

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 349 (1st Edition)

SHORT TITLE: Habitual Impaired Driving

SPONSOR(S): Shaw of Guilford

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	(in millions)				
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
GENERAL FUND					
Correction					
Recurring	<u>No Fiscal Impact</u> (until 2004-5)				
Nonrecurring					
Judicial					
Recurring	\$420,920	\$631,348	\$631,348	\$631,348	\$631,348
TOTAL EXPENDITURES	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	\$420,920	\$631,348	\$631,348	\$631,348	\$631,348
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch					
EFFECTIVE DATE: Applies to offenses committed on or after Oct. 1, 1997.					

BILL SUMMARY: TO REQUIRE THAT A PERSON CONVICTED OF HABITUAL IMPAIRED DRIVING MUST BE SENTENCED TO PRISON AND MUST SERVE THE ENTIRE TIME OF IMPRISONMENT. Amends GS 15A-1340.10 to remove the offense of habitual impaired driving from the provisions of the Structured Sentencing Act. Amends GS 20-138.5 to **S 349..** provide that person convicted of habitual impaired driving shall be punished as class G felon and as follows: (1) for first conviction, sentence of not less than 60 months nor not more than 84 months; (2) for second conviction, sentence of not less than 120 months nor not more than 180 months; (3) for third conviction, sentence of not less than life imprisonment. Provides that court must impose single term of imprisonment that shall be both minimum and maximum sentence, and court may not suspend sentence or place person on probation. Sentence may not be reduced by credit for good behavior, gain and earned time, etc., except for time served under GS 15-196.1. Person serving sentence is not eligible for parole.¹

¹ Daily Bulletin, Institute of Government, UNC-Chapel Hill, 1997

ASSUMPTIONS AND METHODOLOGY:

1) Description of the Bill

The chart below shows the difference between sentences (in months) for habitual impaired driving under current law and those imposed by this bill:

Prior Record Level	Current Law		SB 349	
	Avg Minimum	Avg Maximum	Level	Range
I	11.5	13.8	1 st offense	60-84
II	13.1	15.9	2 nd offense	120-180
III	14.3	17.6	3 rd offense	Life
IV	17.5	21.4		
V	20.0	25.5		
VI	24.3	29.6		

Under current law, some offenders receive intermediate punishments instead of active sentences. For 1995-6, 41% of defendants at prior record levels I and II received intermediate punishments. About 25% of record level III and 17% at level IV received intermediate punishments while those at higher record levels always receive active sentences. Intermediate punishments would not be allowed for habitual impaired driving under SB 349.

2) 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 ²	31,762	30,371	30,060	30,610	31,259
Projected No. of Prison Beds (DOC Expanded Capacity) ³	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	12	49	388	780	1,196
No. of Additional Beds Need Each Fiscal Year 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 1,196 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,

² 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.

³ 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.

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.

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.

Note: While fiscal notes focus on the impact over 5 years, the Sentencing Commission projects available beds and the impact of new bills over a longer time period. The chart below shows the projected inmate impact of SB 349 compared to the projected available beds. Starting in 2004-5, this bill would generate inmates beyond the capacity of the prison system, based on current projections.

Fiscal Year Ending	2003	2004	2005	2006	2007	2008
Additional Inmates	1620	2049	2259	2397	2536	2665
Projected Beds Available	3548	2752	1858	969	na	na

3)Judicial Branch (AOC)

According to AOC data, 83% of the 640 habitual impaired driving cases disposed of in 1995-6 did *not* go to trial. Since most habitual impaired driving defendants now choose *not* to go to trial and since all receive much lighter sentences than they would under this bill, it seems that there is a large pool of defendants who could potentially change their defense strategy and request more trials. It seems likely that most, if not all, defendants who would be subject to a sentence of life imprisonment would choose to go to trial under the provisions of this bill and that a large proportion of those subject to five or ten years prison terms would also go to trial. It is assumed that defendants who under current law have pled guilty as charged will be most likely to change their defense strategy.

There were 497 defendants who pled guilty as charged for habitual impaired driving in 1995-6.

Based on calendar year 1995 data on the prior record levels of those sentenced for habitual impaired driving, the AOC projects that :

- 30.8% of defendants will be subject to 5-7 year sentences --- or about 153 (=30.8% of 497)
- 47.6% of defendants will be subject to 10-15 years 237
- 21.6% of defendants will be subject to life in prison 107

They further assume that 90% of the 107 facing life sentences will go to trial : 96 new trials (=9*107)

- 75% of the 237 facing 10-15 years 178 new trials (=.75*237)
- 50% of the 153 facing 5-7 years 77 new trials

These assumptions lead to a projection of 351 new Superior Court trials for habitual impaired driving. Each trial is assumed to take 1 day (although trials for life sentences may take longer) at a cost of \$1548. This dollar figure approximates the cost of the judge, assistant district attorney and clerk involved in the trial. This yields an annual cost of \$543,348 (=351*1548). Since the bill is effective October 1, 1997, the earliest trials would be in November so costs for 1997-8 are based on 8 months. Specifically, the 1997-8 costs for Superior Court time are \$362,250. While the Judicial Branch does not actually pay out these costs for every new trial, these dollar figures are a way to quantify the increase in workload due to this bill. Eventually, the increase in workload will necessitate increased staffing in the Judicial system.

There are additional costs due to the need for indigent defense. Assuming half the trials would involve indigents and 10 hours legal time per case at \$50 hours, this annual 12 month cost would be \$88,000 and the cost for 1997-8 is \$58,670. This brings the total estimated annual cost to \$631,348 (=88,000+543,348) and the 1997-8 cost to \$420,920 (=58,670+362,250).

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION

733-4910

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