

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 241 (Second Edition)

SHORT TITLE: Increase DWI Penalty/Child in Vehicle.

SPONSOR(S): Senators Allran, Purcell, and Atwater

FISCAL IMPACT				
Yes (X)	No ()	No Estimate Available ()		
<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:				
Correction			No Estimate Available	
Probation			No Estimate Available	
Judicial			<i>*See Assumptions and Methodology*</i>	
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch				
EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.				
<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>				

The proposed legislation amends G.S. 20-179(c)(4), listing the aggravating factor of driving by the defendant with a child under 18 years old (currently, under 16 years old) in the vehicle at the time of the offense. The act also amends G.S. 20-179(c) to direct the judge to impose the Level One punishment if the judge finds that the grossly aggravating factor in G.S. 20-179(c)(4) applies, or two of the other (currently, two or more) grossly aggravating factors apply. In addition, the act adds that if the judge does not find that G.S. 20-179(c)(4) applies, then the judge must impose the Level Two punishment if the judge determines only one of the other grossly aggravating factors applies.

SOURCE: BILL DIGEST S.B. 241 (03/07/0201)

ASSUMPTIONS AND METHODOLOGY:

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.

However, the Sentencing and Policy Advisory Commission was unable to prepare prison population projections for the proposed legislation. DWI's are not punished under Structured Sentencing, so the Sentencing Commission does not have any DWI offender data. As a result, the Department of Correction Office of Research and Planning (DOC) was asked to estimate the fiscal impact of the proposed legislation.

Department of Correction- Division of Prisons

According to the Department of Correction Office of Research and Planning (DOC), there is no data in OPUS regarding the number of offenders who may move into the Level One punishment, regardless of the presence of other aggravating factors. In other words, the offender can either meet the current aggravating factor requirements, or the judge must impose the Level One punishment under subsection (g) of this section if it is determined that the defendant had a child under the age of 18 years in the vehicle at the time of the offense. The documentation of grossly aggravating factors is not routinely included with the judgment order for inmates or probationers convicted of Level One or Level Two DWI. Also, there is no proxy DOC could use to estimate how many offenders would be elevated to Level One. Therefore, DOC was unable to determine the impact of the proposed legislation. There were 1,925 entries to prison in FY 2009-10 for Level One or Two DWI.

Judicial Branch

The Administrative Office of the Courts (AOC) 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.

Elevation from Level Two to Level One for Single Grossly Aggravating Factor

In calendar year 2010, AOC data shows 3,939 defendants with a Level One punishment and 6,215 defendants with a Level Two punishment imposed. Assuming some of the current defendants with Level Two punishments had as their single grossly aggravating factor the presence of a child under 16 in the vehicle, the effect of the proposed legislation would be to elevate the defendants with Level Two punishments to Level One punishments.

Elevation from Level Two to Level One carries the potential for an increase in punishment. In general, AOC expects that an increase in punishment will lead to a more vigorous defense, thus requiring more time on the part of court personnel. However, the district attorney is already obligated to introduce all aggravating and grossly aggravating factors of which they are aware, and

anecdotal evidence suggests that DWI charges are already defended vigorously. Therefore, AOC does not anticipate that this aspect of the proposal will significantly impact court workload at the time of conviction.

However, because Level One DWI offenders may be required to pay a fine of up to \$4,000, rather than the \$2,000 maximum for Level Two offenders, it is possible that the violation rate for some DWI probationers would increase, resulting in more court hearings on those violations. The number or impact of such hearings cannot be projected.

Expansion of the Age of the Child Passenger from Under 16 to Under 18

The second edition of the bill would expand the scope of a grossly aggravating factor. It would increase the age of the child in the vehicle to include 16 or 17 year old passengers, and would require a Level One punishment due to the presence of a 16 or 17 year old passenger. The proposed legislation has the potential to increase the number of DWI offenders who would be subject to a Level One punishment rather than a Level Two, Three, Four, or Five punishment. The majority of DWI offenders receive Level Five punishments, which are significantly lower than a Level One punishment (see table below). A Level One punishment, for example, includes a much higher maximum fine, the requirement that at least 30 days of active time be served (Level Five requires 24 hours, which can be suspended), and the potential use of continuous alcohol monitoring and its associated costs.

	Level One	Level Two	Level Three	Level Four	Level Five
Max. Fine	\$4,000	\$2,000	\$1,000	\$500	\$200
Min. Active Time	30 days	7 days	72 hours*	48 hours*	24 hours*
Max. Active Time	2 years	1 year	6 months	120 days	60 days
Community Service			72 hours	48 hours	24 hours
Continuous Alcohol Monitoring option	yes	yes			
2010 Convictions	3,939	6,215	3,306	5,391	22,831

*Active time may be suspended for levels three through five

Because the proposed legislation would likely increase the number of DWI cases in which the district attorney will introduce the presence of a grossly aggravating factor, and because of the substantial difference in punishment that may result, there is the possibility of a more vigorous defense and more time required by court personnel to process these cases. AOC cannot project the number of offenses that will now involve the presence of this specific aggravating factor due to the inclusion of 16 and 17 year old passengers, but the number could be substantial.

In addition, due to the substantial difference in the maximum fine and conditions of probation between a Level One and Level Five punishment, it is possible that the violation rate for some DWI probationers would increase, resulting in more court hearings on those violations. The number or impact of such hearings cannot be projected.

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Department of Correction; Judicial Branch

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone, Douglas Holbrook

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: April 5, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices