

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1435 (First Edition)

SHORT TITLE: Criminal Record Considered in DWI Sentencing.

SPONSOR(S): Representative Johnson

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>
<b>GENERAL FUND</b>					
Correction	Exact amount cannot be determined (see pg. 2 for details).				
Judicial	\$42,582	\$72,998	\$75,188	\$77,444	\$79,767
<b>LOCAL GOVERNMENTS</b>					
	Exact amount cannot be determined (see pg. 2 for details)				
<b>ADDITIONAL PRISON BEDS*</b>					
	Exact amount cannot be determined (see pg. 2 for details).				
<b>POSITIONS: (cumulative)</b>					
	Exact amount cannot be determined (see pg. 2 for details).				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Local Governments					
<b>EFFECTIVE DATE:</b> December 1, 2005					
<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>					

**BILL SUMMARY:** This bill would make a defendant's prior felony or misdemeanor conviction record (other than misdemeanor traffic offenses) an aggravating factor to be weighed in sentencing for impaired driving.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

Of the 37,099 defendants convicted of an impaired driving offense in 2004, 9,837 had at least one prior felony or misdemeanor conviction (other than a misdemeanor traffic offense). Due to the discretion available to the judge when applying aggravating and mitigating factors in sentencing offenders for DWI, it is not possible to project how a new aggravating factor would impact the rate at which active sentences are imposed or the length of time for which convicted offenders serve. As such, the impact on local jails and the prison system cannot be determined. Likewise, although AOC expects some increase in court time to dispose of cases in which the aggravating factor might lead to a more severe sentence, the specific increase cannot be determined.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

### **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Of the 9,837 offenders who had a prior felony or misdemeanor conviction when sentenced for DWI in 2004, the number that would receive an aggravated sentence due to this bill and the associated impact on local jail and prison populations cannot be determined for three reasons:

- 1) No data is available on the proportion of these 9,837 cases in which other aggravating factors were present and the defendant would have been subjected to an aggravated sentence in spite of any prior criminal record.
- 2) The weight assigned to any given aggravating (or mitigating) factor is at the discretion of the sentencing judge and it is, therefore, not clear how many defendants would receive an increased punishment due to prior criminal history.
- 3) Each DWI punishment level stipulates a maximum sentence, but the offender may be released on parole after completing any mandatory minimum sentence and treatment, or the sentence may be suspended altogether and community-based sanctions imposed instead. As such, the Sentencing Commission cannot project whether any given offender would serve time in jail or prison and how long they would occupy a bed.

## **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC expects that for any case in which this new aggravating factor were an issue, litigation over guilt or innocence would be more vigorous, as the ramifications of conviction would be more severe. Although AOC identified 9,837 offenders who had at least one prior felony or misdemeanor conviction (other than a misdemeanor traffic offense) when convicted of DWI in CY 2004, no data is available regarding how many of these individuals received an aggravated sentence despite a prior criminal record. AOC can therefore not determine the number of cases in which additional court time would be expected due to the possibility of a more severe punishment as a result of this bill.

For illustrative purposes, AOC provided a cost estimate assuming the following:

- 1) Fifty percent of the 9,837 defendants would not have been otherwise subject to an aggravated sentence if not for the aggravating factor under this bill.
- 2) Each case would require an average of 30 additional minutes of in-court time.

Under these assumptions, the increase in in-court time would be 2,459 hours, not including district attorney preparation time. This increase in workload would necessitate approximately two positions each for a district court judge, district attorney, and deputy clerk, at a total cost of \$511,214 (first-year estimated position costs are \$137,230 for a district court judge, \$82,253 for an assistant DA, and \$36,124 for a deputy clerk). Assuming, furthermore, that 25 percent of the defendants were indigent and the indigent defense counsel would need 30 minutes of preparation time for each case in addition to the 30 minutes of time in court, at a rate of \$65 per hour, the additional indigent defense costs would equal \$159,850.

Due to the number of assumptions and possible permutations in the outcome of these cases, Fiscal Research considers this estimate to likely overstate the costs. As the potential disposition of each judge, the vigor with which the defendant would argue the case, and the applicability of the new aggravating factor in the 9,837 cases cannot be determined, Fiscal Research has revised the estimate provided by AOC to reflect the estimated cost if ten percent of the cases would require an additional 30 minutes of time in court on average due to the aggravating factor. The increase in workload under this scenario would be 492 hours at a fractional recurring position cost of \$65,005. If 25 percent of these defendants were indigent, the additional 30 minutes of court time would cost \$7,993. This figure does not reflect any additional out-of-court attorney preparation time, which may be necessary. The costs in the box on the front page reflect the total cost (\$72,998), inflated at a rate of three percent annually, and adjusted in the first year to reflect only the seven months for which the bill would be effective.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

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