

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 65 (First Edition)

**SHORT TITLE:** Req Active Time Felony Death MV/Boat.

**SPONSOR(S):** Representatives Pittman, Speciale, C. Graham, and Jackson

<b>FISCAL IMPACT</b>										
(\$ in millions)										
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Estimate Available										
<b>State Impact</b>	<b>FY 2017-18</b>		<b>FY 2018-19</b>		<b>FY 2019-20</b>		<b>FY 2020-21</b>		<b>FY 2021-22</b>	
General Fund Revenues:	to		to		to		to		to	
General Fund Expenditures	0.0	to 0.0	0.1	to 0.2	0.1	to 0.2	0.1	to 0.2	0.1	to 0.2
State Positions:	to		to		to		to		to	
<b>NET STATE IMPACT</b>	<b>(\$0.0)</b>	<b>to (\$0.0)</b>	<b>(\$0.1)</b>	<b>to (\$0.2)</b>	<b>(\$0.1)</b>	<b>to (\$0.2)</b>	<b>(\$0.1)</b>	<b>to (\$0.2)</b>	<b>(\$0.1)</b>	<b>to (\$0.2)</b>

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**  
 Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

**EFFECTIVE DATE:** December 1, 2017

**TECHNICAL CONSIDERATIONS:**  
 None

**FISCAL IMPACT SUMMARY:**

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: No cost
- Indigent Defense Services: No cost
- Department of Public Safety (DPS) - Prisons: Between \$115,920 and \$185,472 in FY 2018-19
- DPS - Community Corrections: No cost

Please see the Assumptions and Methodology section for additional information.

(Note: Although this bill may result in additional expenditures, no additional General Fund appropriation is required. Costs can be absorbed within the existing Department of Public Safety budget. The net effect of the bill may be to reduce the amount of unspent funds the Department reverts at the end of the fiscal year.)

**BILL SUMMARY:**

This bill amends existing G.S. 20-141.4(b) (felony death by vehicle) in subdivision (2) and existing G.S. 75A-10.3(f) (death by impaired boating) in subdivision (3) to require that any intermediate punishment

imposed for these offenses include special probation with a period of confinement of one-fourth the maximum sentence imposed for the offense, up to 27 months.

## **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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

### **Judicial Branch**

Because this bill only changes the implementation of the sentence imposed, no impact is expected on either the Administrative Office of the Courts or Indigent Defense Services.

### **Department of Public Safety – Prisons**

G.S. 20-141.4(b)(2) makes it a Class D felony if a person commits the offense of felony death by vehicle. An intermediate punishment is authorized if the offender is in Prior Record Level I. This bill requires that the intermediate punishment include special probation with a continuous period of confinement of one-fourth of the maximum sentence imposed, up to 27 months. (Currently, special probation may be for up to one-fourth of the maximum imposed.)

There were 54 Class D convictions for felony death by vehicle under G.S. 20-141.4(b)(2) in FY 2015-16. Of those, 69% (n=37) were in Prior Record Level I. The majority of the 37 Class D convictions in Prior Record Level I received an intermediate punishment (n=24 or 65%), while 35% (n=13) received an active punishment. Offenders receiving an intermediate punishment had a lower average maximum sentence imposed than those receiving an active sentence (71 months and 76 months respectively).

Of the 24 offenders sentenced under G.S. 20-141.4(b)(2) in Prior Record Level I with an intermediate punishment, 22 received special probation. The average special probation length was 9 months, or 12.7% of the average maximum sentence imposed (71 months). As such, the proposed change to require special probation with a continuous period of confinement of one-fourth of the maximum sentence imposed, up to 27 months, is expected to have an impact on the prison population due to the special probation requirement and the longer special probation sentence length.

The Sentencing and Policy Advisory Commission provided the following table showing the estimated impact of changing the allowable special probation sentence length with scenarios provided for 18 months (one-fourth of the maximum sentence imposed) or 27 months (the maximum allowable under the proposed sentencing change). The current average special probation length (9 months) was used as the baseline for estimating impact. The estimate does not include any changes in judicial or prosecutorial practices with the imposition of special probation for this offense.

<b>Estimated Impact of Changing Allowable Special Probation Sentence Length on Prison Beds</b>					
<b>Sentence Length</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Minimum 18 Months	7	20	20	20	20
Maximum 27 Months	7	32	38	39	38

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2015.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add between 20 and 32 inmates to the prison system by the end of FY 2018-19.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>
1. Inmates <sup>2</sup>	36,906	37,116	36,814	36,821	37,010
2. Prison Beds (Expanded Capacity)	37,617	37,617	37,617	37,617	37,617
3. Beds Over/(Under) Inmate Population	711	501	803	796	607
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	7	20-32	20-38	20-39	20-38
<b>5. Additional Beds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Although no additional beds will be required for this bill, additional spending will be required to house new prisoners or to house prisoners longer as a result of the required sentencing change. Per diem expenditures

<sup>1</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2016.

<sup>3</sup> Criminal penalty bills effective December 1, 2016 should not affect prison population and bed needs until FY 2017-18 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

for each inmate are approximately \$15.02, or \$5,482 per year. The table below shows the annual cost for each year of the five year projection, adjusted for inflation.

<b>Annual Incarceration Cost Adjusted for Inflation Five Year Projection</b>						
	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
Inflation Rate		2.76%	2.90%	2.98%	2.65%	1.89%
Annual Cost	\$5,482	\$5,633	\$5,796	\$5,969	\$6,127	\$6,243
<i>Inflation Rates based on consumer price index projections provided by Moody's economy.com (February 2017)</i>						

The table below provides the range of expenditures that may be required as a result of this bill. In the first full year of implementation (FY 2018-19), costs will range from a minimum of \$115,920 (if all intermediate sentences receive the minimum 18 months required) to a maximum of \$185,472 (if all intermediate sentences receive the maximum 27 months allowed).

<b>Additional Per Diem Costs Resulting from Increased Penalty Five Year Projection</b>					
	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
Minimum 18 Months	7	20	20	20	20
<b>Annual Cost</b>	<b>\$39,431</b>	<b>\$115,920</b>	<b>\$119,380</b>	<b>\$122,540</b>	<b>\$124,860</b>
Maximum 27 Months	7	32	38	39	38
<b>Annual Cost</b>	<b>\$39,431</b>	<b>\$185,472</b>	<b>\$226,822</b>	<b>\$238,953</b>	<b>\$237,234</b>

The bill also changes G.S. 75A-10.3(f)(3) to require that the intermediate punishment for death by impaired boating include special probation with a continuous period of confinement of one-fourth of the maximum sentence imposed, up to 27 months. Since death by impaired boating is a new offense (effective December 1, 2016), it is not known how many convictions may occur and may be affected by the proposed change requiring the offender to receive special probation and to serve one-fourth of the maximum sentence imposed. The proposed change could result in an impact on the prison population. However, because no data are currently available, the impact of this change cannot be determined.

**Department of Public Safety – Community Corrections**

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community

service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations.

Because the bill only changes the required minimum period of confinement, no cost is anticipated for CCS.

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** None

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