

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 241 (First Edition)
SHORT TITLE: Increase DWI Penalty/Child in Vehicle.
SPONSOR(S): Senators Allran, Purcell, and Atwater

Table with 5 columns: FISCAL IMPACT, Yes (X), No (), No Estimate Available (), and fiscal years (FY 2011-12 to FY 2015-16). Rows include EXPENDITURES (Correction, Probation, Judicial) and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

The proposed legislation amends G.S. 20-179(c) (determining existence of grossly aggravating factors in impaired driving hearing). The act makes a conforming change to remove the factor of driving with a child under 16 years of age in the vehicle from the list of grossly aggravating factors required for consideration that can elevate a DWI offense to Level One, and requires the judge to sentence a DWI offender at Level One if there was a child under the age of 16 in the vehicle. The act applies to offenses committed on or after December 1, 2011.

SOURCE: BILL DIGEST S.B. 241 (03/07/0201)

ASSUMPTIONS AND METHODOLOGY:

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.

However, the Sentencing and Policy Advisory Commission was unable to prepare prison population projections for the proposed legislation. DWI's are not punished under Structured Sentencing, so the Sentencing Commission does not have any DWI offender data. As a result, the Department of Correction Office of Research and Planning (DOC) was asked to estimate the fiscal impact of the proposed legislation.

Department of Correction- Division of Prisons

According to the Department of Correction Office of Research and Planning (DOC), there is no data in OPUS regarding the number of offenders who may move into the Level One punishment, regardless of the presence of other aggravating factors. In other words, the offender can either meet the current aggravating factor requirements, or "The judge must impose the Level One punishment under subsection (g) of this section if it is determined that the defendant had a child under the age of 16 years in the vehicle at the time of the offense." The documentation of grossly aggravating factors is not routinely included with the judgment order for inmates or probationers convicted of Level One or Level Two DWI. Also, there is no proxy DOC could use to estimate how many offenders would be elevated to Level One. Therefore, DOC was unable to determine the impact of the proposed legislation. There were 1,925 entries to prison in FY 2009-10 for Level One or Two DWI.

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.

In calendar year 2010, AOC data shows 3,939 defendants with a Level One punishment and 6,215 defendants with a Level Two punishment imposed. Assuming some of the defendants with Level Two punishments had as their single grossly aggravating factor the presence of a child under 16 in the vehicle, the effect of the proposed legislation would be to elevate some of the defendants with Level Two punishments to Level One punishments.

Elevation from Level Two to Level One carries the potential for an increase in punishment. In general, AOC expects that an increase in punishment will lead to a more vigorous defense, thus requiring more time on the part of court personnel. However, the district attorney is already

obligated to introduce all aggravating and grossly aggravating factors of which he is aware, and anecdotal evidence suggests that DWI charges are already defended vigorously. Therefore, AOC does not anticipate that this proposal will significantly impact court workload at the time of conviction.

However, because Level One DWI offenders may be required to pay a fine of up to \$4,000, rather than the \$2,000 maximum for Level Two offenders, it is possible that the violation rate for non-payment for some DWI probationers would increase, resulting in more court hearings on those violations. The number or impact of such hearings cannot be projected.

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Department of Correction; Judicial Branch

TECHNICAL CONSIDERATIONS: None

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