

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 368
SHORT TITLE: Governor's DWI Initiative
SPONSOR(S): Senators Odom, Cooper and Forrester

FISCAL IMPACT

Yes (X) No () No Estimate Available ()

(in millions)

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
GENERAL FUND					
Correction					
Recurring					
Nonrecurring		NONE			
Judicial					
Section III	\$714,466	\$1,103,987	\$1,103,987	\$1,103,987	\$1,103,987
Section VII	\$ 60,926	\$ 104,450	\$ 104,450	\$ 104,450	\$ 104,450
GF TOTAL	\$775,392	\$ 1,208,437	\$1,208,437	\$1,208,437	\$1,208,437
HIGHWAY FUND					
Division of Motor Vehicles					
Nonrecurring	\$ 10,140				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch
Department of Motor Vehicles; County Jails, Division of Mental Health/DHR

EFFECTIVE DATE: First section (on seizing vehicles) is effective when bill becomes law; other sections apply to offenses committed on or after December 1, 1997. **Sections that require additional funding are not effective until funds have been appropriated.**

NOTE: The Judicial Branch believes that Parts I, II, III and VII will have a substantial fiscal impact. However, they are able to provide estimates of that impact only for Parts III and VII. The figures above represent the absolute *minimum* cost of the bill. The figures above also omit potential cost to county jails as explained in the last item below.

BILL SUMMARY: GOVERNOR'S D.W.I. INITIATIVE. TO IMPLEMENT THE GOVERNOR'S RECOMMENDATION ON DRIVING WHILE IMPAIRED. Seizing vehicles used in driving while impaired (DWI) offenses. Amends GS 20-28.2(d)

(forfeiting motor vehicle for impaired driving after impaired driving license revocation) to require that sentencing judge order vehicle forfeited if requirements of subsections (a) through (c) are met and defendant was registered owner of vehicle at time of offense. If defendant was not registered owner, judge must order vehicle forfeited unless registered owner proves by clear and convincing evidence that he or she was “innocent party” (person who did not know and had no reason to know that defendant’s license was revoked, or knew defendant’s license was revoked but defendant drove vehicle without person’s consent). Adds new GS 20-28.3 to require officer to seize and impound vehicle when officer has probable cause to believe it is subject to forfeiture. Requires officer to give written notice of impoundment to registered owner if that owner was not operating or present in vehicle when DWI offense was committed. Includes provisions regarding review of impoundment by magistrate, custody of vehicle at location designated by county school board, and conditions allowing release of vehicle pending trial. Adds new GS 20-28.4 to set out procedures by which innocent party registered owner may apply to trial judge for return of vehicle, and new GS 20-28.5 to provide for sale or transfer of forfeited vehicle to county school board.

Increased penalties for DWI., Changes punishment for DWI conviction as follows. (1) Level one punishment—term of imprisonment may be suspended only if condition of special probation requires defendant to serve minimum 30 days (now, 14 days) imprisonment. (2) Level two punishment—term of imprisonment may be suspended only if condition of special probation is imposed, but condition is not specified (now, condition must be minimum seven days imprisonment or two days imprisonment and house arrest). (3) Levels three, four, and five punishments—deletes mandatory suspended sentence as punishment for each of these levels of punishment, thereby allowing active terms of imprisonment. (4) For all levels of punishment, provides that if probation is imposed, condition of probation must include defendant’s obtaining substance abuse assessment and education or treatment as required by GS 20-17.6. Amends GS 20-179(k1) (credit for inpatient treatment) to allow trial judge to order that costs of treatment be absorbed by state.

Increase administrative license revocation period., Amends GS 20-16.2 and 20-16.5 to increase immediate pretrial license revocation for DWI offenses from 10 to 30 days, but allows limited driving privilege after 10 days if (1) at time of offense, person held either valid driver’s license or license that had been expired for less than one year; (2) person does not have unresolved pending DWI offense; and (3) person obtains substance abuse assessment from mental health facility and registers for, and agrees to participate in, recommended training or treatment program.

Alcohol screening test admissible to prove driving-after-drinking offense by person under 21., Amends GS 20-138.3 (driving by person under 21 after consuming alcohol or drugs) to provide (1) results of alcohol screening test or refusal to submit to test may be used by law enforcement officer, court, or administrative agency to determine if alcohol was present in driver’s body; and (2) odor of alcoholic beverage on driver’s breath is insufficient evidence to prove beyond reasonable doubt that alcohol was remaining in driver’s body unless driver was offered alcohol screening test or chemical analysis and refused to provide sample.

Allow drug testing for DWI., Amends GS 20-139.1 to provide that a person may be requested, under GS 20-16.2, to submit to chemical analysis of person’s blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of breath, in charging officer’s discretion. Person’s willful refusal to submit to chemical analysis of blood or other bodily fluid or substance is willful refusal under GS 20-16.2. Makes conforming change in definition of “chemical analysis” in GS 20-4.01(3a) to include test for presence of impairing substance as well as alcohol.

Minimum imprisonment for habitual impaired driving., Amends GS 20-138.5(b) to require that person convicted of habitual impaired driving must be sentenced to minimum active term of not less than 12 months imprisonment, which may not be suspended. If paroled, person may be enrolled in Dep’t of Correction’s Drug and Alcohol Rehabilitation Training or similar substance abuse program as condition of parole.

*Provides that sections requiring additional funds for implementation do not become effective until those funds have been appropriated.*¹

ASSUMPTIONS AND METHODOLOGY:

1) Department of Correction (Prisons). The primary impact on the Department of Correction is Part VII of the bill which specifies that a person convicted of Habitual Impaired Driving is a Class G felon but will be sentenced to a minimum active sentence of at least 12 months. Habitual Impaired Driving is included in Structured Sentencing and currently allows for an intermediate or active punishment, depending on aggravating and mitigating circumstances and the prior record level. This bill would remove the possibility of an intermediate punishment. However, Sentencing Commission projections already assume that all Habitual Impaired Drivers receive active sentences and 86% of offenders who did receive active sentences for Habitual Impaired Driving in 1995-6 received minimum sentences of at least 12 months. Thus, the effect of this bill on prison bed utilization is very small. The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of

¹ *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, 1997

additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

	<u>June 30</u> <u>1998</u>	<u>June 30</u> <u>1999</u>	<u>June 30</u> <u>2000</u>	<u>June 30</u> <u>2001</u>	<u>June 30</u> <u>2002</u>
Projected No. of Inmates Under Current Structured Sentencing Act ²	31,762	30,371	30,060	30,610	31,259
Projected No. of Prison Beds (DOC Expanded Capacity) ³	34,133	35,599	35,599	35,599	35,599
No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+2,371	+5,228	+5,539	+4,989	+4,430
No. of Projected Additional Inmates					
Due to this Bill	0	12	12	13	13
No. of Additional Beds Need Each Fiscal Year Due to this Bill	0	0	0	0	0

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 13 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02, based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);
2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;

² The Sentencing Commission's revised prison population projections (dated December 1996) were estimated under three scenarios: High, Best, and Low. The differences in these scenarios reflect varying assumptions on incarceration rates under Structured Sentencing, probation and revocation rates, and the decline of the stock population. The projections outlined above are included in the "Best scenario" since the Sentencing Commission and the Department of Correction believe this scenario is most likely to occur.

³ Projected number of prison beds based on Department of Correction estimates of expanded bed capacity as of 1/11/97. These numbers do not include the number of beds requested in the Governor's 1997-99 Capital Improvement budget.

3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,
4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

Note: The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

2) Department of Correction (Probation and Parole, Alcoholism and Substance Abuse) and Division of Mental Health For all punishment levels, the bill specifies that the court may order the state to absorb the cost of inpatient treatment that is to be used as a credit against the terms of imprisonment. Current law allows the credit for treatment but costs are borne by the offender. The Department of Correction operates a 300 bed residential facility (Dart-Cherry) that provides 30 day treatment for substance abuse to parolees and probationers. During 1997, the program has averaged 25 available beds per week. The Department also contracts for 350 private treatment beds that provide 3-6 month treatment for minimum custody inmates nearing the end of their sentence but this program operates at 90-98% of capacity. **If the number of cases where a judge orders the state to absorb the cost of treatment exceeds these available beds, the Department would need to expand these programs** or funds would be needed to contract with private providers.

Because there is no data to project the number of cases where this would occur, no dollar figure is included for this potential impact. If Mental Health centers were ordered to waive fees that would affect their budgets as well.

For offenders who receive an active sentence, including a sentence for habitual impaired driving, parole is not allowed unless a substance abuse assessment has been performed and recommended treatment completed or the individual is paroled into a residential treatment.. This could occur in one of two ways. An offender could be sent to one of the private treatment beds near the end of their sentence and be paroled from that facility. However, since these facilities offer long term treatment (6-9 months) few DWI offenders have sentences long enough for this option to apply. More likely, DWI offenders can be paroled to the Dart-Cherry facility. This facility accepts up to 75 offenders each week, both parolees and probationers. If there are more potential DWI parolees than this facility can serve, paroles may be delayed and the prison population affected. However, since the program has had available beds and the Parole Commission has sent relatively few parolees in recent months, this impact seems unlikely. The Post Release Supervision and Parole Commission does *not* expect this bill to significantly affect the parole process.

This bill also adds the condition that in order for an offender to move to unsupervised probation, they must have obtained any necessary substance abuse assessment and any recommended treatment/training. Also, in order for a judge to place an offender on probation, an assessment and treatment must be included as a condition. Under current law a significant number of offenders are placed on *unsupervised* probation which does not include additional conditions. However, current administrative law requires offenders to receive an

assessment and treatment/education in order to recover their licenses. The Division of Mental Health estimates about 50% of offenders comply and anticipates this percentage increasing since the penalties for driving with a revoked license have been increased. From 20,000 to 30,000 assessments will be done this year using existing resources, primarily contracts with private providers through area mental health agencies. Requiring judges to order assessment and treatment should *not* have any fiscal impact on the Division of Mental Health. If failure to obtain assessment/treatment keeps offenders on supervised probation longer, this may affect Probation and Parole caseloads and staffing needs. However, data is not available to quantify this impact.

3) Division of Motor Vehicles: Part I of the bill strengthens current laws requiring forfeiture of a vehicle upon an impaired driving conviction after an impaired driving license revocation. Section 1.5 specifies that the Division of Motor Vehicles establish procedures to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles. The Department can accomplish this within existing resources. Part III of the bill lengthens the period of time (from 10 to 30 days) during which driving privileges are revoked for refusal to cooperate with a chemical analysis or for showing alcohol concentration above the legal limits. This change would require DMV to modify their computer system at a one time cost of \$10,140. This cost estimate is based on 169 hours of work at \$60 per hour.

4) Judicial Branch: The Judicial Branch believes that unless the new measures in this bill have a substantial deterrent effect, the heightened DWI enforcement and stiffer penalties will almost certainly lead to a substantial increase in workload for the Judicial Branch. Below is a summary of the aspects of the bill which lead to this impact..

Section I revises the statutes governing forfeiture of a motor vehicles after an impaired driving license revocation and provides for the immediate seizure and impoundment of vehicles in certain circumstances. It also provides for the forfeiture of the impounded vehicle at sentencing. Current law provides for forfeiture but allows it in the judge's discretion; this bill makes it mandatory and removes the exception that allows family members to use a vehicle for business and school. **This could lead defendants to more vigorously resist DWI charges thereby increasing costs but data is not available to quantify this impact on the judicial branch.**

The provision for immediate seizure of a vehicle driven while impaired if at the time of the violation the driver had an impaired license revocation. If the owner is not the driver, they may apply to the clerk of court for pretrial release of the vehicle. **This will create additional work for magistrates to review the impoundment decision and clerks of court to process the request for pretrial release of the vehicle. Data is not available to quantify the cost of this impact since it depends on the number of people affected.**

Section II increases the minimum punishment for DWI offenders by each punishment class. *Level I* is the most severe punishment level. This bill raises the length of the minimum sentence from 14 to 30 days and specifies that the sentence can be suspended only if the conditions of probation include a term of imprisonment of at least 30 days. That is, no matter what, the offender will be imprisoned somewhere for 30 days. A substance abuse assessment will be required as well. Current law allows electronic house arrest as part of a suspended sentence and leaves the substance abuse assessment discretionary. The bill's provision will affect the jail population (see #6 below) but will also affect the defense strategy of defendants facing Level I punishment. **If defendants more vigorously defend against these charges, it will affect the workload of the Judicial Branch. Data is unavailable to quantify this impact.** *Level II* punishment requirements are also modified to remove the possibility of electronic house arrest and to make substance abuse assessments mandatory. The amendment deletes any requirement for active imprisonment. *Level III-V* punishments (the less severe) would allow an active sentence under this bill; current law says the judge must suspend the sentence. If probation is ordered, the judge must require a substance abuse assessment. **The risk of active sentence may change the defense strategy of some offenders and affect the workload of the courts. Data is not available, however, to quantify this impact.**

Section III amends the administrative license revocation period, increasing the civil license revocation period from 10 to 30 days. In order to obtain limited driving privileges, the offender must complete a substance abuse assessment from a mental health facility and complete any recommended training or treatment. Under certain conditions, including assessment and agreement to participate in treatment, the offender may apply for limited driving privileges after 10 days. **The Judicial Branch anticipate this provision will affect their workload.** Although the bill does not specify which judicial official is authorized to grant these privileges, they assume a district court judge would be appropriate. They make the following additional assumptions:

- *each hearing takes 10-20 minutes
- *between 50 and 75% of people with revoked licenses apply for limited driving privileges
- *63,000 people will have licenses revoked (same as in 1996)
- *courts are available 1,800 hours per year

Using authorized salary information for district court judges, assistant district attorneys and deputy clerks the Judicial Branch estimates that Section III would require :

	<u>assuming 50% apply</u>	<u>assuming 75% apply</u>	<u>average</u>
District Court Judges	4	7	
Assistant DA's	4	7	
Deputy Clerks	4	7	
Total Positions	12	21	
Total Costs 97-8	\$519,612	\$909,321	\$793,696
Total Costs 98-9	\$802,900	\$1,405,075	\$1,103,987

NOTE: The cost summary box at the front of this fiscal note uses the *average* of these two columns.

The Judicial Branch also feels that the longer revocation period will lead to more arrests for driving with a revoked license, potentially further affecting workload of the courts.

Section VII specifies that a person convicted of Habitual Impaired Driving is a Class G felon but will be sentenced to a minimum active sentence of at least 12 months. Habitual Impaired Driving is included in Structured Sentencing and currently allows for an intermediate or active punishment, depending on aggravating

and mitigating circumstances and the prior record level. This bill would remove the possibility of an intermediate punishment.

Since most habitual impaired defendants now choose not to go to trial and since most fall under prior record levels I-IV, **there may be a large pool of defendants who will potentially change their defense strategy and request more trials.** Assuming 500 defendants charged with habitual DWI would in the absence of this bill plead guilty as charged (last year 496 defendants fell in this category). Using a conservative estimate that 10% would request a trial due to the changes in penalties in this bill, there would be 50 additional trials. Using estimates of \$1839 per day of trial in Superior Court and that half of defendants would qualify for indigent defense at the cost of \$500 per trial, the total cost would be:

Court costs (Assistant DA's , Assistant Public Defenders, Jury) (50*1839)	\$91,950
Indigent Costs (25*500)	\$12,500
Total	\$104,450

Assuming the law is effective December 1, 1997, first year costs would be 58% of this total or \$60,926.

5)County Jails (Figure not included in expenditure totals above) . Since sentences 90 days or less are served in county jails and the vast majority of DWI sentences fall in this range, this bill may have an impact on county jails. Section 2.1 of the bill increases the minimum active sentence for Level I punishment from 14 to 30 days, although the sentence can be suspended under certain conditions. Section 2.1 and 2.2 eliminate the option of Electronic House Arrest for Levels I and II punishment. The Sentencing Commission projects the combined effect of these three changes will be as follows:

Fiscal Year Ending	June 30 1998	June 30 1999	June 30 2000	June 30 2001	June 30 2002
Projected Maximum Increase Statewide Sentenced Jail Inmates	374	377	381	385	389

Assuming Level I sentences will be 30 days (the minimum) and Level II who would otherwise be sentenced to EHA will have active sentences of 7 days (the minimum) this bill would add 9,324 inmate days in 2002. A recent survey of 69 of the state's 115 local jails found an average cost of \$40 per inmate day, with a range from \$6 to \$236 (NC Association of County Commissioners' Survey). Using the average cost figure, the total cost of the additional 389 inmates would be a minimum of \$372,960 (=40*9324) for the year.

6) Some General Facts: Facts and assumptions used in development of this analysis are as follows.

- in 1996, 76,000 people were charged with DWI
- in 1996, 32,400 were convicted of driving with a revoked license (not all these are DWI cases)
- in 1996, 63,000 people had their license revoked for refusing a test or testing above the legal limit
- in fiscal year 95-96, the Judicial Branch disposed of 640 cases involving habitual impaired driving; 19

of these cases went to trial

SOURCES OF DATA: Department of Correction, Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Motor Vehicles, Department of Human Resources/Division of Mental Health; Post Release Supervision and Parole Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION

733-4910

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Signed Copy Located in the NCGA Principal Clerk's Offices