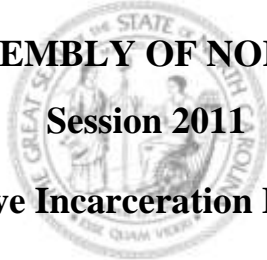


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 393 (First Edition)

SHORT TITLE: Felony Death by Vehicle/Penalty Increase.

SPONSOR(S): Senator Atwater

	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>
GENERAL FUND					
Correction					
Recurring	-	\$289,859	\$735,671	\$1,374,084	\$2,297,443
Nonrecurring	\$7,089,454	-	-	-	-
Judicial	\$38,226	\$69,782	\$74,313	\$78,079	\$81,249
TOTAL EXPENDITURES:	\$7,127,680	\$359,641	\$809,984	\$1,452,163	\$2,378,692
ADDITIONAL PRISON BEDS: (cumulative)*	-	9	23	45	71
POSITIONS: (cumulative)	-	4	10	20	31
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<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 makes aggravated felony death by vehicle a Class C felony and felony death by vehicle a Class D felony. The act becomes effective December 1, 2011, and applies to offenses committed 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.

Department of Correction – Division of Prisons

In FY 2009-10, there were 30 convictions for felony death by vehicle and one conviction for aggravated felony death by vehicle. The impact of increasing felony death by vehicle from a Class E to a Class D would be to (a) increase the length of a prison sentence, and (b) shift some offenders from the possibility of a probation sentence with an intermediate sanction to a mandatory active sentence. The impact of increasing Aggravated felony death by vehicle from a Class D to a Class C would be to increase the length of the prison sentence imposed upon conviction.

Table 1 provides the projected impact for the proposed reclassification of felony death by vehicle from Class E to Class D and for the proposed reclassification of aggravated felony death by vehicle from Class D to Class C.

Table 1

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS
Year 1	9
Year 2	23
Year 3	45
Year 4	71
Year 5	96
Year 6	105
Year 7	106
Year 8	109
Year 9	113
Year 10	115

Source: NC Sentencing and Policy Advisory Commission, FY 2009-10 Structured Sentencing Simulation Data

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2010.

Based on the most recent population projections and estimated bed capacity, there are no surplus prison beds available for the five-year fiscal note horizon or beyond. Therefore, the number of additional beds needed (row five) is always equal to the projected number of additional inmates resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of S.B. 393. As shown, the Sentencing Commission estimates that this specific legislation will add 71 inmates to the prison system by the end of FY 2015-16.

	June 30 2012	June 30 2013	June 30 2014	June 30 2015	June 30 2016
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	41,987	42,013	42,267	42,562	42,898
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	41,168	41,924	41,924	41,924	41,924
3. Projected No. of Beds Over/Under Inmate Population	(819)	(89)	(343)	(638)	(974)
4. Projected No. of Additional Inmates Due to this Bill³	<i>N/A</i>	9	23	45	71
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	<i>N/A</i>	9	23	45	71

POSITIONS: It is anticipated that by FY 2015-16, approximately 31 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.3 inmates (71 additional beds divided by 2.3 inmates equals 31 positions).

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2015-16. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to S.B. 393; and, the estimated number of new beds required each year through FY 2019-20.

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in January 2011.

³ Criminal penalty bills effective December 1, 2011, should not affect prison population and bed needs until FY 2012-13 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

	June 30 2017	June 30 2018	June 30 2019	June 30 2020
1. Available Beds (Over/Under) Under Current Structured Sentencing	(1,296)	(1,740)	(2,284)	(2,916)
2. <i>Projected No. of Additional Inmates Resulting From S.B. 393</i>	96	105	106	109
3. <i>Estimated No. of New Beds Required Under S. B. 393</i>	96	105	106	109

DISTRIBUTION OF BEDS: After analyzing S.B. 393, the Department of Correction estimates the following distribution of needed beds, by custody level in Table 2:⁴

Table 2

Year	Minimum	Medium	Close	Total Beds
1	-1	4	6	9
2	0	11	12	23
3	3	22	18	43
4	8	36	27	71
5	12	50	35	97
6	13	54	38	105
7	14	55	38	107
8	14	56	39	109
9	15	59	40	114
10	14	59	40	113

*There may be a slight difference between the Sentencing Commission’s published total population numbers and those in this report, due to rounding.

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2010-11) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

Estimated Construction Cost per Custody Level, FY 2010-11

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost EOC Per Bed	\$72,200	\$78,100	\$132,100

Construction costs are shown as non-recurring costs in the Fiscal Impact table (p.1). An annual inflation rate is applied to these costs. The inflation rate applied depends on the timeframe required for planning and construction. The inflation rate is applied until the midpoint of project

⁴ Custody level is determined by a multi-factor assessment, including but not limited to: offense severity and history, institutional behavior (i.e. violence, rule disobedience), sentence length and portion served, job performance, and age. Infrastructure, personnel, and equipment needs are positively correlated with security levels and inmate risk assessments.

construction. A facility should be budgeted four years in advance, since building a prison typically requires four years for site selection planning, design, construction, and occupancy. The midpoint figure used should be thirty months (one year of planning and one to three years of construction). The annual inflation rate should be 1.92%.

Accordingly, given an increase of 71 inmates, bed provision through construction could cost approximately \$7 million by 2015-16. Table 3 provides the estimated construction costs to implement the proposed legislation.

Table 3

Year	Inflation	Minimum		Medium		Close		Total	
		Beds	Costs	Beds	Costs	Beds	Costs	Beds	Costs
FY 2015-16	1.92%	8	\$588,690	36	\$2,865,583	27	\$3,635,181	71	\$7,089,454

OPERATING: Operating costs are based on actual FY 2009-10 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. Table 4 provides the operating cost per day and per year to implement the proposed legislation. Table 5 provides the operating cost per year times the number of estimated beds. Fiscal Research applies an estimated inflation rate to these base costs, as shown in the recurring costs estimate in the Fiscal Impact table (p.1).⁵

Daily Inmate Operating Cost per Custody Level, FY 2009-10

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$64.59	\$76.22	\$88.39	\$74.34

Table 4

Year	Inflation	Minimum		Medium		Close	
		Per Day	Per Year	Per Day	Per Year	Per Day	Per Year
FY 2012-13	3.05%	\$66.56	\$24,294	\$78.54	\$28,669	\$91.09	\$33,246
FY 2013-14	2.99%	\$68.55	\$25,021	\$80.89	\$29,526	\$93.81	\$34,240
FY 2014-15	2.47%	\$70.24	\$25,639	\$82.89	\$30,255	\$96.13	\$35,086
FY 2015-16	2.49%	\$71.99	\$26,277	\$84.96	\$31,009	\$98.52	\$35,960

⁵ Estimates based on consumer price index projections provided by Moody's economy.com (January 2011)

Table 5

Year	Minimum		Medium		Close		Total	
	Beds	Costs	Beds	Costs	Beds	Costs	Beds	Costs
FY 2012-13	-1	-\$24,294	4	\$114,675	6	\$199,478	9	\$289,859
FY 2013-14	0	\$0	11	\$324,786	12	\$410,880	23	\$735,671
FY 2014-15	3	\$76,916	22	\$665,610	18	\$631,548	43	\$1,374,084
FY 2015-16	8	\$210,216	36	\$1,116,324	27	\$970,920	71	\$2,297,443

Department of Correction – Division of Community Corrections

A period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies. Aggravated felony death by vehicle and felony death by vehicle offenders are currently in Classes D and E; as such, they already receive Post-Release Supervision. In Classes C and D, the period of supervision would be the same, and the period of revocation would be the same.

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 show 85 defendants charged with the Class E felony of felony death by vehicle and seven defendants charged with the Class D felony of aggravated felony death by vehicle.

In general, AOC anticipates a more vigorous defense associated with the higher felony offense class, and a higher percentage of cases disposed by trial. Thus, there would be additional workload for superior court judges, court reporters, deputy clerks, assistant district attorneys, and victim witness legal assistants.

The monetary value of the time of court personnel, plus the increase in jury fees is provided in Table 6:

Table 6

	FY 2011-12 (Eff. Dec. 1)	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Defendants	54	92	92	92	92
Court Personnel	\$27,695	\$52,192	\$56,723	\$60,489	\$63,659
Jury Fees	\$1,353	\$2,320	\$2,320	\$2,320	\$2,320
Indigent Defense	\$8,908	\$15,270	\$15,270	\$15,270	\$15,270
Inflation	0.00%	8.87%	8.68%	6.64%	5.24%
Total	\$37,956	\$69,782	\$74,313	\$78,079	\$81,249

*Court personnel were inflated based on the fiscal note inflation rate estimates for salaries and wages. The jury fees and indigent defense costs were not inflated, as these amounts are set in the General Statutes.

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; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

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