

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 40 (First Edition)

**SHORT TITLE:** Amend Habitual DWI.

**SPONSOR(S):** Representative Jackson

**FISCAL IMPACT**

(\$ in millions)

Yes       No       No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**

Department of Public Safety, Administrative Office of the Courts, Office of Indigent Defense Services

**EFFECTIVE DATE** December 1, 2013

**TECHNICAL CONSIDERATIONS:**

None

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on this new offense, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$626 per disposition
- Indigent Defense Services: \$69 in district court  
\$193 in superior court without a trial  
\$940 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$980

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

This bill amends existing G.S. 20-138.5(1), Habitual impaired driving. The statute currently states that a person commits the offense of habitual impaired driving if he drives while impaired and has been convicted of three (3) or more impaired driving offenses within 10 years of the date of the offense. The proposed legislation stipulates that a person may be convicted of habitual impaired driving if they drive while impaired and have been convicted of two or more impaired driving offenses within 10 years of the date of the offense. This bill goes into effect December 1, 2013, and applies to offenses committed on or after that date.

## **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. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

### **Judicial Branch**

The Administrative Office of the Courts 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.

AOC cannot estimate the potential number of charges that may arise due to the changes made by this bill. AOC's database tracks the number of convictions and the related prior record scores and offense levels; however they are unable to track actual prior convictions. They can tell that a defendant has a prior conviction for a Class F felony, but not what offense the defendant committed to achieve the prior record. Therefore, AOC does not know precisely how many individuals have been convicted of two or more impaired driving offenses. In fiscal year 2012, approximately 403 defendants were charged with the existing Class F felony offense of habitual impaired driving (individuals who were charged with their fourth or subsequent offense of driving while impaired). Of these, 316 were convicted. For every additional person charged with this offense, AOC estimates the average cost to the court would be \$626.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that may result in greater expenditures for indigent defense. IDS states that the increased penalty may result in a more vigorous defense. They estimate that the difference between defending a DWI and defending a habitual DWI would be approximately \$69 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost would be \$193 if the case does not go to trial and \$940 if it does.

**Department of Public Safety –Prison Section**

The Department of Public Safety states that in fiscal year 2011-12 there were 2,232 DWI prison entries. Of these entries 124 had two or more prior DWI convictions and these DWI offenders spent an average of four months in prison. According to the North Carolina Sentencing and Policy Advisory Commission, habitual DWI offenders will spend an average of 16 months in prison. Assuming these 124 offenders had received an active class F sentence, the result is a need for an additional 124 beds in the first year and 186 beds in the second year.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

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). As shown, the Sentencing Commission estimates that this specific legislation will add 186 inmates to the prison system by the end of FY 2014-15.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2013</b>	<b>June 30 2014</b>	<b>June 30 2015</b>	<b>June 30 2016</b>	<b>June 30 2017</b>
1. Inmates <sup>2</sup>	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>124</b>	<b>186</b>	<b>186 +*</b>	<b>186+*</b>	<b>186+*</b>
<b>5. Additional Beds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

\* The Sentencing and Policy Advisory Commission provides two year threshold projections. Projections beyond the two year horizon are estimates.

**Department of Public Safety – Community Correction Section**

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 and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-

<sup>1</sup> 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.

<sup>2</sup> 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 2013.

<sup>3</sup> Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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 types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service.<sup>4</sup> General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; 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, intermediate sanctions and supervised probations.

G.S. 20-138.5 stipulates that all individuals convicted of this offense must serve a minimum active term of 12 months of imprisonment. Regardless of the length of the active sentence, all offenders convicted under this statute are subject to 9 months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup> At the end of the 2013-14 fiscal year, it is estimated that it will cost at least \$121,520 (124 offenders times \$980 dollars per offender) to CCS for all offenders convicted under this statute.

**SOURCES OF DATA:** Administrative Office of the Courts, Department of Public Safety, Sentencing and Policy Advisory Commission, Indigent Defense Services

**TECHNICAL CONSIDERATIONS:** None

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

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<sup>4</sup> CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

<sup>5</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.