

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)
REVISED

BILL NUMBER: House Bill 49 (Third Edition)

SHORT TITLE: Laura's Law.

SPONSOR(S): Representatives T. Moore, Hastings, Torbett, and H. Warren

Table with columns: FISCAL IMPACT, Yes (X), No ( ), No Estimate Available ( ), FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2015-16. Rows include REVENUE, EXPENDITURES (Correction, Probation, Judicial), and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

FISCAL SUMMARY:

The Administrative Office of the Courts (AOC) estimated that 23,200 defendants convicted in FY 2008-09 of the applicable offenses paid the full General Court of Justice fees owed. If all 23,200 paid the additional \$100 fee, total revenue from defendants sentenced in the first 12 months of implementation would be \$2.32 million, collected over 24 months.

The Department of Correction Office of Research and Planning (DOC) examined 519 entries to prison with DWI Level One as their most serious offense in FY 2009-2010. DOC estimated 275

of the 519 offenders (53 percent) would be re-assigned to Aggravated Level One punishment and serve an additional 62 days in prison. The estimated total cost of 62 additional days is \$238,700 per year (62 days x \$14 per day x 275 offenders). There is no resource impact on the Division of Community Corrections. The 275 offenders would be absorbed into existing caseloads across the State. In addition, DOC does not anticipate any additional capital costs based on the estimated number of offenders who would be sentenced under the new Aggravated Level One DWI offense.

## **BILL SUMMARY:**

The proposed legislation would:

1. Increase the punishment for DWI offenders with three or more grossly aggravating factors;
2. Authorize the court to require continuous alcohol monitoring for certain offenders; and
3. Impose an additional \$100 in court costs for DWI offenders.

The proposed legislation is effective December 1, 2011, and applies to offenses committed on or after that date.

*Source: Adopted from Committee Counsel's bill summary dated March 11, 2011.*

## **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.

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.

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.

### **Section 1:**

This section amends G.S. 20-179 to create a new, higher, Aggravated Level One punishment for DWI offenders with three or more grossly aggravating factors. The punishment would allow a fine up to \$10,000 and a term of imprisonment of 12 to 36 months. A defendant would not be eligible

for parole. However, the defendant would be released four months (120 days) prior to the maximum prison term for a period of supervision including continuous alcohol monitoring (CAM).

This section also amends subsections (h1), (h2), and (h3) of G.S. 20-179 to make the following changes to the current provisions relating to the use of CAM:

- Remove the current limitation of 60 days on the use of CAM, and allow the court to require the use for the full term of probation;
- Remove the current restriction that the total cost to the defendant for CAM not be more than \$1,000; and
- Remove the provision in current law that allows the court to find that the defendant should not be required to pay the costs of CAM, and in that case to not impose the requirement unless the local government entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the cost of the system.

**DOC Impact:** To estimate eligibility for Aggravated Level One punishment, the Department of Correction Office of Research and Planning (DOC) examined 519 entries to prison with DWI Level One as their most serious offense in FY 2009-10. DOC reviewed the offender's commitments and arrest record to determine the following:

1. Whether the offender had any prior DWI offenses and instances of concurrent driving while license revoked charges;
2. Whether, at the time of the offense, the defendant's impaired driving caused serious injury to another person; and
3. Whether, at the time of the offense, the defendant was driving while a child under the age of 16 was in the vehicle.

Inmates were assigned one factor for each prior offense, and one factor for each aggravating condition, then the factors were summed for each inmate. Inmates with a total of three or more factors were placed in Aggravated Level One for the purposes of this analysis. Inmates with only two factors remained in Level One. In total, DOC estimated that 275 offenders would be re-assigned to Aggravated Level One punishment.

In FY 2009-10, the average sentence for DWI Level One offenders was 501 days. DOC estimated the expected new sentence for Aggravated Level One offenders to be 926 days. Under current law, Level One inmates served approximately 33 percent of the average sentence, or 165 days (501 days x 33 percent); non-paroled Level One inmates served approximately 41 percent of the average sentence, or 205 days (501 x 41 percent). For purposes of this analysis, DOC assumed that Aggravated Level One offenders would serve approximately the same percentage as current non-paroled DWI Level One inmates (41 percent). Therefore, the expected number of prison days served by new Aggravated Level One offenders would be 380 days (926 x 41 percent). After subtracting 120 days for post-release supervision, the adjusted time would be approximately 260 days in prison. Without the proposed legislation, Aggravated Level One offenders would be expected to serve 198 days. The difference between the adjusted days (260 days) and the time

expected to serve without the proposed legislation (198 days) would be 62 days. Overall, offenders sentenced as Aggravated Level One are estimated to spend 62 more days in prison than those convicted for a Level One offense.

The cost of the additional days for offenders in the Aggravated Level One punishment was estimated by multiplying the number of potential days served by \$14 per day per inmate. The following table illustrates the methodology used by DOC:

| Entry Level          | Expected New Sentence | Percent Expected to Serve | Expected Prison Days | Minus Post-Release | Adjusted Days | Expected DART-Cherry Time | Expected to Serve without New Legislation | Impact |
|----------------------|-----------------------|---------------------------|----------------------|--------------------|---------------|---------------------------|---|--------|
| Level One            | 501                   | 0.33                      | 165                  | 0                  | 165           | 33                        | 198                                       | 0      |
| Aggravated Level One | 926                   | 0.41                      | 380                  | 120                | 260           | 0                         | 198                                       | 62     |

Using the methodology above, 275 of the 519 offenders (53 percent) would be re-assigned to Aggravated Level One punishment. The estimated total cost of 62 additional days is \$238,700 per year (62 days x \$14 per day x 275 offenders). There is no resource impact on the Division of Community Corrections. The 275 offenders would be absorbed into existing caseloads across the State. In addition, DOC does not anticipate any additional capital costs based on the estimated number of offenders who would be sentenced under the new Aggravated Level One DWI offense.

DOC also noted that inmates convicted of DWI Level One may enter prison with some other crime as the most serious offense. During FY 2009-2010, there were 118 inmates who entered prison with a Level One conviction to be served concurrently or consecutively to a more serious crime. Of these inmates, DOC estimates that 61 (51.7 percent) would be eligible for Aggravated Level One. The changes in sentence range for inmates convicted of Aggravated Level One may extend these inmates stay in prison, depending upon the sentence received for other crimes. DOC was unable to estimate the impact for these inmates at this time.

**AOC Impact:** The Administrative Office of the Courts (AOC) also provided a case estimate for the new Aggravated Level One punishment for DWI offenders. Under current law, a judge must impose the Level One punishment under subsection (g) of this section, if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies.

For Calendar Year 2010, AOC data shows the following:

| DWI Level    | Grossly Aggravating Factors* | Defendants Convicted** | Percent of Total |
|--------------|------------------------------|------------------------|------------------|
| Level 1      | 2 or more                    | 3,939                  | 9.5%             |
| Level 2      | 1                            | 6,215                  | 14.9%            |
| Levels 3 - 5 | none                         | 31,528                 | 75.6%            |
| <b>Total</b> |                              | <b>41,682</b>          | <b>100.0%</b>    |

\*AOC data does not contain details on the number of grossly aggravating factors found or alleged. However, G.S. 20-179 requires a Level One conviction if two or more grossly aggravating factors are found and a Level Two conviction if one grossly aggravating factor is found.

\*\*Note: Typically, Judicial cost estimates are based on charges, rather than convictions. However, since a Level One or Level Two DWI conviction is determined at sentencing based on findings of grossly aggravating factors, in this instance convictions are a more appropriate measure of workload.

For their analysis, AOC accounted for all DWI convictions, including offenders who received active, intermediate, and community punishment. Overall in 2010, DWI convictions with any grossly aggravating factors accounted for 28 percent of all DWI convictions, and DWI convictions with more than one grossly aggravating factor accounted for 39 percent of all DWI convictions with grossly aggravating factors (or 10 percent of all DWI convictions). AOC cannot determine the number of Level One convictions that had at least three grossly aggravating factors.

Elevation from Level One to Aggravated Level One carries the potential for a substantial 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 portion of the bill will significantly impact court workload at the time of conviction.

However, because this legislation increases the maximum fine amount and increases court costs, it is likely 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. There will be some one-time programming and form changes to include the new offense in the necessary reports to DMV. These costs are not anticipated to be substantial.

In terms of the elimination of duration and cost caps for continuous alcohol monitoring (CAM), G.S. 20-179(h1)–(h3) currently provide that, when imposing a Level One or Level Two punishment for conviction of DWI, the court may impose a condition of probation that the defendant abstain from the consumption of alcohol for up to 60 days. The defendant's compliance with this condition is to be monitored by the use of a CAM system approved by the Department of Correction. The costs (up to \$1,000) are borne by the defendant or, if the court finds for good cause that the defendant should not bear the costs of CAM, by the local government entity responsible for his incarceration. If neither the defendant nor the local government can bear the costs, the judge may not require CAM. The costs of CAM are paid to the Clerk of Court for distribution to the vendor providing the monitoring system.

Section 1 amends the current CAM provisions in G.S. 20-179 to eliminate:

- The cap of 60 days (proposed: CAM could be imposed for the duration of probation);
- The \$1,000 cap on CAM costs (proposed: no limitation); and,
- The provision that CAM may not be imposed if there is no party available to pay for it (proposed: unknown; there is no clear authority to assess costs or their allocation).

By repealing G.S. 20-179(h2) and the assessment of costs in subsection (h1), it is unclear how costs for CAM would be assessed or allocated to a responsible party. Subsection (h3) would continue to provide that “any fees or costs paid under subsection[s] (h1)” would be collected by the clerk and paid to the CAM vendor. If the intention of the bill is that the costs of CAM would be assessed against the defendant, it is possible that judges would be less likely to impose as a condition of probation that offenders abstain from alcohol consumption under 20-179(h1). AOC cannot project the impact of this potential change in terms of other conditions that might be imposed instead, or on any resulting impact on probationer compliance and behavior. Any increase in probation revocation hearings would impact court workload.

Approximately, 1,200 people in North Carolina have been placed on CAM since December of 2004. The name of the company providing CAM in North Carolina is Rehabilitation Support Services, LLC. CAM cost \$75 to install and \$12 per day for daily monitoring fees. The CAM System is delivered on an offender-pay model, so the offender absorbs either all or a significant portion of the cost for the equipment and daily monitoring fees. Currently, approximately 90% of offenders on CAM are paying for all or a significant portion of CAM fees. Approximately 10% receive some sort of government funding to subsidize the daily cost. Pay is collected by the Clerks of Court for a Level 1 or Level 2 DWI offense and sent to Rehabilitation Support Services, LLC. Any other alcohol-related offender on CAM pays directly to Rehabilitation Support Services, LLC. If a defendant is late on their payments (typically up to one month late), Rehabilitation Support Services, LLC will remove CAM and the defendant would be in violation of the terms of their probation. The Division of Community Corrections reviewed their records to determine how many offenders were revoked to prison as a result of a CAM sanction. Since January 1, 2010, no one has been revoked to prison or jail for not paying CAM fees.

**Section 2:**

This section provides for a permanent revocation for persons sentenced as an Aggravated Level One offender. This particular "permanent" revocation authorizes a person to apply for conditional license restoration after 3 years.

**Impact:** Costs associated with this section are offender based. Therefore, Section 2 does not impose a fiscal impact to the State.

**Section 3:**

This section requires a person sentenced as an Aggravated Level One offender to have an ignition interlock system installed on their vehicle for a period of seven years after license restoration, preventing them from driving with an alcohol concentration (BAC) of greater than 0.00.

**Impact:** Costs associated with this section are offender based. Therefore, Section 3 does not impose a fiscal impact to the State.

**Section 4:**

This section imposes an additional court cost of \$100 on all persons convicted of a driving while impaired offense.

**Impact:** According to AOC, there was a total of 41,682 defendants convicted of a DWI in calendar year 2010. For the purpose of determining the amount of revenue the new fee would provide the General Fund, the AOC analyzed the number of DWI offenders who paid in full by 2009-10. Due to data limitations, AOC is unable to determine the exact number of DWI offenders convicted in FY 2008-09 who paid in full by FY 2009-10. This is due to the court's focus on offender compliance with all terms of probation, rather than solely on money collected. Offenders may have received some reduction or waiver of fees and complied in full with the judgments rendered, and some defendants may still be on probation and making payments. In addition, it is important to note that costs due the State are toward the end of the priority order, and DWI probation terms are more than one year. Therefore, AOC would expect to see a gradual increase in revenue over the first three fiscal years.

At this time, AOC estimates that 23,200 defendants convicted in FY 2008-09 of the applicable offenses paid the full General Court of Justice fees owed. If all 23,200 paid the additional \$100 fee, total revenue from defendants sentenced in the first 12 months of implementation would be \$2.32 million, collected over 24 months. (Note: effective date is December 1, 2011, so collections would be spread over three fiscal years.)

However, it is likely that some of the offenders would pay only part of the new fee, or collections would be diminished in other accounts with lower priorities. If the equivalent of 50 percent paid the full fee, collections from that group would be \$1.16 million, collected over 24 months. If the equivalent of ten percent paid the full fee, collections from that group would be \$232,000, collected over 24 months.

Additionally, there will be a one-time impact on workload for information technology and legal staff, and ongoing impact on clerk workload, for any new fee that is imposed only on conviction of specific cases.

### **Section 5:**

This section authorizes that a person charged with an offense involving impaired driving be required to comply with CAM as a condition of pre-trial release if they have a prior conviction of an offense involving impaired driving that occurred within seven years.

**Impact:** Judges have the discretion to order CAM for pretrial release for any offender charged with an offense involving impaired driving if they have a previous conviction within the past seven years. Costs associated with this section would be offender based. Therefore, Section 5 does not impose a fiscal impact to the State.

**SOURCES OF DATA:** Department of Correction Office of Research and Planning; Judicial Branch

**TECHNICAL CONSIDERATIONS:** none

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