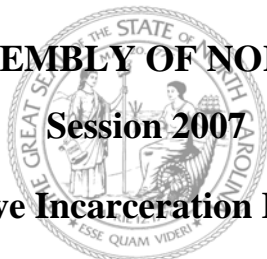


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

**(G.S. 120-36.7)
REVISED**

BILL NUMBER: Senate Bill 1290 (Fourth Edition)

SHORT TITLE: Alcohol Monitoring Systems for DWI Offenders.

SPONSOR(S): Senator Snow

	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		Possible, significant impact due to prison re-entries upon revocation and additional probation/parole officer workload. Exact amount cannot be determined.			
Judicial		Some fiscal impact anticipated, due to potential revocation hearings and programming requirements. Amount cannot be determined.			
DMV		No impact assumed.			
Local Govts.		Possible fiscal impact due to offender revocation (re-incarceration in jail) and voluntary payment of monitoring system service costs. Amount cannot be determined.			
DHHS		No significant impact anticipated.			
TOTAL EXPENDITURES:		Amount cannot be determined.			
ADDITIONAL PRISON BEDS: (cumulative)*		Some additional prison beds anticipated; however, the amount cannot be determined.			
POSITIONS: (cumulative)		Amount cannot be determined.			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments; Department of Health and Human Services – Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.					
EFFECTIVE DATE: Sections 1-5 are effective Dec. 1, 2007. Remainder is effective upon ratification.					
<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: S.B. 1290 permits earlier conditional restoration of a drivers license for DWI offenders in certain circumstances, and provides for the use of continuous alcohol monitoring systems to monitor individuals sentenced for DWI convictions, or as necessary by the courts to ensure compliance with the conditions of release, probation, or parole.

Section 1: Amends G.S. 20-19 to include prescription drugs and other controlled substances among the list of substances for which excessive use is prohibited, as a condition for conditional license restoration. Also authorizes the Division of Motor Vehicles, for offenders with permanent license revocations for DWI offenses, to conditionally restore a license after 24 months of revocation compliance (currently 3 years) – if the person meets certain requirements and demonstrates abstinence from alcohol for the 12 month period preceding restoration, while being monitored by a continuous alcohol monitory device.

Section 2: Amends G.S. 20-179 to create a new mitigating factor for DWI sentencing, if the person completes a substance abuse assessment, complies with its recommendations, and simultaneously maintains 60 days of continuous abstinence from alcohol consumption (proven by a continuous alcohol monitoring system approved by the Department of Correction).

Section 3: Amends G.S. 20-179, permitting a judge to impose abstinence from alcohol consumption as a condition of probation for the most serious DWI convictions, Levels One or Two. The period of abstinence may range from a minimum of 30 days to a maximum of 60 days, as verified by a continuous alcohol monitoring system approved by the Department of Correction. Provides that the total cost to the defendant may not exceed \$1,000; and, that if the court finds a defendant cannot pay the costs of the continuous alcohol monitoring system, the court may not impose its use unless the local governmental entity responsible for the offender’s incarceration agrees to pay the costs. Requires that system fees or costs be paid to the clerk of court and remitted to the service provider.

Sections 4 and 5: Amends G.S. 15A-1374 to create a new condition of parole, allowing the Post-Release Supervision and Parole Commission to require that a parolee remain alcohol free as proven by a continuous alcohol monitoring system approved by DOC. Provides that any fees or costs paid by the parolee in order to comply with this condition be paid to the clerk of court, and remitted to the service provider.

Section 6: Requires the Department of Correction to establish regulations for the continuous alcohol monitoring system, and to approve systems for use by the courts. Requires all courts (including those using continuous alcohol monitoring systems prior to the Act’s effective date – SCRAM) to comply with these regulations once established.

Section 7: Requires the Department of Correction to issue Requests for Information (RFIs) to develop possible pilot programs for the use of continuous alcohol monitoring systems as an intermediate punishment, and/or as a condition of probation for offenders other than DWI offenders.

Section 8: Requires the Department of Correction to report to the Appropriations Chairs, the Chairs of the Justice and Public Safety Appropriations Subcommittee, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee regarding the RFIs, an evaluation of the system, and any recommendations for implementation of the system (including alternate funding options).

Section 9: Provides that Sections 1 through 5 become effective December 1, 2007 and apply to offenses committed on or after that date. Specifies that courts are not prohibited from continuing or allowing the use of alcohol monitoring systems as evidence of alcohol abstinence, prior to this effective date. Provides that the remainder of the act is effective upon ratification.

Source: S1290e3-SMSA-CSSA-45

ASSUMPTIONS AND METHODOLOGY: Though the imposition of alcohol abstinence as a condition of probation or parole for certain DWI offenders may result in additional offender revocations, thereby increasing state prison and local jail populations and bed needs, the potential rates of judicial imposition and probation/parole revocation are unknown. Result data for the current Secure Continuous Remote

Alcohol Monitoring System (SCRAM) program is presently unavailable. Consequently, the number of additional revocation hearings (Courts and Post-Release Supervision and Parole Commission) and requisite prison/jail beds is indeterminate at this time. Nevertheless, some additional fiscal impact is anticipated for Corrections, the Courts, and Local Governments, driven primarily by the potential increase in offender probation/parole revocations. Minimal fiscal impact is anticipated for the Division of Motor Vehicles and Department of Health and Human Services.

Section 1: Conditional Restoration of Drivers License

According to the Division of Motor Vehicles, there is no anticipated fiscal impact for moving up certain offenders’ conditional restoration hearings for permanent revocations - to two years from the current three-year window. However, procedural changes and internal operational forms are necessary to accommodate the proposed changes.

Section 2: Proposed Mitigating Factor – Substance Abuse Assessment/Compliance and Alcohol Abstinence

Per G.S. 20-179 (DWI Sentencing), in the absence of grossly aggravating factors (Levels One and Two), the judge and jury must weigh all aggravating and mitigating factors for offender sentencing among Levels Three through Five. Level Three punishment is authorized if the aggravating factors substantially outweigh any mitigating factors; Level Four is authorized if there or no aggravating or mitigating factors, or the factors counterbalance; and Level Five is authorized if mitigating factors outweigh. Although suspended sentences (active time plus special probation) are authorized for each level, the following minimum and maximum active terms apply:¹

	Minimum Active Term	Maximum Active Term
Level Three	72 hours	6 months
Level Four	48 hours	120 days
Level Five	24 hours	60 days

Section 2 of S.B. 1290 creates a new mitigating factor for DWI sentencing, which a judge may find if an offender:

1. Completes a substance abuse assessment (and pays the requisite \$100 fee), conducted by an assessor authorized by the Division for Mental Health, Developmental Disabilities, and Substance Abuse Services
2. Complies with the assessment’s recommendations; and,
3. Simultaneously maintains 60 days of abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system.

Proof of compliance (prior to sentencing) must be brought forth by the defendant and his attorney during the sentencing hearing. It is assumed that the defendant would be responsible for payment of services rendered by the continuous alcohol monitoring system vendor (e.g. installations, equipment issuance, removal of equipment, maintenance, monitoring results and reporting).

Department of Correction: As illustrated above, the proposed mitigating factor could decrease sentence severity for compliant offenders, contingent upon that factor’s interaction with other aggravating and mitigating factors. Accordingly, a slight reduction in prison and jail bed savings could result, barring non-compliance.

¹ Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

Department of Health and Human Services: Similar to the condition for license restoration after a DWI conviction (G.S. 20-17.6), eligibility for the proposed mitigating factor is contingent upon a substance abuse assessment and compliance with that assessment. According to the Department of Health and Human Services, such assessments are conducted by assessors authorized by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. By law, a \$100 fee is assessed against the offender for the substance abuse assessment, the proceeds of which offset the costs of treatment services and increase workload. Accordingly, the Division anticipates minimal fiscal impact due to the proposed requirement.

Judicial Branch: The proposed mitigating factor, where applicable, could decrease sentence length and punishment severity. However, the defendant must prove compliance to become eligible, which may require additional court-time and increase court personnel workload (district and superior court judges, district attorneys, court reporters, jury fees, and indigent defense counsel). Nonetheless, the Administrative Office of the Courts does not anticipate a significant impact on case litigation due to this mitigating factor.

Sections 3, 4, and 5: Alcohol Abstinence – Probation and Parole Conditions.

Per G.S. 20-179, upon finding of grossly aggravating factors, the court may sentence a DWI offender to Levels One (two or more grossly aggravating factors) or Two (one grossly aggravating factor) punishments. Although suspended sentences (active time plus special probation) are authorized for each level, the following minimum and maximum active terms apply:²

	Minimum Active Term	Maximum Active Term
Level One	30 days	24 months
Level Two	7 days	12 months

Section 3 of S.B. 1290 adds alcohol abstinence (for up to 60 days), proven by a continuous alcohol monitory device, as a condition of probation for Levels One and Two DWI convictions. Imposition is subject to judicial discretion, and is applicable to suspended sentences. In addition, Sections 4 and 5 add alcohol abstinence for an unspecified period, proven by a continuous alcohol monitory device, as a condition of parole. Imposition is subject to determination by the Post-Release Supervision and Parole Commission.

Department of Correction: According to the Department of Correction, it is assumed that the monitoring system vendor would bear the responsibility for court ordered installations, equipment issues, removal of equipment, maintenance, monitoring results and reporting. However, probation/parole officer workload (Division of Community Corrections) is expected to increase due to the review of vendor reports and investigation of non-compliance incidents (including the assumed notification to the courts). Any fees or costs of the system would be assessed against the defendant, paid to the clerk of court, and remitted to the contracted vendor.

If alcohol abstinence is imposed as a condition of either probation or parole and offenders violate those conditions, the Court or Post-Release Supervision and Parole Commission (where applicable) may: continue that offender on probation; place the offender on special probation with revised conditions; or revoke the probation/parole and active the suspended sentence. Consequently, *due to the current prison bed deficit, if additional revocations result in increase active time served (in excess of 90 days), additional prison beds will be required.*

² Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

The table below illustrates the total number of Level One and Two offender entries to probation and parole in calendar year 2006, indicative of the annual eligible pool of offenders for the proposed probation condition (and continuous alcohol monitoring system):

Punishment Type	PROBATION		PAROLE		Total	
	Count	Percentage	Count	Percentage	Count	Percentage
DWI	4,919	86.95%	738	13.05%	5,657	100%
NON-N.C. OFF.	18	100%	0	0%	18	100%
NON JUDGMENT CASES	42	100%	0	0%	42	100%
Total	4,979	87.09%	738	12.91%	5,717	100%

Of the 4,979 DWI Level 1 or 2 offenders:

- There were a total of 4,473 DWI Level 1 or 2 probation offender exits
- 773 (17.3%) exited by revocation, 639 (82.7%) of which went to prison
- Of the 639 offenders revoked to prison, 218 (34.1%) were revoked for technical violations
- Only 17 (8%) of the 218 offenders revoked for technical reasons had an alcohol related violation reported in the last violation process prior to revocation.

However, it is not known how many additional probation *and parole* revocations might result due to continuous alcohol monitoring. Presently, results data on the current monitoring initiative SCRAM (Secure Continuous Remote Alcohol Monitoring System) is unavailable. Accordingly, the potential number of revocations could prove much higher. Additional parole revocation hearings could also increase Post-Release Supervision and Parole Commission workload.

Judicial Branch: Although the number of potential revocations is unknown, the Administrative Office of the Courts anticipates that additional preliminary and revocation hearings will increase court-time requirements and workload, thereby generating additional costs for the Courts. In addition, clerk workload is expected to increase, depending on the number of vendors involved and the number of defendants ordered to comply with alcohol monitoring. Because fees paid by defendants or local governments for vendor services are to be paid to clerks and remitted to the vendor, additional processing time will be required to determine the correct amount owed to each vendor before transmitting payments. Cost information would be included on the judgment form in order for the bookkeeper to create a correct Bill of Cost for each defendant. Moreover, programming changes to the AOC's Financial Management System will be required, although these costs are not expected to be substantial.

Local Governments: Where applicable, local governments could incur additional costs for voluntary payment of vendor fees on behalf of incarcerated persons. Additionally, if additional revocations result, the demand for jail beds will increase. The exact impact is indeterminate.

Sections 6, 7, and 8: Although additional administrative workload is expected due to the establishment of regulations for the continuous alcohol monitoring system, and requisite Requests for Information, minimal fiscal impact for the Department of Correction due to these requirements.

SOURCES OF DATA: Department of Correction; Judicial Branch; Department of Health and Human Services; Department of Transportation.

TECHNICAL CONSIDERATIONS: None

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