in 2001 and according to the Sentencing Commission there were 52 convictions under the existing law in 2000-01 with only eight of these receiving active sentences. Because of the length of sentence for misdemeanors, these sentences would be served in county jails. The Sentencing Commission cannot project whether the broader definition of the offense will result in more convictions but because they are misdemeanors, this change is unlikely to affect prison population.

SB 402 also introduces six new offenses related to possessing, using or installing photographic devices or possessing or disseminating photographic images. Of these new offenses, one is a Class A1 Misdemeanor and the other five are Class I felonies. Because these are new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population

However, using data from convictions for all offenses at a given penalty level, we do there would be a need for additional prison beds **if** there are more than five convictions for a Class I felony. Given this legislation is in reaction to known incidents of criminal conduct, it is not unlikely that there would be convictions of this frequency. In addition, section (i) increases the penalty for second or subsequent convictions under any aspect of the revised GS 14-202, raising the misdemeanor convictions to Class H and I felonies. This makes it even more likely there will be enough felony convictions to slightly affect prison population.

Finally, SB 402 could broaden the class of offenders required to comply with the sex offender registry. Violations of these requirements are Class F felonies. If there are two additional Class F convictions due to this provision of SB 402, that would result in the need for an additional prison bed.

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 that even a handful of new prison beds has a fiscal impact. Due to the December 2002 effective date and the time it would take for an offender to be convicted and begin serving a prison sentence, the Department of Correction (DOC) would not see an impact until 2003-04. For each additional prison bed needed in that year, the average statewide operating cost is estimated to be \$71.34/day.

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 2003 and 2004; this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2004-05 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, the Fiscal Research Division (FRD) will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

Those offenders who do not receive active sentences would be placed on probation. The average daily cost for probationers on intermediate punishment is \$12.69. The bill also imposes requirements for probationers sentenced under these laws to obtain psychological evaluations and comply with related treatment but that would not impose additional costs on the Division of Community Corrections

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. 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.

For SB 402, the AOC does not have data on which to base a projection of new or higher level charges. However, they expect an increase in court workload due to these new offenses.

Department of Justice

This bill expands the class of offenders who may be required to register as a sex offender. However, the Department of Justice can accommodate this change within existing resources.

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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