

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 766 (First Edition)

**SHORT TITLE:** DWI for Controlled Substances.

**SPONSOR(S):** Representative Jackson

**FISCAL IMPACT SUMMARY:**

<b>FISCAL IMPACT</b>					
(\$ in millions)					
	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> No Estimate Available		
	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**  
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

**EFFECTIVE DATE** December 1, 2017

**TECHNICAL CONSIDERATIONS:**  
None

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated, and having penalties applied to those convicted of the new offense. However, given that there is no historical data on this new offense or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$357-\$1,137 per disposition
- Indigent Defense Services: \$202-\$569 per disposition
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: Minimum of \$740-\$4,736 per supervised probation sentence

Please see the Assumptions and Methodology section for additional information.

**BILL SUMMARY:**

House Bill 766 expands the scope of two misdemeanor offenses, impaired driving and impaired driving in a commercial vehicle, by adding to the list of substances a person may not have in their system. In addition, it adds a felony offense for Habitual impact driving.

## **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), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses.

JRA also created the Statewide Misdemeanor 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 and Driving While Impaired (DWI) offenders. 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 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 does not have data on the number of suspected DWI stops that could be affected by these proposed changes, the number of additional charges cannot be determined. AOC reports that DWIs cost \$357 per case on average.

Section 3 of the bill creates a new Class F felony offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class F felony, the average cost to the court would be \$1,137.

The Office of Indigent Defense Services (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. In FY 2011-12, the most recent year data is available, 74% of Class F felony cases were handled through IDS. The weighted average cost of a new Class F felony is \$569 per case for a private appointed counsel (PAC) attorney. 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.

**Department of Public Safety – Prisons**

Since the 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. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. DWI offenders who receive active sentences serve their sentences in county jails as part of the Statewide Misdemeanant Confinement Program, so there will not be an impact on the State prison system. The Sentencing Commission provided the following table to show the average minimum sentences imposed for DWI offenders.

**Table 2: Average Minimum Sentence Imposed for DWI Convictions by Punishment Level**

Punishment Level	Statutory Minimum	Average Minimum Sentence Imposed		Statutory Maximum
		Active Sentence	Suspended Sentence	
Aggravated Level 1	12 months	22 months	28 months	36 months
Level 1	30 days	14 months	20 months	24 months
Level 2	7 days	6 months	11 months	12 months
Level 3	72 hours	3 months	5 months	6 months
Level 4	48 hours	2 months	3 months	120 days
Level 5	24 hours	1 month	2 months	60 days
Total		8 months	5 months	

Note: There were 38 DWI convictions with missing sentence information.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2015 Impaired Driving Data

For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2015-16, 50% of Class F felony convictions resulted in active sentences, with an average estimated time served of 17 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	2	2	2	2
20	10	18	19	19	19

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender

receiving an active sentence, the cost to the prison section will be \$7,769 (\$457 monthly cost times 17 months).

### **Department of Public Safety – Community Corrections**

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes F through I 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 \$148 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.

In FY 2015-16, the average DWI length of probation imposed for this offense class was 5 months. The cost of five months of supervision is \$740 per offender (\$148 per month times five months). In FY 2015-16, 50% of Class F felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 32 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).<sup>1</sup> For every offender sentenced to probation, the average cost would be \$4,736 (\$148 per month times 32 months).

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

**TECHNICAL CONSIDERATIONS:** None

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<sup>1</sup> Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

Fiscal Research Division

**DATE:** May 10, 2017



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