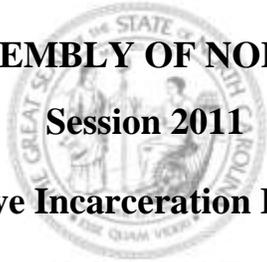


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)
REVISED

BILL NUMBER: House Bill 451 (Second Edition)

SHORT TITLE: DWLR Penalties Increased/Vehicle Seizures.

SPONSOR(S): Representative Starnes

Table with fiscal impact 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 EXPENDITURES: Correction, Probation, Judicial; PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; and EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

BILL SUMMARY:

The Proposed Committee Substitute for House Bill 451 would increase the penalties for driving while license revoked by setting minimum fines for the initial and subsequent convictions. The act also requires the vehicle being operated by a driver whose license or driving privileges are revoked after two prior convictions for driving while license revoked to be seized and forfeited to the State. The act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

Source: Adopted from Committee Counsel's bill summary dated 4/19/2011.

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.

Department of Correction – Division of Prisons

Section 1 amends G.S. 20-28, Unlawful to drive while license revoked, after notification, or while disqualified. Currently, subsection (a) makes it a Class 1 misdemeanor for a person whose driver's license has been revoked to drive a motor vehicle on a State highway while the license is revoked (DWLR). The bill adds subdivision (a)(ii) which makes it a Class A1 misdemeanor for a person to drive with a revoked license after having two prior DWLR convictions under 20-28(a)(i).¹ There is no time limit on the two prior convictions.

In FY 2009-10, there were 30,587 convictions for DWLR. Of these convictions, 15,247 (approximately 50 percent) had two or more prior conviction points. While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses that are used to calculate the number of prior record/conviction points. Therefore, it is not known how many of the 15,247 offenders with two or more prior conviction points had two prior DWLR convictions and would be reclassified from a Class 1 misdemeanor to a Class A1 misdemeanor under the proposed bill.²

In FY 2009-10, 32 percent of Class A1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class A1 convictions was 69 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. If a large number of offenders were to be convicted as Class A1 misdemeanor offenders instead of as Class 1 misdemeanor offenders, the impact on local jail populations could be substantial. Impact on the prison population would occur when the sentence imposed is greater than 90 days. Under the misdemeanor punishment chart, the only offenders convicted of a Class A1 misdemeanor who can receive a sentence length of greater than 90 days are those with five or more prior conviction points³ (with a sentence range of 1-150 days). Of the DWLR convictions, 9,324 had five or more prior conviction points. It is not known how many of the 9,324 offenders with five or more prior conviction points had two prior DWLR convictions or how many would receive sentences of greater than 90 days under the proposed bill.

¹ The bill also adds subsection G.S. 20-28(e) (Fines), to require that a person convicted of under G.S. 20-28(a) shall be fined at least \$250 for a first offense, \$1,000 for a second offense, and \$2,500 for a third or subsequent offense.

² This assumes that the two prior DWLR convictions must be obtained during separate weeks or sessions of court. (See the definition of prior convictions under Structured Sentencing (G.S. 15A-1340.11(7)).

³ This analysis assumes that the offender's two prior DWLR convictions would count toward the Prior Conviction Level (PCL), rather than being excluded as elements of the Class A1 misdemeanor offense.

If a large number of these convictions would be reclassified to Class A1 and would receive sentences of 90 days or more, the impact on the prison population could be substantial. Additional prison impact would occur for any Class A1 offenders in Prior Conviction Level II who receive consecutive sentences totaling more than 90 days.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.⁴

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

Judicial Branch

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.

In Calendar Year 2010, there were 183,236 DWLR charges. AOC data does not contain information on the specific offenses that are used to calculate prior record points/prior convictions; therefore, it cannot be determined how many defendants would be charged with the Class A1 misdemeanor of a third DWLR offense. If, for example, ten percent of offenders had two or more prior convictions for DWLR, then 18,324 defendants would face the elevated Class A1 misdemeanor charge.

⁴ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

The elevation of the offense from a Class 1 misdemeanor to a Class A1 misdemeanor for third or subsequent convictions, combined with the vehicle seizure for third or subsequent convictions, could result in a more vigorous defense and more time for district court personnel – district court judge, deputy clerk, assistant district attorney, and victim witness legal assistant. It may also make appeals to superior court more likely, which would impact superior court judges, court reporters, assistant district attorneys, District Attorney (DA) office staff, and deputy clerks.

Increased seizures will impact magistrate workload (five minutes per seizure) and DA staff workload (duty to inform of forfeiture hearing and duty to notify law enforcement of need to seize). Depending on when in the process an application for release of the vehicle is made (pretrial or post-disposition), and the outcome of that application, clerk time will range from 15 minutes to one hour. Judge and assistant district attorney time is estimated at 30 minutes for those seizures dealt with in hearings.

Using the illustrative scenario outlined above, if 18,324 vehicles were seized and required on average 20 minutes of a deputy clerk’s time pre-trial, and if 3,059 seizures (ten percent of 30,587 convictions for DWLR in FY 2009-10) resulted in post-conviction hearings, the workload would be the equivalent of one additional district court judge, one additional assistant district attorney, six additional clerk staff (five assistant clerks and one deputy clerk), and three additional magistrates.

Under the scenario, the estimated cost for the 11 positions would equate to \$750,638 in the first full year of implementation (FY 2012-13). The cost estimates used in the scenario are minimum estimates. The costs provided assume new assistant clerks will be hired to handle the requests. Costs include salaries, benefits, nonrecurring expenses for office furniture and equipment, and operating expenses. The table below shows the projected costs for those positions under the scenario.

Position Type	Positions	Position Cost				FY2011-12 (Eff. Dec 1)			FY2012-13	FY2013-14	FY2014-15	FY2015-16
		Salary	Soc Sec	Retirement	Health	R	NR	Total	Total	Total	Total	Total
Inflation*								0.00%	8.87%	8.68%	6.64%	5.24%
District Court Judge	1	\$109,372	\$8,209	\$21,886	\$4,929	\$84,231	\$9,653	\$93,884	\$157,204	\$170,849	\$182,194	\$191,741
Magistrate	3	\$97,899	\$7,491	\$10,290	\$14,787	\$76,106	\$10,332	\$86,438	\$142,039	\$154,368	\$164,619	\$173,245
Assistant District Attorney	1	\$70,946	\$5,428	\$7,457	\$4,929	\$51,777	\$3,739	\$55,516	\$96,633	\$105,021	\$111,994	\$117,863
Deputy Clerk	1	\$27,888	\$2,134	\$2,932	\$4,929	\$22,098	\$2,620	\$24,718	\$41,243	\$44,823	\$47,799	\$50,304
Assistant Clerk	5	\$161,110	\$12,325	\$16,935	\$24,645	\$125,425	\$13,100	\$138,525	\$234,087	\$254,406	\$271,298	\$285,514
Subtotal Court Personnel	11							\$399,081	\$671,206	\$729,467	\$777,904	\$818,666
Inflation**									3.05%	2.99%	2.47%	2.49%
Operating								\$52,590	\$115,916	\$119,382	\$122,330	\$125,376
Grand Total								\$451,671	\$787,122	\$848,849	\$900,234	\$944,042

*Positions were inflated based on the Moody’s economy.com inflation rate estimates for salaries and wages (Jan. 2011).

**Operating expense inflation estimates based on consumer price index projections provided by Moody’s economy.com(Jan. 2011).

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: North Carolina Sentencing and Policy Advisory Commission; Judicial Branch

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices