

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

## Legislative Incarceration Fiscal Note (G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 61 (First Edition)

**SHORT TITLE:** Felony Death/Serious Injury by Vehicle

**SPONSOR(S):** Senator Thomas

	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>EXPENDITURES:</b>					
<b>HIGHWAY FUND:</b>					
Transportation:	\$18,388	-	-	-	-
<b>GENERAL FUND:</b>					
Correction: <sup>+</sup>					
Recurring:	-	\$432,799 <sup>+</sup>	\$1,255,931 <sup>+</sup>	\$2,072,553 <sup>+</sup>	\$3,065,809 <sup>+</sup>
Non-Recurring:		<b>There are no available prison beds during this timeframe. This note assumes that contractual beds will be used in the short run. In the long term, the state will need to construct new cells at an average cost of \$86,957 per bed.</b>			
Judicial (Recurring):	\$13,559 <sup>+</sup>	\$24,406 <sup>+</sup>	\$25,626 <sup>+</sup>	\$26,907 <sup>+</sup>	\$28,252 <sup>+</sup>
<b>TOTAL EXPENDITURES:</b>	\$31,947 <sup>+</sup>	\$457,205 <sup>+</sup>	\$1,281,557 <sup>+</sup>	\$2,099,460 <sup>+</sup>	\$3,094,061 <sup>+</sup>
<b>ADDITIONAL PRISON BEDS*</b>	-	12 <sup>+</sup>	41 <sup>+</sup>	70 <sup>+</sup>	102 <sup>+</sup>
<b>POSITIONS: (cumulative)</b>	-	5 <sup>+</sup>	16 <sup>+</sup>	28 <sup>+</sup>	41 <sup>+</sup>
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Department of Transportation.					
<b>EFFECTIVE DATE:</b> December 1, 2005					
<sup>+</sup> Costs reflect only the impact of enhancing the penalty for Felony Death by Vehicle. There would be an indeterminate number of additional prison beds and costs to the Administrative Office of the Courts (AOC) and the Department of Correction (DOC) as a result of the new offense of Felony Serious Injury by Vehicle. See Assumptions and Methodology for details.					
<sup>*</sup> 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.					

**BILL SUMMARY:** This bill amends G.S. 20-141.4 to raise the offense class of Felony Death by Vehicle from felony Class G to Class D and creates a new offense, Felony Serious Injury by Vehicle, punishable as a Class E felony. Both offenses require that the offender be engaged in the offense of Driving While Impaired.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

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.

Offenders that could be convicted of Felony Serious Injury by Vehicle due to this bill are eligible under current law to be convicted of Assault with a Deadly Weapon Inflicting Serious Injury, also a Class E felony. The Sentencing Commission does not have data reflecting the number of these convictions that involve the perpetration of a Driving While Impaired offense. To the extent that these offenders are already being charged and convicted of a Class E felony, the impact upon prison population and the courts due to this new offense would be reduced. However, an informal poll of district attorneys conducted by AOC in 2002 indicated that no charges other than DWI are currently being brought against these defendants.

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

The State Automated Driver License System (SADLS) will require the following modifications to implement the new offense of Felony Serious Injury by Vehicle:

- 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 – Division of Prisons**

This bill (S.B. 687) could increase the number of prison beds needed by three means: 1) raising the offense class of Felony Death by Vehicle from Class G to Class D; 2) creating the new offense of Felony Serious Injury by Vehicle; and 3) inducing prosecutors to seek convictions for Felony Death by Vehicle in cases in which they presently seek a conviction for Involuntary Manslaughter (a Class F felony). Due to lack of historical data, the Sentencing Commission cannot estimate any impact on prison population resulting from the creation of a new offense or a change in prosecutorial behavior. Throughout this fiscal note, the + symbol is used to indicate the potential for additional, unquantifiable prison beds and expenditures resulting from those aspects of this bill.

### *1) Felony Death by Vehicle*

This bill would increase the penalty for Felony Death by Vehicle from Class G to Class D, resulting in an increase in both sentence length and activation rate. While a judge may impose an intermediate sanction for a Class G felony, a Class D felony requires an active sentence. In FY 2003-04, there were 35 convictions for Felony Death by Vehicle. The Sentencing Commission projects that raising the offense classification to Class D would increase the number of prison beds needed each year, resulting in the need for 102 new beds by FY 2009-10.

### *2) Felony Serious Injury by Vehicle*

The new offense of Felony Serious Injury by Vehicle would be punishable as a Class E felony. Division of Motor Vehicles (DMV) data indicates that there were 625 alcohol-related crashes that caused serious injury as defined by DMV in 2003, a continued decline from previous years. Although AOC has provided an estimate of the number of charges that could result from these accidents, it is not possible to estimate the number of convictions that might result from those charges. 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. The statewide average annual operating cost for each additional prison bed in 2006-07 is projected to be \$24,740.

### *3) Change in Prosecutorial Behavior*

The bill would raise Felony Death by Vehicle to an offense class above Involuntary Manslaughter (G.S. 14-18), a Class F felony. It is possible that, as a result of this bill, some convictions for Involuntary Manslaughter would instead be for Felony Death by Vehicle, increasing sentence length and ensuring an active sentence. In FY 2003-04, there were 83 convictions for Involuntary Manslaughter. There is no data on the number of these convictions that involved the commission of a Driving While Impaired offense. As such, the Sentencing Commission cannot project the number of offenders that might be convicted of Felony Death by Vehicle if it were classified above Involuntary Manslaughter.

The chart on the next page compares the projected inmate population to available prison bed capacity system-wide and shows 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 five) is always equal to the projected additional inmates due to a bill (row four).

Rows four and five in the chart show the impact of the increased penalty for Felony Death by Vehicle proposed by this bill. As shown in bold in the chart, the Sentencing Commission estimates that this specific legislation will add *at least* 102 inmates to the prison system by the end of FY 2009-10. There will be additional beds required by the creation of the new Class E offense of Felony Serious Injury by Vehicle, but the number cannot be determined.

	<b>June 30</b> <b><u>2006</u></b>	<b>June 30</b> <b><u>2007</u></b>	<b>June 30</b> <b><u>2008</u></b>	<b>June 30</b> <b><u>2009</u></b>	<b>June 30</b> <b><u>2010</u></b>
1. Projected No. Of Inmates Under Current Structured Sentencing Act <sup>1</sup>	38,106	39,021	39,864	40,750	41,668
2. Projected No. of Prison Beds (DOC Expanded Capacity) <sup>2</sup>	37,015	37,911	38,807	38,807	38,807
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,091	-1,110	-1,057	1,943	-2,861
4. No. of Projected Additional Inmates <b><u>Due to this Bill</u></b> <sup>3</sup>	-	70+	12+	102+	41+
5. No. of Additional Beds Needed Each Fiscal Year <b><u>Due to this Bill</u></b> <sup>3</sup>	-	12+	41+	70+	102+

**POSITIONS:** It is anticipated that *at least* 41 positions would be needed to supervise the additional inmates housed under this bill by 2009-10. This position total includes 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 five prisons opened by DOC and two prisons under construction. Two of the prisons were medium custody and five were close custody.

**FISCAL IMPACT BEYOND FIVE YEARS:** Fiscal notes look at the impact of a bill through FY 2010. 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>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
Inmates Due to This Bill*	134+	155+	163+	169+
Available Beds (over/under)	-3,787	-4,692	-5,574	-6,505
New Beds Needed (minimum)*	-3,921	-4,847	-5,737	-6,674
* Only part of the impact is quantifiable.				

<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 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.

<sup>2</sup> Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 2004. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

<sup>3</sup> Criminal penalty bills effective December 1, 2005 will not affect prison population and bed needs until FY 2006-07 due to the lag time between when an offense is committed and an offender is sentenced.

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

- 32% Close Custody
- 60% Medium Custody
- 8% Minimum Custody

**CONSTRUCTION:** Construction costs for new prison beds, as listed in the following chart, are based on estimated 2004-05 costs for each custody level as provided by the Office of State Construction and the Department of Correction. An inflation rate of five percent per year is applied to future years. *The costs assume stand-alone facilities; single cells for close custody and dormitories for medium and minimum.*

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2004-05	\$45,500	\$73,500	\$98,500

The cost to construct each bed required by this bill is shown in the Fiscal Impact Table on page one of this note. This cost is for 2006-07 and assumes that funds to construct prison beds should be budgeted three years in advance since building a prison typically requires three years for planning, design, and construction.

**The total cost to construct new beds to accommodate the 102 inmates this bill is projected to add to the prison system by FY 2009-10 is estimated to be \$8.87 million.** DOC would need to begin construction of these beds in fiscal year 2006-07. By fiscal year 2013-14, 169 beds would be needed due to this legislation. **The cost to construct the additional 67 beds beginning in year 2010-11 would be \$7.08 million.** These figures represent a 2004-05 average base cost per bed of \$78,873 adjusted for inflation at a rate of five percent annually. This base cost per bed is a weighted average of the cost per bed for each of the three custody levels as shown above.

**OPERATING:** Operating costs are based on actual 2003-04 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 three percent annual inflation rate will be added each year to the base costs for FY 2003-04 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

**Daily Inmate Operating Cost 2003-04**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2003-04)	\$49.34	\$65.59	\$82.46	\$62.03

### **Department of Correction – Division of Community Corrections**

Offenders convicted of Felony Serious Injury by Vehicle (felony Class E) in Prior Record Levels I and II could receive an intermediate rather than active punishment. Probation officers in the Division of Community Correction supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction. In FY 2003-04, 51 percent of Class E felons received an intermediate punishment, and the average length of supervision was 36 months.

If, for example, there were two convictions for Felony Serious Injury by Vehicle, and the rate of intermediate sentences was the same as the overall rate for Class E in 2003-04, one offender would receive an intermediate punishment. Costs to the Division of Community Corrections (DCC) for that offender would be an estimated \$2,338 in the first year, and \$683 per year in the second and third years. As with active sentences, costs would begin in FY 2006-07 due to the lag time between charge and conviction.

As a Class G offense, individuals convicted of Felony Death by Vehicle can receive intermediate sanctions administered by DCC. Because Class D offenders cannot receive intermediate sanctions, there would be short-term cost savings to DCC if Felony Death by Vehicle were reclassified as a Class D offense. However, in the long term DCC would incur the cost of post-release supervision for Class D offenders. To the extent that offenders charged with Felony Serious Injury by Vehicle are presently being charged with a lesser offense with a higher non-active sentence rate, the same would hold true for that offense.

### **Judicial Branch**

For most criminal penalty bills, 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.

#### *Felony Death by Vehicle*

**AOC estimates that it would cost the courts an additional \$23,244 to process charges for Felony Death by Vehicle if it were reclassified as a Class D offense.** According to AOC data, in calendar year 2004 a total of 65 defendants were charged with Felony Death by Vehicle. Of these charges, AOC estimates that four percent were settled by jury trials, sixty percent by guilty pleas, and the remaining charges were dismissed. Based on attorney preparation costs and time in court, AOC estimates the cost to dispose of these cases as Class G felonies at \$20,458. The cost of indigent defense, based on an estimated indigency rate of 39 percent, would total an additional \$4,077.

Using overall disposition rates for Class D felony cases in 2004, AOC estimates that, if 65 defendants were charged as Class D felons for Felony Death by Vehicle, seven percent would be disposed of by jury trial, 56 percent by plea, and the remaining charges would be dismissed. The cost to process these cases, based on attorney preparation time and time in court, would be \$39,518. At an estimated indigency rate of 39 percent, costs of indigent defense would total an

additional \$8,261. The increase in cost to process Felony Death by Vehicle as a Class D offense reflects presumed increases in trial rates, trial length, attorney preparation time, and time to handle pleas. This figure does not include the cost of processing dismissals, any additional appeals that could result from the punishment enhancement, nor any increase in prosecution for violent habitual felony. The figures in the box on the front page reflect the difference in total cost (\$23,244), inflated at a rate of three percent annually, and adjusted in fiscal year 2005-06 to reflect only the seven months for which the bill would be effective.

*Felony Serious Injury by Vehicle*

**Based on the costs of time in court, attorney preparation, and indigent defense, the total cost to process an estimated 120 additional Class E charges as a result of this new felony would equal \$54,721 per year.** North Carolina Division of Motor Vehicles (DMV) data reveals that in 2003 there were 354 alcohol-related crashes resulting in at least one fatality. During that same time period, AOC data shows that there were 68 charges for Felony Death by Vehicle, indicating that approximately 19.2 percent of alcohol-related fatal crashes in 2003 resulted in charges for Felony Death by Vehicle. According to DMV data, there were 625 alcohol-related crashes involving serious injury in 2003. If the same proportion of these 625 accidents were to result in charges for Felony Serious Injury by Vehicle, the court system could expect to handle approximately 120 charges of this new Class E felony. Using the average disposition rates of all Class E felonies, these 120 charges would result in 6 jury trials, 52 pleas, and 62 dismissals. The cost of attorney preparation time and time in court to process these charges would equal an estimated \$45,814. At an indigency rate of 39 percent, additional costs for indigent defense would equal \$8,907. Since no actual data exists regarding charges for this new offense and we do not know how these cases are currently charged, these figures are not included in the box on the front page.

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

**TECHNICAL CONSIDERATIONS:** None

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