

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

**BILL NUMBER:** House Bill 1048 (Fifth Edition)

**SHORT TITLE:** Governor's DWI Task Force Recommendations.

**SPONSOR(S):** Representative Hackney

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>
<b>GENERAL FUND</b>					
Judicial Branch	\$1,142,762	\$1,880,507	\$1,974,531	\$2,073,257	\$2,176,920
Dept. of Correction	Exact amount cannot be determined.				
Health and Human Services	\$9,000	-	-	-	-
Subtotal	\$1,151,762	\$1,880,507	\$1,974,531	\$2,073,257	\$2,176,920
<b>HIGHWAY FUND</b>					
Dept. of Transportation	\$362,580	-	-	-	-
<b>LOCAL GOVERNMENTS</b> Exact amount cannot be determined					
<b>TOTAL EXPENDITURES:</b>	<b>\$1,514,342</b>	<b>\$1,880,507</b>	<b>\$1,974,531</b>	<b>\$2,073,257</b>	<b>\$2,176,920</b>
<b>ADDITIONAL PRISON BEDS*</b> Exact amount cannot be determined.					
<b>POSITIONS (cumulative)</b>					
Judicial Branch	19	19	19	19	19
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Judicial Branch; Local Governments; Department of Correction; Department of Transportation; Department of Health and Human Services					
<b>EFFECTIVE DATE:</b> December 1, 2006 (except G.S. 20-138.4(c) – effective upon next rewrite of clerk’s system).					
*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.					

## SUMMARY OF HOUSE BILL 1048

The proposed committee substitute amends House Bill 1048 to implement some of the recommendations of the Governor's Task Force on Driving While Impaired (DWI). The bill is complex and covers numerous aspects of law enforcement, prosecution, and sentencing of offenders. For purposes of this note, there will only be detailed summary and analysis of those sections where impact is expected and where there is data for projections. A general summary of the bill by section follows.

- ❑ Section 1: Establishes the definition of a keg - "...a portable container designed to hold and dispense in excess of eight gallons of malt beverage."
- ❑ Section 2: Requires a purchase-transportation permit for the purchase of a keg by certain consumers. Authorizes a permit (18B-1001(2)) holder to issue a purchase-transportation permit.
- ❑ Section 2A: Exempts a keg, when obtained properly, from the restricted amounts of malt beverages that can be purchased at one-time. Allows a permittee (18B-1001(2)) to purchase kegs (any amount) for on-premises consumption.
- ❑ Section 3: Modifies the statutes on motor vehicle checking stations and roadblocks to standardize procedures by law enforcement, and provide for a written policy to ensure randomization.
- ❑ Section 4: Delineates procedures for the investigation and processing of implied-consent offenses.
- ❑ Section 5: Allows the admissibility of certain expert opinions and test results pertaining to a purported offense of impaired driving, or to the speed of a vehicle.
- ❑ Section 6: Identifies grounds for administering alcohol screening tests; provides for the approval and manner of use of screening devices by DHHS; and allows the results from alcohol screening devices and a driver's refusal to submit to a screening to be used to determine that a driver committed an implied-consent offense.
- ❑ Section 7: Clarifies the definition of a public vehicular area.
- ❑ Sections 8 and 9: Clarify what constitutes an impaired driving offense, including impaired driving in a commercial vehicle. Provide that the results of a chemical analysis are sufficient to prove alcohol concentration, and that both offenses include driving with any amount of a Schedule I controlled substance or its metabolites in one's system. Specifies admissible evidence for proving gross vehicle weight (commercial vehicle).
- ❑ Sections 10 and 10A: Reduces the penalty for driving while consuming alcohol or upon consuming any alcohol or unlawful controlled substance (not driving while impaired) by a person less than 21 years old - a Class 3 misdemeanor. Requires the DMV to revoke the license of a person under the age of 18 who is convicted of this offense.
- ❑ Sections 11 and 12: Expands the offense of habitual impaired driving to include conviction of three or more impaired driving offenses within 10 years of the date of recent offense. Specifies that the provisions of G.S. 120-139.1 apply to such an offense.
- ❑ Section 13: Increases the penalty for Felony Death by Vehicle from a Class G to Class E felony. Creates new offenses: Aggravated Felony Death by Vehicle (Class D), Felony Serious Injury by Vehicle (Class F), and Aggravated Felony Serious Injury by Vehicle (Class E). Includes a sentence enhancement for Repeat Felony Death by Vehicle, punishable as Second Degree Murder (Class B2).

- ❑ Section 14: Rewrites the implied consent law to clarify grounds and procedures for performing chemical analyses, and changes the standard of review by superior court when a license revocation for refusal to submit to chemical analysis is appealed.
- ❑ Section 15: Standardizes chemical analysis procedures and forms, and clarifies the admissibility of chemical analysis results in court.
- ❑ Sections 16 and 17: Requires improved access to patients (including juveniles) and their medical records for impaired driving cases, and provides that a certified copy of health information is admissible in court.
- ❑ Section 18: Requires a prosecutor to explain, document, and distribute certain information if he accepts a plea for lesser offense, enters a voluntary dismissal, or substitutes another charge in an implied-consent or driving while license revoked (after impaired driving conviction) case.
- ❑ Section 19.1: Requires the clerk of superior court to keep specific file data for all cases involving impaired driving and any other violation of the motor vehicle code related to the possession, consumption, or transport of alcoholic beverages.
- ❑ Section 19.2: Requires the Administrative Office of the Courts to maintain and report on the data identified in Section 19.1.
- ❑ Section 20: Allows the Division of Motor Vehicles to prove revocation notice through personal delivery or mail by making a notation in its records; a certified copy of Division records may serve as proof of notice in court.
- ❑ Section 21: Revises statute on revocation and restoration of driver's license for driving while impaired. Includes criminal penalty (Class 1 misdemeanor) for driving with a revoked license after revocation notice for driving while impaired, or failure to appear for more than two years from the charge date for an implied-consent offense.
- ❑ Sections 21A-C: Require DMV to revoke a license upon conviction for impaired driving under G.S. 20-138.1. Provide for a medical exception to the ignition interlock requirement.
- ❑ Section 22: Modifies DWI sentencing statutes to conform to Blakely vs. Washington decision concerning the determination of aggravating or mitigating factors for sentencing.
- ❑ Section 23: Requires the clerk of court to maintain all records relating to impaired driving convictions for at least ten years from the date of conviction; the clerk must also maintain certain summary data on each case beyond the ten year period.
- ❑ Section 24: Repeals G.S. 20-17.2 (revocation and notice procedures).
- ❑ Section 25: Makes the purchase, possession, or consumption of alcohol by a 19 or 20 year old a Class 3 misdemeanor; makes consumption by a person less than 18 years old a Class 1 misdemeanor; and allows law enforcement to employ alcohol screening devices to determine consumption.
- ❑ Section 26: Requires a DWI offender who has completed a recommended treatment or training program and who is not being paroled to a residential treatment program to be assigned community service parole or house arrest.
- ❑ Section 27: Prohibits a permittee from employing someone who was a permit holder, but who had the permit revoked within three years.
- ❑ Section 28: Requires all justices and judges to receive a minimum of two hours of continuing judicial education, every two years, on DWI offenses and related issues.

- ❑ Section 29: Provides that a motion of appropriate relief (MAR) may not be granted without a District Attorney’s signature, unless 10 business days have passed since the DA was notified in court or served with the motion.
- ❑ Section 29A and B: Allows the District Attorney to voluntarily dismiss certain cases in exchange for proof of compliance, a person’s signed waiver of appearance, and payment of court costs (\$50.00). Specifies offenses for which compliance dismissals may be obtained.
- ❑ Section 30: Requires and identifies procedures for determining the nationality of any person charged with a felony or an impaired driving offense, and who is confined in a local confinement facility or satellite jail/work release unit.
- ❑ Section 31: Section 18, 19.1, and 19.2 become effective after the next rewrite of the superior court clerk’s system. Sections 29A and 29B are effective October 1, 2006. The remainder of the act becomes effective December 1, 2006.

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 06-07: \$1,142,762 (19 positions) (December 1, 2006)

FY 07-08: \$1,880,507

	<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
<b>Total Positions (rounded)</b>	<b>1</b>	<b>2</b>	<b>12</b>	<b>3</b>	<b>1</b>	<b>19</b>

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. In some cases, when AOC had new information to add on sections of the bill for this version, or when the underlying data showed a difference, they re-

computed the impact of the section with 2005 data, but in most cases, they stood with their original analysis based on 2004 calendar year data.

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.

The likeliest source of impact on the state's prison system is Section 13, Felony Death by Vehicle. While the impact of this section cannot be projected since it creates new offenses and due to the low number of convictions for the existing crime, it could produce a significant need for new prison beds.

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, 2006. Therefore, costs estimated for this note for FY 2006-07 are for seven months only unless otherwise noted. Costs for 2007-08 are the total annual costs plus inflation over 2006-07.

#### 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>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
<b>Judicial Branch (General Fund)</b>					
§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.				
§12 Deferred Prosecution/Underage DWI	\$460,116	\$744,491	\$781,715	\$820,801	\$861,841
§13 Habitual DWI	\$67,379	\$121,281	\$127,345	\$133,712	\$140,398
§15 Felony Death / Serious Injury	\$14,237	\$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				
<b>Subtotal</b>	<b>\$1,142,762</b>	<b>\$1,880,507</b>	<b>\$1,974,531</b>	<b>\$2,073,257</b>	<b>\$2,176,920</b>
<b>Positions (cumulative)</b>	<b>19</b>	<b>19</b>	<b>19</b>	<b>19</b>	<b>19</b>
<b>Department of Correction (General Fund)</b>					
§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	Exact amount cannot be determined; could be substantial.				
§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				
<b>Subtotal</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Positions (cumulative)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Department of Transportation (Highway Fund)</b>					
§21 Driving While License Revoked	\$344,192	-	-	-	-
§15 Felony Death / Serious Injury	\$18,388	-	-	-	-
<b>Subtotal</b>	<b>\$362,580</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Positions (cumulative)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Department of Health and Human Services (General Fund)</b>					
§17 Web Site Listing Chemical Analysts	\$9,000	-	-	-	-
<b>Subtotal</b>	<b>\$9,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Positions (cumulative)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Local Governments</b>					
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.				
<b>Total Expenditures</b>	<b>\$1,514,342</b>	<b>\$1,880,507</b>	<b>\$1,974,531</b>	<b>\$2,073,257</b>	<b>\$2,176,920</b>
<b>Total Positions</b>	<b>19</b>	<b>19</b>	<b>19</b>	<b>19</b>	<b>19</b>

**ASSUMPTIONS AND METHODOLOGY:**

This section of the fiscal note includes those sections with an appreciable impact on court or correctional resources. The other sections of the bill either have no or minimal impact according to the affected agencies.

**Part VI, Section 10, “Driving by Person Less Than 21 Years Old After Consuming Alcohol or Drugs”**

Summary

Section 10 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>
<b>JUDICIAL BRANCH (R)</b>	\$460,116	\$744,491	\$781,715	\$820,801	\$861,841
<b>POSITIONS</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>

*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 2005 show 6,976 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 come to \$788,771 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 \$90,675 for indigent defense (assuming a 20 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 11, “Habitual Impaired Driving”**

Summary

Section 11 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>
<b>JUDICIAL BRANCH (R)</b>	\$67,379	\$121,281	\$127,345	\$133,712	\$140,398
<b>POSITIONS</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>

*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 316 charges of Habitual Impaired Driving in 2005. 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 452, then the cost of this section would be \$84,696 system-wide in the first full year for a new assistant district attorney plus \$30,810 in first full year for indigent defense for a total of \$115,506.

*Department of Correction:* In 2005, there were 208 convictions for habitual impaired driving. About 98% (or 203) 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 13, “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 F felony. For a detailed analysis of the fiscal impact of this provision see Session 2005 Legislative Incarceration Fiscal Note for Senate Bill 61.<sup>1</sup> Since this section both reclassifies existing crimes and creates new offenses, its total impact cannot be estimated, and since there were so few convictions for the existing crime of Felony Death by Vehicle in 2004-05, a simulation progression is also not possible.

Potential Fiscal Impact

	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
<b>DEPT. OF CORRECTION</b>		Exact amount cannot be determined			
<b>JUDICIAL BRANCH</b>	\$14,237	\$24,406	\$25,626	\$26,907	\$28,252
<b>DEPT. OF TRANSPORTATION</b> (Highway Fund)	\$18,388	\$0	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$32,625</b>	<b>\$24,406</b>	<b>\$25,626</b>	<b>\$26,907</b>	<b>\$28,252</b>

*Department of Correction:* There were 16 convictions for Felony Death by Vehicle in 2004-05. This number is too small for a detailed analysis using the simulation model. Based on the active sentence rate for Class E (47% rather than 40% for Class G) and the estimated time served (30 months instead of 15 for Class G), there would be a need for one additional prison bed in the first year, and five in the second year.

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.

*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

---

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

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 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 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 information<sup>2</sup> must be entered into the record of

---

<sup>2</sup> 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.

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 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
<b>JUDICIAL BRANCH (R)</b>	\$182,359	\$328,247	\$344,659	\$361,892	\$379,987
(NR)	\$16,396	-	-	-	-
<b>TOTAL</b>	<b>\$198,755</b>	<b>\$328,247</b>	<b>\$344,659</b>	<b>\$361,892</b>	<b>\$379,987</b>
<b>POSITIONS</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>

*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 plead 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 plead 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.

**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 misdemeanor (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 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
<b>JUDICIAL BRANCH</b>	\$25,618	\$41,928	\$44,024	\$46,225	\$48,536
<b>DEPT. OF TRANSPORTATION</b> (Highway Fund)	\$344,192	\$0	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$369,810</b>	<b>\$41,928</b>	<b>\$44,024</b>	<b>\$46,225</b>	<b>\$48,536</b>

*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 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
<b>JUDICIAL BRANCH (R)</b>	\$344,530	\$620,154	\$651,162	\$683,720	\$717,906
(NR)	\$32,127				
<b>TOTAL</b>	<b>\$376,657</b>	<b>\$620,154</b>	<b>\$651,162</b>	<b>\$683,720</b>	<b>\$717,906</b>
<b>POSITIONS</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>

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 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 2005 indicates that 16,437 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 6,976 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 31, "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:** Douglas Holbrook

**APPROVED BY:** Lynn Muchmore, Director  
Fiscal Research Division



**DATE:** July 5, 2006

**Signed Copy Located in the NCGA Principal Clerk's Offices**