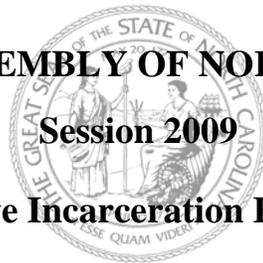


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1318 (First Edition)
SHORT TITLE: New Felony Death by Motor Vehicle.
SPONSOR(S): Representatives Howard and Randleman

FISCAL IMPACT table with columns for Yes, No, and No Estimate Available across fiscal years 2009-10 to 2013-14. Includes rows for EXPENDITURES - GENERAL FUND (Correction, Probation, Judicial), ADDITIONAL PRISON BEDS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

Under current law, a person commits the Class E felony offense of felony death by vehicle if he is engaged in an impaired driving offense and unintentionally causes the death of another person. This bill would expand the felony death by vehicle offense to add an unintentional death committed by an owner-operator of a commercial vehicle who knew or should have known that the vehicle was not in compliance with federal safety regulations (no impaired driving offense required).

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The North Carolina 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.

### **Department of Correction – Division of Prisons**

In FY 2007-08, there were 39 convictions under G.S. 20-141.4(a1). *It is not known how many additional convictions may result from the proposed broadening of the current statute.* In FY 2007-08, 51% of Class E felony convictions resulted in active sentences, with an average estimated time served of 30 months. If, for example, there were two Class E felony convictions for this proposed offense per year, 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. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

A portion of the acts punishable under the expanded definition of felony death by vehicle would currently qualify as misdemeanor death by vehicle under G.S. 20-141.4(a2), Misdemeanor Death by Vehicle, a Class 1 misdemeanor. Misdemeanor death by vehicle is defined as an unintentional death proximately caused by violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving. Many of the safety regulations found in 49 C.F.R. 571, Subpart B (Federal Motor Vehicle Safety Standards) overlap with State law, see G.S. Chapter 20, Article 3, Part 9 (The Size, Weight, Construction and Equipment of Vehicles), and may also overlap with local ordinances. In FY 2007-08, there were 60 convictions for misdemeanor death by vehicle. Because the AOC's Automated Criminal/Infractions System does not contain data on the specific conduct involved, it is not known how many of the 60 convictions would be reclassified as a Class E felony under G.S. 20-141.4(a1). *Because there are no data available on the specific conduct involved, the impact of this proposal cannot be determined.* However, any convictions that would move from being a Class 1 misdemeanor to a Class E felony would result in the need for additional prison beds. If, for example there were two Class E convictions for this proposed offense per year, 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. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

An offender who commits felony death by vehicle under G.S. 20-141.4(a1) after having a prior conviction for the offense is guilty of a Class B2 felony under G.S. 20-141.4(a6), Repeat Felony Death by Vehicle Offender. The bill's expanded definition of felony death by vehicle also expands the conduct that would constitute repeat felony death by vehicle under (a6). In FY 2007-08, there were no convictions for repeat felony death by vehicle. Because G.S. 20-141.4(a6) became effective August 30, 2007, and due to the lag-time between arrest and conviction, the Sentencing Commission does not have any historical data regarding convictions for this offense. *It is not known how many additional convictions may result from the proposed broadening of the current statute.* Under Structured Sentencing, the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2007-08, the average estimated time served for an offender convicted of a Class B2 offense was 189.1 months. If, for example, there was

one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

A portion of the acts punishable as repeat felony death by vehicle under the bill's expanded definition of felony death by vehicle would currently qualify as a Class 1 misdemeanor death by vehicle under G.S. 20-141.4(a2). In FY 2007-08, there were 60 convictions for misdemeanor death by vehicle. Because the AOC's Automated Criminal/Infractions System does not contain data on the specific conduct involved, it is not known how many of the 60 convictions would be reclassified as a Class B2 felony under G.S. 20-141.4(a6). Of the 60 convictions, 25 were for offenses with a Prior Conviction Level II or greater, indicating at least one prior conviction for an offense. Because the AOC's Automated Criminal/Infractions System does not contain data on the specific offense that make up the offender's prior conviction level, it is not known how many of the offenders had a prior conviction for misdemeanor death by vehicle, thus *the impact of this proposal cannot be determined*. Any convictions that would move from a Class 1 misdemeanor to a Class B2 felony would result in the need for additional prison beds. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2007-08, the average estimated time served for an offender convicted of a Class B2 felony offense was 189.1 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond*. Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

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

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.<sup>1</sup>

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

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<sup>1</sup> DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

### **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.

Much of the conduct covered by this bill is currently covered under misdemeanor death by vehicle (G.S. 20-141.4(a2)), which is defined as an unintentional death proximately caused by violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving. Many of the safety regulations in the Federal Motor Vehicle Safety Standards overlap with State law, and may also overlap with local ordinances.

In 2008, there were 200 defendants charged with misdemeanor death by vehicle. *AOC cannot determine the number of defendants who would qualify for the elevated penalty under this bill.* Each elevated charge would shift a case from a misdemeanor charge in District Court to a relatively more serious felony charge in Superior Court. In general, felony cases require significantly more time for court personnel and result in substantially greater expenditures per case for the court system. If, for example, 20 defendants (10%) faced elevated charges, the estimated cost would be \$36,000 annually.

In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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

**TECHNICAL CONSIDERATIONS:** None

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