

**NORTH CAROLINA GENERAL ASSEMBLY  
LEGISLATIVE FISCAL NOTE  
(INCARCERATION NOTE G.S. 120-36.7)**

**BILL NUMBER:** SB 687 1st Edition  
**SHORT TITLE:** Felony Death/Serious Injury by Vehicle  
**SPONSOR(S):** Senator Scott Thomas

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>
<b>EXPENDITURES</b>					
<b>HIGHWAY FUND</b>					
Transportation	\$18,388	-	-	-	-
<b>GENERAL FUND</b>					
Correction <sup>+</sup>					
Recurring ( <u>min.</u> )	-	\$79,680 <sup>+</sup>	\$379,928 <sup>+</sup>	\$759,835 <sup>+</sup>	\$1,395,466 <sup>+</sup>
Judicial (Recurring)	\$200,343	\$360,617	\$378,647	\$397,580	\$417,459
<b>TOTAL EXPENDITURES:</b>	\$218,731 <sup>+</sup>	\$440,297 <sup>+</sup>	\$758,575 <sup>+</sup>	\$1,157,415 <sup>+</sup>	\$1,812,925 <sup>+</sup>
<b>ADDITIONAL PRISON BEDS<sup>+</sup>*</b>	-	2 <sup>+</sup>	14 <sup>+</sup>	28 <sup>+</sup>	48 <sup>+</sup>
<b>POSITIONS:</b>	-	0 <sup>+</sup>	6 <sup>+</sup>	11 <sup>+</sup>	19 <sup>+</sup>
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction (DOC); Judicial Branch; Department of Transportation					
<b>EFFECTIVE DATE:</b> December 1, 2003					
<sup>+</sup> <i>This analysis can only project a partial impact from SB 687. There will be additional prison beds and Correction expenditures of an undetermined amount.</i>					
<sup>*</sup> <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 increase the offense class for Felony Death by Vehicle (G.S. 20-141.4) from a Class G felony to a Class D felony and create a new offense class, Felony Serious Injury by Vehicle (G.S. 20-141.4(a3)), punishable as a Class E felony.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Transportation/Highway Fund**

This bill would create a new offense, Serious Injury by Vehicle. The State Automated Driver License System (SADLS) will require modifications to implement this offense. The following changes and additions will be required:

- Logic for new conviction codes and Business rules to enforce these new codes.
- New AOC code process logic.
- New suspension codes and the business rules to enforce these new codes.
- Changes to the correspondence system for new correspondence produced.
- Alcohol Restriction for new codes and business rules to enforce these new codes.

The Drivers License Section estimates 206 hours of programming, testing, and implementation at \$80/hour for a total of \$16,720, plus ITS charges totaling \$1,668. Total nonrecurring expenditures for the Drivers License Section are estimated to be \$18,388.

### **Department of Correction**

The Sentencing Commission uses historical data and AOC offense codes to project the impact on the prison population. The Commission cannot estimate the potential impact of new offenses or of changes in prosecutorial behavior. This bill, SB 687, has the potential to increase the number of prison beds needed by three different means, only one of which is quantifiable. The potential for additional, unquantifiable beds is signified by the (+) following each prison bed estimate.

***Increased offense class.*** The penalty for felony death by vehicle is increased from a Class G felony to a Class D felony. While a judge may impose an intermediate punishment for a Class G felony, he must impose an active sentence for a Class D felony, and the average active sentence is longer for Class D felony convictions. In 2001-02, there were 21 convictions for Felony Death by Vehicle. The projected impact of increasing the offense class to Class D is to increase the number of prison beds needed each year, resulting in the need for 48 new prison beds by 2007-08.

***Changes in prosecutorial behavior.*** Under current law, punishment for felony death by vehicle is a lower offense class than that for involuntary manslaughter (G.S. 14-18). This bill would raise felony death by vehicle to a higher offense class than involuntary manslaughter, and it is possible that some of the convictions for involuntary manslaughter would instead be convictions for felony death by vehicle. The Sentencing Commission cannot project the extent to which this would occur.

***Creation of a new offense.*** This bill also creates a new offense, felony serious injury by vehicle, punishable as a Class E felony. The Sentencing Commission cannot estimate the potential impact on the prison population. We do know from DMV data that there were 875 alcohol related crashes with serious injury in 2001, a decline from past years. If there were two Class E convictions for this offense per year, there would be the need for one additional prison bed the first year and three additional prison beds the second year, due to active sentences and post-release sentencing revocations. The average annual operating cost for each additional prison bed in FY 2004-05 will be \$24,175.

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* That means the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add *at least* 48 inmates to the prison system by the end of FY 2007-08. There will be additional beds required by the creation of a new Class E offense, but the number of additional beds cannot be determined.

	<b>June 30 2004</b>	<b>June 30 2005</b>	<b>June 30 2006</b>	<b>June 30 2007</b>	<b>June 30 2008</b>
1. Projected No. of Inmates Under Current Structured Sentencing Act <sup>1</sup>	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>2</sup>	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,290	-2,058	-3,010	-3,958	-4,828
4. No. of Projected Additional Inmates <b>Due to this Bill<sup>3</sup></b>	-	<b>2+</b>	<b>14+</b>	<b>28+</b>	<b>48+</b>
5. No. of Additional Beds Needed Each Fiscal Year <b>Due to this Bill<sup>3</sup></b> -	-	<b>2+</b>	<b>14+</b>	<b>28+</b>	<b>48+</b>

<sup>1</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

<sup>2</sup> Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.**

<sup>3</sup> Criminal Penalty bills effective December 1, 2002 will only affect inmate population for one month of FY 2002-03, June 2003, due to the lag time between when an offense is committed and an offender is sentenced. This analysis can only project a partial impact from SB 687. There will be additional prison beds needed due to the creation of a new Class E felony.

**POSITIONS:** It is anticipated that at least 19 positions by 2007-08 would be needed to supervise the additional inmates housed under this bill. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal notes look at the impact of a bill through the year 2008. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Inmates Due to This Bill*	67 <sup>+</sup>	76 <sup>+</sup>	81 <sup>+</sup>	84 <sup>+</sup>
Available Beds (over/under)	-5,616	-6,339	-7,039	-7,684
New Beds Needed (Minimum)*	-5,683	-6,415	-7,120	-7,768

\*Only part of the impact is quantifiable.

**DISTRIBUTION OF BEDS:** After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under the quantifiable portion of this bill:

- 24% Close Custody
- 65% Medium Custody
- 10% Minimum Custody

**CONSTRUCTION:** Construction costs for new prison beds, as listed in the following chart, are based on estimated 2002-03 costs for each custody level as provided by the Office of State Construction and an assumed inflation rate of 5% per year.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2002-03	\$38,595	\$73,494	\$85,444

Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on Page 1 of this note. These costs assume that funds to construct prison beds should be budgeted in advance. Based on previous prison construction projects we are assuming it will typically require three years for planning, design and construction of new beds.

**OPERATING:** Operating costs are based on actual 2001-02 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate will be added each year to the base costs for FY 2002 shown

below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1. **Only operating costs are included in the fiscal analysis of this bill.**

Using Department of Correction projections for custody levels, the projected operating costs for the first year (2004-05) are approximately \$79,680 for two new beds (two additional beds in close custody, three beds shifted from minimum to medium custody). The projected operating costs for 2011-12 are approximately \$2.7 million for 81 new beds (26 close, 49 medium, and 6 minimum custody).

### **Daily Inmate Operating Cost 2001-02**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2001-02)	\$50.04	\$65.17	\$80.19	\$62.43

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2004 and 2005, this assumes that Correction cannot build prisons quickly enough to house additional offenders before 2005-06 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, the Fiscal Research Division (FRD) will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) 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.

***Class D Offense.*** This bill increases the penalty for felony death by vehicle from a Class G to a Class D felony. AOC data indicate that in calendar year 2002, there were 112 charges of this felony, of which three were disposed of by jury trial and 78 by plea. Using data from 2002 on methods of disposition for these cases, AOC estimates that 2.7% were disposed of by jury trial and 69.4% by plea. Applying these percentages to the year 2002 charges yields 3 trials and 78 pleas. Also based on this data, the AOC estimates an indigency rate of 39%. At the present Class G felony, these cases would have cost the court system approximately \$29,327. At the proposed Class D level, they would cost the system about \$45,758, an increase of **\$16,432**. This increase is

due to an assumed increase in trial times (from 2.15 days to 2.77 days) and time involved in handling pleas (.53 hrs to .75 hrs). This figure is conservative in that it does not include the costs for processing dismissals, for any additional appeals that could result from the enhancement in punishment, nor any increase in prosecution under violent habitual felony. Furthermore, this figure assumes the current rates of disposition types would remain the same despite the increase in penalty. It is possible that a defendant facing the higher punishment would be less likely to plea and increase the chances that there would be more trials and fewer pleas.

***Class E Offense.*** This bill also adds a new Class E felony for inflicting serious injury if the injury is caused during the commission of the offense of driving while impaired. North Carolina DMV data reveal that in 2001, there were 875 alcohol-related crashes involving serious injury. During approximately the same time period, AOC data indicate there were 380 alcohol-related fatalities, of which 112 (29.5%) resulted in charges for felony death by vehicle. Applying this same percentage to the 875 alcohol-related serious injury crashes would result in approximately 258 charges of this new Class E felony to be handled by the court system. (An informal poll by AOC of District Attorneys across the state indicates that currently no charges, in addition to the DWI, are currently being lodged against these defendants. Class E penalties are considerably stiffer than all but the most serious DWI charges and carry with them the risk of receiving prior record points).

Assuming the same trial rates as the felony death by vehicle charge, these new serious injury charges would result in seven jury trials, 179 pleas and 72 dismissals. Each jury trial on averages lasts 2.46 days at a cost of \$1,728 for the first day and \$1,536 for the second and third days. Based on these averages, the new trials resulting from this bill would cost **\$47,075** per year. Processing 179 Class E felony pleas at .64 hours per plea costs approximately **\$49,394**. These costs assume an indigency rate of 39 percent. Thus, the total additional cost to the court system for this Class E felony is projected to be 218 additional hours of court time, for a total of **\$96,469 per year**. To the extent that more cases are disposed of via trials and fewer pleas are accepted at the Class E level, the costs would be proportionally higher.

**SOURCES OF DATA:** Department of Transportation; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

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