

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 673 (First Edition)

SHORT TITLE: DWLR/Death or Injury by Vehicle.

SPONSOR(S): Representative Faircloth

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
State Impact					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
EFFECTIVE DATE: December 1, 2017					
TECHNICAL CONSIDERATIONS:					
None					

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. The Fiscal Research Division is unable to estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$780 to \$10,528 per defendant
- Indigent Defense Services: \$368 to \$1,708 per indigent defendant
- Department of Public Safety (DPS) - Prisons: \$7,769 to \$79,061 per conviction resulting in an active sentence
- DPS - Community Corrections: \$1,332 to \$920 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The proposed bill increases the penalty for various death or serious injury by vehicle offenses if the incident occurred while the defendant was driving while license revoked for impaired driving (DWLR/ID). Currently, DWLR/ID death or serious injury by vehicle is a Class A1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The proposed bill increases the penalty for various death or serious injury by vehicle offenses if the death or serious injury occurred while the defendant was driving while license revoked for impaired driving (DWLR/ID). Currently, DWLR/ID death by vehicle is a Class A1 misdemeanor. DWLR/ID causing serious injury by vehicle is most likely charged as assault, also a Class A1 misdemeanor. The following chart lists the increased penalties that would apply under this bill.

Proposed Increases to Penalties Involving Death or Serious Injury While DWLR/ID			
Existing Offense	Existing Charge Class	New Offense	New Charge Class
Assault inflicting serious injury	Class A1 MD	Felony serious injury by vehicle	Class F felony
Assault inflicting serious injury	Class A1 MD	Aggr. felony serious injury by vehicle	Class E felony
Misdemeanor death by vehicle	Class A1 MD	Felony death by vehicle	Class D felony
Misdemeanor death by vehicle	Class A1 MD	Aggravated felony death by vehicle	Class D felony
Misdemeanor death by vehicle	Class A1 MD	Repeat felony death by vehicle	Class B2 felony

AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost to AOC for the existing charge class, the cost for the proposed charge class, and the difference between the two.

AOC Cost Differential for New Offense Classes				
Existing Offense Class	AOC Cost	New Offense Class	AOC Cost	Difference
Class A1 MD	\$357	Class F felony	\$1,137	\$780
Class A1 MD	\$357	Class E felony	\$2,017	\$1,660
Class A1 MD	\$357	Class D felony	\$4,320	\$3,963
Class A1 MD	\$357	Class B2 felony	\$10,885	\$10,528

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The following table shows the usage rates and IDS costs for the existing offense class compared to the new offense classes.

IDS Cost Differential for New Offense Classes						
Existing Offense Class	Usage Rate	IDS Cost	New Offense Class	Usage Rate	IDS Cost	Difference
Class A1 MD	52%	\$201	Class F felony	74%	\$569	\$368
Class A1 MD	52%	\$201	Class E felony	79%	\$586	\$385
Class A1 MD	52%	\$201	Class D felony	89%	\$961	\$760
Class A1 MD	52%	\$201	Class B2 felony	85%	\$1,909	\$1,708

Department of Public Safety – Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill.

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	36,906	37,116	36,814	36,821	37,010
2. Prison Beds (Expanded Capacity)	37,617	37,617	37,617	37,617	37,617
3. Beds Over/(Under) Inmate Population	711	501	803	796	607
4. Additional Inmates Due to this Bill³	***No estimate available***				
5. Additional Beds Required					

Although it is unlikely that additional capital construction will be required for this bill, additional spending will be required to house new prisoners or to house prisoners longer as a result of the increased penalty. Currently all misdemeanor offenders are housed in local jails, so any misdemeanor offenses that are increased to felonies will have an impact on the prison system. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 50% of Class F felony convictions resulted in active sentences, with an average estimated time served of 17 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	2	2	2
20	10	18	19	19	19

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$7,769 (\$457 monthly cost times 17 months).

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2017.

³ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

In FY 2015-16, 63% of Class E felony convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	3	3	3	3
20	13	28	34	34	35

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 63% of Class E felony offenders received active sentences averaging 27 months. For every one Class E felony offender receiving an active sentence, the cost to the prison section will be \$12,339 (\$457 monthly cost times 27 months).

In FY 2015-16, 54% of Class D felony convictions for felony death by vehicle resulted in active sentences, with an average estimated time served of 60 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	3	4	5
20	11	23	34	45	56

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 54% of Class D felony death by vehicle offenders received active sentences averaging 60 months. For every one Class D felony offender receiving an active sentence, the cost to the prison section will be \$27,420 (\$457 monthly cost times 60 months).

In FY 2015-16, 100% of Class B2 felony convictions resulted in active sentences, with an average estimated time served of 173 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there was one conviction (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and

probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class B2 Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	4	5
20	20	41	61	82	102

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, all Class B2 felony offenders received active sentences averaging 173 months. For every one Class B2 felony offender receiving an active sentence, the cost to the prison section will be \$79,061 (\$457 monthly cost times 173 months).

Department of Public Safety – Community Corrections

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations. The table below provides information about PRS and probation for each offense class affected by the proposed penalty increase.

Community Corrections Section Cost of PRS and Probation by Offense Class						
Class	% Active	PRS Length (months)	Cost of PRS	% Probation	Length of Probation (months)	Cost of Probation
Class B2 felony	100%	12	\$1,776	NA	NA	NA
Class D felony	54%	12	\$1,776	46%	40	\$5,920
Class E felony	63%	12	\$1,776	37%	33	\$4,884
Class F felony	50%	9	\$1,332	50%	32	\$4,736
Class A1 MD	35%	NA	NA	65%	17	\$2,499

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

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