

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

REVISED					
BILL NUMBER: House Bill 50 (Second Edition)					
SHORT TITLE: Street Gang Prevention Act.					
SPONSOR(S): Representatives Michaux and Frye					
FISCAL IMPACT					
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction- Operating		\$8,980,757	\$22,959,462	\$22,959,462	\$22,959,462
	Minimum operating cost if 1% of eligible offenses convicted. Excludes potential cost of penalty enhancements in this bill				
Correction Capital*	-	\$76,661,979			
Juvenile Justice-- Operating	-	\$2,774,303	\$9,822,766	\$12,048,961	\$13,642,000
Juvenile Justice Capital*		\$27,138,096			
Judicial Recurring	\$693,642	<u>\$1,159,564</u>	<u>\$1,194,351</u>	<u>\$1,230,180</u>	<u>\$1,267,086</u>
Nonrecurring	<u>\$59,799</u>				
TOTAL COST	\$753,441	\$130,693,404	\$33,976,579	\$36,238,603	\$37,868,548
ADDITIONAL PRISON BEDS		363	901		
ADDITIONAL JUVENILE BEDS	-	32	110	131	144
POSITIONS: DOC		145	360	--	--
POSITIONS: DJJDP	-	58	200	235	262
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Juvenile Justice and Delinquency Prevention.					
EFFECTIVE DATE: December 1, 2005 *NOTE: Capital costs exclude debt service					
<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 (and juvenile) 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. NOTE: Positions are cumulative</i>					

BILL SUMMARY: Section 1 of the bill creates a new Article 13A of Chapter 14 of the General Statutes (Criminal Law) entitled the "North Carolina Street Gang Prevention Act". The new article contains the following provisions:

G.S. 14-50.16 – sets out legislative findings and intent concerning the problem of street gang activity.

G.S. 14-50.17 – defines the term "Criminal Street gang" as "any ongoing organization, association, or group of three or more persons, whether formal or informal, which engages in a pattern of criminal gang activity." The term "pattern of criminal gang activity" means "the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the following offenses". The listed offenses are any violation of the Controlled Substances Act and any violation of the Criminal Law except for certain specified crimes. At least one of the offenses must have occurred after December 1, 2005, and the last offense must have occurred within three years of prior gang activity.

G.S. 14-50.18 – prohibits participation in criminal street gang activity by creating the following offenses:

- Makes it a Class E felony to participate in a criminal street gang through a pattern of criminal gang activity or to acquire or maintain property through a pattern of criminal gang activity.
- Adds a 10-year penalty enhancement to a person's conviction if the person occupies a position of organizer, supervisor or manager of criminal gang activity or if the person conspires to engage in a pattern of criminal gang activity.
- Makes it a Class G felony to solicit or coerce another to participate in a criminal street gang, to communicate a threat of injury to a person or relative or associate of a person, or to threaten to damage property with the intent to deter a person from withdrawing from a criminal street gang or to punish a person for having withdrawn from a criminal street gang.

G.S. 14-50.19 - provides that a person convicted of an offense that was committed to benefit a criminal street gang is guilty of an offense that is one class higher than the offense committed. This does not apply to offenses under G.S. 14-50.18.

G.S. 14-50.20 – requires that the judge determine whether an offense was committed for the benefit of a criminal street gang and to reflect the determination on the judgment so that it becomes part of the official record of the conviction.

G.S. 14-50.21 – declares property used to violate this act or derived from a violation of this act to be contraband, subject to seizure and forfeiture. The District Attorney or the Attorney General must initiate a forfeiture proceeding within 60 days of the seizure of the property.

G.S. 14-50.22 – provides that local ordinances related to gangs and gang violence are not preempted by this act.

G.S. 14-50.23 – declares real property used by criminal street gangs to be a public nuisance subject to abatement under Art. 1 of Chap. 19 of the General Statutes. If the owner is not a member

of the street gang, this section only applies if the owner had knowledge of the criminal gang activity.

G.S. 14-50.24 – provides that a person convicted of a criminal street gang offense may not contest any facts determined in the criminal case in any subsequent civil case based on the same conduct.

Section 2 of the bill makes it a Class E felony to willfully discharge or attempt to discharge a firearm from within any kind of enclosure towards persons not within the enclosure.

Section 3 of the bill amends the law related to pretrial release of defendants to create a rebuttable presumption against allowing pretrial release if there is reasonable cause to believe that the person committed the offense in connection with criminal street gang activity, while on pretrial release for another offense and if the person had been convicted of a gang related offense within five years.

Section 4 of the bill amends the Structured Sentencing law to provide that evidence used to prove a case under G.S. 14-50.19 may not be used to prove an aggravating factor.

Section 5 authorizes enhanced sentences if the defendant is convicted of a serious felony that was committed for the benefit of gang activity and either possessed, displayed, or discharged a firearm. The enhancement for possession is an additional 60 months, for displaying, an additional 84 months and for discharging, an additional 120 months. This section applies even if the gun is incapable of firing. Also, the court cannot suspend a sentence imposed under this section.

Sections 6 and 7 are technical and conforming changes.

Section 8 appropriates \$150,000 to the State Bureau of Investigation to purchase or develop software to create a statewide criminal street gang member database.

Section 9 appropriates \$2 million to the Governor's Crime Commission to provide grants for street gang violence prevention and intervention programs. The grants shall include a 25% matching requirement. The Governor's Crime Commission is directed to report to the Appropriations Subcommittees on Justice and Public Safety and the Fiscal Research Division on the uses of the funds by April 1, 2006.

Section 10 makes the two appropriations effective July 1, 2005 and the remainder of the act effective December 1, 2005, at which time it will only be applicable to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. Current projections show DOC prison population will easily exceed bed capacity during the next five years (1,091 beds short in 2005-06) so any bill that increases prison population will have a fiscal impact.

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 does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

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This Fiscal Note attempts to demonstrate the fiscal impact of the Street Gang Prevention Act on the court, prison, and juvenile justice systems. Providing impact assessment is difficult for this bill because many of the offenses are new, and also there is little reliable data on gangs and gang membership upon which to base analysis. However, both the Sentencing Commission and AOC were able to develop reasonable scenarios for considering the impact of this bill. (NOTE: The Governor's Crime Commission has conducted survey research to estimate the number of gangs and gang members in the state; their estimate for 2004 is that there are 387 gangs operating in the state, with a total of 8,517 members. Crime Commission research staff believes these numbers may be low).

Department of Correction – Division of Prisons

The Sentencing Commission does not have data on how many offenders convicted in court are gang members. In order to analyze the impact of this bill, the Commission first determined the number of *potentially eligible* offenders under this bill. Using 2003-04 data, the Commission determined the total number of potentially eligible offenders is 74,506. Eligible offenders were determined as follows:

TABLE I

<u>Offenses</u>	<u>Total Offenses 2003/04</u>	<u>Total Offenses Covered by Bill</u>	<u>Total Eligible Offenses at Prior Record Level 2*</u>
Felonies	28,556	26,761	20,457
Misdemeanors	159,491	94,542	54,049
Total	188,047	121,303	74,506

**Under the bill, only offenders who have been convicted before and are at Prior Record Level II or higher on the Sentencing Grid are potentially eligible for conviction under the definition in this bill of a "pattern of criminal gang activity."*

The Commission then projected numbers for each criminal penalty section of the Bill individually, assuming that only one percent (1%) or 745 offenders of the eligible offenders would be convicted under each section. The results of this analysis are in the table below. *These numbers are not cumulative, and thus cannot be added up for an overall impact of the bill, but they do give an idea of the scope of this legislation.* Additionally, these sections cannot be run through the

Commission’s Simulation Model due to lack of data, so these numbers are simple two-year projections.

TABLE II

Section Number	Crime	Year One Impact	Year Two Impact
14-50.18(a)	Unlawful to Participate in Criminal Street Gang	363	901
14-50.18(b)	Unlawful to acquire or maintain...any real or personal property, including money	363	901
14-50.18(d)	Unlawful to cause...another to join a gang	319	662
14-50.18(e)	Unlawful to communicate a threat...to withdraw from a gang	319	662
14-50.18(f)	Unlawful to communicate a threat...for having withdrawn from a gang	319	662

To illustrate the potentially significant costs of this bill, Fiscal Research assumes that only 1% of the eligible offenders will be convicted of one of the five offenses listed in Table II – *Unlawful to Participate in Criminal Street Gangs*. This offense is the most general and the most likely offense to be charged frequently. In practice, if 1% of the eligible offenses result in convictions under this act, the convictions are more likely to be spread among the various offenses listed in Section 1 of the Bill.

Operating Costs: The projected bed impact if 745 offenders were convicted of this new Class E felony is 363 prison beds in 2006-07 and 901 in 2007-08 (Bill effective date is December 1, 2005, so it would be at least six months before any bed impact). The cost to operate 363 prison beds in 2006-07 would be \$8,980,757. The cost to operate 901 prison beds in 2007-08 would be \$22,959,462. Calculations are based on the following:

- ❑ For 2003-04, the average cost to operate a prison bed was \$62.03 a day or \$22,640 annually
- ❑ FY 03-04 costs were used as the base year and 3% inflation was added per year to project 2006-07 and 2007-08 costs
- ❑ The number of positions shown on page 1 for DOC assume 2.5 positions per inmate/prison bed, the current average staffing ratio for prisons constructed since the late 1990’s.
- ❑ **Since it will take 2 to 3 years to construct prison beds, the operating costs assume that DOC will need to purchase additional beds through county jails or out of state**

Capital Costs: Since Correction prison population already exceeds bed capacity, it is likely capital funding will also be needed to construct new prison beds. *The cost of 901 prison beds would be \$76,661,979.* Assumptions are:

- ❑ Construction of medium custody beds
- ❑ Cost of \$73,500 per bed in 2003-04 for medium custody beds, times 5% inflation per year (costs derived from DOC and State Construction Office)
- ❑ Assuming 2006-07 funding since 2005-06 state budget (SB 622) has already been ratified
- ❑ The cost estimate does not include the potential cost of debt service.

Given the nature of these felony offenses, capital and operating costs could be higher if more close custody beds were needed as a result of this bill.

Other Potential Costs to DOC – Sentence and Firearms Enhancements. The following is based primarily on analysis by the Sentencing Commission of the sentence enhancements in this bill.

14-50.19: Enhanced offense for criminal gang activity

In FY 2003/04 there were 28,556 felony convictions and 159,491 misdemeanor convictions. It is not known how many of these convictions involved an offense committed for the benefit of, at the direction of, or in association with, any criminal street gang. As such, it is not possible to determine how many convictions would be affected by this proposal. However, enhancing a defendant’s sentence by raising it one offense class higher than the class of the committed offense will, in general, increase the defendant’s likelihood of receiving an active sentence and increase the chance of receiving a longer sentence that would result in the need for prison resources.

14-34.9: Discharging a firearm from within an enclosure

In FY 2003/04 there were 89 Class E convictions for discharging a firearm into occupied property (G.S. 14-34.1) and no convictions for shooting within city limits (local ordinance). It is not known how many offenders might be convicted and sentenced under this proposal. *If, for example, there were two Class E convictions under this proposed statute 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.*

15A-1340.16B: Enhanced sentence if the defendant is convicted of a Class A through Class E felony that was committed for the benefit of, at the direction of, or in association with, any gang, and the defendant possessed, displayed, or discharged a firearm during the commission of a felony

This proposal enhances the punishment for felony offenses committed for the benefit of, at the direction of, or in association with, any criminal street gang that involved a firearm. The firearm enhancement applies to Class A through Class E offenses. The Bill provides for a minimum term of imprisonment of 60 months in addition to the punishment for the underlying felony if the offender possessed a firearm, 84 additional months if the offender displayed a firearm, and 120 additional months if the offender discharged a firearm. The proposed Bill also removes the requirement that the offender be sentenced to an active term of imprisonment for the underlying felony. This proposal also removes the restriction that limits the application of the enhancement to those offenses where the use, display, or threat of use or display of a firearm is not an element of the underlying offense.

Methodology and Assumptions for Alternative Firearms Enhancement Scenarios (G.S. 15A-1340.16B)

- In FY 2003/04 the firearm enhancement, as defined under current law, was not applied to any convictions. It is not known how many convictions to which the firearm enhancement would be applied under the proposal. In FY 2003/04, there were 103 Class A through Class E firearm-related convictions. There were also 233 Class A through Class E cases that had accompanying charges or additional convictions for firearm-specific offenses. There were an additional 1,717 Class A through Class E cases involving a weapons-related conviction and/or charge, which could include offenses involving firearms.

These 2,053 convictions (or 58% of all Class A – Class E convictions) represent the total eligible pool for possible application of the firearm enhancement under the proposal. **For this analysis, it was assumed that the firearm enhancement would be applied to the 336 cases with a specific firearm-related conviction and/or charge.** These cases define the eligible pool for this analysis. Since it is not known how many of the 1,717 cases with a weapons-related conviction and/or charge involved a firearm, it was not possible to estimate the potential impact of these convictions on the prison population.

- The AOC database does not contain information about crimes committed for the benefit of, at the direction of, or in association with, criminal street gangs. As such, it is not possible to determine who would be eligible for the firearm enhancement. For purposes of providing an estimate of the impact of this proposal, three scenarios were developed. In Scenario 1, it was assumed that five percent of the eligible pool were convicted for Class A through Class E crimes committed for the benefit of, at the direction of, or in association with, criminal street gangs; in Scenario 2, it was assumed that ten percent of the eligible pool were convicted for Class A through Class E crimes committed for the benefit of, at the direction of, or in association with, criminal street gangs; and in Scenario 3, it was assumed that twenty percent of the eligible pool were convicted for Class A through Class E crimes committed for the benefit of, at the direction of, or in association with, criminal street gangs.
- Since it is not known how many offenders possessed versus displayed or discharged a firearm, this analysis does not model the proposed 84-month enhancement for displaying a firearm or 120-month enhancement for discharging a firearm. *The analysis models the minimum conduct required (i.e., possession of a firearm) under the proposed bill.* The additional 60 months would be consecutive to the sentence imposed for the underlying conviction. Note that since the enhancement is applied to Class A through Class E convictions, most of which are subject to a mandatory active sentence, much of the impact of the 60-month, 84-month and 120-month enhancement will occur beyond the 10-year projection.

IMPACT OF FIREARM ENHANCEMENT— POSSESSION OFFENSE ONLY			
FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS		
	Scenario 1: 5% of Eligible Pool	Scenario 2: 10% of Eligible Pool	Scenario 3: 20% of Eligible Pool
Year 1	0	0	0
Year 2 (06-07)	1	2	3
Year 3	7	14	20
Year 4	15	30	43
Year 5	24	46	69
Year 6	33	64	98
Year 7	43	84	131
Year 8	50	98	155
Year 9	53	105	172
Year 10	56	114	190

Using the lowest cost scenario of 5%, DOC will need another 24 prison beds at the cost of \$648,800 per year by 2009-10, year 5 of the fiscal note window. This assumes the base cost of \$22,640 for a prison bed in 2003-04 plus 3% inflation per year. The effect of this firearm enhancement on prison population and on cost is more significant in years 5 through 10.

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. 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.

The Administrative Office of the Courts expects that this bill could have a significant impact on felony charges and trial rates, depending upon the actual number of gang members in the state, and the rate at which they are charged with crimes, and the rate at which those crimes are charged under the new and enhanced gang statutes. For purposes of this analysis, AOC assumed that half of the 8,517 gang members, based on the Crime Commission survey, would be charged with a crime during a year's time, and that half of those would be charged with a gang-related offense carrying an enhanced sentence. The Fiscal Research Division believes that it is unlikely that half of all gang members would be charged with a crime each year, and that half of those would also be charged under the new gang statutes.

- ❑ Using AOC's estimate of 2,129 defendants (25% of the estimated number of gang members in the state), and assuming that each defendant charged required five hours of trial time, the AOC would need six additional Superior Court Judges, six court reporters, six assistant district attorneys, and six deputy clerks systemwide. These positions would cost approximately \$2,036,000 annually.
- ❑ Without knowledge of the frequency with which prosecutors will use the new offenses created in this bill, any estimate is highly speculative, nevertheless, Fiscal Research will use ten percent of the estimated gang members (850) as the number charged under the enhanced penalties in SB 733.
- ❑ With 850 offenders charged and accepting AOC's projection of five hours of trial time, the necessary numbers of Superior Court Judges would be 2.5, as with all other positions types. For purposes of this note, for whole numbers and to be more cautious, we will anticipate a need for three Superior Court Judges, three court reporters, three assistant district attorneys, and three deputy clerks. **The total costs for these positions in the first year, beginning December 1, 2005, are \$632,487, and \$945,993 for the first full year.**

The agency does not have sufficient data to estimate the effects of the firearm enhancement, the new discharging firearm from an enclosure offense, nor the pretrial release component of this bill.

In addition to the position costs for dealing with the new trials in Superior Court, the AOC assumes a 75% indigency rate for these defendants, or 638 cases needing indigent defense fees. Again assuming five hours of trial time at the standard rate of \$65 per hour, **the Indigent Persons Attorney Fee Fund would need an additional \$207,350.**

Department of Juvenile Justice and Delinquency Prevention

The Street Gang Prevention Act also affects juvenile sentencing. The Sentencing Commission used data from NC-JOIN, the Juvenile Offender Information Network, to analyze the number of juvenile offenders likely to be affected by this bill. NC-JOIN includes screens to capture data from the risk assessment interview conducted by the court counselor. This assessment checks for numerous risk factors including school performance, family factors, and association factors, such as gang involvement. The data for the assessment comes from self-report for the most part, but the court counselor also seeks information from responsible adults in the juvenile's life. *As such, NC-JOIN provides a better measure of gang involvement than any source of data for the adult system.*

Based on 2004 risk assessment data, there were 408 dispositions where the child was identified as a gang member either by self-report or by the report of a responsible adult. *Of these, 193 had a prior record and a current offense that met the definition of pattern of criminal gang activity.* Thus, 193 juveniles meet the criteria to be sentenced under this bill, specifically under proposed new GS 14-50.18(a), making it a Class E felony to participate in a criminal street gang.

Operating Costs: If 193 juvenile offenders that meet the definitions in the bill were sentenced for unlawful participation in a criminal street gang, there would be a need for 144 additional Youth Development Center beds by 2009-10, which would account for a \$13.6 million increase in operating costs for the YDC budget in that fiscal year. These calculations were determined as follows:

- In Fiscal Year 2003-04, the annual cost for operating one YDC bed was \$79,340.
- Assuming a three percent annual inflation factor, these costs would rise year by year to \$94,736 in 2009-10, as demonstrated in the table below

2003-04	\$79,340
2004-05	\$81,720
2005-06	\$84,172
2006-07	\$86,697
2007-08	\$89,298
2008-09	\$91,977
2009-10	\$94,736

- The Sentencing Commission uses the current number of juveniles eligible for the Class E penalty for gang association to project an annual number in new admissions to YDCs. Their projections for the five-year fiscal note period are

2005-06	-
2006-07	32
2007-08	110
2008-09	131
2009-10	144

- *Positions:* The operating costs primarily include positions. *The costs, and number of positions shown on Page 1 of this Note assume a staffing ratio of 1.82 staff for every juvenile. This is the ratio as of August 2005 after passage of SB 622, the budget bill. Proposed staffing by DJJDP increases the ratio to over 2 staff per juvenile so these costs may be underestimated.*
- **Since it takes two to three years to construct and begin operation of a YDC, it is assumed DJJDP will need to reopen closed housing units in the short term and hire additional staff**

For purposes of this analysis, we have assumed that all offenders who met the criteria for the proposed GS 14-50.18(a), gang association, would be convicted. Of course, there are many other offenses created in the bill, but this specific offense is the most basic, and therefore the one most likely to generate convictions. Without data on prosecutorial discretion, it is not possible to determine how often these other offenses will be charged, nor how often other sections of the bill, such as the firearm enhancement, might be used.

Capital Costs: The General Assembly recently authorized the construction of 224 new YDC beds but a plan for closing current facilities and projected bed capacity figures have not been fully developed. The current population projection for YDC's over the next few years is approximately 450. It is assumed that the Department would need to seek authorization to construct new YDC beds if this bill is ratified, given the condition of current facilities.

The cost to construct 144 new beds is estimated at \$27,138,096. Assumptions include:

- Baseline cost for new YDC beds is \$170,938 per bed (2004-05 State Construction figures for 32 bed unit) plus 5% inflation per year (State Construction Office)
- Assumes construction of 32 bed units, per DJJDP current plans for most new YDC facilities
- Assumes construction would start in 2006-07

- The cost does not include the potential debt service cost

Costs could be lower if beds in YDC's that have been closed, or are scheduled for closing, are renovated and reopened permanently.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction, Department of Juvenile Justice and Delinquency Prevention.

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices