

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 61 (Fourth Edition)

SHORT TITLE: Felony Death by Vehicle/Sex Offender Amend.

SPONSOR(S): Senator Scott Thomas

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND EXPENDITURES:					
Correction	-	\$123,702	\$586,100	\$761,165	\$838,069
Judicial – Sec. 1	\$2,011	\$3,621	\$3,802	\$3,992	\$4,192
– Sec. 2-5		Amount cannot be determined			
-- Sec. 6					
(already appropriated in SB 622)	\$381,973	\$670,905	\$691,032	\$711,763	\$733,116
TOTAL EXPENDITURES:	\$383,984	\$674,650	\$1,280,934	\$1,476,920	\$1,575,377
ADDITIONAL PRISON BEDS*	-	5	23	29	31
POSITIONS: (cumulative)	8	11	18	21	21
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Commerce.					
EFFECTIVE DATE: Section 1 is effective December 1, 2005. Remainder is effective October 1, 2005.					
<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: Section 1 would amend G.S. 20-141.4 to raise the offense class of Felony Death by Vehicle from felony Class G to Class E. This offense requires that the offender be engaged in the offense of Driving While Impaired.

Sections 2 through 5 allow the victim of a sexually violent crime to take out a temporary or permanent civil no-contact order against the offender convicted of that crime if that offender (1) is a registered sex offender and (2) lives or works within a quarter of a mile of the victim.

Section 6 creates two new District Court Judgeships, five new Assistant District Attorney positions, and two new Deputy Clerk of Court positions. The funds for these positions are appropriated from the DWI Reserve established in the 2005 Appropriations Act.

Section 7 changes counties eligible for Tier 1 designation under the Bill Lee Act for the fourth quarter of calendar year 2005. Under the Lee Act, the counties are divided into five “enterprise tiers” based on economic factors including the unemployment rate. Under HB 1004 enacted this session, any of the 10 counties with the highest unemployment rates for the preceding 12 months is automatically put in Tier 1 (most distressed counties), regardless of the designation using the existing ranking system. This change is effective for the next designation (made in December 2005 for the 2006 calendar year). The language in Section 7 indicates that for the tier rankings for the last quarter of the 2005 calendar year, the 10 county determinations is based on county unemployment rates for November 2003-October 2004 using unemployment data available in December 2004.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction – Division of Prisons

This bill could increase the number of prison beds needed by two means: 1) raising the offense class of Felony Death by Vehicle from Class G to Class E; and 2) inducing prosecutors to seek convictions for Felony Death by Vehicle in cases in which they presently seek a conviction for Involuntary Manslaughter (a Class F felony).

1) Felony Death by Vehicle

This bill would increase the penalty for Felony Death by Vehicle from Class G to Class E, resulting in an increase in both sentence length and activation rate. In FY 2003-04, 44 percent of Class G felons received an active sentence, compared to 49 percent of Class E felons. Also in FY 2003-04, there were 35 convictions for Felony Death by Vehicle. The Sentencing Commission projects that raising the offense classification to Class E would increase the number of prison beds needed each year, resulting in the need for 31 new beds by FY 2009-10.

2) Change in Prosecutorial Behavior

The bill would raise Felony Death by Vehicle to an offense class above Involuntary Manslaughter (G.S. 14-18), a Class F felony. It is possible that, as a result of this bill, some convictions for

Involuntary Manslaughter would instead be for Felony Death by Vehicle, increasing sentence length and ensuring an active sentence. In FY 2003-04, there were 83 convictions for Involuntary Manslaughter. There is no data on the number of these convictions that involved the commission of a Driving While Impaired offense. As such, the Sentencing Commission cannot project the number of offenders that might be convicted of Felony Death by Vehicle if it were classified above Involuntary Manslaughter.

The chart on the next page compares the projected inmate population to available prison bed capacity system-wide and shows any population increases caused by a specific bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.* That means the number of beds needed (row five) is always equal to the projected additional inmates due to a bill (row four).

Rows four and five in the chart show the impact of the increased penalty for Felony Death by Vehicle proposed by this bill. As shown in bold, the Sentencing Commission estimates that this specific legislation will add 31 inmates to the prison system by the end of FY 2009-10.

	<u>June 30</u> <u>2006</u>	<u>June 30</u> <u>2007</u>	<u>June 30</u> <u>2008</u>	<u>June 30</u> <u>2009</u>	<u>June 30</u> <u>2010</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	38,106	39,021	39,864	40,750	41,668
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	37,015	37,911	38,807	38,807	38,807
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,091	-1,110	-1,057	1,943	-2,861
4. No. of Projected Additional Inmates <u>Due to this Bill</u>³	-	5	13	29	31
5. No. of Additional Beds Needed Each Fiscal Year <u>Due to this Bill</u> ³	-	5	13	29	31

POSITIONS: It is anticipated that 12 positions would be needed to supervise the additional inmates housed under this bill by 2009-10. This position total includes security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

² Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 2004. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

³ Criminal penalty bills effective December 1, 2005 will not affect prison population and bed needs until FY 2006-07 due to the lag time between when an offense is committed and an offender is sentenced.

combined average of the last five prisons opened by DOC and two prisons under construction. Two of the prisons were medium custody and five were close custody.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes look at the impact of a bill through FY 2010. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
Inmates Due to This Bill*	32	33	34	35
Available Beds (over/under)	-3,787	-4,692	-5,574	-6,505
New Beds Needed	-3,921	-4,847	-5,737	-6,674

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2004-05 costs for each custody level as provided by the Office of State Construction and the Department of Correction. An inflation rate of five percent per year is applied to future years. *The costs assume stand-alone facilities; single cells for close custody and dormitories for medium and minimum.* This bill is projected to add less than 40 beds to the prison system. Therefore, construction costs are not included in the front page box.

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2004-05	\$45,500	\$73,500	\$98,500

OPERATING: Operating costs are based on actual 2003-04 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. A three percent annual inflation rate will be added each year to the base costs for FY 2003-04 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

Daily Inmate Operating Cost 2003-04

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (2003-04)	\$49.34	\$65.59	\$82.46	\$62.03

Department of Correction – Division of Community Corrections (DCC)

In FY 2003-04, a greater percentage of Class G felons (56 percent) received intermediate sanctions, compared to Class E felons (51 percent). If fewer offenders receive intermediate sanctions due to this bill, there will be short-term cost savings to DCC. However, in the long term DCC would incur the cost of post-release supervision for the Class E felons receiving active sentences for Felony Death by Vehicle. Under the current Class G offense, these offenders would not require post-release supervision.

Judicial Branch

For most criminal penalty bills, AOC provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 1: Felony Death by Vehicle

AOC estimates that it would cost the courts an additional \$3,448 to process charges for Felony Death by Vehicle if it were reclassified as a Class E offense. According to AOC data, in calendar year 2004 a total of 65 defendants were charged with Felony Death by Vehicle. Of these charges, AOC estimates that four percent were settled by jury trial, sixty percent by guilty plea, and the remaining charges were dismissed. Based on the costs of jury fees, attorney preparation, and court time, AOC estimates the cost to dispose of these cases as Class G felonies at \$20,463. The cost of indigent defense, based on an estimated indigency rate of 39 percent, would total an additional \$3,414.

Using overall disposition rates for Class E felony cases in 2004, AOC estimates that, if 65 defendants were charged as Class E felons for Felony Death by Vehicle, five percent would be disposed of by jury trial, 43 percent by plea, and the remaining charges would be dismissed. The cost to process these cases, based on the costs of jury fees, attorney preparation, and time in court, would be \$22,814. At an estimated indigency rate of 39 percent, costs of indigent defense would total an additional \$4,511. The increase in cost to process Felony Death by Vehicle as a Class E offense reflects presumed increases in trial rates, trial length, attorney preparation time, and time to handle pleas. This figure does not include the cost of processing dismissals, any additional appeals that could result from the punishment enhancement, nor any increase in prosecution for violent habitual felony. The figures in the box on the front page reflect the difference in total cost (\$3,448), inflated at a rate of five percent annually, and adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective.

Sections 2 – 5: Civil No-Contact Orders

These sections would add an additional basis for a person to seek and the court to enter a civil no-contact order under G.S. Chapter 50C. Most victims to whom these conditions would apply are able to seek a no-contact order against the individual who victimized them under existing law. The Administrative Office of the Courts cannot project the number of additional victims who would seek orders due to the new criteria. To the extent that additional 50C orders would be sought, there would be additional work for the district courts to consider the complaints, in

subsequent hearings to consider requests for extended permanent orders, and in contempt hearings relating to alleged violations of the orders.

Section 6: Judicial Positions

This section establishes new judgeships in Durham County (effective December 1, 2005) and Orange/Chatham (effective December 1, 2006; five Assistant District Attorney positions in the following counties – Durham, Alamance, Caswell/Person, Stokes/Surry; and two deputy clerk positions in Durham and Orange Counties. The funds are already appropriated in SB 622, the 2005 Appropriations Act; this section earmarks dollars in a reserve fund into specific positions.

Section 7. Bill Lee Act changes

The practical effect of this provision is to allow companies locating in 5 counties to receive enhanced credits for investing in machinery and equipment, creating jobs, and providing worker training. A review of “announcements” data (investment, jobs) provided by the Department of Commerce for a couple of recent years indicates that the share of new activity from the 5 counties amounts to only 3% for capital investment and 5% for jobs and investment. A second consideration is that the change is effective only for the fourth quarter of the 2005 calendar year. Finally, four of the five affected counties are already receiving enhanced jobs tax credits and investment tax credit because they are located in Tier 2 (second most distressed counties) and one county is a Tier 3. Thus, the impact of this change is minimal.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Office of State Construction; Department of Justice, Department of Commerce and Employment Security Commission.

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices