



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

## Legislative Incarceration Fiscal Note

**Short Title:** Req Active Time Felony Death MV/Boat.  
**Bill Number:** House Bill 66 (First Edition)  
**Sponsor(s):** Representatives Pittman, Speciale, Jackson, and Graham

### SUMMARY TABLE

FISCAL IMPACT OF H.B. 66, V.1 (\$ in thousands)												
	FY 2019-20		FY 2020-21		FY 2021-22		FY 2022-23		FY 2023-24			
<b>State Impact</b>												
General Fund Revenue	-	to -	-	to -	-	to -	-	to -	-	to -	-	to -
Less Expenditures	32.2	to 32.2	77.5	to 96.8	77.5	to 109.8	83.9	to 116.2	83.9	to 116.2	83.9	to 116.2
<b>General Fund Impact</b>	<b>(32.2)</b>	<b>to (32.2)</b>	<b>(77.5)</b>	<b>to (96.8)</b>	<b>(77.5)</b>	<b>to (109.8)</b>	<b>(83.9)</b>	<b>to (116.2)</b>	<b>(83.9)</b>	<b>to (116.2)</b>	<b>(83.9)</b>	<b>to (116.2)</b>
<b>NET STATE IMPACT</b>	<b>(\$32.2)</b>	<b>to (\$32.2)</b>	<b>(\$77.5)</b>	<b>to (\$96.8)</b>	<b>(\$77.5)</b>	<b>to (\$109.8)</b>	<b>(\$83.9)</b>	<b>to (\$116.2)</b>	<b>(\$83.9)</b>	<b>to (\$116.2)</b>	<b>(\$83.9)</b>	<b>to (\$116.2)</b>

### FISCAL IMPACT SUMMARY

Sections 1 and 2 of this bill would require that an intermediate punishment include special probation with a continuous period of confinement equal to one-fourth of the maximum sentence imposed, up to 27 months, for two offenses: felony death by motor vehicle and death by impaired boating, both of which are Class D felonies. Fiscal Research finds that this change would have a fiscal impact because intermediate punishments for these offenses would include lengthier periods of confinement than required under current law. Assuming that FY 2017-18 conviction data for felony death by motor vehicle would continue at the same level, the bill would have an impact on the prison system ranging from \$32,280 to \$116,208 annually over the next five years. Fiscal Research is unable to estimate the impact of this change on the death by impaired boating charge due to a lack of data on the number of charges for that offense. However, its impact would likely match that of felony death by motor vehicle, scaled for the number of charges in a given year and the sentences imposed.

#### General

Because this bill does not create or modify any existing criminal charges, there is no anticipated impact on the court system (either the Administrative Office of the Courts or the Office of Indigent Defense Services). However, the bill may have an impact on the Department of Public Safety.

The Sentencing and Policy Advisory Commission (SPAC) 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, 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. 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.

### **Department of Public Safety – Prisons**

Under current law, G.S. 20-141.4(b)(2) and G.S. 75A-10.3(f)(3) establish a Class D felony offense for felony death by vehicle and death by impaired boating, respectively. While most Class D felony convictions require an active sentence, an intermediate punishment is authorized if the offender is in Prior Record Level I for these offenses. This bill would require that the intermediate punishment include special probation, with a continuous period of confinement of one-fourth of the maximum sentence imposed, up to 27 months. Section 1 of the bill applies this change to felony death by vehicle and Section 2 applies this change to death by impaired boating.

#### **Section 1: Felony Death by Vehicle**

Data provided by SPAC shows that in the most recent Fiscal Year, there were 10 felony death by vehicle offenders sentenced to intermediate punishment. Of these, 8 received special probation, with an average length of 6 months of confinement. Assuming that this data remains true for future years, SPAC provided estimates of the impact to the prison system based on two scenarios – the new amount of required active time based on the average maximum sentence imposed (21 months, or 25% times 84 months), and the new amount of required active time based on the maximum allowable sentence (27 months, or 25% times 107 months). Because the bill would require special probation for all intermediate punishments, all 10 annual offenders would be required to serve this period of confinement.

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 2018.

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). Rows 4a, 4b, and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add 5 inmates to the prison system by the end of FY 2019-20.

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<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.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>	<b>June 30 2023</b>	<b>June 30 2024</b>
1. Inmates <sup>2</sup>	36,452	36,867	37,231	37,433	37,702
2. Prison Beds (Expanded Capacity)	38,225	38,225	38,225	38,225	38,225
3. Beds Over/(Under) Inmate Population	1,773	1,358	994	792	523
<b>4a. Additional Inmates Due to this Bill - 21 Months<sup>3</sup></b>	5	12	12	13	13
<b>4b. Additional Inmates Due to this Bill - 27 Months</b>	5	15	17	18	18
<b>5. Additional Beds Required</b>	0	0	0	0	0

As the table shows, there will be no additional beds required.

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 \$17.69 per day, \$538 per month, or \$6,456 per year, which includes the cost of food, clothing, and health care. If the previous conviction rate for felony death by vehicle holds, this bill will result in increased costs of \$6,456/year times the increased bed requirements listed in the table below:

	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>21 Month Scenario</b>	<b>\$32,280</b> (\$6,456 x 5 beds)	<b>\$77,472</b> (\$6,456 x 12 beds)	<b>\$77,472</b> (\$6,456 x 12 beds)	<b>\$83,928</b> (\$6,456 x 13 beds)	<b>\$83,928</b> (\$6,456 x 13 beds)
<b>27 Month Scenario</b>	<b>\$32,280</b> (\$6,456 x 5 beds)	<b>\$96,840</b> (\$6,456 x 15 beds)	<b>\$109,752</b> (\$6,456 x 17 beds)	<b>\$116,208</b> (\$6,456 x 18 beds)	<b>\$116,208</b> (\$6,456 x 18 beds)

## Section 2: Death by Impaired Boating

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for death by impaired boating, which offers some indication that this offense is infrequently charged and/or infrequently results in convictions. However, it is not known how many convictions may occur and may be affected by the proposed change in this bill. As a result, Fiscal Research cannot provide an estimate for the impact of this section of the bill. However, much as in Section 1, it is likely than any future convictions for death by impaired boating will have an impact on the prison system. For every 10 of these convictions, the impact on the prison system should match the costs associated with Section 1 of this bill, as described above.

<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 2019.

<sup>3</sup> Criminal penalty bills effective December 1, 2019 should not affect prison population and bed needs until FY 2020-21 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

## **TECHNICAL CONSIDERATIONS**

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N/A.

## **DATA SOURCES**

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Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

## **LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS**

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This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

## **CONTACT INFORMATION**

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Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

## **ESTIMATE PREPARED BY**

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April 3, 2019



**Signed copy located in the NCGA Principal Clerk's Offices**