

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** House Bill 183  
**SHORT TITLE:** DWI/Felony Prior Record Level  
**SPONSOR(S):** Bowie and McComas

**FISCAL IMPACT**

Yes (X)      No ( )      No Estimate Available (X )

(in millions)

FY 1997-98   FY 1998-99   FY 1999-00   FY 2000-01   FY 2001-02

**GENERAL FUND**

**Correction**

Recurring

Nonrecurring

**See technical consideration—appropriation called for in bill  
appears not to be needed**

**Judicial**

Section 2

\$401,450

\$401,450

\$401,450

\$401,450

Section 1&3

xxxxxx

IMPACT BUT NO ESTIMATE AVAILABLE

**TOTAL EXPENDITURES**

0

\$401,450

\$401,450

\$401,450

\$401,450

**NOTE:** Some of the fiscal impact noted above is due to an appropriation included in Section 9 of the bill. This appropriation appears to relate to a version of the bill in prior sessions, not the current version. Not including this appropriation, the bill is anticipated to have an impact on the Judicial Branch but no estimate is available for much of this impact.

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Dept. of Correction; Judicial Branch

**EFFECTIVE DATE:** Felony sentencing provisions effective Dec. 1, 1997. License revocation provisions effective July 1, 1998. Appropriation effective July 1, 1997.

**BILL SUMMARY: H 183. DWI/FELONY PRIOR RECORD LEVEL.** TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY PRIOR RECORD LEVEL CALCULATION, TO PROVIDE FOR AN INDEFINITE CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER IMPAIRED DRIVING OFFENSE IS. Amends GS 15A-1340.14(b) (regarding calculation of prior record points in felony sentencing) to assign one point for each prior conviction of impaired driving (GS 20-138.1) or impaired driving in commercial vehicle (GS 20-138.2). (Now, no points assigned for those offenses.)

Amends GS 20-16.5 to provide that if a person meets the criteria for driver's license revocation under current GS 20-16.5(b) (for example, refusing to submit to a chemical analysis of blood alcohol concentration, or showing a concentration of .08 or more in such an analysis, where charging officer has reason to believe that person has committed DWI), and if the person has another pending charge for which his or her license has been or is revoked under GS 20-16.5, the person's

license must be revoked until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. Period of revocation may not be less than 10 days.

Adds new GS 20-179(a1) to provide that where offender appeals DWI conviction to superior court for new trial but then withdraws the appeal or the case is remanded to district court for imposition of judgment, the district court must, upon motion of the district attorney, hold hearing to determine whether any grossly aggravating factors under GS 20-179(c)(1) apply which were not included in the previous judgment. If so, judge must modify the sentence in accordance with GS 20-179. District attorney's motion must be filed before order of remand or withdrawal of appeal. *Appropriates* from General Fund to Dep't of Correction \$837,219 for 1997-98 to fund cost of additional 165 inmates incarcerated as result of bill.<sup>1</sup>

**ASSUMPTIONS AND METHODOLOGY:**

Department of Correction

Section I of this bill would include prior impaired driving convictions in calculating felony prior record levels under structured sentencing. Since this will affect the frequency of and length of active sentences handed down, it will increase the size of the inmate population. The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

	<b><u>June 30</u></b> <b><u>1998</u></b>	<b><u>June 30</u></b> <b><u>1999</u></b>	<b><u>June 30</u></b> <b><u>2000</u></b>	<b><u>June 30</u></b> <b><u>2001</u></b>	<b><u>June 30</u></b> <b><u>2002</u></b>
Projected No. of Inmates Under Current Structured Sentencing Act <sup>2</sup>	31,762	30,371	30,060	30,610	31,259
Projected No. of Prison Beds (DOC Expanded Capacity) <sup>3</sup>	34,133	35,599	35,599	35,599	35,599
No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+2,371	+5,228	+5,539	+4,989	+4,430
No. of Projected Additional Inmates Due to this <b>Bill</b>	<b>0</b>	<b>321</b>	<b>365</b>	<b>422</b>	<b>462</b>
No. of Additional Beds Need Each Fiscal Year Due to this Bill	0	0	0	0	0

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 462 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this

<sup>1</sup> *Daily Bulletin*, Institute of Government, UNC-Chapel Hill.

<sup>2</sup> The Sentencing Commission's revised prison population projections (dated December 1996) were estimated under three scenarios: High, Best, and Low. The differences in these scenarios reflect varying assumptions on incarceration rates under Structured Sentencing, probation and revocation rates, and the decline of the stock population. The projections outlined above are included in the "Best scenario" since the Sentencing Commission and the Department of Correction believe this scenario is most likely to occur.

<sup>3</sup> Projected number of prison beds based on Department of Correction estimates of expanded bed capacity as of 1/11/97. These numbers do not include the number of beds requested in the Governor's 1997-99 Capital Improvement budget.

bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02 , based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);
2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;
3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,
4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

**Note:** The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

Judicial Branch The Judicial Branch anticipates a *substantial* impact from this bill. Because Section I would increase the likelihood and length of active sentence for felony convictions, it may affect the defense strategy of certain defendants. This could increase the jury trial rate and the workload of the Judicial system. Data is not available, however, to quantify this impact.

Section 2 of the bill requires that if an offender has one or more pending offenses for which the license has been revoked, civil revocation of the drivers license will be until final judgment has been entered on all offenses. Current law specifies a 10 day period. This change may increase the number of arrests for driving while license revoked. Because the revocation period may be longer there may be more contested revocations (20-30 minutes court time per case) as well as more requests for limited driving privileges(10-20 minutes per case), primarily in district court. This section also contains an additional reporting requirement for clerks to report to DMV in indefinite revocation cases.

The Judicial Branch estimates that 7,440 individuals will be charged with driving while impaired while they already have their license revoked for a pending DWI charge. They also estimate that 90% of these individuals will request a hearing to contest the revocation and/or to apply for limited driving privileges, with an average court time of 30 minutes. This totals 3,534 in additional court time. Assuming about 1800 available hours per year per courtroom, the Judicial Branch would need 2 each of District Court Judges, Assistant District Attorneys and Deputy Clerks to handle the workload. Based on allotted salaries for these positions, this would cost \$401,450 starting in 1998-9.

District Court Judges	2 @	109,669	=	219,338
Assistant DA	2@			131,248
Deputy Clerk	2@			50,864
<b>TOTAL</b>				<b>\$401,450</b>

Section 3 of the bill requires that if a case is remanded to district court or an appeal to superior court dropped, and the district attorney has moved for a hearing to determine if any grossly aggravating factors apply to judgment, the district court shall hold such a hearing and modify the sentence in accordance with such findings. This may increase the number of district court hearings and the costs for district attorneys, district court judges and clerks of court. Data is unavailable however to quantify this impact since it is not known the number of DWI appeals that are withdrawn or remanded nor the frequency of new grossly aggravating factors.

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

**TECHNICAL CONSIDERATIONS:** Section 9 includes an appropriation of \$837,219 to the Department of Correction for 1997-8 to fund the estimated additional 165 inmates that will be added by implementation of Section I. This appears to be from a version of this bill that was introduced in prior sessions. Under current analysis there is no fiscal impact of this bill on the Department of Corrections and no additional inmates will be added in 1997-8. Additional inmates in later years can be absorbed with existing resources.

**FISCAL RESEARCH DIVISION: 733-4910**

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Official  
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Publication



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