

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

**Legislative Incarceration Fiscal Note
REVISED**

BILL NUMBER: House Bill 32 (Second Edition)

SHORT TITLE: Amend Habitual DWI.

SPONSOR(S): Representative Jackson

FISCAL IMPACT					
(\$ in millions)					
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
EFFECTIVE DATE: December 1, 2015					
TECHNICAL CONSIDERATIONS:					
None					

Revision Note: *This note has been revised to correct the fiscal year column headers in the table above.*

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: \$56 in district court
\$173 in superior court without a trial
\$940 in superior court with a trial
- Prison Section: \$5,814 per active sentence
- Community Corrections: \$1,112 per active sentence

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, 2015, 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.

Since the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

Judicial Branch

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 2013-14, approximately 307 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, 289 were convicted. DWI offenses are misdemeanor offenses that cost the court approximately \$286 per case. Class F felony offenses cost approximately \$912 per case. Therefore, for every additional person charged with this offense, AOC estimates the average cost to the court would be \$626 (\$912 Class F felony minus \$286 Class A1 misdemeanor).

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. The following chart shows the difference in defense costs for Misdemeanor DWIs and Class F felonies.

IDS Cost Differential Misdemeanor DWI and Class F Felony			
	Misdemeanor DWI	Class F Felony	Difference
District Court	\$267	\$323	\$56
Superior Court	\$455	\$628	\$173
Superior Court w/Trial	\$1,106	\$2,046	\$940

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,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2014.

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).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2016	June 30 2017	June 30 2018	June 30 2019	June 30 2020
1. Inmates ²	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

¹ 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.

² 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 March 2014.

³ Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$11.23 per day, or \$342 per month, which includes the cost of food, clothing, and health care. In FY 2013-14, 97% of Class F habitual impaired driving offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$5,814 (\$342 monthly cost times 17 months).

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-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. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$123.50 per offender, per month; 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 2013-14, 97% of Class F habitual impaired driving offenders received active sentences. All active sentences result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,112 per offender (\$123.50 per month times nine months).⁴

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: Kristine Leggett

APPROVED BY:

Mark Trogon, Director
Fiscal Research Division

DATE: April 22, 2015

⁴ Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.



Signed Copy Located in the NCGA Principal Clerk's Offices