

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1048 (Third Edition)

SHORT TITLE: Governor's DWI Task Force Recommendations.

SPONSOR(S): Representative Hackney

	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					
Judicial Branch	\$1,137,367	\$1,869,834	\$1,963,325	\$2,061,491	\$2,164,565
Dept. of Correction	\$0	\$432,799	\$1,255,931	\$2,072,553	\$3,065,809
Health and Human Services	\$9,000	-	-	-	-
Subtotal	\$1,146,367	\$2,302,633	\$3,219,256	\$4,134,044	\$5,230,374
HIGHWAY FUND					
Dept. of Transportation	\$362,580	-	-	-	-
LOCAL GOVERNMENTS Exact amount cannot be determined					
TOTAL EXPENDITURES:	\$1,508,947	\$2,302,633	\$3,219,256	\$4,134,044	\$5,230,374
ADDITIONAL PRISON BEDS*					
(Felony Death by Vehicle)	0	12	41	70	102
POSITIONS (cumulative)					
Judicial Branch	19	19	19	19	19
Correction	0	5	16	28	41
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Local Governments; Department of Correction; Department of Transportation; Department of Health and Human Services					
EFFECTIVE DATE: December 1, 2005 (except G.S. 20-138.4(c) – effective upon next rewrite of clerk’s system).					
<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>					

SUMMARY OF HOUSE BILL 1048

Bill Summary

House Bill 1048 implements some of the recommendations of the Governor's Task Force on Driving While Impaired (DWI). More detailed summaries are provided in the text of the fiscal note. Major changes are:

- ❑ Section 1 and 2: Authorizing retailers and local ABC stores to issue purchase transportation permits to purchase a keg of malt beverage for off-premises consumption and makes it a Class I misdemeanor if a permit is not obtained
- ❑ Section 3: Modifying the statutes on motor vehicle checking stations and roadblocks to standardize procedures by law enforcement.
- ❑ Section 4: Establishing pre-trial processes for implied consent cases.
- ❑ Section 5: Allowing the admissibility of various expert opinions and testing for drug and alcohol use while driving.
- ❑ Section 6: Changing procedures to allow results from alcohol screening devices to be used to prove alcohol consumption
- ❑ Sections 7-11: Clarifying the statutes on what is an impaired driving offense and the criteria or test for determining impaired driving. The third edition, as amended on the House Floor, revises the standard for charging commercial drivers with impaired driving. Section 9 in the third edition is revised to prohibit commercial drivers from having any concentration of alcohol or controlled substance in their system except for therapeutic purposes. Section 10 and 11 of the bill are repealed and incorporated with changes into new Section 9.
- ❑ Section 12: Changing criminal penalties from Class 2 misdemeanor to coverage under DWI statutes for individuals under age 21 who are convicted of driving while impaired; also allows for deferred prosecution.
- ❑ Section 13: Amending the habitual DWI statute to apply to any person with four DWI convictions in a ten-year period (now seven-year period).
- ❑ Section 14: Technical change.
- ❑ Section 15: Increasing the penalty for Felony Death by Vehicle from a Class G to Class D felony and creating a new offense of Felony Serious Injury by Vehicle (Class E).
- ❑ Section 16: Rewriting the implied consent law to clarify and simplify procedures for performing chemical analyses and changing the standard of review by superior court when a license revocation for refusal to submit to chemical analysis is appealed.
- ❑ Section 17: Amending statute governing admissibility of chemical analysis in court and standardizing procedures and forms.
- ❑ Section 18: Providing law enforcement officers with improved access to medical records when investigating a crash.
- ❑ Section 19: Specifying information that a prosecutor must document and distribute when dismissing an implied consent case.

- ❑ Sections 20 and 21: Revising statutes on revocation and restoration of license for driving while impaired including increasing criminal penalty for driving without reclaiming a license for impaired driving and failure to appear for more than two years on these charges to a Class 1 misdemeanor.
- ❑ Section 22: Modifying DWI sentencing statutes to conform to Blakely vs. Washington decision regarding the findings of aggravating factors in sentencing.
- ❑ Section 23: Requiring clerks to maintain all records related to impaired driving convictions for at least ten years, and maintain certain summary data on each case beyond ten years.
- ❑ Section 24: Repealed.
- ❑ Sections 25 and 26: Creating a new Class 1 misdemeanor for consuming alcohol while under the age of 21 and allowing use of alcohol monitoring devices to determine consumption.
- ❑ Section 27: Requiring that DWI defendants released early from prison to be assigned community service.
- ❑ Section 28: Effective date (see below)

Fiscal Note Summary

H.B. 1048 makes substantive changes to certain DWI statutes to ensure consistency in enforcement of DWI laws, clarity in the legal determination of who is “driving while impaired,” greater penalties for those who are convicted of DWI and availability of deferred prosecution options for certain DWI offenders. Overall, HB 1048 could lead to a substantial increase in DWI charges, convictions, and jail or prison time for DWI offenders. However, in some instances, Fiscal Research and the agencies affected by H.B. 1048 were unable to develop reliable cost estimates.

While there is good statistical information on DWI offenses generally, the nature of DWI laws makes it difficult to project the impact of H.B. 1048 for two primary reasons:

- 1) Most DWI cases are not part of the Structured Sentencing Act so the Sentencing and Policy Advisory Commission does not maintain a historical database for DWI offenses.
- 2) Because DWI laws provide significant judicial discretion and a wide range of possible sentences (Levels 1-5; sentences of 1-24 months, possible parole) it is not possible in many cases to project the impact on prison and jails in most cases as is done under the Structured Sentencing system, nor on the court system.

Costs could be estimated for certain sections of HB 1048. These costs are summarized in the box on page one of this note and in this Summary section. Details on the fiscal impact are provided in the text of the note.

Judicial Branch:

FY 05-06: \$1,137,367 (19 positions) (December 1, 2005)

FY 06-07 \$1,869,834

	<u>Superior Court Judges</u>	<u>District Court Judges</u>	<u>Assistant District Attorneys</u>	<u>Clerks</u>	<u>Court Reporters</u>	<u>Total</u>
§12 Deferred Prosecution/Underage DWI		2	4	2		8
§13 Habitual DWI			1			1
§19 Prosecutor Reporting			4			4
§22 Blakely v. Washington	1		3	1	1	6
Total Positions (rounded)	1	2	12	3	1	19

For most bills that change criminal penalties or revise judicial procedure and practice, the Administrative Office of the Courts provides Fiscal Research with their analysis of the fiscal impact of the specific bill. FRD reviews these analyses and makes the final determination of potential costs for the fiscal note.

For bills with fiscal impact on the court system, it is assumed that court time will increase as a result of a substantive change and that there will be a corresponding increase in the hours of work for judges, clerks and prosecutors. For example, it is often assumed that when a criminal penalty is increased, a defendant is more likely to contest the case and thus increase time in court for court personnel and defense attorneys. The estimated time added to a case is multiplied by the number of cases to determine system-wide impact on judicial man-hours. One position is estimated for every 1800 man hours added. Increased court time is also expected to result in greater expenditures for jury fees if applicable to a particular change and to indigent defense costs.

For H.B. 1048, FRD believes the most substantial impact on court time will be for the following:

- ❑ Section 12, DWI Under Age 21: Revising the criminal penalty for driving after consuming alcohol if under age 21 from a Class 1 Misdemeanor to coverage under DWI Statutes makes the criminal penalties potentially more wide ranging and longer. There is also a potentially large pool of offenders (6,998 in 2004).
- ❑ Section 13, Habitual Impaired Driving: Additional court time is likely since the number of cases will increase (HB 1048 amends statute to apply to anyone with four convictions for DWI in 10 years instead of seven) and some offenders would now be tried as Class F felons.
- ❑ Section 19, Prosecutor Reporting for Implied Consent Cases: HB 1048 details a number of new reporting requirements for dismissing implied consent cases or accepting a plea to lesser offenses. Information must be entered into a record of the case, explained orally in court and stated in writing on an AOC form. These requirements will increase workload for assistant district attorneys.
- ❑ Section 22, Conformance to Blakely vs. Washington: As a result of Blakely, a judge may only impose an aggravated sentence based on facts found by jury, admitted by

defendant or prior convictions. The additional court time is likely to occur as a result of more complex cases, new jury trials and/or longer jury trials in Superior Court to consider aggravating factors.

There is also potentially significant impact on court time for Sections 25 and 26 which make it a Class 1 misdemeanor to consume alcohol if under age 21, but there is no reliable method to gauge the level of enforcement and resulting impact on the courts.

Department of Correction: For the DOC, the cost estimate shown on the fiscal note table on page 1 is for the cost of prison beds due to Section 15, Felony Death by Vehicle. It is projected that this measure will increase the number of prison beds by 102 by FY 2009-10, due to increasing the current Felony Death by Vehicle penalty from a Class G to Class D felony. This offense is part of the Structured Sentencing system and the Sentencing Commission can project prison beds based on past practice for Class G and D felonies.

Other changes in criminal penalties or in clarifying DWI laws in H.B. 1048 may impact the prison system but bed impact cannot be projected. Costs to the prison system entail not only the potential impact on prison beds, but increased payments to the counties for certain offenders. Offenders with active sentences of less than ninety days are housed in county jails; DOC must reimburse counties for housing offenders sentenced to more than thirty days at a rate of \$18 per day per offender.

Counties/Local Jails: H.B. 1048 is most likely to have fiscal impact on local confinement facilities because of revised or new DWI misdemeanors, such as the creation of a new Class 1 misdemeanor for consuming alcohol while under the age of 21, clarification of what constitutes an impaired driving offense, and increasing misdemeanor penalties from Class 2 to Class 1 for certain offenses related to driving while license revoked and failure to appear. For new offenses, there is no historical data to use to estimate the impact on local jails.

Department of Transportation/Division of Motor Vehicles: Several sections of the bill will require substantive changes to the DMV management information system totaling \$362,580. Most of the cost relates to changes in laws regarding driving while license revoked in Section 21.

Bill Effective Date

The primary changes in DWI laws under H.B. 1048 are effective December 1, 2005. Therefore, costs estimated for this note for FY 2005-06 are for seven months only unless otherwise noted. Costs for 2006-07 are the total annual costs plus inflation over 2005-06

Format/Focus of Fiscal Note

The text of the fiscal note does not include summary statements of fiscal impact for all sections of HB 1048. Sections that were clearly technical changes or had little arguable fiscal impact were excluded.

DETAILED FISCAL IMPACT

	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Judicial Branch (General Fund)					
§3 Checking Stations	Exact amount cannot be determined; no substantial impact anticipated.				
§4 Pre-trial Procedures	Exact amount cannot be determined; no substantial impact anticipated.				
§8, 9 Clarification of DWI Offenses	Exact amount cannot be determined; 3 rd edition change may be substantial.				
§12 Deferred Prosecution/Underage DWI	\$452,159	\$735,363	\$772,131	\$810,738	\$851,275
§13 Habitual DWI	\$70,619	\$119,736	\$125,723	\$132,009	\$138,609
§15 Felony Death / Serious Injury	\$13,559	\$24,406	\$25,626	\$26,907	\$28,252
§16 Clarification of Implied Consent Law	Exact amount cannot be determined; no substantial impact anticipated				
§18 Improved Access to Medical Records	No estimate available.				
§19 Prosecutor Reporting	\$198,755	\$328,247	\$344,659	\$361,892	\$379,987
§21 Failure to Appear	\$25,618	\$41,928	\$44,024	\$46,225	\$48,536
§21 Driving While License Revoked	Exact amount cannot be determined; no substantial impact anticipated.				
§22 Blakely v. Washington	\$376,657	\$620,154	\$651,162	\$683,720	\$717,906
§25 Underage Consumption	Exact amount cannot be determined.				
Subtotal	\$1,137,367	\$1,869,834	\$1,963,325	\$2,061,491	\$2,164,565
Positions (cumulative)	19	19	19	19	19
Department of Correction (General Fund)					
§8, 9 Clarification of DWI Offenses	Exact amount cannot be determined.				
§12 Deferred Prosecution/Underage DWI	Exact amount cannot be determined.				
§13 Habitual DWI	Exact amount cannot be determined.				
§15 Felony Death / Serious Injury	\$0	\$432,799	\$1,255,931	\$2,072,553	\$3,065,809
§21 Failure to Appear	Exact amount cannot be determined; no substantial impact anticipated.				
§20, 21 Driving While License Revoked	Exact amount cannot be determined; no substantial impact anticipated.				
§25 Underage Consumption	Exact amount cannot be determined.				
§27 Community Service Parole	Exact amount cannot be determined.				
Subtotal	\$0	\$432,799	\$1,255,931	\$2,072,553	\$3,065,809
Positions (cumulative)	0	5	16	28	41
Department of Transportation (Highway Fund)					
§21 Driving While License Revoked	\$344,192	-	-	-	-
§15 Felony Death / Serious Injury	\$18,388	-	-	-	-
Subtotal	\$362,580	-	-	-	-
Positions (cumulative)	0	0	0	0	0
Department of Health and Human Services (General Fund)					
§17 Web Site Listing Chemical Analysts	\$9,000	-	-	-	-
Subtotal	\$9,000	-	-	-	-
Positions (cumulative)	0	0	0	0	0
Local Governments					
Jails	The general clarification of DWI regulations, new misdemeanor offenses, and increase in certain criminal penalties would impact local confinement facilities, but the exact amount cannot be determined.				
ABC Boards	Some impact to regulate sale of malt beverage kegs under Sections 1 and 2.				
Total Expenditures	\$1,508,947	\$2,302,633	\$3,219,256	\$4,134,044	\$5,230,374
Total Positions	19	24	35	47	60

ASSUMPTIONS AND METHODOLOGY:

Part I, Sections 1 and 2, “Regulating Malt Beverage Kegs”

Summary

Authorizes retailers and local ABC stores to issue purchase transportation permits to purchase a keg of malt beverage for off-premises consumption and makes it a Class 1 misdemeanor if a permit is not obtained.

Potential Fiscal Impact

Local ABC Boards: Currently local ABC boards do not sell kegs or otherwise regulate the sale of kegs. While it is assumed that the primary seller of kegs and issuers of this new permit would be retailers, there could be some fiscal impact on local boards/stores because of the time required to sell and issue permits.

Department of Correction/Local Jails: As the offense would be new, the Sentencing Commission has no historical data from which to estimate the impact on local jails and prison population.

- In FY 2003-04, 19 percent of Class 1 misdemeanor convictions resulted in active sentences and the average estimated time served was 31 days.
- Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per day per offender.
- The remaining 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$.187 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Part II, Section 3, “Modifying the Statutes on Checking Stations and Roadblocks”

Summary

Current G.S. 20-16.3A, establishes criteria for conducting “impaired driving checks” for the purpose of detecting impaired drivers. Section 3 amends G.S. 20-16.3A, changing “impaired driving checks” to “checking stations and roadblocks” and standardizes criteria for all types of motor vehicle checkpoints. This section requires law enforcement agencies conducting the checkpoint to develop a plan for stopping vehicles and requesting information from drivers. Law enforcement officers would also be required to have at least one vehicle with its blue lights flashing to indicate that a checkpoint is in progress. This section also provides specific procedures for detecting and testing impaired drivers.

This section additionally requires the Attorney General to develop a model policy or policies that law enforcement agencies could use when conducting checkpoints and would prohibit law enforcement agencies from repeatedly setting up checking stations in close proximity to certain businesses that sell alcohol for on-premises consumption.

Potential Fiscal Impact

No significant fiscal impact anticipated.

The primary purpose of this section is to standardize methods of conducting checkpoints for all motor vehicle violations. While such standardization could increase the number of individuals charged with and convicted of DWI, there is no way to estimate this potential impact.

Judicial Branch: AOC estimated an additional cost of \$468,863 in court time and workload for this section. AOC used 2004 data on charges made at checkpoints (34,000) and assumed 5,000 new charges were possible (10 more at each of the 500 checkpoints). While FRD agrees that some fiscal impact could result, there is not a strong basis for assuming a 10 percent increase in charges. In particular, it is noted that 2004 was the year of a major “Booze It and Lose It” campaign, so the number of charges in 2004 may have been inflated. Additionally, the intent was to standardize and not increase the number of checkpoints. Therefore it is assumed fiscal impact will not be significant.

Department of Justice: The Attorney General’s Office does not anticipate any fiscal impact for developing a model “checkpoint” policy for use by law enforcement agencies.

Part III, Section 4, “Providing for Implied Consent Pretrial and Court Proceedings”

Section 4, G.S. 20-38.3, “Initial Appearance”

Summary

Establishes procedures for magistrates to use when processing defendants for impaired driving and authorizes magistrates to hold initial hearings in locations other than courthouse to expedite the process.

Potential Fiscal Impact

No estimate available.

Judicial: Requires additional paperwork for magistrates and defines certain duties to be performed upon the initial appearance in a DWI charge. AOC expects that many of the duties are already performed, but that there could be some cost for additional time and paperwork required for magistrates to determine probable cause and pretrial release. The magnitude of this potential cost cannot be determined. AOC notes that any increase in workload at the beginning of the case may be offset by timesavings later in the case.

In the long-term, there could be a need for new computer equipment if magistrates were to hold regular hearings outside of the courthouse. However, the language requiring this activity is permissive.

Section 4, G.S. 20-38.4, “Chemical Analysis/Facilities”

Summary

Requires the Chief District Court Judge, Sheriff, Department of Health and Human Services, and District Attorney in each district to develop written procedures for attorneys and witnesses to have access to the chemical analysis room and to allow a person who is denied pretrial release to have access to outside chemical analysis. Notices explaining how to get access to analysis room must be posted.

Potential Fiscal Impact

No substantial fiscal impact for DOT, DHHS, or the Judicial Branch.

Department of Transportation: The bill requires posting of notices and states that this will be done by DOT at no cost.

Department of Health and Human Services: The bill requires written agency procedures for chemical analysis and posting of notices of rights. No cost is anticipated.

Judicial Branch: AOC anticipates additional work for court personnel but no substantial impact.

Section 4, G.S. 20-38.5, “Motions/District Court Procedures”

Summary

Requires a defendant’s motion to suppress evidence or dismiss charges to be made prior to trial and in writing at least seven days prior to a hearing. Under current law, motions to suppress in district court are brought during the trial.

Potential Fiscal Impact

Judicial: None anticipated. May shift workload to pretrial phase, which could be more efficient than the current practice of considering such motions during trial.

Section 4, G.S. 20-38.6, “Appeals to Superior Court”

Summary

New G.S. 20-38.6 would allow the State to appeal district court orders dismissing a case or suppressing evidence to superior court and specifies that defendants can only appeal upon conviction as provided by law. Currently under G.S. 15A-1432, the State can only appeal from district court to superior court after a final judgment is entered dismissing one or more counts of criminal charges or when motions are granted for a new trial on the ground of newly discovered evidence only on the questions of law.

Potential Fiscal Impact

Fiscal impact but cannot estimate amount.

Judicial: AOC data for fiscal year 2003-04 show 4,767 impaired driving appeals to superior court. Data for calendar year 2004 show 3,162 impaired driving cases remanded to district court. Under current law (G.S. 15A-1431), defendants who appeal their conviction to superior court may, at any time prior to trial in superior court, withdraw their appeal and have their case remanded back to district court. Under current practice a district court judge may hold a new hearing or simply enter prior judgment.

New G.S. 20-38.6(b) specifies that implied consent cases appealed to superior court can only be remanded back to district court with the consent of the superior court judge and the district attorney. Any cases remanded must have a new sentencing hearing in district court. *Overall, the impact of this new section is hard to predict for both AOC and Fiscal Research. Giving the court and district attorney the final say on remanded cases could reduce both appeals to superior court and the number of remanded cases. On the other hand, more work could result from keeping cases in superior court.*

Part VI, Sections 8 & 9, “Clarification of Impaired Driving Offenses”

Summary

Sections 8 and 9 clarify the per se offenses to make it clear that if a person registers a certain blood alcohol level on a chemical analysis, that is sufficient to prove the offense. These sections also state that the presence of any amount of Schedule I or II controlled substance (heroin, LSD, cocaine, opium, etc.) is sufficient to prove the offense. An affirmative defense is provided for Schedule II substances if the defendant can show that it was lawfully obtained and taken in therapeutically appropriate amounts. Section 8 applies to non-commercial drivers and Section 9 to commercial drivers

Potential Fiscal Impact

These sections of HB 1048 will have a fiscal impact on the court system, jails, and prisons, but the extent of the impact cannot be determined.

Section 8 allows the State to prove the offense of impaired driving if a person registers .08 or greater on a chemical analysis. The intent is to reduce the number of charges dismissed at the .08 level, thus, it is likely that there will be fewer cases dismissed and more convictions. The addition of a subsection that clarifies that use of Schedule I and II controlled substances while driving is illegal could also increase convictions.

Judicial Branch: AOC expects some impact on court workload but there is no data to determine the extent of the additional workload and potential cost.

Department of Correction/Local Jails: Neither the Sentencing Commission nor AOC can determine the number of new cases and convictions likely under this section. The Commission does not maintain statistical information on impaired driving since these offenses are not part of Structured Sentencing. *Also, because DWI laws include a wide range of possible sentences (1 month to 24 months) and the option of parole, it is not possible to determine the impact on prisons and jails.*

Section 9 is analogous to Section 8 except that it affects commercial drivers. The pool of commercial drivers convicted of DWI at .04 is relatively small, thus, the impact of this change on the Courts, prisons, or jails will be less than the change for non-commercial drivers. (*Edition 2 of HB 1048*).

Section 9 in the 3rd edition is revised to prohibit commercial drivers from having any concentration of alcohol or controlled substance in their system except for therapeutic purposes. These changes may have substantial fiscal impact. In FY 2003-04, there were 111 dispositions for impaired driving in a commercial vehicle; 45 were convictions. The pool of likely offenders could increase significantly under this zero tolerance policy but we have no way to determine how many commercial drivers tested between 0.00 and 0.04 in FY 2003-04 and no way to estimate the number of future offenders.

Part VI, Section 12, “Driving by Person Less Than 21 Years Old After Consuming Alcohol or Drugs”

Summary

Section 12 provides that a person under age 21 who drives after consuming alcohol or controlled substances would be punished under the DWI statute (G.S. 20-179). This section also creates a deferred prosecution option for persons charged with driving under the age of 21 after having consumed any amount of alcohol. This allows the person to obtain a dismissal after completing an assessment and treatment or education, a period of non-operation, and doing community service, as well as meeting some additional conditions.

Potential Fiscal Impact

	<u>FY 05-06</u>	<u>FY 06-07</u>	<u>FY 07-08</u>	<u>FY 08-09</u>	<u>FY 09-10</u>
JUDICIAL BRANCH (R)	\$408,535	\$735,363	\$772,131	\$810,738	\$851,275
(NR)	\$43,624				
TOTAL	\$452,159	\$735,363	\$772,131	\$810,738	\$851,275
POSITIONS	8	8	8	8	8

Judicial Branch: Under current law (G.S. 20-138.3), a person less than 21 who drives after consuming alcohol or drugs is guilty of a Class 2 misdemeanor and is sentenced under Structured Sentencing. Under this section a person less than 21 would be sentenced under specific punishment levels of the DWI statute. AOC analysis assumes that a shift from a Class 2 misdemeanor to the DWI criminal penalties would increase the stigma of a conviction and lead to greater potential punishment under DWI statutes. In combination, these factors are likely to lead to an increase in litigation strategies with more time and cost for the court, prosecution, and defense.

AOC data for calendar year 2004 show 6,998 defendants charged with driving under 21 after having consumed alcohol. If more rigorous litigation were to require an overall average of just an additional one-half hour of court time per case and an additional one-half hour of preparation time per case for prosecutors and the defense, the costs would exceed \$700,000 in the first full year. This also includes the anticipated increase in court time to consider the use of the deferred prosecution provision in HB 1048. Cost estimates are based on system-wide costs for two district

court judges, four assistant district attorneys, and two deputy clerks; an additional \$68,250 for indigent defense (assuming a 15 percent indigency rate); and an inflation factor of five percent per year.

Department of Correction/Local Jails: The Sentencing Commission does not maintain statistical information on impaired driving since these offenses are not part of Structured Sentencing. Also, because DWI laws include a wide range of possible sentences (1 month to 24 months) and the option of parole, it is not possible to determine the impact on prisons and jails.

Part VI, Section 13, “Habitual Impaired Driving”

Summary

Section 13 amends the habitual DWI statute to apply to any person who has four DWI's within a ten-year period. Currently, the law applies to anyone who has four DWI's within a seven-year period.

Potential Fiscal Impact

	<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>
JUDICIAL BRANCH (R)	\$66,520	\$119,736	\$125,722	\$132,009	\$138,609
(NR)	\$4,099	-	-	-	-
TOTAL	\$70,619	\$119,736	\$125,722	\$132,009	\$138,609
POSITIONS	1	1	1	1	1

Judicial Branch: AOC expects an increase in workload due to this provision, as some offenders currently being sentenced within the regular DWI structure (Levels 1-5) would now be tried in superior court as Class F felons. Furthermore, since the consequences of a Class F conviction are more serious than a DWI conviction, AOC expects an increase in the trial rate. There were 357 charges of Habitual Impaired Driving in 2004. If this number were to increase by 43 percent due to the addition of three years (43% more time) to the period of tracking, up to 511, then the cost of this section would be \$82,062 system-wide in the first full year for a new assistant district attorney plus \$37,674 in first full year for indigent defense for a total of \$119,736.

Department of Correction: In FY 2003-04, there were 195 convictions for habitual impaired driving. About 95% (or 186) received an active sentence with an average estimated time served of 18 months. This change would increase the eligible pool of offenders for Habitual Impaired Driving. However, the Sentencing Commission indicates there is no data available to estimate how many additional convictions would occur as a result of the proposed amendment.

Assuming some new convictions will occur, if there were two additional Class F convictions per year as a result of this Section, 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. The cost for one additional prison bed in 2006-07 would be \$24,740 and three beds by 2007-08 would be \$76,447.

Part VII, Section 15, "Felony Death by Vehicle and Injury by Vehicle"

Summary

Raises the penalty for Felony Death by Vehicle from Class G to Class D and creates the new offense of Felony Serious Injury by Vehicle, punishable as a Class E felony. For a detailed analysis of the fiscal impact of this provision see Session 2005 Legislative Incarceration Fiscal Note for Senate Bill 61.¹

Potential Fiscal Impact

	<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>
DEPT. OF CORRECTION	\$0	\$432,799	\$1,255,931	\$2,072,553	\$3,065,809
JUDICIAL BRANCH	\$13,559	\$24,406	\$25,626	\$26,907	\$28,252
DEPT. OF TRANSPORTATION (Highway Fund)	\$18,388	\$0	\$0	\$0	\$0
TOTAL	\$31,947	\$457,205	\$1,281,557	\$2,099,460	\$3,094,061
POSITIONS (DOC)	0	5	16	28	41

Department of Correction: As a Class D felony, offenders sentenced for Felony Death by Vehicle under this bill would be required to receive an active sentence, whereas under existing law (Class G) offenders may receive an intermediate sanction (56% of all Class G convictions resulted in intermediate sanctions in FY 2003-04). Class D convictions also carry longer sentences than Class G: an average of 71 to 95 months as opposed to 15 to 19 months. As such, the Sentencing Commission projects that elevating the penalty for Felony Death by Vehicle from Class G to Class D would increase prison bed needs as follows:

	<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>
Net Prison Beds	0	12	41	70	102

The additional prison beds needed for each fiscal year represent a net increase in prison population due to anticipated increases in close and medium custody population and a decrease in minimum custody population. The recurring cost for these beds is shown under "Fiscal Impact" above and reflects this adjustment in bed distribution by custody level and an estimated FY 2005-06 base cost per bed of \$27,795 inflated at a rate of three percent annually.

Additional prison beds would be needed as a result of any new Class E convictions for Felony Serious Injury by Vehicle. As the offense would be new, the Sentencing Commission has no historical data from which to project the specific impact on prison population. If, for example, there were two convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and two additional beds in the second year.

¹ Legislative Incarceration Fiscal Note: Senate Bill 61, Felony Death/Serious Injury by Vehicle. Fiscal Research Division, March 29, 2005.

Judicial Branch: In 2004 there were 65 charges for Felony Death by Vehicle. AOC expects that elevating the penalty for this offense would result in additional superior court workload, as a more vigorous defense and prosecution in the associated cases would be expected due to the increased severity of punishment. Based on presumed increases in trial rates, trial length, attorney preparation time, and time to handle pleas, AOC projects that the increase in cost to process 65 charges for the offense as Class D rather than Class G felonies would be \$24,406 in the first full year.

There would be additional costs to process new Class E felony charges resulting from the offense of Felony Serious Injury by Vehicle. If, for example, approximately 120 (or 20 percent) of the 625 alcohol-related crashes that caused serious injury in 2003 were to result in a charge for this new offense, the total cost to dispose of the charges would be \$54,721 in the first full year. This cost is not included in the fiscal impact projection in the table on the previous page due to the lack of actual data on the number of charges.

Department of Transportation: The State Automated Driver License System would require several modifications to implement the new offense of Felony Serious Injury by Vehicle. The Department estimates that 206 hours of programming, testing, and implementation would be necessary at a cost of \$16,720 in addition to ITS charges of \$1,668.

Part VIII, Section 16, “Clarifying and Simplifying the Implied Consent Law”

Summary

Clarifies provisions relating to implied consent offenses: 1) allows any officer (not only the charging officer) to perform a chemical analysis; and, 2) alters the standard of review to eliminate the requirement that an appeal to superior court of a license revocation for failure to submit to a chemical analysis be heard de novo (under this bill the superior court would conduct a review on the record).

Potential Fiscal Impact

Some cost savings anticipated.

Judicial Branch: Under current law, when an individual’s license is revoked for refusing to submit to a chemical analysis, the person may request a hearing by the Division of Motor Vehicles to appeal the revocation. If the revocation is sustained, the individual may appeal to superior court for a de novo hearing. Section 16 would eliminate the requirement that the hearing in superior court be a de novo review and stipulate instead that the hearing be only a review of the record. To the extent that a review on the record would be less time-consuming than a trial de novo, there would be some reduction in superior court workload due to this provision. However, as the number of such appeals to superior court is presently unknown, the specific reduction in workload and costs cannot be determined.

Part IX, Section 17, “Admissibility of Chemical Analysis”

Summary

This part amends the statute governing the admissibility of chemical analyses. It allows the results of a chemical analysis to be sufficient to prove an alcohol concentration as long as the analysis is performed in accordance with DHHS rules and requirements for administering chemical analyses. Also requires DHHS to perform preventative maintenance on instruments used for chemical analysis and to post on a Web page and file in each county a list of all persons who have a permit authorizing them to perform chemical analyses.

This part also authorizes the admission of tests on blood or urine if submitted on a form approved by the Attorney General without further authentication. This part restricts the issuance of a subpoena for the chemical analyst unless the subpoena is found to be necessary by the court.

This part also clarifies a law enforcement officer’s ability to obtain a blood or urine sample from a person who has refused a test.

Potential Fiscal Impact

Minor fiscal impact for DHHS: \$9,000 non-recurring.

Department of Health and Human Services: DHHS estimates a one-time cost of \$9,000 for development and operation of the required Web site and for transferring existing data to AOC (list of certified chemical analysts and preventative maintenance files). This estimate assumes relatively low volume, regular but not daily site maintenance, and no special security measures. DHHS indicates that many of the other duties outlined in this section of HB 1048 are already performed and that a preventative maintenance program for machines is already in place.

Part X, Section 18, “Improved Access to Medical Records in Impaired Driving Cases”

Summary

Allows any officer investigating a vehicle crash to: 1) request from any health care provider the name, location, and status of impairment of any individual involved in the crash; 2) interview any individual involved in the crash; and, 3) obtain, with a search warrant or judicial order, a certified copy of the medical records of any individual involved in the crash.

Potential Fiscal Impact

No estimate available.

Judicial Branch / Local Jails: As a result of this provision, it is possible that some cases which would presently be dismissed would instead be prosecuted due to more complete information about the circumstances of the alcohol-related crash. However, the existence of additional incriminating information could lead some defendants who would otherwise contest the charge to plead guilty, reducing the court time necessary to dispose of the case. To the extent that any increase in court workload that may occur as a result of new DWI charges is offset by a greater number of guilty pleas in DWI cases, no substantial fiscal impact is expected from this provision.

Part XI, Section 19, “Prosecutor Reporting When Implied Consent Case is Dismissed”

Summary

Requires prosecutor to document specific reasons for dismissing an implied consent offense or accepting a plea to a lesser included offense. The information² must be entered into the record of the case and explained orally in open court and in writing on a form provided by AOC. Upon the next rewrite of the clerks automated system, AOC would be required to record this information in its electronic database and make it available upon request.

Potential Fiscal Impact

	<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>
JUDICIAL BRANCH (R)	\$182,359	\$328,247	\$344,659	\$361,892	\$379,987
(NR)	\$16,396	-	-	-	-
TOTAL	\$198,755	\$328,247	\$344,659	\$361,892	\$379,987
POSITIONS	4	4	4	4	4

Judicial Branch: AOC data for calendar year 2004 show 24,496 implied consent offenses that were voluntarily dismissed and 1,370 implied consent offenses that were pled to a lesser included offense. Data is not available regarding the number of charges for driving while license revoked-where the revocation was due to impaired driving - that were voluntarily dismissed or pled to a lesser included offense.

While the exact increase in workload cannot be determined, if prosecutors were to need fifteen minutes, on average, to provide an oral and written explanation in each of the 25,866 cases in which such documentation would be required, an additional 6,467 hours per year of work would be generated. This increase in workload equates to the need for approximately four additional assistant district attorneys at a recurring cost equal to \$328,247 in the first full year. In the first year, these four positions would necessitate additional non-recurring equipment costs of \$16,396.

In the long-term the requirement to electronically record certain data would have significant fiscal impact but HB 1048 has eliminated this impact for the short-term. Section 28 of HB 1048 makes the requirement in Section 19 that AOC electronically record certain data effective **after** the next rewrite of the superior court clerk system. To update and convert the criminal information system to meet the demands of this requirement would entail a significant cost. Furthermore, when a capable electronic database comes online and entries into the system begin, clerk workload would also increase to record the information in the database.

² At minimum the prosecutor must document the alcohol concentration or that the driver refused analysis, a list of all prior convictions of implied consent offenses and driving while license revoked, whether the driver had a valid drivers license, a statement that the AOC database was checked for other pending charges, the elements that the prosecutor believes in good faith could be proved, those that cannot be proved and why, the name and agency of the charging officer and whether the officer was available, and any other reason why the charges will be dismissed.

Part XII, Section 21, "Driving While License Revoked After Failure to Appear in Driving While Impaired"

Summary

- Makes driving without reclaiming a license for impaired driving and failure to appear for more than two years on impaired driving charges a Class 1 misdemeanors (now Class 2).
- Provides that one-year revocations under new offense would now be for an entire year (nullifies hearing after 90 days).
- Requires that licenses may only be conditionally restored if revocation was for more than one year.
- Requires a person to get a substance abuse assessment prior to conditional restoration and then complete any treatment.
- Requires DMV to put ignition interlock device on a person's vehicle if the assessment finds the person abuses alcohol.

Potential Fiscal Impact

	<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>
JUDICIAL BRANCH	\$25,618	\$41,928	\$44,024	\$46,225	\$48,536
DEPT. OF TRANSPORTATION (Highway Fund)	\$344,192	\$0	\$0	\$0	\$0
TOTAL	\$369,810	\$41,928	\$44,024	\$46,225	\$48,536

Judicial Branch: AOC data indicates that 1,919 implied consent cases - where the file shows a failure to appear - are presently pending after two or more years from the date of the charge. For illustrative purposes, AOC estimated that, if half of the pending cases resulted in a Class 1 misdemeanor charge under this provision, the cost to dispose of the charges would be \$286,807. However, Fiscal Research expects that many of the pending cases will remain unresolved despite the new offense and has revised this estimate to reflect the cost if ten percent of these offenses (192) were to result in a Class 1 misdemeanor charge. Under this scenario, and assuming that one additional hour of time in court and one hour of attorney preparation would be needed on average for each case, the resource cost would equal \$41,928 in the first full year.

Under current law, driving with a revoked license is a Class 1 misdemeanor irrespective of whether the revocation was for an impaired driving or other motor vehicle offense. However, driving after the revocation has expired and without reclaiming one's license is a Class 2 misdemeanor (G.S. 20-35). Under this new provision, an individual whose license is automatically revoked under G.S. 20-16.5 (for refusing to submit to a breathalyzer or registering .08 or more) could be prosecuted for a Class 1 misdemeanor even after the 30-day revocation has expired if the impaired driving offense has not yet been resolved or license restored.

AOC data for 2004 indicates that no defendants were charged with a Class 2 misdemeanor under G.S. 20-35 for driving without a license. If the lack of charges under G.S. 20-35 is an indication that, at present, individuals are rarely prosecuted for driving without reclaiming one's license when the license has been revoked for an impaired driving offense, the impact of this new Class 1 misdemeanor is not likely to be substantial. The cost to settle any new Class 1 misdemeanor

charge via trial would be an estimated \$3,224. However, based on prior-year data, the majority of new charges that are not dismissed are likely to be settled by guilty plea at a cost of \$284 per plea.

Department of Transportation (Division of Motor Vehicles): DMV indicates their management information system is only programmed to capture part of the information required in this section to track and administer persons whose license has been revoked. DMV indicates it will need to reprogram its system to capture information on the new one-year revocation requirements, generate notices for failure to appear after two years, cancel registration when appropriate (requires an interface to the LITES system), and track and enter data on substance abuse assessment and education when required.

Programming, testing, and implementation is estimated at 3,856 hours at \$80 an hour plus a 15 percent Information Technology Services charge for a total of \$344,192 in one-time costs.

Department of Correction/Local Jails: As the offense would be new, the Sentencing Commission has no historical data from which to estimate the impact on local jails and prison population.

- In FY 2003-04, 19 percent of Class 1 misdemeanor convictions resulted in active sentences and the average estimated time served was 31 days.
- Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per day per offender.
- The remaining 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$.187 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Part XIII, Sections 22 & 23, “Modifying Current Punishments”

Summary

Section 22 of this part conforms the sentencing statute for impaired driving offenses to comply with a recent U.S. Supreme Court decision, *Blakely v. Washington*, regarding the finding of aggravating factors in sentencing. Subsection(s) of this section makes a change in the DWI sentencing law to provide that anyone given an active sentence of 48 hours or more shall be required to serve 48 continuous hours to receive credit for time served and to provide that jail time shall be credited on an hour-for-hour basis.

Section 23 of this part requires the clerk of superior court to maintain all impaired driving records for at least ten years from the date of conviction and to record certain information on the case before destroying the record.

Potential Fiscal Impact (Section 22)

	<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>
JUDICIAL BRANCH (R)	\$344,530	\$620,154	\$651,162	\$683,720	\$717,906
(NR)	\$32,127				
TOTAL	\$376,657	\$620,154	\$651,162	\$683,720	\$717,906
POSITIONS	6	6	6	6	6

Section 22 would require that the evidentiary standard for finding aggravating factors meet a higher standard than under current law. Currently, the judge makes a determination based on the preponderance of evidence, but the Blakely decision requires the State to prove the factors beyond a reasonable doubt. The Blakely decision should have a minimal effect in district court, where DWI cases begin, as the judge would still determine the existence of aggravating factors. However, DWI defendants convicted in district court have a right to a new trial in superior court; this is where most impact from the Blakely decision will exist.

When a defendant appeals a DWI conviction to superior court, a new trial begins. In this trial, the same new evidentiary standards (beyond a reasonable doubt) apply. In cases where aggravating factors are alleged, AOC expects increased trial time and complexity to determine the existence of these factors. Prior criminal record as an aggravating factor, which is the primary aggravating factor in DWI sentencing, is specifically excepted from Blakely.

For each DWI punishment level, AOC has provided the estimated number of cases involving Blakely-eligible factors.

<u>Level</u>	<u>CY 2004 Convictions</u>	<u>Estimated Percent with Aggravating Factors Alleged</u>	<u>Estimated Number with Aggravating Factors Alleged</u>
Level I	3,359	100%	3,369
Level II	5,243	26%	1,363
Level III	3,475	46%	1,599
Level IV	5,213	41%	2,137
Level V	19,205	16%	3,073
Total	36,495	32%	11,541

Data for 2003-04 show 4,767 DWI appeals to superior court. If we assume that the same proportion of aggravating factors was alleged in these cases as in the overall DWI population of DWI convictions (32%), there would have been 1,525 trials in superior court on a DWI appeal. AOC used a higher rate (41%) for projections based on the assumption that appeals are more likely to involve aggravating factors on average, but this note assumes that the current rate will remain unchanged.

If each affected trial required an additional hour-and-a-half of preparation time and an additional hour-and-a-half of court time, this section would require one additional superior court judge, one new deputy clerk, and one new court reporter, as well as three assistant district attorneys, for a total cost of \$620,154 in the first full year. The rest of Section 22 produces no anticipated cost.

Section 23 requires clerks to maintain all records related to impaired driving convictions for at least ten years, and maintain certain summary data on each case beyond ten years. This would cause no impact on the court system.

Part XIV, Sections 25 and 26, “Making it Illegal for a Person Under 21 Years of Age to Consume as well as Possess Alcohol and to Allow Alcohol Screening Devices to be used to Prove a Person has Consumed Alcohol”

Summary

Creates a new Class 1 misdemeanor for consuming alcohol while under the age of 21. Under current law, it is unlawful for a person under the age of 21 to purchase or possess alcohol.

Potential Fiscal Impact

Fiscal impact could be significant depending on enforcement but a reliable estimate cannot be determined

Department of Correction/Local Jails: As the offense would be new, the Sentencing Commission has no historical data from which to estimate the impact on local jails and prison population.

- In FY 2003-04, 19 percent of Class 1 misdemeanor convictions resulted in active sentences and the average estimated time served was 31 days.
- Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per day per offender.
- The remaining 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$.187 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial: While AOC notes that consuming alcohol while under the age of 21 is prevalent, no data is available to indicate the frequency with which such behavior would be prosecuted if unlawful. AOC data for 2004 indicates that 16,412 defendants were charged under existing G.S. 18B-302 for purchase or possession of alcohol by and sale of alcohol to individuals under the age of 21. Another 6,998 defendants were charged with a Class 2 misdemeanor for driving while under the age of 21 after having consumed alcohol (with a BAC of .08 or less).

AOC assumes that at least as many individuals could be expected to be charged for this new Class 1 misdemeanor as are presently charged with a Class 2 misdemeanor for driving after having consumed alcohol when under age 21. If roughly 7,000 individuals were charged for underage consumption under this bill, the cost in the first full year would equal \$700,346.

However, FRD believes this assumption may overstate the impact. To the extent that offenders are already being caught at the point of purchase or being prosecuted for possession while consuming alcohol when underage, new charges for consumption may number less than charges for the

existing offenses. As a specific number of charges cannot be projected, the total cost to the Courts cannot be determined. For each new Class 1 misdemeanor charge settled via trial, the cost would be an estimated \$3,224. However, based on prior-year data, the majority of new charges that are not dismissed are likely to be settled by guilty plea at a cost of \$284 per plea.

Part XV, Section 27, "Requiring that defendants who are released from prison early are to be assigned Community Service Parole, which may include House Arrest"

Summary

Requires that a paroled DWI offender who is not paroled into a substance abuse treatment program participate in community service or be placed on Electronic House Arrest.

Potential Fiscal Impact

Some increase anticipated. Amount cannot be determined.

Department of Correction: Parole decisions are made by the Post-Release Supervision and Parole Commission; parolees are supervised in the community by the Division of Community Corrections in the Department of Correction.

Most DWI parolees are paroled into the DART-Cherry residential substance abuse treatment program. In FY 2003-04, approximately 28 DWI parolees were not paroled into substance abuse treatment programs so the number of offenders likely to participate in community service is relatively small. The Commission reports that it has not required community service for DWI offenders, and may use Electronic House Arrest if a DWI offender violates the conditions of parole and the Commission feels that more restrictive supervision is warranted.

The Division of Community Corrections (DCC) maintains both the Community Service Work and Electronic House Arrest (EHA) programs. The cost of community service is \$0.67 per offender per day. Offenders pay a flat fee of \$200 to participate; this money is deposited in the General Fund. The cost for Electronic House Arrest is \$6.65 per offender per day.

The net cost to DCC depends on the type of supervision used for DWI offenders in the absence of this bill. If, for example, a DWI offender is not given any specific sanctions, the cost per day is \$1.87 for supervision. Adding community service would increase the cost to \$2.54 per day. Adding EHA instead would increase the cost to \$8.52 per day. Alternatively, if the offender is currently under intensive supervision, and would be moved to EHA under this bill, DCC would see a savings of \$2.42 per day.

Part XV, Section 28, "Effective Date"

Summary

This section sets the effective date for the bill. The requirement that the Administrative Office of the Courts electronically record certain data contained in subsection (c) of G.S. 20-138.4, as amended by Section 19 of this act, becomes effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts. The remainder of this act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

Potential Fiscal Impact

The Administrative Office of the Courts is currently in the planning phases of a criminal information system rewrite. No money is available in this year's budget for such a massive project, nor is the agency prepared to launch a rewrite at this time. The AOC will likely submit an expansion budget request in the next two to three years to begin the redevelopment process on their criminal information system.

SOURCES OF DATA: Administrative Office of the Courts, North Carolina Sentencing and Policy Advisory Commission, Department of Correction, Department of Health and Human Services, Department of Transportation, ABC Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jim Mills, Doug Holbrook, Aaron Paul, Chloe Gossage, Bob Weiss
Susan Morgan, Carol Shaw

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: August 8, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices