

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1039 (Third Edition)

SHORT TITLE: Increase Rape Penalties/Helpless Victims.

SPONSOR(S): Senator Jenkins

	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*					
Recurring	-	\$481,453	\$917,611	\$1,393,532	\$2,255,176
Non-Recurring	There are no available prison beds during this timeframe. To accommodate an additional 305 inmates in the long term, the State will need to construct new cells at an average cost (for close custody) of \$108,596 per bed.				
Judicial (Recurring)	\$249,800	\$428,228	\$449,639	\$472,121	\$495,727
TOTAL EXPENDITURES:	\$249,800	\$909,681	\$1,367,250	\$1,865,653	\$2,750,903
ADDITIONAL PRISON BEDS**	-	7	15	23	38
	Long-term increases in bed needs are expected. By FY 2013-14, the Sentencing Commission projects a need for 305 additional prison beds due to this bill.				
POSITIONS: (cumulative)	-	3	6	9	15
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: December 1, 2005					
*Costs reflect only the impact of enhancing the penalty for second-degree rape and sexual offense. There would be an indeterminate number of additional prison beds and costs beyond the five-year projection period to the Judiciary and the Department of Correction (DOC) as a result of expanding the scope of first-degree rape and sexual offense.					
**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: This bill would remove force as an element of the offenses of second-degree rape (G.S. 14-27.3) and second-degree sexual offense (G.S. 14-27.5), raise the offense class for both from Class C to Class B2, and enhance sentences for certain sex offenses by 60 months for the use of “date rape drugs.”

The second edition eliminates the proposed removal of the element of force from the offenses of second-degree rape and sexual offense and the proposed 60-month enhancement for the use of “date rape drugs” but would raise the offense class of second-degree rape and sexual offense from Class C to B2. New sections three and four are added to amend first-degree rape and sexual offense to include engaging in vaginal intercourse with a person who is mentally disabled, mentally incapacitated, or physically helpless and:

- a) Employing or displaying a dangerous or deadly weapon;
- b) Inflicting serious personally injury upon the victim or another person; or
- c) Committing the offense aided and abetted by one or more other persons.

The third edition makes a technical change only.

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

Department of Correction – Division of Prisons

Section 1 amends G.S. 14-27.3 to reclassify second-degree rape from a Class C to Class B2 felony (which would also raise attempted second-degree rape from Class D to Class C). In FY 2003-04 there were 81 convictions for second-degree rape. If these offenders were sentenced as Class B2 rather than Class C felons, the average estimated time served would increase from 90 to 186 months. For offenders convicted of attempted second-degree rape (21 convictions in FY 2003-04), the average estimated time served would increase from 71 to 95 months. As such, the Sentencing Commission projects that raising the penalty for this offense would increase the number of prison beds needed each year, resulting in the need for an additional 21 prison beds by FY 2009-10.

Section 2 amends G.S. 14-27.5 to reclassify second-degree sexual offense from a Class C to Class B2 felony (also raising attempted second-degree sexual offense from Class D to Class C). In FY 2003-04 there were 41 convictions for second-degree sexual offenses. If these offenders were sentenced as Class B2 rather than Class C felons, the average estimated time served would increase from 92 to 186 months. For offenders convicted of an attempted second-degree sexual offense (16 convictions in FY 2003-04), the average estimated time served would increase from 57 to 87 months. As such, the Sentencing Commission projects that raising the penalty for this offense would increase the number of prison beds needed each year, resulting in the need for an additional 17 prison beds by FY 2009-10.

Sections 3 and 4 amend G.S. 14-27.2 and 14-27.4, respectively, to broaden the offenses of first-degree rape and sexual offense to include engaging in vaginal intercourse with a person who is mentally disabled, mentally incapacitated, or physically helpless and:

- a) Employing or displaying a dangerous or deadly weapon;
- b) Inflicting serious personally injury upon the victim or another person; or
- c) Committing the offense aided and abetted by one or more other persons.

Currently such an offense could be prosecuted as first-degree rape or sexual offense if perpetrated by force and against the will of the victim and one of the three factors listed above were present in the offense. If one of the three factors were not present or if not committed by force and against the will of the victim, the offense would be punishable as second-degree rape or sexual offense.

Of the present convictions for first and second-degree rape and sexual offense, the proportion involving the elements of the proposed offenses is unknown. As such, the number of convictions that would be elevated from second-degree (Class C) to first-degree rape or sexual offense (Class B1), as well as the associated fiscal impact, cannot be determined. The following table lists the number of convictions for first and second-degree and attempted first and second-degree rape and sexual offense in FY 2003-04 as well as the average estimated sentence length for each offense.¹

Table 1: FY 2003-04 Convictions for Selected Sexual Offenses

Statute	Offense Class	Offense	Convictions	Average Estimated Time Served (months)
§ 14-27.2	B1	<i>First Degree Rape</i>	14	353
	B2	<i>Attempted First Degree Rape</i>	8	137
§ 14-27.3	C	<i>Second Degree Rape</i>	81	90
	D	<i>Attempted Second Degree Rape</i>	21	71
§ 14-27.4	B1	<i>First Degree Sexual Offense</i>	19	354
	B2	<i>Attempted First Degree Sexual Offense</i>	21	134
§ 14-27.5	C	<i>Second Degree Sexual Offense</i>	41	92
	D	<i>Attempted Second Degree Sexual Offense</i>	16	57
	Total		221	

Although both Class C and B2 offenses carry mandatory active time, due to the increase in average sentence length (approximately 354 as opposed to 90 months), any conviction that is elevated from second-degree (Class C) to first-degree (Class B1) rape or sexual offense would result in a long-term impact on prison population beginning in the seventh year of the projection phase and continuing beyond the 10-year projection period of the model used by the Sentencing Commission.

The chart on the next page compares the projected inmate population to available prison bed capacity system-wide and shows 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 five) is always equal to the projected additional inmates due to a bill (row four).

¹ These figures exclude convictions under 14-27.2(a)(1) and 14-27.4(a)(1) for first-degree rape and sexual offense involving a child, which would not include offenders which could be sentenced under the offense proposed by this bill.

Rows four and five in the chart show the projected impact of Sections 1 and 2 of this bill. The amendments to first-degree rape and sexual offense in Sections 3 and 4 of the bill cannot be modeled and would not generate an impact until after FY 2010, and are thus not included in the estimates of additional inmates due to this bill. As shown in bold in the chart, the Sentencing Commission estimates that this specific legislation will add **38 inmates** to the prison system by the end of FY 2009-10.

	<u>June 30</u> <u>2006</u>	<u>June 30</u> <u>2007</u>	<u>June 30</u> <u>2008</u>	<u>June 30</u> <u>2009</u>	<u>June 30</u> <u>2010</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	38,106	39,021	39,864	40,750	41,668
2. Projected No. of Prison Beds (DOC Expanded Capacity) ³	37,015	37,911	38,807	38,807	38,807
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,091	-1,110	-1,057	1,943	-2,861
4. No. of Projected Additional Inmates Due to this Bill⁴	-	7	15	23	38
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill ³	-	7	15	23	38

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes look at the impact of a bill through FY 2010. However, there is information available on the impact of Sections 1 and 2 of this bill in later years. The chart below shows the additional inmates due to Sections 1 and 2 of this bill, the projected available beds, and required beds due only to this bill each year.

	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
Inmates Due to This Bill*	82	143	215	305
Available Beds (over/under)	-3,787	-4,692	-5,574	-6,505
New Beds Needed	-3,869	-4,835	-5,789	-6,810

POSITIONS: It is anticipated that **15 positions** would be needed to supervise the additional inmates housed under this bill by 2009-10. This position total includes 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 five prisons opened by DOC and two prisons under construction. Two of the prisons were medium custody and five were close custody.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

³ Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 2004. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

⁴ Criminal penalty bills effective December 1, 2005 will not affect prison population and bed needs until FY 2006-07 due to the lag time between when an offense is committed and an offender is sentenced.

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction expects that, within the five-year projection horizon, a greater number of close custody beds and fewer medium and minimum custody beds would be needed to house offenders sentenced under this bill. Due to the increase in penalty, offenders convicted of these offenses would be expected to occupy a close custody bed for a greater amount of time before being downgraded to medium and then minimum custody.

OPERATING: Operating costs are based on the actual 2003-04 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 three percent annual inflation rate will be added each year to the base costs for FY 2003-04 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

Daily Inmate Operating Cost 2003-04

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2003-04)	\$49.34	\$65.59	\$82.46	\$62.03

Operating costs, as shown in the Fiscal Impact Table on page one, are calculated under the anticipated change in custody needs as projected by DOC. The additional prison beds needed for each fiscal year represent the net increase in prison population due to increases in close custody population and decreases in medium and minimum custody population. Operating costs are calculated by subtracting the cost savings for medium and minimum custody from the cost of additional close custody beds. As an example, a detailed breakdown of the FY 2006-07 custody and cost projection is shown below.

FY 2006-07 Department of Correction Operating Cost Detail

Close Custody:	26 beds * \$90.11 per day ⁵ * 365 days =	\$855,144
Medium Custody:	- 3 beds * \$71.67 per day * 365 days =	- \$78,479
Minimum Custody:	- 15 beds * \$53.92 per day * 365 days =	- \$295,212
Net Cost:		\$481,453

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2004-05 costs for each custody level as provided by the Office of State Construction and the Department of Correction. An inflation rate of five percent per year is applied to future years. *The costs assume stand-alone facilities; single cells for close custody and dormitories for medium and minimum.*

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2004-05	\$45,500	\$73,500	\$98,500

⁵ Daily per inmate operating costs for each custody level are adjusted for inflation at a rate of 3 percent annually.

Operating costs are calculated assuming that offenders sentenced under this bill would be housed in the State prison system. However, to accommodate the projected prison population including these offenders (which exceeds available beds), DOC would need to increase temporary bed space by 1) purchasing additional beds out of state or in county jails; 2) paying counties for jail backlog; or, 3) establishing temporary beds in the State system. To incarcerate the offenders sentenced under this bill in the long term, the State would need to construct new prison beds.

The cost to construct each bed required by this bill is shown in the Fiscal Impact Table on page one of this note. This cost is for 2006-07 and assumes that funds to construct prison beds should be budgeted three years in advance since building a prison typically requires three years for planning, design, and construction.

The total cost to construct new close custody beds to accommodate the 38 inmates this bill is projected to add to the prison system by FY 2009-10 is estimated to be \$4.1 million. DOC would need to begin construction of these beds in FY 2006-07. By FY 2013-14, 305 beds would be needed due to this legislation. The cost to construct the additional 267 close custody beds beginning in FY 2010-11 would be \$35.2 million. These figures represent a FY 2004-05 average base cost per bed of \$98,500 adjusted for inflation at a rate of five percent annually.

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.

AOC expects that disposing of charges for second-degree rape and second-degree sexual offense would require additional court and attorney time under this bill, as a more vigorous defense and prosecution would be anticipated due to the increased penalty for these offenses. Table 2 below outlines the number of charges during calendar year 2004 for the offenses affected by this bill.

Table 2: CY 2004 Charges for Selected Sexual Offenses

Statute	Offense Class	Offense	Charges
§ 14-27.2	B1	<i>First Degree Rape</i>	262
	B2	<i>Attempted First Degree Rape</i>	54
§ 14-27.3	C	<i>Second Degree Rape</i>	353
	D	<i>Attempted Second Degree Rape</i>	95
§ 14-27.4	B1	<i>First Degree Sexual Offense</i>	242
	B2	<i>Attempted First Degree Sexual Offense</i>	49
§ 14-27.5	C	<i>Second Degree Sexual Offense</i>	236
	D	<i>Attempted Second Degree Sexual Offense</i>	38
	Total		1,329

Sections 1 and 2 of the bill amend G.S. 14-27.3 and G.S. 14-27.5, respectively, to remove the use of force as an element of second-degree rape and second-degree sexual offense and reclassify the offenses from Class C to Class B2 felonies (which would also raise attempts from Class D to Class C). Additional court time and attorney preparation time would be expected to settle any charge increased by an offense class due to this bill.

As shown in Table 2 on the previous page, there were **589** Class C charges, in sum, for second-degree rape and second-degree sexual offenses in CY 2004. As detailed in Table 3 below, AOC estimates that the average increase in cost to settle these charges as Class B2 rather than Class C felonies would be **\$383,730** in the first full year. This increase in cost reflects anticipated increases in trial rates, trial length, plea rates, and attorney preparation time, as well as indigency rates of 50 percent.

Charges	Offense Class	Settled via Trial		Settled via Guilty Plea		Total
		Court/Attorney Costs	Indigent Defense	Court/Attorney Costs	Indigent Defense	
589	Class C	\$251,265	\$65,754	\$41,715	\$12,852	\$371,586
	Class B2	\$481,360	\$125,412	\$114,752	\$33,792	\$755,316
	Cost Increase	\$230,095	\$59,658	\$73,037	\$20,940	\$383,730

In sum, there were **133** Class D charges for attempted second-degree rape and attempted second-degree sexual offenses in CY 2004. As detailed in Table 4 below, AOC estimates that the average increase in cost to settle these charges as Class C rather than D felonies would be **\$44,498** in the first full year. This increase in cost reflects anticipated increases in trial rates, trial length, and attorney preparation time, as well as indigency rates of 50 percent.

Charges	Offense Class	Settled via Trial		Settled via Guilty Plea		Total
		Court/Attorney Costs	Indigent Defense	Court/Attorney Costs	Indigent Defense	
133	Class D	\$19,317	\$6,578	\$10,298	\$3,458	\$39,651
	Class C	\$57,432	\$14,612	\$9,270	\$2,835	\$84,149
	Cost Increase	\$38,115	\$8,034	(\$1,028)	(\$623)	\$44,498

The costs in the box on the first page reflect the sum of these figures (**\$428,228**), inflated at a rate of 5 percent annually, and adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective.

Sections 3 and 4 of the bill, which broaden the offenses of first-degree rape and sexual offense, would be expected to have an additional impact on superior court workload. For any offense prosecuted as a Class B1 rather than Class C felony (or Class B2 rather than Class D for an attempt), a more vigorous defense and prosecution would be anticipated due to the increased penalty upon conviction. However, as the number of second-degree rape and sexual offense charges that would be prosecuted as first-degree rape or sexual offense due to this bill is not known, the specific cost to dispose of these charges cannot be determined.

The following table outlines the average estimated *increase* in cost to settle a single charge as a Class B1 rather than Class C felony and as a Class B2 rather than Class D felony. These figures are based on the costs of time in court, attorney preparation time, jury fees, and indigent defense.

Offense Class	Settled via Trial			Settled via Guilty Plea
	<i>Court/Attorney Costs</i>	<i>Indigent Defense</i>	<i>Total</i>	
<i>Class C → B1 Felony</i>	\$1,882	\$1,014	\$2,896	\$397
<i>Class D → B2 Felony</i>	\$2,313	\$1,190	\$3,503	\$583

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