

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 41 (First Edition)

**SHORT TITLE:** 0.00 Alcohol Restriction - All 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:**

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

**EFFECTIVE DATE:** December 1, 2014

**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: \$88 - \$165 per disposition
- Indigent Defense Services: \$158 in district court  
\$266 in superior court
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$1,634-\$1,743 per conviction

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

G.S. 20-17.8 sets forth ignition interlock requirements and alcohol concentration restrictions for people who have been convicted of impaired driving under certain circumstances. House Bill 41 would change the alcohol concentration restriction from .04 to .00 for people who are subject to subsections (b)(3)(a) and (c3)(1). Every person who drives in violation of that new restriction would be subject to prosecution for misdemeanor driving while license revoked (“DWLR”).

## **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.

By tightening the alcohol concentration conditions on two subsets of defendants who receive restored licenses, the pool of eligible defendants who may be charged with violation of this requirement is expanded. AOC is not able to determine how many of the individuals charged with driving with license revoked (DWLR) or no operator’s license (NOL) were specifically charged due to a violation of the alcohol concentration condition of a license restoration. Thus AOC is unable to estimate how many additional violations may occur due to the tightening of this condition.

Violations of the modified restriction in Section 1 of this bill would be charged with the Class 1 misdemeanor of driving with license revoked (DWLR) while on a restored license. In fiscal year 2011-12, approximately 76 defendants were charged with this offense. Of these, one was convicted for DWLR as a result of violation of a restored license requirement and 23 were convicted for DWLR as a result of a violation of limited driving privileges. AOC estimates the average cost to the court for each person charged would be \$165.

Violations of the modified restriction in Section 2 of this bill would be charged with the Class 2 misdemeanor offense of no operator’s license (NOL). In fiscal year 2011-12, approximately 148,871 defendants were charged with this offense. The Sentencing and Policy Advisory Commission does not maintain statistical information of Class 2 or 3 misdemeanor offenses so the number of convictions is not known. AOC estimates the average cost to the court for each person charged would be \$88.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates each new driving with license revoked (DWLR) case will cost \$158 for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a DWLR would be \$266.

**Department of Public Safety –Prison Section**

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).

<b>Population Projections and Bed Capacity</b>					
<b>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>No estimate available</b>				
<b>5. Additional Beds Required</b>					

The proposed bill expands the scope of an existing offense. It is not known how many offenders might be convicted and sentenced from the proposed broadening of the current statute. In FY 2011-12, 26% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 39 days. Similarly, in FY 2011-12, 26% of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 29 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

<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.

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

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.

In FY 2011-12, 74% of offenders convicted of a Class 1 misdemeanor were sentenced to community sentences for an average of 16 months. Of these, half received supervised community sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor and who receives community supervision is \$1,743 (480 days times \$3.63 per day). Similarly, in FY 2010-11, 72% of offenders convicted of a Class 2 misdemeanor were sentenced to community sentences for an average of 15 months. Of these, half received supervised community sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor and who receives community supervision is \$1,634 (450 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced to community supervision under the proposed bill.

**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

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Maggie Morrissey  
Kristine Leggett

**APPROVED BY:** Mark Trogdon, Director  
Fiscal Research Division

**DATE:** March 1, 2013



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