

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 298 (First Edition)

**SHORT TITLE:** 0.00 Alcohol Restriction - All DWI.

**SPONSOR(S):** Representatives Jackson, Conrad, Adcock, and Warren

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
<b>EFFECTIVE DATE:</b> December 1, 2017					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address the expanded scope of two existing misdemeanor offenses. However, due to data limitations regarding specific offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$39 to \$206 per disposition
- Indigent Defense Services: \$200 to \$202 per disposition
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections: Minimum of \$1,776 to \$2,200 per supervised probation sentence

Please see the Assumptions and Methodology section for additional information.

**BILL SUMMARY:**

The bill expands the scope of two existing offenses. Section 1 of the bill amends subdivision (b)(3) of existing G.S. 20-17.8, Restoration of a license after certain driving while impaired convictions; ignition interlock, to now require that all defendants who receive a restoration of license revoked for impaired driving under this statute abide by the condition to maintain a 0.00 alcohol concentration. Currently, defendants who had an alcohol concentration of 0.15 at the time of the offense must abide by an alcohol

concentration of 0.04. Violation of the offense is a Class 1 misdemeanor under G.S. 20-17.8(f) or G.S. 20-28(a1). In 2016 there were 478 and 137 defendants charged with these offenses, respectively.

Section 2 of the bill amends G.S. 20-19(c3) in subdivision (1), Period of suspension or revocation; conditions of restoration, to now require that all defendants who receive license restoration abide by the condition to maintain a 0.00 alcohol concentration. Currently, defendants for whom this was the first time they had received a restoration of license have to abide by an alcohol concentration of 0.04. Violation of this offense is a Class 3 misdemeanor under G.S. 20-7(e). In 2016 there were 3,435 defendants charged with this offense. Violations of the restriction could also be charged under G.S. 20-7(a) (the more generic No Operators License offense, also a Class 3 misdemeanor). In 2016 there were 113,419 individuals charged with this offense.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

### **Judicial Branch**

The Administrative Office of the Courts 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.

The bill expands the scope of an existing Class 1 misdemeanor and an existing Class 3 misdemeanor. AOC data is not able to determine how many of the individuals charged with driving while license revoked or no operators' license were specifically charged due to a violation of the alcohol concentration condition of a license restoration. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$206. For every additional person charged with a Class 3 misdemeanor, the average cost to the court would be \$39.

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior

court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. In FY 2011-12, the most recent year data is available, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$202 per case for a private appointed counsel (PAC) attorney. Twenty-one percent of Class 3 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 3 misdemeanor is \$200 per case for a private appointed counsel (PAC) attorney. These estimates assume the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

### **Department of Public Safety – Prisons**

This bill expands the scope of an existing Class 1 misdemeanor offense and an existing Class 3 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail.

### **Department of Public Safety – Community Corrections**

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$148 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probation.

In FY 2015-16, 31% of Class 1 misdemeanor offenders received active sentences; 69% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,200 per offender (\$148 per month times 15 months).<sup>1</sup>

In FY 2015-16, 24% of Class 3 misdemeanor offenders received active sentences; 76% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 12 months. Therefore, at a minimum, one

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<sup>1</sup> Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

Class 3 misdemeanor conviction resulting in probation will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,776 per offender (\$148 per month times 12 months).<sup>1</sup>

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** None

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