

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 951

SHORT TITLE: Felony Driving W/O License

SPONSOR(S): Representative Nichols

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

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

BILL SUMMARY: Amends G.S. 20-28 to make driving while their license is suspended for an impaired driving or controlled substance violation a Class J felony subject to imprisonment of not less than 90 days and a fine of not less than \$2,000. Prohibits suspended sentences, probation, and reduction of sentences for good time, gain time, or early parole. Conviction also leads to additional license suspension equal to original suspension.

EFFECTIVE DATE: January 1, 1994; applicable to offenses committed on or after that date.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department; Department of Correction

JUDICIAL DEPARTMENT

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES*	\$96,975	\$193,949	\$193,949	\$193,949	\$193,949
GENERAL FUND	74,755	149,549	149,549	149,549	149,549
REVENUES/RECEIPTS	\$18,126	\$36,252	\$36,252	\$36,252	\$36,252
RECURRING	18,126	36,252	36,252	36,252	36,252
NON-RECURRING	0	0	0	0	0

\* Recurring expenditures do not include salary or inflationary increases.

POSITIONS: The Administrative Office of the Courts (AOC) does not itemize the need for new positions largely because the impact of

this bill is spread across state. However, the AOC notes that the "increased workload due to this bill, combined with other pending legislation, would require additional superior court judges, assistant district attorneys, and assistant public defenders."

**ASSUMPTIONS AND METHODOLOGY:** The above costs for the Judicial Department are based on the following analysis prepared by the AOC. The AOC estimates that this bill would result in an additional 179 felony trials in superior court and an estimated 9,309 guilty pleas that would require additional preparation time by assistant district attorneys and defense attorneys. A detailed cost analysis, as provided by the AOC, is as follows:

**Additional Felony Filings:** "This bill would result in a substantial increase in felony filings for what are now misdemeanor driving while license revoked (DWLR) offenses. Extrapolating from data for the first quarter of 1993, we estimate that under current law, in a year's time there will be approximately 74,592 defendants (in 81,608 cases) who are charged with driving while their license is revoked. Although our data do not allow us to identify which of these revocations were on the basis of an impaired driving offense, we can estimate the number by using data from the Division of Motor Vehicles. For fiscal year 1991-92, 25% of the in-state license suspensions or revocations for reasons other than failure to appear (and excluding the 10-day revocations under G.S. 20-16.5) were due to impaired driving offenses.

"Assuming this same percentage for DWLR cases, 25% of the total 74,592 defendants yields an estimated 18,648 felony defendants. (This may actually be an underestimate; one district attorney estimated that 50%-70% of the DWLRs in his district were due to previous driving while impaired convictions. On the other hand, due to the deterrent effect of this bill and the deterrent effect of having been previously convicted of an impaired driving offense, it could be that persons convicted of impaired driving offenses are less likely to drive with their licenses revoked. The estimate of 25% strikes a balance between this possibility and the district attorney's estimate.) Subtracting an estimated 4%, or 746 defendants, who would be expected to appeal to superior court under current law, results in an estimated 17,902 new superior court felony defendants during a one-year period.

"Because of the more serious nature of felony convictions, as well as the stiffer penalty for these DWLRs under the bill, some district attorneys and public defenders suggested that more people would proceed to trial than do under current law. Several district attorneys also indicated that in many of these cases, defendants would plea to a misdemeanor offense, such as driving without a license. Assuming that an additional 1% of these defendants would enter not guilty pleas and proceed to trial than otherwise would have, yields an estimated 179 new trials. These trials would be jury trials in superior court.

"We estimate that 52% of the defendants would enter guilty pleas, a somewhat higher figure than the current estimated rate for defendants charged with these offenses. The result is an estimated 9,309 guilty pleas, in which some additional preparation time on the part of assistant district attorneys and defense attorneys would be expected.

**Additional Costs:** "For the estimated 9,309 guilty pleas, we assume that attorneys would devote at least an additional one-half hour of preparation time due to the more serious charge and its mandatory 90-day active sentence. Assuming that 25% of the defendants in these cases are indigent, (for a total of 2,327 indigent cases) and that the court would appoint private assigned counsel (as opposed to the public defender) in 66% of the indigent cases, there would be an estimated 1,536 guilty pleas handled by private assigned counsel. An additional one-half hour for these 1,536 cases, at \$50 per hour, yields \$38,400 in additional costs for private assigned counsel for the guilty pleas.

"As stated above, we estimate that there would be an additional 179 felony trials in superior court for these cases. We estimate that 25%, or 45, of the defendants would be indigent and would receive court-appointed counsel. AOC data on appointment of counsel in indigent cases suggests that 66% of these 45 cases, or 30 cases, would involve private assigned counsel, and the remaining 34%, or 15 cases, would involve the public defender as defense counsel. The cost estimates below detail the anticipated costs for the additional trials, broken down as follows: (a) costs for the additional days in court (excluding costs of private assigned counsel), and (b) additional costs for assigned counsel. These figures do not account for the increased costs that would be incurred for superior court jury trials in those cases that are now tried in district court, nor do they reflect costs for additional preparation time by district attorneys or public defenders in either tried cases or plead cases.

"(a) **Days in court:** Assuming that trials in these cases would take one-half day (for the estimated 134 trial cases involving retained counsel and for the 30 cases involving private assigned counsel), we estimate the cost for court time (i.e., costs for the judge, jury, assistant district attorney, clerk, and court reporter) in each trial to be \$826. Thus, we would predict that these 164 trials would cost approximately \$135,464. For the 15 trial cases involving the public defender, costs for the one-half day in court are estimated at \$939. Thus, we would predict that these 15 trials would cost approximately \$14,085. The total costs for court time are estimated at \$149,549.

"(b) **Costs for assigned counsel:** For the 30 trials involving private assigned counsel, we estimate that an additional 1 hour of preparation time would be required (as compared to that for the less severe misdemeanor DWLR charge). Including the 3 hours of trial time for the half-day trial, the estimated additional 4 hours of assigned counsel time in each case yields an additional

120 hours of private assigned counsel time. At \$50 per hour, the estimated additional cost for private assigned counsel in these cases is \$6,000.

**"Additional Revenues:** The General Court of Justice fee is \$41 for district court and \$48 for superior court. The difference of \$7 for approximately 9,416 convictions in superior court yields estimated total receivables for the General Fund of \$65,912. However, not all of this would be collected. Assuming collection in 55% of the cases, we would estimate receipt of about \$36,252.

**"Other Considerations:** With one exception, consisting of a small number of cases, the above estimates address new felony filings related only to DWLRs when the revocation is for impaired driving. Review of the current motor vehicle laws revealed only one statute relating to license revocation based on a controlled substance violation (see G.S. 20-17.4, which specifies that persons is disqualified for life from driving a commercial motor vehicle if the person used a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance). It is conceivable that there could be some DWLRs based on controlled substance felonies due to revocations under G.S. 20-17(3), which requires mandatory revocation of a driver's license if a motor vehicle was used in the commission of a felony. However, the DMV data identify only 36 such revocations during 1991-92. If other bills are enacted that relate to the revocation of drivers licenses for controlled substance offenses, there would be additional felony filings as a result of this bill."

**DEPARTMENT OF CORRECTION**

**FISCAL IMPACT**

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
<b>EXPEND. *</b>	\$33,626,390	\$51,557,952	\$27,345,740	\$26,420,074	\$2
<b>RECURRING</b>	5,297,850	21,702,900	23,235,900	24,100,950	23
<b>NON-RECURR.</b>	28,328,540	29,855,052	4,109,840	2,319,124	0
<b>REVENUES/RECEIPTS</b>	0	0	0	0	0
<b>RECURRING</b>					
<b>NON-RECURRING</b>					

\* Expenditures consist of local funds and do not include salary or inflationary increases.

**POSITIONS:** N/A

**ASSUMPTIONS AND METHODOLOGY:** The above cost estimates are calculated from the projected increase in jail populations that would result upon ratification of this bill. The expenditures are the operating and capital costs to house additional inmates within local jail facilities and are, therefore, local costs. (Note: The relevant DWLR

offenders are expected to be confined within local jail facilities since it is currently the procedure that any defendant receiving a six month sentence or less be held at a jail facility. Offenders sentenced under the proposed legislation must serve a mandatory 90 days or 3 months.) Projections apply to all relevant offenses committed on or after December 1, 1993.

**Added Inmate Population:** The number of additional beds that would be required by local jails was estimated by Rob Lubitz, Executive Director of the N.C. Sentencing and Policy Advisory Commission using the Commission's correctional population simulation model. (See Appendix IV of the Commission's "1993 Report to the General Assembly" for further explanation.) The projected increase in jail population is based on the following assumptions:

- 1) There would be no changes in charging practices or in plea negotiation practices resulting from this bill.
- 2) Twenty-five percent of relevant license revocations in DWLR offenses are attributable to driving while impaired convictions. (Based on analysis performed by the AOC. See narrative for "Judicial Department" for further explanation.)
- 3) Offenders convicted under the proposed legislation would be required to serve 90 days of active time without benefit of any reduction in time.
- 4) The growth rate for these crimes will match the growth rate used in the Commission's correctional population simulation model.

Based on these assumptions, the Commission calculated the total number of jail inmates projected under current sentencing laws and practices and then projected the expected jail populations under the proposed mandatory sentencing law. The following table illustrates the projected increase in jail populations for the next five years.

Fiscal Year	Added Inmate Population
1993/94	965
1994/95	1,982
1995/96	2,122
1996/97	2,201
1997/98	2,111

**Additional Costs:**

**Recurring Expenditures** - Recurring or operating costs have been estimated according to the average cost per day to house jail inmates in most counties. Based on a telephone interview with a representative of the N.C. County Commissioners Association, it is estimated that said cost is between \$28 and \$32. Using the average of \$30 per inmate per day, operating costs have been calculated by multiplying the number of additional inmates x \$30 x 365 days per year. (Note that the projected added inmate populations listed in

the above table are those additional inmates that would be expected to be housed in local jail facilities at any given time as a result of this bill.) Expenditures for FY 93-94 are based on the 6 relevant months following the bill's January 1, 1994 effective date.

**Non-Recurring Expenditures** - Non-recurring or capital costs have been estimated under the assumption that local jails cannot absorb the additional inmates that are estimated as a result of the proposed legislation. This assumption is based on data provided by the N.C. County Commissioners Association (NCCCA) and the Jail Detention Branch of the Facility Services Section of the Department of Human Resources. The total capacity of existing jail facilities is 10,374 beds. Planned construction (all of which has not yet been approved) would elevate this total to 15,740 beds. The latest study conducted regarding jail overcrowding indicated that 51 of 98 county jails were operating over capacity in 1990. A representative of the NCCCA notes that overcrowding has become an even larger problem since the above mentioned study. Since planned construction will not be adequate to relieve overcrowding, absorb expected growth, and absorb large populations due the effect of this bill or similar legislation, it is assumed that additional construction would be required as a result of the proposed legislation.

As noted on the preceding page, 965 additional jail beds are required in FY 93-94. Capital costs to construct these beds are based the average cost per bed (averages are based on costs for both beds constructed in a new facility and in an expanded or renovated facility) as provided by the NCCCA. For FY 93-94, 965 new jail beds x \$29,356 (average cost per bed) yields an expenditure of \$28,328,540. Costs for the remaining years are calculated based on the number of beds required minus the number of new beds already constructed in the preceding year(s). Note that the Sentencing Commission estimates that a greater number of beds will be required in FY 96-97 (2,201 beds) than will be necessary in FY 97-98 (2111 beds). This is not to suggest that the number of inmates will decrease following FY 96-97. The Commission estimates that the full impact of the proposed legislation will not be realized until FY 2002-2003 when 2,454 beds would be required.

**SOURCES OF DATA:** Administrative Office of the Courts - Data provided by DMV on the frequency of license revocations and suspensions during fiscal year 1991-92, interviews with district attorneys and public defenders, AOC data on frequency of offenses charged, AOC data on indigent defense, data from the AOC Court Information System for January-March 1993; N.C. General Statutes; N.C. Sentencing and Policy Advisory Commission; N.C. County Commissioners Association; Department of Human Resources- Jail Detention Branch

**TECHNICAL CONSIDERATIONS:** None.

**FISCAL RESEARCH DIVISION**

**733-4910**

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