

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 754

SHORT TITLE: Mandatory Jail for Some DWI

SPONSOR(S): Representative Hunter

<b>FISCAL IMPACT:</b>	<b>Expenditures:</b>	<b>Increase ( )</b>	<b>Decrease ( )</b>
	<b>Revenues:</b>	<b>Increase ( )</b>	<b>Decrease ( )</b>
	<b>No Impact ( )</b>		
	<b>No Estimate Available (X)</b>		

<b>FUND AFFECTED:</b>	<b>General Fund (X)</b>	<b>Highway Fund ( )</b>	<b>Local Fund (X)</b>
	<b>Other Fund ( )</b>		

**BILL SUMMARY:** Adds new G.S. 20-179(u), requiring mandatory jail sentences to be imposed on any person convicted of impaired driving if blood alcohol concentration was over 0.15%. If the level was 0.16%, the sentence is two days, and an additional two days is imposed for each 0.01% above 0.16%. The sentence may not be suspended, nor may defendants be placed on probation. The sentence is to be served in county jail unless defendant is sentenced to serve an active sentence in prison; then the sentence imposed by the bill may be served concurrently. Days of sentence served under act may be credited against any other incarceration ordered under G.S. 20-179 only if defendant receives a term longer than the minimum term of incarceration authorized by the other subsection. If defendant receives the minimum term authorized by the other subsection of G.S. 20-179, then days served pursuant to act shall be in addition to any other incarceration.

**EFFECTIVE DATE:** October 1, 1993

**PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:** Judicial Department; Department of Correction; Local Jails

JUDICIAL DEPARTMENT

FISCAL IMPACT

<u><b>FY</b></u> 93-94	<u><b>FY</b></u> 94-95	<u><b>FY</b></u> 95-96	<u><b>FY</b></u> 96-97	<u><b>FY</b></u> 97-98
------------------------	------------------------	------------------------	------------------------	------------------------

**EXPENDITURES**

**RECURRING**

**NON-RECURRING**Dollar Amount Undetermined

**REVENUES/RECEIPTS**

**RECURRING**

**NON-RECURRING**

**POSITIONS:** No new positions.

**ASSUMPTIONS AND METHODOLOGY:** Due to the unavailability of pertinent data from which reliable estimates can be made, no estimate is available for the Judicial Branch. However, based on a number of assumptions, the Administrative Office of the Courts (AOC) provides the following narrative to describe the range for which a significant portion of any additional costs (i.e., indigent defense) may fall within.

"We would not expect this bill to add additional defendants to the court system. However, it will increase the penalty for some persons convicted of DWI with blood alcohol concentrations greater than 0.15%. Therefore, it may result in a more vigorous defense in some cases, including the possibility of more trials and greater costs, including for indigent defense. However, it is very speculative to identify the cases that might be affected and the extent to which costs might increase.

"First, we do not expect the primary impact from this bill to be on cases where defendants receive Level One or Level Two punishment. Under G.S. 20-179(c), Level One and Level Two convictions must be based on a finding of certain grossly aggravating factors that justify more severe penalties, including mandatory jail time. Since such defendants are already subject to relatively stiff penalties, we would not predict that the additional penalties of the current bill would substantially influence the litigation strategies of these defendants.

"However, for persons who may receive punishment Levels Three through Five, the bill's requirements for mandatory active jail sentences could affect the nature and complexity of the case. Present law for punishment Levels Three through Five, G.S. 20-179(i), and (k), requires the judge to suspend the mandatory minimum terms of imprisonment; the judge may include imprisonment as a condition of special probation. For many cases under present law, involving a blood alcohol concentration of .16% or more, the mandatory jail terms of this bill could significantly change the perceived risk of an active sentence (the risk may change from possible to definite), and therefore lead to changes in defense strategy (more trials). Depending on the blood alcohol concentration, and therefore the number of active days to be added to the sentence under the bill, as well as what the likely sentences would be under current law, the bill's provisions for mandatory jail could be a significant factor in determining whether the case will be plead or tried.

"Unfortunately, we are unable to confidently predict how frequently the more severe penalties in the bill would change trial strategies and result in additional costs. According to AOC data for calendar year 1992, there were approximately 53,689 DWI convictions, broken down as follows: Level One, 12.76%; Level Two, 19.15%; Level Three, 8.82%; Level Four, 11.80%; and Level Five, 47.47%. However, these percentages apply to all defendants convicted of DWI, regardless of alcohol concentration, and AOC data do not identify how many defendants, at each punishment

level, had blood concentrations in excess of 0.15%. There are many complications. For example, a blood alcohol concentration of .20% or more is currently an aggravating factor. It seems likely, therefore, that a higher percentage of defendants testing above .15% receive Level Three punishment, and defendants who receive Level Five punishment probably tend to have lower blood alcohol contents.

"The following analysis is extremely speculative, but attempts to illustrate the difficulty of developing estimates relevant to the potential impact on the court system. First, for the reasons discussed above, we will assume that persons convicted of Level One and Level Two DWI will be largely unaffected by this bill (because they are already subject to strict punishments). For Levels Three through Five, we estimate the number of convictions involving blood alcohol concentrations of .15% or more by combining AOC convictions data (discussed above), and data from the Division of Motor Vehicles (DMV).

"In their 1991 annual report on DWI statistics, the DMV reported 21,061 breath test results and 877 blood test results over 0.15% (ranging from .16% to .54%), for a total of 21,938 test results exceeding .15%. This number may be used to estimate the potential pool of defendants that may be most affected by this bill. DMV data indicate that 27.4% of all arrests (including where a test was refused) involved concentrations of .16% or more (21,938 out of 80,131). Applying this percentage to AOC data on the number of convictions yields the following results. For Level Three, it results in an estimated 1,297 convictions with blood alcohol levels above .15% (4,735 convictions x .274); for Level Four, there would be an estimated 1,736 such convictions (6,335 convictions x .274). For Level Five DWI convictions, comprising nearly half of the total, it seems likely that the vast majority of these cases involve less serious offenses and will be much less likely to involve high blood alcohol concentrations. Thus, for Level Five convictions, we will assume that only a quarter of the usual 27.4% or 6.85%, will involve blood alcohol concentrations in excess of .15%. This analysis yields an estimated 1,746 defendants with .16% or higher blood alcohol levels who would be convicted of Level Five DWI (25,486 convictions x .0685). The total estimate of defendants who would be likely to receive Levels Three through Five punishments and have blood alcohol concentrations of .16% or more during a one-year period is 4,779.

"Perhaps the most speculative item to estimate is the number of these defendants whose defense strategies would be affected because of this bill. If 5% of these 4,779 defendants will proceed to trial who otherwise would not have, the bill could result in an additional 239 misdemeanor trials. One impact would be additional costs due to an increase in court days. Another cost would be indigent defense. Assuming that 20% of defendants in these 239 cases were indigent and appointed private assigned counsel, who devoted an additional two hours to each case, at an average cost of \$50 per hour, the additional costs for private

assigned counsel in these 48 cases would be \$4,800. If, however, 50% of the 4,779 defendants proceed to trial (rather than plea), or for some other reason devote an additional two hours to the case, the additional costs for private assigned counsel in the estimated 478 cases would be \$47,800. Further, this bill could generate additional appeals to superior court, which would involve additional costs.

"Thus, we predict a range of possible indigent defense costs of from some \$4,800 to \$47,800, and a corresponding range of increased costs due to trial court workload in addition to indigent defense. However, due to the layers of speculation behind these estimates, the summary on page 1 of this fiscal note states that no estimate is available. Another consideration in our decision not to specify a specific fiscal impact is that there is arguably some tendency for there to be a reduction in the numbers of DWI cases following enactment of stricter laws, due to the deterrent effects of the law."

**DEPARTMENT OF CORRECTION**

**FISCAL IMPACT**

**FY** 93-94      **FY** 94-95      **FY** 95-96      **FY** 96-97 **FY** 97-98

**EXPENDITURES**

**RECURRING** Dollar Amount Undetermined

**NON-RECURRING**

**RECEIPTS/REVENUES**

**RECURRING**

**NON-RECURRING**

**POSITIONS:** No new positions.

**ASSUMPTIONS AND METHODOLOGY:** Similar to the analysis provided for the Judicial Department, the following narrative is based on a number of assumptions that are necessary as a result of limited data. These assumptions may or may not be validated upon ratification and enforcement of this legislation; and, hence, the following cost estimates may or may not be reliable. Based on a scenario characterized by the assumptions listed below, this analysis provides an estimate of possible costs that could result from the proposed legislation. These costs are local expenditures and total \$3,233,160 per year. To the extent that the enactment of tougher legislation deters potential DWI offenders, these costs could be offset to an undetermined degree.

Assumptions:

- 1) DMV data indicating that 27.4% of all DWI arrests involve blood alcohol concentrations (BAC) above .15% is relevant to the number of convicted offenders with BAC levels above .15%.
- 2) All convicted DWI offenders receiving an active sentence in excess of the minimum sentence are offenders with BAC levels above .15%.

3) Convicted DWI offenders currently receiving supervised probation do not receive a "Special Condition" of probation requiring the defendant to serve a sentence greater than the minimum sentence prescribed by law.

4) Of the BAC data provided by DMV, there is an equitable distribution within the defined ranges.

5) Additional days of incarceration will be served in local jail facilities.

Sentencing distribution data provided by the N.C. Sentencing and Policy Advisory Commission shows that 98.2% of all DWI convicted offenders received the following sentencing alternatives in 1991:

<u>Sentence Distribution</u>	<u>Percent</u>	<u>Number</u>
Active	7.2	3,697
Supervised Probation	26.1	13,401
Unsupervised Probation	64.9	33,324
TOTAL	98.2	50,422

Assuming that 27.4% (See DMV arrest data explained within text of "Judicial Department") of these offenders have BAC levels above .15%, the number of offenders that would be affected by the proposed legislation is 13,816 ( $50,422 \times .274$ ).

Additional data, also provided by the Sentencing Commission, indicates that of those offenders receiving an active sentence, 3,187 defendants received a sentence in excess of the minimum sentence that is prescribed by law according to the Level of convicted DWI offense. Pursuant to the proposed legislation, these offenders would be entitled to serve any additional days of incarceration (resulting from a BAC level over .15%) concurrent to their present sentence. Assuming that the longer sentences represent more serious offenses and involve a .16% BAC or higher, these 3,187 offenders can be subtracted from the pool of 13,816 offenders labeled above as having BAC levels over .15%. After subtracting the 3,187 offenders, it is estimated that 10,629 offenders would remain and would be affected by the proposed legislation.

For those offenders placed on probation, a "Special Condition" of probation requiring that the offender be incarcerated for a set number of hours in Level IV and Level V cases is sometimes imposed. In Level III cases, a minimum number of hours may be imposed and in Level I and II cases, a minimum term of incarceration must be imposed. No data is available to suggest the average term imposed by judges for Levels I through III. Likewise, there is no data available to suggest how often a judge is likely to impose the set term of incarceration in Level IV and V cases. However, a representative of the Division of Adult Probation and Parole estimates that there are very few instances when a discretionary term is imposed that exceeds the minimum term prescribed by law. Hence, for those offenders placed on probation, it is assumed that

the vast majority with BAC levels above .15% would be affected by this law.

In determining the number of additional days DWI offenders would be required to serve as a result of the proposed DWI legislation, DMV data is the best available source. However, available DMV data does not provide estimates of BAC levels in DWI arrest cases on a per percent basis. Available data obtained from breath test results in 99.5% of the 1991 arrest cases is only available as follows:

BAC RANGE	# OF PERSONS	PERCENT
.16-.21%	16,116	76.5
.22-.27%	4,103	19.5
.28-.33%	728	3.5

Assuming that there is an equitable distribution of cases within the defined ranges, the number of offenders at each of the relevant BAC levels can be identified by multiplying the percentage of expected offenders in each range x the 10,629 offenders expected to be affected by the proposed legislation and then distributing those offenders equally among each of the levels included within the range. The result of this calculation is as follows:

- 1,355 offenders per .01 percentage between .16% and .21%
- 345 offenders per .01 percentage between .22% and .27%
- 62 offenders per .01 percentage between .28% and .33%

Based on the provision of the proposed legislation that mandates a convicted DWI offender with an alcohol concentration of .16% to be sentenced to at least two days in jail and an additional two days for each .01% above .16%, it is estimated that an additional 107,772 days of incarceration will be required by the above group of offenders as a whole. Assuming that the majority of the offenders will serve the required days of incarceration in a local jail, additional costs are estimated to be \$3,233,160. (Note that the County Commissioners Association estimates that the average cost per day to incarcerate a jail inmate is between \$28 - \$30 in most counties. Above costs were calculated at the rate of \$30 per day.) It is assumed that most of the offenders would serve in local jails since the majority of the estimated DWI offenders receiving active sentences (i.e., sentences most likely to be served within the Division of Prisons) were previously subtracted out as potential cases where any additional days could be served concurrent to an active sentence that is greater than the prescribed minimum sentence. In addition, it is currently the procedure that any length of incarceration under 6 months will be served in a local jail facility.

**SOURCES OF DATA:** Administrative Office of the Courts - 1991 North Carolina DWI Statistics, RATERS Report (NC Department of transportation, Division of Motor Vehicles, Driver License Section); AOC data on frequency of offenses charged and convicted; N.C. Sentencing and Policy Advisory Commission; Department of Correction; N. C. General Statutes.

**TECHNICAL CONSIDERATIONS:** None.

**FISCAL RESEARCH DIVISION**

733-4910

**PREPARED BY:** Brenda S. Beerman  
Carolyn H. Wyland

**APPROVED BY:** Tom Covington TomC

**DATE:** 04-May-93

[FRD#003]

**COMMITTEE SUBSTITUTE FOR HB 754-May 18, 1993**

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 754 (Committee Substitute)

**SHORT TITLE:** Mandatory Jail for Some DWI

**SPONSOR(S):** Representative Hunter

**FISCAL IMPACT:**

<b>Expenditures:</b>	<b>Increase ( )</b>	<b>Decrease ( )</b>
<b>Revenues:</b>	<b>Increase ( )</b>	<b>Decrease ( )</b>
<b>No Impact ( )</b>		
<b>No Estimate Available (X)</b>		

**FUND AFFECTED:**

<b>General Fund (X)</b>	<b>Highway Fund ( )</b>	<b>Local Fund (X)</b>
<b>Other Fund (X)</b>	<b>(Indigent Persons Attorney Fee Fund)</b>	

**BILL SUMMARY:** Adds new G.S. 20-179(u), requiring mandatory jail sentences to be imposed on any person convicted of impaired driving if blood alcohol concentration was over 0.15%. If the level was 0.16%, the sentence is two days, and an additional two days is imposed for each 0.01% above 0.16%. The sentence may not be suspended, nor may defendants be placed on probation. The sentence is to be served in county jail unless defendant is sentenced to serve an active sentence in prison; then the sentence imposed by the bill may be served concurrently. Days of sentence served under act may be credited against any other incarceration ordered under G.S. 20-179 only if defendant receives a term longer than the minimum term of incarceration authorized by the other subsection. If defendant receives the minimum term authorized by the other subsection of G.S. 20-179, then days served pursuant to act shall be in addition to any other incarceration.

**HOUSE COMMITTEE SUBSTITUTE:** House committee substitute makes following substantive changes: (1) mandatory days in jail required by new subsection (u) may be suspended only if condition of special probation is imposed to require defendant to serve term of imprisonment equal to mandatory days in jail required by subsection (original bill prohibited suspended sentence or

probation); (2) adds provision that if defendant is punished at Level Three, Four, or Five and has not been previously convicted of impaired driving offense within seven years, judge may order 24 hours of community service in lieu of each day of mandated jail; (3) deletes provision of original bill limiting credit against another sentence; and (4) adds new provision that amends G.S. 20-139.1(b3) to provide that person's willful refusal to give second sequential breath sample makes admissible at trial results of first breath test, if it is otherwise admissible.

**EFFECTIVE DATE:** October 1, 1993

**PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:** Judicial Department; Department of Correction; Local Jails; Crime Control & Public Safety - Community Service Program

**JUDICIAL DEPARTMENT**

**FISCAL IMPACT**

**FY** 93-94      **FY** 94-95      **FY** 95-96      **FY** 96-97      **FY** 97-98

**EXPENDITURES**

**RECURRING**

**NON-RECURRING**      Dollar Amount Undetermined

**REVENUES/RECEIPTS**

**RECURRING**

**NON-RECURRING**

**POSITIONS:** No new positions.

**ASSUMPTIONS AND METHODOLOGY:** Due to the limited amount of data noted in the first fiscal note for HB 754 (note submitted prior to the adoption of the current committee substitute), the Administrative Office of the Courts (AOC) remains unable to confidently predict the fiscal impact of the proposed legislation upon the Judicial Branch. However, the AOC provides the following narrative to suggest that the range of potential costs (previously estimated to be between \$4,800 and \$47,800) would be reduced.

"Our fiscal note ... on the original version of HB 754, indicated that no estimate of the bill's impact was available. However, we estimated a range for the possible impact from about \$4,800 to \$47,800. In our previous analysis, we estimated that the primary impact on the court system would result from adoption of more vigorous defense strategies on the part of defendants testing at blood alcohol concentrations of .16% or more and punished under Levels Three through Five. (We reasoned that defendants receiving Level One and Level Two punishments are already subject to relative stiff penalties, and that the bill's additional penalties would not substantially influence their litigation strategies.)

"For defendants receiving punishment Levels Three through Five, we assumed that increasing the risk of an active sentence from possible to definite could lead to changes in defense strategy, resulting in more trials and greater costs, including for indigent defense. Because the committee substitute provides that the sentencing judge may order defendants punished at Levels Three through Five to perform 24 hours of



community service in lieu of each mandated day in jail, the impact on defense strategies, and therefore cost, can be expected to be less than we estimated for the original bill. Although we predict that the range of possible impacts, under the committee substitute would be less substantial, we adhere to the conclusions in our fiscal note on the original bill; and, for the reasons stated there, no specific fiscal impact is estimated.

"We are not estimating any impact due to Section 2 of the committee substitute, which makes results of the first breath test admissible at trial in the event of willful refusal to give the second sequential breath sample."

Based on the analyses performed by the AOC which identifies a range of potential impact upon the Judicial Branch, it is reasonable to argue that the legislation, as amended, may not have a significant fiscal impact. Assuming that 5% of all DWI defendants affected by the proposed legislation practiced more vigorous defense strategies and proceeded to trial, the AOC previously estimated that the impact upon the indigent defense fund would be about \$4,800. [See page 3 of fiscal note submitted 5/4/93.] Five percent was deemed to be a low estimate and the AOC speculated that up to 50% of the defendants might conceivably pursue more aggressive defense strategies. These initial estimates were premised on Level III through V offenders pursuing more aggressive defense strategies. However, as noted above, the mandated sentencing requirements have been deleted from the committee substitute. Since the AOC estimates that the current substitute will reduce potential fiscal impact, it is possible that the proposed legislation would not have a significant fiscal impact on the Judicial Branch. This potential outcome is dependent upon the assumption that 5% or another low percentage is, in fact, a reasonable estimate. Supporting a potential, reduced impact conclusion is the argument that the deterrent effect would result in a reduction in the numbers of DWI cases following enactment of stricter laws. However, since there continues to be no data to confidently predict defense strategies or possible deterrent effects, no dollar estimate can be provided.

DEPARTMENT OF CORRECTION

FISCAL IMPACT

FY 93-94      FY 94-95      FY 95-96      FY 96-97 FY 97-98

EXPENDITURES

RECURRING            Dollar Amount Undetermined

NON-RECURRING

RECEIPTS/REVENUES

RECURRING

NON-RECURRING

POSITIONS: No new positions.

**ASSUMPTIONS AND METHODOLOGY:** Based on a number of assumptions in the previous note, it was estimated that HB 754 could result in \$3,233,160 of additional expenditure for local jail facilities across the state per year. The original legislation differs from the proposed committee substitute in that it: (1) did not allow the sentencing judge to suspend the mandatory days in jail or place the offender on probation for the mandatory days in jail; (2) did not allow the offender to serve the mandatory days concurrently with any other incarceration ordered under G.S. 20-179 unless the term was longer than a minimum term of incarceration; and, (3) did not allow the sentencing judge the discretion to require community service hours be performed in lieu of the mandated jail days for Level III, IV, and V DWI offenders. The legislation as amended would be expected to result in less expenditure for local jails. However, necessary data is still unavailable to base a reliable estimate.

In addition to the missing data (i.e., #'s of offenders having a BAC level above .15% and (1) convicted within each level of offense or (2) receiving a particular sentence) listed in the previous note, no data is available to estimate two new key elements under the committee substitute. First, additional expenditure is dependent upon the number of days an offender placed on probation would receive as a "Special Condition" of probation under the proposed legislation as compared to current law. According to 1991 data provided by the N.C. Sentencing and Policy Advisory Commission, 26.1% or 13,401 convicted DWI offenders were placed on supervised probation. As noted in the previous fiscal note, a "Special Condition" of probation requiring that offenders be incarcerated for a set number of hours in Level IV and Level V cases is sometimes imposed. In Level III cases, a minimum number of hours may be imposed and in Level I and II cases, a minimum term of incarceration must be imposed. No data is available to suggest the average term imposed by judges for Levels I through III. Likewise, there is no data available to suggest how often a judge is likely to impose the "Special Condition" of probation in Level III through V cases. A representative of the Division of Adult Probation and Parole estimates that there are very few instances where a discretionary term is imposed that exceeds the minimum term prescribed by law. However, no additional data is available. [The AOC reports that when the dispositions in cases involving probation are entered into existing data networks, specific information regarding special conditions of probation etc., is entered as text in a "free form field" and there is no way of extracting such data other than manually reviewing all records.]

Regarding possible expenditures, those DWI offenders having BAC levels above .15% who currently receive jail days as a "Special Condition" of probation could offset a portion of the overall 107,772 additional days of incarceration estimated as a potential impact of the proposed legislation before amended. However, since it is unknown how many Level III through IV offenders actually receive an unknown number of jail days, estimates can not be made. [Note that only a minimum number of days would be likely to be offset as DWI offenders placed on probation infrequently receive jail days in excess of the minimum sentence. The minimum term for: Level I offenders is 14 days; Level II offenders is 7 days; and, Level III offenders is 3 days. Level IV offenders may only receive a "Special Condition" of probation requiring 48 hours of incarceration and Level V offenders may only receive 24 hours. Considering that the longest minimum sentence is only 14 days and that 46,032 days of incarceration would be awarded to offenders having a BAC level over .22 (level which would require 14 days of incarceration), a number of probationers would still be expected to serve additional days above what they are currently serving.]

A second element that would be required in order to accurately revise the cost estimate in the previous fiscal note, is data to estimate how often judges would exercise their discretion to order community service in lieu of mandated jail days for Level III through V offenders. Again, although judges may now order DWI offenders to perform community service instead of special jail time as a condition of probation, this data can not be extracted from AOC data systems.

Hence, the current committee substitute is likely to significantly reduce the potential impact of the proposed legislation. No reliable estimate of the remaining impact is possible.

**SOURCES OF DATA:** Administrative Office of the Courts - 1991 North Carolina DWI Statistics, RATERS Report (NC Department of transportation, Division of Motor Vehicles, Driver License Section); AOC data on frequency of offenses charged and convicted; N.C. Sentencing and Policy Advisory Commission; Department of Correction; N. C. General Statutes.

**TECHNICAL CONSIDERATIONS:** The following technical considerations are noted by the AOC:

(1) The provision that judges may order defendants to perform community service in lieu of the mandatory jail sentence applies to defendants punished at Levels Three through Five who have "not been previously convicted of an offense involving impaired driving within seven years." Unlike similar language in G.S. 20-179(c), this provision does not specify within seven years "before the date of the offense for which the defendant is being sentenced."

(2) Also, the application of this language to sentencing under Levels Three, Four, and Five is unclear, since a prior impaired driving conviction is a grossly aggravating circumstance and the judge must impose at least a Level Two punishment under G.S. 20-179(c).

**FISCAL RESEARCH DIVISION**

**733-4910**

**PREPARED BY:** Brenda S. Beerman  
Carolyn H. Wyland

**APPROVED BY:** Tom Covington **TomC**

**DATE:** 17-May-93

**[FRD#003]**



**Signed Copy Located in the NCGA Principal Clerk's Offices**