

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2005**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 1486 (Second Edition)

**SHORT TITLE:** Felony Death by Vehicle.

**SPONSOR(S):** Representative Culpepper

	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>
<i>Exact amount cannot be determined. Costs, beds, and positions are calculated if, for example, only 15% of charges and convictions for Felony Death by Vehicle become Class E felonies.</i>					
<b>GENERAL FUND</b>					
Correction (recurring)	-	\$52,321	\$134,725	\$166,521	\$228,688
Judicial (recurring)	\$1,960	\$3,359	\$3,527	\$3,703	\$3,888
<b>ADDITIONAL PRISON BEDS*</b>	0	2	5	6	8
<b>POSITIONS: (cumulative)</b>	0	1	2	2	3
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> December 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:** This bill would separate the existing offense of Felony Death by Vehicle (a Class G felony) into first-degree and second-degree offenses. If any specified aggravating factors exist, the offense would be First-Degree Felony Death by Vehicle, punishable as a Class E felony. Otherwise, the offense would be Second-Degree Felony Death by Vehicle, punishable as a Class G felony. The specified aggravating factors include:

- 1) Gross impairment of the defendant's faculties or alcohol concentration of 0.16 or more at any relevant time after driving.
- 2) Driving while license is revoked in violation of G.S. 20-28 or G.S. 20-28.1 where the revocation was an impaired driving revocation under G.S. 20-28.2(a).
- 3) Having one or more DWI convictions during the previous seven years.
- 4) Felony speeding to elude arrest in violation of G.S. 20-141.5.

## ASSUMPTIONS AND METHODOLOGY:

### General

Under current law, Felony Death by Vehicle is a Class G felony. This bill would reclassify the offense as a Class E felony (First-Degree Felony Death by Vehicle), if certain aggravating factors exist, and the offense would remain a Class G felony otherwise (Second-Degree Felony Death by Vehicle). As a result, some offenders who would presently be punished as Class G felons would receive an increased punishment as Class E offenders. *While there is data regarding the number of present charges and convictions for Felony Death by Vehicle, it is not known how many of the offenses involved any of the specified aggravating factors and would, therefore, be elevated to Class E felonies due to this bill.*

Convictions elevated from Class G to Class E felonies would, on average, carry a longer sentence (31 months vs. 15 months for Class E) and be more likely to result in active sentences (48% vs. 42%). As such, Class E felony convictions resulting from this bill would be expected to increase prison bed needs and therefore prison costs. In addition, increased court workload and costs would be anticipated due to the more vigorous defense and prosecution in these cases resulting from the more severe penalty. However, because no estimate of the number of offenses that would be elevated to Class E felonies is available, the specific cost associated with the bill cannot be determined. *The cost in the box on the front page illustrates a low-end estimate by assuming 15% of Felony Death by Vehicle charges and convictions would become Class E felonies. Because of the small pool of offenders, however, we do not expect a substantial fiscal impact.*

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

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. 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.*

This bill would be expected to elevate some convictions from Class G to Class E felonies (see “General”). In FY 2003-04 there were 35 convictions for Felony Death by Vehicle, however, it is not known how many of these convictions involved any of the aggravating factors specified by the bill and would thus become Class E felonies under this bill. The average active sentence rate and sentence length for Class G and Class E felonies is outlined in Table 1 below.

**Table 1: FY 03-04 Active Rate and Average Sentence Length by Offense Class**

<b>Offense Class</b>	<b>Active Sentence Rate</b>	<b>Average Estimated Sentence Length (months)</b>
<i>Class G</i>	42 %	15
<i>Class E</i>	48 %	31

There will be an impact to prison population if even a small number of convictions move to Class E due to the increased rate of active sentences and average estimated time served as compared to Class G. Table 2 below outlines prison bed needs if relatively few convictions (15%, or 5 of the 35 convictions) were raised to Class E felonies. To illustrate the maximum possible impact (though it is unlikely that all 35 offenses involved one of the four aggravating factors), the table also shows the prison bed needs if all Felony Death by Vehicle convictions were elevated to Class E felonies.

**Table 2: Low-End and Maximum Prison Impact**

FISCAL YEAR	Estimated Additional Prison Beds	
	Low-End Impact Scenario	Maximum Impact Scenario
2006-07	2	5
2007-08	5	23
2008-09	6	29
2009-10	8	31
2010-11	9	32
2011-12	8	33
2012-13	9	34
2013-14	10	35
2014-15	10	35
2015-16	10	36

**OPERATING:** Operating costs are based on actual FY 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 FY 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

Operating costs for this bill, as shown in the box on the front page, are calculated using medium custody bed costs. By FY 2006-07, the medium custody operating cost for one inmate will be an estimated \$71.67 per day (\$26,160 per year). Based on the **low-end impact scenario** outlined above, if 2 additional beds were needed in FY 2006-07, operating costs would equal \$52,321 per year, and if 8 beds were needed by FY 2009-10, operating costs would equal \$228,688 per year.

Though it is unlikely that all 35 convictions would be elevated to Class E felonies, to illustrate the maximum possible cost, if 5 additional beds were needed in FY 2006-07, operating costs would equal \$130,801, and if 31 additional beds were needed by FY 2009-10, operating costs would equal \$886,167 per year.

*Non-Active Sentences:* For convictions increased to Class E felonies under this bill, offenders would be less likely to receive non-active sentences, which would result in short-term cost savings to the Division of Community Corrections. However, in the long term DCC would incur the cost of post-release supervision of Class E offenders.

## **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (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.

In calendar year 2004, AOC data indicate that 65 defendants were charged with Felony Death by Vehicle. However, the number of these cases in which one of the specified aggravating factors was alleged (see Bill Summary for a list), is unknown. As such, no estimate is available of the number of charges that would be elevated from Class G to Class E felonies due to this bill.

Increases in time to settle charges elevated from Class G to Class E felonies would lead to additional workload in superior court. Due to the lack of data on the number of charges for Felony Death by Vehicle in which one of the specified aggravating factors would be alleged, the costs cannot be determined. Table 3 below outlines the average estimated *increase* in cost to settle a charge as a Class E rather than Class G felony.

**Table 3: Estimated Average Per Charge Settlement Costs**

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	-
Class G → Class E	\$715	\$383	\$1,098	\$205

Based on the per charge settlement costs above and estimated trial, plea, and indigency rates, if for example, relatively few current charges (15%, or 10 of the 65 charges) were increased to Class E felonies, the total estimated cost to the Courts would be \$3,359 in the first full year. The costs in the box on the first page reflect this cost, inflated at a rate of 5 percent annually, and adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective.

To illustrate the maximum possible cost to the Courts, if all of the current 65 charges for Felony Death by Vehicle were increased to Class E felonies, an unlikely scenario, the total estimated cost to the Courts would be \$16,696 in the first full year.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

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