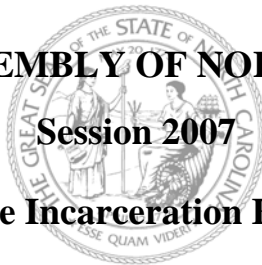


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 944 (First Edition)
SHORT TITLE: Change Penalty for Hit and Run Violations.
SPONSOR(S): Senator Dalton

		FISCAL IMPACT				
		Yes (X)	No ()	No Estimate Available ()		
		<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND						
Correction: Prisons	Assumes minimum prison capital and operating costs if 15% of FY 2005-06 Class H convictions increased to Class F. See pp. 2-3.					
Recurring*	-	\$ 84,751	\$ 145,489	\$ 149,854	154,349	
Capital*	\$ 340,200	-	-	-	-	
<i>*Assumes prison bed construction within a stand-alone facility (p. 3). Prison population (bed) impact and minimum capital and operating costs cannot be projected beyond initial two-year window (pp. 2-3).</i>						
Correction: DCC	Amount cannot be determined.					
Judicial	Assumes 15% of FY 2005-06 Class H charges. See p. 4.					
Recurring	\$ 28,506	\$ 51,340	\$ 53,908	\$ 56,603	\$ 59,433	
Nonrecurring	-	-	-	-	-	
TOTAL EXPENDITURES:	Exact amount cannot be determined. Based on 15% scenario, total costs could approach \$368,706 for FY 2007-08; \$136,091 for FY 08-09; and \$199,397 for FY 09-10.					
ADDITIONAL PRISON BEDS: (cumulative)*	-	3	5	-	-	
POSITIONS: (cumulative)	-	-	2	-	-	
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.						
EFFECTIVE DATE: October 1, 2007.						
<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: Current G.S. 20-166 prohibits the driver of a vehicle, who knows or reasonably should know that his or her vehicle has been involved in an “accident or collision” *and* that the accident has resulted in *injury or death* to any person, from willfully leaving the scene before a law enforcement officer so authorizes, or before an investigation is completed. The driver is also prohibited from removing or facilitating/attempting to remove the involved vehicle from the scene, prior to completion of the investigation. A driver is permitted to temporarily leave the scene to secure emergency assistance and/or to promote his personal and others’ safety; however, he must return the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by law enforcement. *Willful violation of current G.S. 20-166 is a Class H felony offense.*

S.B. 944 rewrites G.S. 20-166(a) to create the enhanced Class F felony offense of fleeing/failing to remain at the scene of a “crash” that results in death or “serious bodily injury” to any person, as defined by G.S. 14-32.4. The bill also adds new subsection (a1) to clarify that the offense of fleeing/failing to remain at the scene of a “crash” that results in only “injury” remains a Class H felony. S.B. 944 makes other technical and conforming changes to the statute. The bill becomes effective October 1, 2007, and applies to offenses committed on or after that date.

Source: Adapted from Bill Digest S.B. 944 (03/19/0200)

ASSUMPTIONS AND METHODOLOGY:

General

Assuming that additional violations of G.S. 20-166 were to fit the criteria of this enhanced offense, any resultant charge and/or conviction would generate some additional fiscal impact. However, present data does not distinguish the number of offenses involving “serious bodily injury” (G.S. 14-32.4(a)); therefore, there is no reliable basis from which to project the number of charges and/or convictions that would become subject to this enhancement. Nevertheless, the relatively high prior year charge and conviction frequencies for felony (current Class H offense) violation of G.S. 20-166 suggest that the potential fiscal impact of this proposal could be significant.

Department of Correction – Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.*¹ Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Fiscal Research expects the proposed penalty enhancement to increase both the rate of active sentencing (incarceration) and length of incarceration for affected convictions – those meeting the “serious bodily injury” criterion.² Combined, these two effects will increase the need for additional prison beds. In FY 2005-06, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months; *conversely, 47% of Class F felony convictions resulted in active sentences, with an average estimated time served of 20 months.*

¹ The Sentencing and Policy Advisory Commission analyzes each bill that proposes or alters a criminal penalty, and assess its impact on the projected prison population (SPAC prepares these projections annually). The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

² Because the current penalty levels are maintained for other offenses within G.S. 20-166, no other change in sentencing practices is assumed (e.g. for offenses resulting in “injury” only).

Though the number of future convictions for the enhanced offense is unknown, prior year conviction data provides some indication of potential impact. In FY 2005-06, there were 87 Class H felony convictions for violation G.S. 20-166(a). From this total, the Sentencing and Policy Advisory Commission was asked to estimate bed needs based on several scenarios (Table 1).³ Each scenario assumes that a certain percentage of the FY 2005-06 Class H convictions would become Class F convictions under this proposal. These estimates demonstrate only two-year impacts, and assume FY 2005-06 sentencing and revocation patterns for Classes F and H felonies. Actual convictions, active sentencing rates, and revocation rates could exceed or fall short of these assumptions.

<i>Projected Convictions</i>		<i>Prison Beds Required</i>	
Scenarios	Convictions	FY 08/09	FY 09/10
10%	9	2	4
15%	13	3	5
20%	18	3	7

As shown, if 15% (13) of the 87 Class H felony convictions moved to Class F, *three additional prison beds would be required in the first applicable year; five additional beds by the second; and two additional positions by the second year.*⁴ Assuming inmate assignment to medium custody, the construction of five prison beds within a new, stand alone facility could cost the State \$340,200 in FY 2007-08; bed construction within an add-on facility could cost approximately \$210,600.⁵ These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$84,751 in FY 2008-09, and \$145,489 in FY 2009-10.⁶

- *An annual inflation rate of 3% is applied to FY 2009-10 bed operating costs beyond the initial two-year window. Construction and operating costs, based on the 15% scenario, are shown in the Fiscal Impact Table (p. 1). However, it is not known exactly how bed demand and construction/operating costs might be distributed over the five-year note horizon.*

Scenarios	<i>Prison Bed Construction Alternatives & Costs</i>		<i>Operating Costs</i>	
	Stand Alone: FY 07/08	Add-On: FY 07/08	FY 08/09	FY 09/10
10%	\$ 272,160	\$ 168,480	\$ 56,500	\$ 116,391
15%	\$ 340,200	\$ 210,600	\$ 84,751	\$ 145,489
20%	\$ 476,280	\$ 294,840	\$ 84,751	\$ 203,684

³ *Because the proposed offense criteria are new, a more detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model. Threshold scenarios only represent potential two-year impact.*

⁴ Position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

⁵ New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁶ Impact on incarcerated population is assumed for FY 2008/09, given the presumed effective date of December 1, 2007 and typical lag time between charge and conviction (6 months). * Also see technical consideration, p. 5.

Department of Correction – Division of Community Corrections

Per structured sentencing, Classes F and H felony offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). For Class H felons, community sentencing is authorized only for those without a prior record, whereas intermediate punishment is authorized up to prior record level V. In contrast, *only intermediate punishment is authorized (prior record levels I-III) for non-active, Class F felony sentences.* Accordingly, resultant non-active sentences for the enhanced offense could potentially increase the demand for DCC intermediate sanction resources; however, given the higher rate of active sentencing for Class F felony convictions, no significant impact is assumed.⁷

In FY 2005-06, 53% of Class F felony convictions resulted in intermediate punishments, predominantly intensive supervision and special probation; 66% of Class H felony convictions resulted in non-active, intermediate or community sentences. It is not known how many additional or fewer offenders would be sentenced to intermediate or community punishments under this proposal, nor is it known to which type, or for how long. Thus, the potential fiscal impact for DCC is indeterminate.

Judicial Branch

Though it is not known how many charges might occur for the enhanced offense, the Administrative Office of the Courts expects that any penalty enhancement would be accompanied by more vigorous defense and prosecution, and would thereby increase court-time requirements and the associated costs of case disposal. Specifically, the AOC anticipates that more cases would be prosecuted, resulting in increased jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

AOC data for CY 2006 indicate that approximately 675 defendants were charged with a Class H felony offense under G.S. 20-166(a). Again, assuming that 15% (approx. 100) of these 675 prior year charges were to occur annually for the enhanced offense, the estimated difference in court-time, jury, and indigent defense costs would be approximately \$48,896 per year (adjusted for 5% annual inflation in Fiscal Impact Table, p.1). As shown, it is assumed that a higher percentage of Class F felony cases would result in trial (5%) and guilty plea (54%), relative to Class H felony cases – 0.9% trial and 49% plea. Actual costs may vary from this example, contingent upon court-time and workload requirements, as well as the type of case disposition.

Table 3. Estimated Court-Time & Indigent Defense Costs							
<i>Trial</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
Offense Class	# Cases	Court-Time*	DA Prep.*	Jury*	Court Costs	# Cases	Defense Cost
Class H felony	1	\$ 3,081	\$ 1,590	\$ 640	\$ 5,311	1	\$ 2,032
Class F felony	5	\$ 4,091	\$ 2,187	\$ 920	\$35,990	3	\$ 8,115
<i>* Estimated costs per case</i>				<i>Difference: \$30,679</i>		<i>Difference: \$6,083</i>	
<i>Plea</i>	<i>Court-Time, District Attorney Preparation, and Jury Costs</i>					<i>Indigent Defense Costs</i>	
Offense Class	# Cases	Court-Time*	DA Prep.*	Jury*	Court Costs	# Cases	Defense Cost
Class H felony	49	\$ 135	\$ 99	-	\$ 11,466	29	\$ 2,726
Class F felony	54	\$ 171	\$ 199	-	\$ 19,980	38	\$ 6,346
<i>* Estimated costs per case</i>				<i>Difference: \$8,514</i>		<i>Difference: \$3,620</i>	

⁷ Intermediate sanctions include intensive supervision probation, special probation, and house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court.

- *AOC cost estimates assume that all 675 cases would occur annually for the enhanced offense. Fiscal research assumes that this scenario is unlikely, and has revised AOC cost estimates to reflect the 15% percent illustration used for prison bed impact. As shown in the Fiscal Impact Table (p.1), estimated costs are adjusted for the assumed 7 month effective period in FY 2007-08, and estimated annual inflation rate of 5%.*

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

TECHNICAL CONSIDERATIONS: Most criminal penalty bills become effective on December 1 of the year of ratification; calculations provided for this analysis assume an effective date of December 1, 2007.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball and Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 7, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices