

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 446 (Companion to HB 385)

SHORT TITLE: DWI Amendments

SPONSOR(S): Senator Odom

FISCAL IMPACT: **Expenditures:** **Increase (X)** **Decrease ()**
 Revenues: **Increase (X)** **Decrease ()**
 No Impact ()
 No Estimate Available ()

FUND AFFECTED: **General Fund (X)** **Highway Fund ()** **Local Fund ()**
 Other Fund (X) (Indigent Persons Attorney Fee Fund)

BILL SUMMARY: Amends G.S. 20-138.1(a) (offense of impaired driving) and G.S. 20.12.1(a) (offense of impaired instruction) to reduce the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08 percent, and makes conforming changes in various other statutes. Amends G.S. 20-179(e) to provide that a mitigating factor in sentencing for impaired driving is the slight impairment of defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 (now 0.11) at any relevant time after driving. Amends G.S. 20-139.1(b3) to provide that a person's willful refusal to give the second sequential breath sample required by the regulations of the Commission for Health Services shall make the results of the first breath test admissible at trial, if it is otherwise admissible.

Amends G.S. 20-13.2(d) to establish that the length of revocation of a provisional license under this section shall be equal to the number of days from the date of the charge to the provisional licensee's eighteenth birthday or 45 days, whichever is longer. Amends G.S. 20-179(c) to provide that a conviction for another offense involving impaired driving, for which the conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing, shall also constitute a prior conviction involving impaired driving for aggravation purposes of this section.

EFFECTIVE DATE: October 1, 1993.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: District Court, Superior Court, Indigent Defense, District Attorney, Department of Correction

FISCAL IMPACT - JUDICIAL BRANCH

FY 93-94 FY 94-95 FY 95-96 FY 96-97

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TOTAL EXPENDITURES	\$194,254	\$259,005	*\$259,005	*\$259,055	*
INDIGENT DEFENSE	52,853	70,471	70,471	70,471	7
OTHER RECURRING	141,401	188,534	188,534	188,534	1
TOTAL REV./					
RECEIPTS	(\$114,791)	(\$153,055)	(\$153,055)	(\$153,055)	(
GENERAL FUND	(54,030)	(72,040)	(72,040)	(72,040)	(
OTHER	(60,761)	(81,015)	(81,015)	(81,015)	(
NET EXPENDITURES	\$79,463	\$105,950	*\$105,950	*\$105,950	*

* Based on available data, it is undetermined if the number of DWI charges will increase/decrease following FY94-95. Expenditures for FY95-96, FY96-97, and FY97-98 do not include inflationary increases.

POSITIONS: No new positions. No estimates are provided for costs relating to the additional workload on court officials, especially district attorneys and judges, because the demands would be spread across the state. One likely effect of the increased workload would be the general slowing down of the system. At an undetermined point, the additional workload from bills that impact on the courts cannot simply be absorbed, and additional resources will be needed.

ASSUMPTIONS AND METHODOLOGY - JUDICIAL BRANCH

Estimation of the impact that HB 385 would have on the Judicial Branch involves estimating how many additional cases would enter the court system annually as the result of lowering the blood alcohol threshold from .10 to .08 for civil license revocation and DWI cases, and at what additional cost. In the following analysis, it is recognized that the proposed legislation may have contradictory and somewhat counteracting effects on the number of DWI cases. It may increase the number of cases prosecuted due to the lower blood alcohol concentration threshold. On the other hand, to the extent that the legislation actually deters drinking and driving, it will tend to decrease cases.

Additional Cases: In their 1991 annual report on DWI statistics, the Division of Motor Vehicles (DMV) reported 11,938 breath test results and 337 blood test results (involving non-commercial vehicles) in the range of .05 to .09, for a total of 12,275 test results in this range. Making the assumption that these were evenly distributed (that is, an equal number of persons at .05, .06, .07, .08, and .09), about 40%, or 4,910, would be .08 to .09. We further assume that about half of these are prosecuted under existing law, G.S. 20-138.1(a)(1), and that only the remaining 2,455 would be additional cases. At an average appeal rate of 7.2%, 177 of the 2,455 district court cases would be appealed to superior court.

Additional Costs: At an estimated average cost per case of \$90, the 2,455 additional district court cases would cost \$220,950. At an estimated average cost per case of \$215, the 177 additional superior court cases would cost \$38,055. Thus, the total annual additional costs for the court system would be \$259,005. These costs include indigent defense costs. Broken out, the indigent costs are estimated as follows,

based on the assumption that 15% of the defendants in these cases would be indigent and represented by private assigned counsel. In district court, 15% of the 2,455 cases yields 368 indigent cases, or \$62,560 at an average cost per case of \$170. For superior court, 15% of the defense comes to \$70,471.

Additional Receipts: The General Court of Justice fee of \$41 in district court (times 2,455 cases) and \$48 in superior court (times 177 cases) translates into total receivables for the General Fund of \$109,151. However, not all of this would be collected. Considering the fact that court costs must be paid for license restoration, an estimated 66%, or about \$72,040 would be collected.

[It is estimated that there would be total receivables of about \$122,750 from fees for restoration of licenses in the additional 2,455 civil revocation cases, based on the current \$50 fee. Assuming collection in about 66% of the cases, it is estimated that approximately \$81,015 in revocation fees would be collected. However, 50% of the funds would be distributed to the counties based on the number of revocations, and, pursuant to G.S. 20-16.5(j), the remaining 50% would be transferred to the Injury Control Section of the Department of Environment, Health, and Natural Resources to fund a statewide chemical alcohol testing program. For FY 92-93, funds collected and designated for this program shall not revert to the General Fund, and such funds which have not been spent or obligated as of June 30, 1994, shall revert to the Highway Fund.]

FISCAL IMPACT - DEPARTMENT OF CORRECTION

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>F</u>
EXPENDITURES	*\$803,378	*\$424,298	*\$424,298	*\$424,298	*
RECURRING	424,298	424,298	424,298	424,298	4
NON-RECURRING	379,080	0	0	0	0
REVENUES/RECEIPTS	0	0	0	0	0
RECURRING	0	0	0	0	0
NON-RECURRING	0	0	0	0	0

* Expenditures will not be realized unless the current prison cap is removed. Under the existing cap no additional expenditures would result within DOC.

POSITIONS: 5 new positions.

ASSUMPTIONS AND METHODOLOGY - DEPARTMENT OF CORRECTION

Additional Convictions: Based on the 2,455 additional cases estimated above, it is assumed that there would be 2,070 additional convictions. In their 1991 annual report, the DMV reported that 84.3% of persons testing at or above the .10 level were convicted. Applying this same percentage for the additional test results at the .08 and .09 levels yields 2,070 convictions.

These 2,070 additional convictions do not reflect a possible decrease in arrests resulting from possible increased public restraint if a more

stringent DWI law were enacted. Research conducted by Rick Kane, Co-Administrator of Research and Planning for the Administrative Office of the Courts, in May of 1991 reported that the number of DWI charges began decreasing in 1983, when the Safe Roads Act was enacted, and continued to decrease for two more years. From 1982 to 1985, charges decreased by 29%. As of 1989, there were still 16% fewer charges than there were in 1982. Researchers who studied DWI cases at the Department of Human Resources and at the Highway Safety Research Center in Chapel Hill theorized that the publicity surrounding enactment of the Safe Roads Act led to increased public restraint. It was also noted that ongoing highway safety programs probably continued to check drinking and driving.

However, assessments of DWI offenders prior to the 1991 referenced research indicated that some 60% to 70% had dependency problems and probably needed professional help to change their conduct. While in 1991 that seemed to leave a sizable pool of DWI offenders from which some might change their conduct if the law was strengthened, it is currently the professional opinion of Rick Kane that at the present date, a decreased number of impressionable offenders can be included within that pool. This is largely the result of the above mentioned ongoing programs such as the designated driver program and other highway safety programs. No further research has been conducted in this area. Thus, it is unknown if arrests, and subsequently convictions, would in fact decrease, or by how much. If decreases were realized, costs resulting from additional cases that test at the .08 and .09 levels could be offset by decreases in arrests spanning all blood alcohol levels.

While no estimates are available, it is also noted that other aspects of the bill such as Section 8 (which makes results of the first breath test admissible at trial in the event of a willful refusal to give a second sequential breath sample) could arguably impact the rate of convictions. Increased convictions resulting from this section of the bill could offset a decreased number of cases resulting from increased public restraint.

Sentencing: Based on the estimate of 2,070 additional convictions, Rob Lubitz, Executive Director of the North Carolina Sentencing and Policy Advisory Commission, estimates 26.5 additional inmates in the Department of Correction's (DOC) average daily population. Commission data shows that there were 50,613 misdemeanor DWI convictions in 1991. Of these 50,613 convictions, there were 3,007 or approximately 6% admissions to DOC.¹ Approximately 2.9% or 1,453 of the 1991 admissions

¹Information provided by the Commission indicates that DOC admissions should only include Level One and Level Two DWI convictions. G.S. 20-179 requires a judge to impose a Level One punishment if the defendant has been convicted of two or more prior impaired driving offenses within the seven year period prior to the current offense or if two or more of the following grossly aggravating factors apply:

- A single previous conviction in the past seven years
- The defendant was driving with a revoked license
- Serious injury was caused to another person.

were new offenses and approximately 3.1% or 1,554 of the admissions were revocations. The approximate average time served for the 1991 DWI admissions to DOC was 78 days. Thus, 2,070 new convictions, an estimated 6% DOC admission rate, and an average 78 day period of incarceration yields 26.5 additional inmates in the DOC's average daily population.

Additional Costs: Additional costs are realized only if it is assumed that the current prison cap is removed. Non-recurring or capital costs are estimated to be \$379,080 to build 26 additional minimum security beds. Costs are estimated from the \$2,916,000 expenditure required to build the 200 bed minimum security Duplin addition.

Based on FY 91-92 operating or recurring costs of \$44.71 per minimum security inmate per day, additional recurring costs are estimated to be approximately \$424,298 per year. Costs estimates do not include inflationary or salary.

Additional Positions: Based on the 1992 recommendation of the Government Performance Audit Committee (GPAC), approximately 5 additional positions would be required if the cap were removed and 26 additional minimum security beds were built. Page 8.15 of the Public Safety Section of the GPAC report entitled "Our State Our Future" recommends a staffing ratio of 1 to 5 for minimum security inmates. The above noted operating costs could be lower if this ratio were in effect.

SOURCES OF DATA: 1991 North Carolina DWI Statistics, RATERS Report (NC Department of Transportation, Division of Motor Vehicles, Drivers License Section); AOC data on frequency of offenses charged, AOC data on indigent defense; AOC Statistical Management Reports for 1991-92; N.C. Sentencing and Policy Advisory Commission, Commission Sentencing Database for 1991; Department of Correction, 1991 Annual report of DOC; N.C. General Statutes; 1992 Government Performance Audit Committee Recommendations.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION

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