

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 178

SHORT TITLE: Drunk Driving Felony Murder

SPONSOR(S): Rep. Michael Decker

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>
REVENUES	NONE				
EXPENDITURES					
Judicial Branch	\$65,550	\$144,210	\$158,631	\$174,494	\$191,943
POSITIONS:	0				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Correction					
EFFECTIVE DATE: December 1, 2001; applies to offenses on or after that date					

BILL SUMMARY: HB 178 amends the definition of 1st and 2nd degree murder (G.S. 14-17) to add habitual impaired driving to the list of felony offenses whereby, if a murder results in the commission of the offense, the murder is punishable as 1st degree murder, a Class A Felony. While 1st degree murder generally requires “willful, deliberate and premeditated killing”, if one of these felonies is involved, these requirements are not necessary.

ASSUMPTIONS AND METHODOLOGY:

In 1997, a Forsyth County jury found a defendant guilty of 1st degree murder on the felony murder rule as a result of an automobile accident that killed two individuals. The “felony” that led to the charge was assault with a deadly weapon (automobile) inflicting serious injury and the offender was also convicted of Driving While Impaired. The North Carolina

Supreme Court overruled the conviction based on their interpretation of legislative intent in both DWI and felony murder laws. By adding habitual DWI to the list of felonies in the felony murder rule, HB 178 authorizes prosecution under felony murder for this subset of DWI death cases. That is, HB 178 allows a *narrower use* of the felony murder rule to prosecute DWI cases involving deaths than has been used by some prosecutors in the past. Habitual DWI requires 3 prior convictions for DWI within 7 years.

Given the recent Supreme Court ruling, FRD assumes that prosecutors are now unlikely to bring 1st degree murder charges in DWI cases involving fatalities. Under HB 178, however, such cases could develop.

Department of Correction

The impact of this bill depends on several unknowns. The first unknown is the frequency of DWI related fatalities and capital murder charges related to those deaths. The AOC looked at Division of Motor Vehicle data on traffic fatalities and court data on DWI to predict an annual average of one potential charge of capital murder under this bill. They also found only a couple of DWI cases over the past few years that were prosecuted as 1st degree murder. Both these analyses suggest this bill will affect only 1 or 2 cases per year.

Another unknown is how these cases are being prosecuted today. In examining the impact of this bill on prison populations, the NC Sentencing and Policy Advisory Commission considered two scenarios, in each case considering the impact if the defendant received life in prison. If this bill results in convictions of 1st degree murder (Class A) that would otherwise have been convictions of 2nd degree murder (Class B2), those defendants would face life in prison where they otherwise would have faced sentences averaging 191 months. That means any impact on prison population would be delayed until about 16 years in the future.

Alternatively, this bill could result in convictions for 1st degree murder that would otherwise have been felony death by vehicle (Class G) or involuntary manslaughter (Class F). Since sentences for these offenses average 14 months and 19 months respectively, the impact on prison population would be within the next 5 years, potentially as early as 2003-4. However, we do not anticipate more than a couple of such cases per year, even under this scenario. Each additional year in prison for such a defendant would cost \$27,491. These costs would be assumed to grow 3 % each year. Because there are no available prison beds projected in the next 5 years, these annual operating costs represent the potential impact of HB 178 on the Department of Correction. However, because there are so many unknowns in predicting the impact of this bill on prosecutorial and judicial behavior, this cost is not included above.

Judicial Branch

1st Degree Murder Charges

The Administrative Office of the Courts projected an impact of HB 178 in two areas. First of all, it may result in cases tried as capital trials that would otherwise be prosecuted as 2nd degree murder. The higher-level charge would result in longer trials (particularly the sentencing phase of a capital trial), involving more court time for Superior Court Judges and Court Reporters and more court and preparation time for District Attorneys. They would also involve higher costs for jury fees. If the defendant is indigent, there are also greater

costs for the public defender or assigned indigent counsel (AOC estimates the cost of one example as \$56,000 additional indigent costs). The costs of capital trials vary widely and the average cost is not indicative of any individual case. In addition, it is impossible to predict how a case would proceed. For instance, if the defendant was charged with felony murder but was able to plea down to a 2nd degree murder charge, the case could be less costly than if a charge of 2nd degree murder had been brought and tried fully. Given these unknowns, there is no estimate available for this impact.

Other DWI Charges

The AOC also predicts this bill would affect how defense is handled for many DWI cases. Because a conviction of DWI, particularly a 2nd or 3rd conviction, brings the defendant closer to a habitual DWI charge, they expect more vigorous defense. This will involve more court time and greater indigent defense costs.

In CY 2000, there were 5,769 defendants charged with DWI who had one prior DWI conviction. AOC estimates their more vigorous defense could result in an additional 15 minutes of court time plus an additional hour of attorney preparation. There were an additional 1,091 who had two prior DWI convictions. AOC estimates their defense would add 1 hour of in-court time per case and 2 hours of preparation time. AOC assumes 25% of the defendants would be indigent and assigned counsel would be paid @ \$50 per hour.

Together, this would add the following to court workload and indigent costs:

<u>Time</u>	<u>Defendant Status</u>	<u>Impact on Court Time</u>	<u>Impact on Indigent Defense</u>
	1 prior	1,442 hours	1,804
	2 priors	1,091 hours	818
	TOTAL	2,533 hours	2,622

The AOC estimates the cost at \$431,497 for 1.5 judges, clerks and assistant district attorneys to absorb these additional hours of court time. Because 2,533 hours of court time would be spread statewide and is less than the equivalent of 2 fulltime personnel, FRD believes this impact can be absorbed by the court system.

The impact on indigent defense costs is reflected on page 1 at \$131,100.

These estimates do not include any likely additional costs related to appeals.

(Note: 1,442 = 5,769 * 15 minutes; 1,091 = 1,091 * 1 hr; 1,804 = 5,769 * 1.25 hrs * 25% indigent; 818 = 1,091 * 3 * 25%)

Indigent costs are at 50% in first year because the bill is effective Dec 1. Costs are assumed to grow 10% each year.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Elisa Wolper

APPROVED BY: James D. Johnson

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