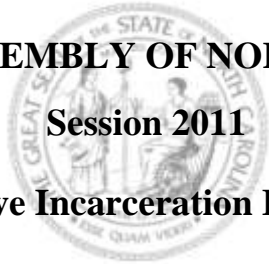


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 591 (Second Edition)

SHORT TITLE: LDP/Ignition Interlock Changes.

SPONSOR(S): Representatives Ingle, Faircloth, and Stevens

	FISCAL IMPACT				
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
<b>REVENUE:</b>					
					<i>*See Assumptions and Methodology*</i>
<b>EXPENDITURES:</b>					
<b>Correction</b>					<i>*See Assumptions and Methodology*</i>
<b>Probation</b>					<i>*See Assumptions and Methodology*</i>
<b>Judicial</b>					<i>*See Assumptions and Methodology*</i>
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> December 1, 2011					
<i>*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.</i>					

BILL SUMMARY:

The proposed legislation enacts the following:

1. Authorizes a limited driving privilege (LDP) with an ignition interlock requirement for first-time DWI offenders with a refusal revocation;
2. Allows 18, 19 and 20 year-olds convicted of Driving While Impaired (DWI) to get an LDP with ignition interlock requirement;
3. Creates a Class 1 misdemeanor for tampering with an ignition interlock device; and

4. Adds an administrative fee for ignition interlock installation which goes into a fund for installation of ignition interlock devices for indigent defendants.

The bill becomes effective December 1, 2012, and applies to offenses committed on or after that date and to limited driving privileges issued and drivers licenses restored on or after that date.

*Adopted from Committee Counsel's bill summary dated*

## **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.

### **Department of Correction – Division of Prisons**

The proposed legislation creates a new Class 1 misdemeanor offense. Article 3 of Chapter 20, The Motor Vehicle Act of 1937, of the General Statutes is amended by the addition of new G.S. 20-17.8B, Tampering with ignition interlock systems, which creates a new Class 1 misdemeanor offense.

G.S. 20-17.8B provides that it shall be a Class 1 misdemeanor for any person to tamper with, circumvent, or attempt to circumvent an ignition interlock device required to be installed on a motor vehicle pursuant to judicial order, statute, or as may be otherwise required as a condition for an individual to operate a motor vehicle, for the purpose of avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or altering the testing results received or results in the process of being received on the ignition interlock device.

Because the proposed 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 proposed bill. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

### **Department of Correction – Division of Community Corrections**

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). Intermediate sanctions include intensive supervision probation, special probation,

house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.<sup>1</sup>

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

### **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.

AOC is unable to precisely determine the number of defendants who would be eligible to receive the limited driving privilege. North Carolina Division of Motor Vehicle data shows that there are approximately 363 DWI refusals in an average year. If, for instance, 90 percent of these defendants petition for the privilege, there would be an additional 327 petitions impacting workload resources. The following court personnel will be impacted: deputy clerks (to receive the petition, create the file, and in-court time; an approximate average of 15 minutes per case), district court judges (either bench or administrative time; an approximate average of 10 minutes per case), assistant district attorneys (their time is anticipated to be minimal and as needed, perhaps not for every case), and superior court judges (their time is anticipated to be minimal, only for certain DWI cases that appear in superior court and for appeals from district court). For the 90 percent scenario, the total cost to the courts would be at least \$8,414.

An initial peak in workload is anticipated (greater than the scenario above of 327 petitions), for every person who has already been charged with a DWI but is still eligible to receive the limited driving privilege may file a petition upon the passage of the proposed legislation. AOC has no way to determine how many of these potential petitions might be filed.

---

<sup>1</sup> DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

There is a \$100 processing fee associated with this privilege that must be paid to the Clerk of Court upon issuance. The money collected from this fee goes to the General Court of Justice and are remitted to the General Fund. If, for instance, 80 percent of the defendants who petition are granted this privilege (262 individuals) and pay the fee upon issuance, the General Fund will receive \$26,200. Because this fee is paid at issuance and not at the time the petition is filed it is unlikely to reduce the number of petitions filed.

Section 5 of the bill creates a new Class 1 misdemeanor, Tampering with ignition interlock systems. Since this is a new offense, AOC is not able to estimate the number of charges that may arise. New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff; superior court personnel could be impacted due to appeals. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (three hours at \$75 per hour) per indigent defendant.

**SOURCES OF DATA:** Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Sarah Poteat Stone and John Poteat

**APPROVED BY:**

Lynn Muchmore, Director  
Fiscal Research Division

**DATE:** June 2, 2011



**Signed Copy Located in the NCGA Principal Clerk's Offices**