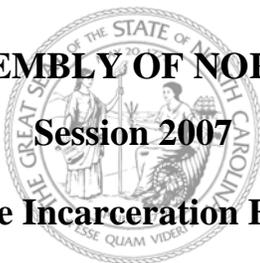


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 743 (First Edition)  
**SHORT TITLE:** Remove Ten-Year Limitation on DWI Conviction.  
**SPONSOR(S):** Senator Rand

	FISCAL IMPACT				
	Yes ( )	No ( )	No Estimate Available ( )		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
<b>GENERAL FUND</b>					
Correction					
Judicial					
DMV					
<b>TOTAL EXPENDITURES:</b>					
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>					
<b>POSITIONS: (cumulative)</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch.				
<b>EFFECTIVE DATE:</b>	October 1, 2007.				
*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.					

**BILL SUMMARY:** Current G.S. 20-138.5 provides that a person is guilty of habitual impaired driving if *he drives while impaired* (defined by G.S. 20-138.1) *and has been convicted of three or more offenses involving impaired driving* (defined by G.S. 20-4.01(24a)) *within 10 years of the date of the present offense*. Habitual impaired driving is a Class F felony offense, with a mandatory minimum active sentence (imprisonment) of not less than a year (12 months). This sentence may not be suspended, and any additional sentence imposed under G.S. 20-138.5(b) is to be served consecutively. Furthermore, upon conviction, an offender’s driver’s license is permanently revoked, and the vehicle used to commit the crime becomes subject to forfeiture.

Effective for offenses committed on or after October 1, 2007, S.B. 743 would amend G.S. 20-138.5 to remove the current 10-year limitation on convictions applicable toward the offense of habitual impaired driving. In effect, any person convicted of three or more impaired driving offenses, within any time period, would now be guilty of habitual impaired driving upon the fourth or subsequent offense.

**ASSUMPTIONS AND METHODOLOGY:** By removing the current 10-year window for applicable convictions, S.B. 743 would subject some unknown portion of repeat offenders to the Class F felony offense of habitual impaired driving (Class F felony) – those who commit a total of three or more offenses outside of a 10-year span. Data gathered in 2006 indicates a total of 316 charges for habitual impaired driving in CY 2005, with 208 convictions. *Although additional data is being collected, it is presently not known how many impaired driving convictions have occurred beyond the current ten-year applicability window, and therefore have not resulted in habitual impaired driving charges/convictions.*

In effect, this proposed change would enhance otherwise misdemeanor charges and convictions (G.S. 20-138.1) to the Class F felony level. However, it is not known exactly how case litigation and sentencing practices might differ (e.g. the average duration of trial, sentencing hearing, or length of punishment imposed in contrast to that otherwise imposed under G.S. 20-179 - Levels One, Two, Three, etc.). Nonetheless, it is assumed that any resultant habitual impaired driving charges would increase court workload, and any convictions would increase the demand for prison beds.

### **Department of Correction**

For affected convictions, this enhancement will significantly lengthen time served. For example, a person convicted at Level One (multiple aggravating factors) under G.S. 20-179 must serve a minimum, mandatory active sentence of 30 days for Level One (though actual sentence length may be much longer). In contrast, the minimum mandatory sentence for a habitual impaired driving offense is 12 months; CY 2005 data indicated that 98% of habitual impaired driving convictions received active sentences, with an average estimated time served of 18 months.

Consequently, any resultant conviction will increase the demand for prison beds, requiring additional bed construction.<sup>1</sup> The estimated cost to construct a single prison bed within a stand alone facility (FY 07-08) is approximately \$68,040; the estimated cost of annual operation (FY 07-08) is approximately \$27,427.

### **Judicial Branch**

Though the number of affected charges is indeterminate, the severity of the offense suggests that a higher percentage of cases will result in trial, with more vigorous litigation. This increase in required court-time is also expected to result in greater expenditures for jury fees and indigent defense, as well as increased workloads for superior court judges, clerks, and prosecutors. Presently, the estimated cost per Class F felony trial is \$9,902; the estimated cost per plea is \$539. Actual costs will vary from this general estimate, which includes indigent defense and jury costs.

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<sup>1</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

**TECHNICAL CONSIDERATIONS:** None

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