

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 507 (Committee Substitute April 23, 1997)

SHORT TITLE: Mandatory Jail – Some DWI

SPONSOR(S): Rep R Hunter

FISCAL IMPACT

Yes () No () **No Estimate Available (X)**

(in millions)

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

GENERAL FUND

Correction

Recurring

Nonrecurring

No Fiscal Estimate

Judicial

Recurring

Nonrecurring

No Estimate Available

**Crime Control &
Public Safety**

No Fiscal Impact

TOTAL EXPENDITURES No Estimate Available(Judicial Branch Only)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch, Crime Control and Public Safety Division of Victims and Justice Services, County Jails

EFFECTIVE DATE: Applies to offenses committed on or after Jan. 1, 1998.

BILL SUMMARY: H 507. MANDATORY JAIL FOR SOME D.W.I. TO REQUIRE MANDATORY ACTIVE JAIL SENTENCES FOR PERSONS CONVICTED OF DRIVING WHILE IMPAIRED WITH BLOOD ALCOHOL LEVELS OF MORE THAN FIFTEENTH HUNDREDTHS PERCENT. Amends GS 20-179 as title indicates. Requires person convicted of D.W.I with alcohol concentration of 0.16 be sentenced to two days in jail; and that two additional days be required for each additional alcohol concentration of 0.01. For defendants punished at levels three, four, or five, permits sentencing judge to order 8 hours of community service in lieu of each day of mandatory jail. Judge may suspend mandatory jail time only if condition of special probation is imposed to require defendant to serve a term of imprisonment equal to the number of mandatory days required by bill. Directs that mandatory D.W.I. sentence must be served in county jail unless defendant is sentenced to an active sentence in prison and mandatory days are served concurrently with prison sentence.

Amends GS 15A-534.2 to require a defendant charged with impaired driving offense under GS 20-138.1, 20-138.2, or 20-138.3, with evidence of alcohol concentration above 0.15, to post secured appearance bond of at least \$500.

The Proposed Committee Substitute would amend the bill to specify 8 rather than 24 hours of community service in lieu of each day of mandatory jail.

ASSUMPTIONS AND METHODOLOGY: The North Carolina Sentencing and Policy Advisory Commission analyzed the impact of this bill on the state prison population, the county jail population and the community service work program. They based their analysis on (1) 1993 data on the number of DWI arrests (16,752) where blood alcohol levels were at least .16; (2) Data from the Administrative Office of the Courts on the percentage of arrests that end up in convictions (.948); (4) data from AOC on the percentage of DWI convictions that fall in the different punishment levels; (5) a calculation of the number of days incarcerated based on the bill's formula of 2 days per percentage point over .16 ; (6) historical data on the percentage of sentences that are active sentences (5.5% at lower punishment levels); and (7) the percentage of lower punishment level sentences that are served in county (86.8%) rather than state jails.

The Sentencing Commission analysis assumes

15,880 Convictions
44,445 Additional Days of Sentence for Punishment
Levels I and II – 13.2% in State Prison
86.8% in County Jails
98,006 Additional Days of Sentence for Punishment
Levels III-V - 5.5% Active Sentences in Jail
94.5% Community Service

That results in

5,867 State Prison Inmate Days
43,968 County Jail Inmate Days
92,616 Community Service 8 hour units

The analysis is based on 1993 data collected by the Division of Motor Vehicles on blood alcohol levels (BAC) for individuals arrested for DWI. Unfortunately, DMV no longer collects this information. However, the data collected 1991-3 showed a declining percentage of arrests with very high BAC levels. The use of 1993 data may represent a maximum estimate of the impact of the bill.

I. Department of Correction

The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

	<u>June 30</u> <u>1998</u>	<u>June 30</u> <u>1999</u>	<u>June 30</u> <u>2000</u>	<u>June 30</u> <u>2001</u>	<u>June 30</u> <u>2002</u>
Projected No. of Inmates Under Current Structured Sentencing Act ¹	31,762	30,371	30,060	30,610	31,259
Projected No. of Prison Beds (DOC Expanded Capacity) ²	34,133	35,599	35,599	35,599	35,599
No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+2,371	+5,228	+5,539	+4,989	+4,430
No. of Projected Additional Inmates Due to this Bill	4	16	16	16	16
No. of Additional Beds Need Due to this Bill	0	0	0	0	0

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 16 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02, based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);
2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;
3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,
4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

¹ The Sentencing Commission's revised prison population projections (dated December 1996) were estimated under three scenarios: High, Best, and Low. The differences in these scenarios reflect varying assumptions on incarceration rates under Structured Sentencing, probation and revocation rates, and the decline of the stock population. The projections outlined above are included in the "Best scenario" since the Sentencing Commission and the Department of Correction believe this scenario is most likely to occur.

² Projected number of prison beds based on Department of Correction estimates of expanded bed capacity as of 1/11/97. These numbers do not include the number of beds requested in the Governor's 1997-99 Capital Improvement budget.

Note: The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

II. Community Service Work Program

The Judicial Branch assumes, based on historical data, that the bill would result in 98,006 additional days of punishment for offenders at punishment levels three, four and five. The bill allows a judge to order community service in lieu of active time at the rate of **8** hours of service per day of sentence. Assuming, based on historical data, that 94.5% of sentences will order community service rather than active time, there would be an increase in the number of community service hours ordered of 740,928 hours, about a 32% increase in the size of the Community Service Work Program in terms of hours (2.3 million hours were performed in 1995-6) . There would be a less dramatic impact on the number of offenders since most level III-V offenders are already sentenced to lower amounts of community service. **The Community Service Work Program believes they could absorb this kind of increase within existing resources.**

III. The Judicial Branch is unable to estimate the potential fiscal impact of the bill. Because the language in HB 507 will increase the penalty and the risk of active sentence for some persons convicted of impaired driving, it may result in a more vigorous defense in some cases. It is very speculative to identify the cases that might be affected and the extent to which costs might increase. However, the primary impact should be on those who may receive Level Three, Four, or Five punishments since defendants receiving Level One or Two punishment are already subject to mandatory jail time. In 1996, there were 31,171 DWI convictions at punishment levels Three, Four or Five, 71% of all DWI convictions.

For persons who may receive Level Three, Four or Five punishment, the bill's requirements for mandatory active jail sentences could affect the nature and complexity of the case. Present law, under G.S. 20-179(i), (j), and (k), requires the judge to suspend the mandatory minimum terms of imprisonment, although the judge may include imprisonment as a condition of special probation. Thus, the mandatory jail requirement of this bill, for defendants with an alcohol concentration of 0.16 or more, increases the risk of an active sentence, therefore potentially altering defense strategies. However, the fact that the bill includes a provision permitting the imposition of community service in lieu of each mandated day in jail would probably tend to ameliorate the perceived risk of more active time.

Although AOC data indicates the number of DWI convictions for the various DWI levels, it does *not* indicate the level of alcohol concentration. This prevents an estimate of the number of defendants punished under Levels Three, Four, or Five who had alcohol concentrations of 0.16 or more. (an estimated 18.5% of all DWI offenders have levels of at least .16 but it may be a lower percentage at the lower punishment levels. If the 18.5% figure is used, noting its shortcomings, an estimated 5,767 offenders would be facing active sentences) Even if this figure was known, it would not be possible to predict how many of these defendants might opt to go to trial who would not do so under current law. For those additional defendants who would opt to go to trial, additional costs could include costs due to an increase in court days (affecting judges and clerks), and an increase in indigent defense costs. Any additional appeals to superior court would also involve additional costs. No substantial impact is predicted from that portion of the bill requiring a defendant charged with impaired driving under G.S. 20-138.1, 20-138.2, or 20-138.3, with evidence of alcohol concentration in excess of 0.15, to post a \$500 or more bond.

IV. Impact on County Jails

The Sentencing Commission Analysis projects an additional 43,968 annual inmate days in county jails from this bill. A recent survey of 69 of the state's 115 county jails found an average inmate cost of \$40 per day with a range from \$6 to \$236. Based on that average, this bill would cost counties \$1.759 Million. *This assumes the sentence is less than 30 days and this assumption is reflected in the Sentencing Commission projections. If the sentence is between 30 and 90 days, the \$40 per inmate day cost would fall on the Department of Correction.*

If Judges order a higher percentage of active sentences, the impact on the Community Service Work Program would fall and the impact on County Jails would rise. This analysis assumes a low rate of active sentences, based on historical data.

SOURCES OF DATA: Department of Correction, Judicial Branch; North Carolina Sentencing and Policy Advisory Commission, Department of Motor Vehicles.

FISCAL RESEARCH DIVISION

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