

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 529 (Second Edition)

SHORT TITLE: NC Drivers License Restoration Act.

SPONSOR(S): Representatives Baskerville and Bryan

FISCAL IMPACT

(\$ in thousands)

Yes No No Estimate Available

State Impact	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
General Fund Revenues:					
General Fund Expenditures:	160.5	386.2	714.0	734.1	753.6
Special Fund Revenues:					
Special Fund Expenditures:	59.0	4.5	4.5	4.5	4.5
State Positions:					
NET STATE IMPACT	(\$219.5)	(\$390.7)	(\$718.5)	(\$738.6)	(\$758.1)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

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

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:

Yes - See Technical Considerations Section

FISCAL IMPACT SUMMARY:

This bill is estimated to have a fiscal impact. The following costs are estimated:

Costs by Agency Adjusted for Inflation					
	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
AOC	\$114,643	\$201,876	\$207,690	\$213,423	\$218,631
IDS	\$32,808	\$57,774	\$59,438	\$61,078	\$62,568
DPS - Community Corrections	\$13,034	\$126,588	\$446,880	\$459,648	\$472,416
DMV	\$59,020	\$4,500	\$4,500	\$4,500	\$4,500
Total	\$219,505	\$390,738	\$718,508	\$738,649	\$758,115

Inflation rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill creates one new offense by moving existing misdemeanor offenses into a new subsection, thereby reclassifying some of the offenses.

Under subsection (a) of G.S. 20-28, it is a Class 3 misdemeanor for a person whose drivers license has been revoked to drive any motor vehicle upon the highways of the State while the license is revoked. It is a Class 1 misdemeanor for a person whose drivers license has been revoked for an impaired driving revocation to drive any motor vehicle upon the highways of the State while the license is revoked.

This bill creates a new offense under subsection (a1), Aggravated Driving While License Revoked (DWLR) (the existing subsection (a1) is recodified as subsection (a2)). Under this offense, it is a Class 1 misdemeanor for a person whose drivers license has been revoked for any of the listed reasons to drive any motor vehicle upon the highways of the State while the license is revoked. The license may have been revoked for any of the following reasons:

- (1) Except as provided in subsection (a2) of this section, an impaired driving license revocation, as defined in G.S. 20-28.2;
- (2) An accumulation of drivers license points in violation of G.S. 20-16(a)(5);
- (3) A violation of any restriction of G.S. 20-179.3;
- (4) A violation of any restriction of G.S. 20-17.8; or
- (5) A violation of a limited driving privilege issued under G.S. 20-20.1.

Subsection (a1)(1) covers the current Class 1 misdemeanor offense under subsection (a). Subsections (a1)(3) and (a1)(4) are also currently Class 1 misdemeanor offenses. Moving existing Class 1 misdemeanor offenses into a new subsection is not expected to have an impact on the prison population or on local jail populations since there is no change in offense class or punishment. Subsections (a1)(2) and (5) are currently punished as Class 3 misdemeanors under subsection (a). Under this bill they would be reclassified as Class 1 misdemeanors.

The bill is effective December 1, 2015, and applies to convictions 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) created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Judicial Branch

The Administrative Office of the Courts (AOC) 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.

Section (a1)(2) of the bill increases the penalty for violation of G.S. 20-16(a)(5) from a Class 3 misdemeanor to a Class 1 misdemeanor. Section (a1)(5) of the bill increases the penalty for violation of G.S. 20-20.1 from a Class 3 misdemeanor to a Class 1 misdemeanor. AOC provides estimates of the average cost to the court for a charge by offense class. For every person who would have been charged with a Class 3 misdemeanor who is instead charged with a Class 1 misdemeanor, the average cost to the court will be \$134 (\$165 for a Class 1 misdemeanor minus \$31 for a Class 3 misdemeanor).

AOC does not have an offense code specific to violations of G.S. 20-28 that occurred on a license revoked under G.S. 20-16(a)(5) (an accumulation of too many drivers license points). The North Carolina Department of Motor Vehicles (DMV) reports that there were a total of 2,108 license holders who were revoked under G.S. 20-16(a)(5) in calendar year 2014. For each of these revoked individuals who drives a motor vehicles upon the highways of the State while the license is revoked, that action would be punished as a Class 1 misdemeanor under new G.S. 20-28(a1) and the net cost to the court system would be \$134 per case. It is possible for any of the 2,108 individuals to receive multiple charges of Driving While License Revoked (DWLR) during the time period in which the license is revoked. Unless these charges occur within a short period of time and are consolidated for trial or disposition, the additional cost to the courts for moving this offense from a Class 3 misdemeanor to a Class 1 misdemeanor will remain \$134 per case. If, for instance, there were 1,054 cases (50% of the total 2,108 revocations) of offenders violating G.S. 20-28(a1) per year, the cost to the courts would be \$141,236 annually. AOC additionally reports that 386 defendants were charged with a violation of a limited driving privilege under G.S. 20-20.1. The additional cost to the courts for moving this offense from a Class 3 misdemeanor to a Class 1 misdemeanor for each of those cases will be \$134, leading to total additional costs to the courts of \$51,724.

The annualized cost to the courts is estimated to be \$192,960.¹ The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date.

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Total AOC Cost	\$114,643	\$201,876	\$207,690	\$213,423	\$218,631

IDS has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The weighted average cost of a Class 1 misdemeanor is \$188 per case for a private appointed counsel (PAC) attorney while the weighted average cost of a Class 3 misdemeanor is \$167 per case. In FY 2011-12, 39% of Class 1 misdemeanor defendants used IDS services while 21% of Class 3 misdemeanor defendants used IDS Services. Using the number of charges provided by AOC, under the Class 1 misdemeanor offense for Sections (a1)(2) and (a1)(5), 562 defendants would have used IDS in FY 2013-14 for a total cost of \$105,656.² Under the previous Class 3 misdemeanor offense category, 302

¹ \$134 difference in court cost between the old offense and the new offense times 1,440 defendants (1,054 for (a1)(2) and 386 for (a1)(5)).

² 1,440 defendants times 39% using IDS equals 562 indigent defendants times \$188 average cost per case equals \$105,656.

defendants would have used IDS in FY 2013-14 for a total cost of \$50,434.³ Therefore, the annualized cost of this criminal penalty increase to IDS will be \$55,222.⁴

The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Total IDS Cost	\$32,808	\$57,774	\$59,438	\$61,078	\$62,568

Department of Public Safety –Prison Section

This bill increases the penalty for violation of G.S. 20-16(a)(5) or a violation of G.S. 20-20.1 from a Class 3 misdemeanor to a Class 1 misdemeanor. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

Department of Public Safety – Community Correction Section

All misdemeanor 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.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$130.50 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 and supervised probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

³ 1,440 defendants times 21% using IDS equals 302 indigent defendants times \$167 average cost per case equals \$50,434.

⁴ \$105,656 Class 1 expense minus \$50,434 existing Class 3 expense equals \$55,222.

**Monthly Supervision Cost Adjusted for Inflation
Five Year Projection**

	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Inflation Rate		1.85%	2.72%	2.88%	2.76%	2.44%
Monthly Cost	\$130.50	\$132.90	\$136.52	\$140.45	\$144.32	\$147.85

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Jan. 2015)

In FY 2013-14, 30% of Class 1 misdemeanor offenders received active sentences; 70% received probation. The average length of probation imposed for this offense class was 15 months. For the same time period, 31% of Class 3 misdemeanor offenders received active sentences; 69% received probation. The average length of probation imposed for this offense class was 12 months. Therefore, for every one conviction under the new Class 1 misdemeanor offense class that is sentenced to probation, this bill will require at least 3 additional months of probation. The cost of 3 additional months of probation is \$391.50 per offender (\$130.50 per month times 3 months).⁵

In 2014, approximately 1,054 defendants were charged with an accumulation of drivers license points in violation of G.S. 20-16(a)(5) and 386 defendants were charged with a violation of a limited driving privilege under G.S. 20-20.1. Under the previous Class 3 misdemeanor offense category, 994 offenders would have been sentenced to 12 months of probation.⁶ Under the new Class 1 misdemeanor offense category, 1,008 offenders will be sentenced to 15 months of probation.⁷ Therefore, the cost to the CCS for additional probation is estimated to be \$389,151⁸ and the cost to CCS for 15 months of probation for 14 additional offenders (1,008 offenders under the new offense minus 994 offenders under the old offense equals 14 offenders) is \$27,405.⁹ Therefore, the total additional annualized cost to the CCS is \$416,556. The following table shows the difference adjusted for inflation for each year of the five-year fiscal note period. The first year has been adjusted to reflect the December 1, 2015 effective date.

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Inflation Rate	1.85%	2.72%	2.88%	2.76%	2.44%
Cost of Current Offense	\$925,414	\$1,634,136	\$1,669,920	\$1,717,632	\$1,765,344
Cost of Proposed Offense	\$938,448	\$1,760,724	\$2,116,800	\$2,177,280	\$2,237,760
Total CCS Cost	\$13,034	\$126,588	\$446,880	\$459,648	\$472,416

Department of Transportation – Information Technology (DOT-IT)

According to DOT-IT, the following changes to the State Automated Driver License System (SADLS) are required to automate the business processes supporting the proposed changes:

- Develop and receive new charge codes in conjunction with the Administrative Office of the Courts.
- Create new conviction and suspension rules, and new action module.

⁵ 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.

⁶ 1,440 (1,054 plus 386) times 69% probation equals 994 probationers.

⁷ 1,440 (1,054 plus 386) times 70% probation equals 1,008 probationers.

⁸ \$391.50 difference in probation costs between the old offense and the new offense times 994 defendants.

⁹ \$130.50 monthly cost times 15 months equals \$1,957.50 times 14 additional offenders equals \$27,405.

- Modify current adjudication processes to determine the underlying reason for suspension which resulted in the Driving While License Revoked (DWLR) charge. Check for a limited privilege, blood alcohol content restriction and ignition interlock restriction.
- Add new convictions to the existing moving violation process, if the conviction is considered a moving violation.
- Add new suspensions for Aggravated Driving While License Revoked offenses to the existing hearing process.
- Remove convictions of DWLR under G.S. 20-28(s), 20-28(a2), and 20-7, as these can no longer be considered moving violations.
- Modify the limited privilege processes to include the DWLR conviction and suspension event identifiers, and to determine what was in effect at the time the DWLR offense occurred.
- Determine and assign a proper ACD (AAMVA Code Dictionary) Code to the new conviction rule for transmission out-of-state through the Commercial Driver License Interface System (CDLIS).
- Modify the codes table to link the new AOC charge code to the new conviction code in SADLS.

A total of 648 development labor hours at the standard rates of \$90-\$95/hr. is assumed for completion of these enumerated tasks. Recurring support costs are estimated at \$4,500/year (65 hrs. at \$70 labor rate).

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

TECHNICAL CONSIDERATIONS: Due to the sequencing of existing projects and deadlines, the Department of Transportation recommends an alternate effective date of July 1, 2016 to accommodate the required system modifications.

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DATE: April 27, 2015



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