



# NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

## Legislative Incarceration Fiscal Note

**Short Title:** NC Health & Human Services Workforce Act.  
**Bill Number:** House Bill 125 (Third Edition)  
**Sponsor(s):**

### SUMMARY TABLE

#### MINIMUM\* FISCAL IMPACT OF H.B.125, V.3

	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>	<u>FY 2026-27</u>	<u>FY 2027-28</u>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	<u>1,445,677</u>	<u>1,479,112</u>	<u>1,509,621</u>	<u>1,538,921</u>	<u>1,569,387</u>
<b>General Fund Impact</b>	<b>(1,445,677)</b>	<b>(1,479,112)</b>	<b>(1,509,621)</b>	<b>(1,538,921)</b>	<b>(1,569,387)</b>

\*Additional unknown criminal justice costs associated with this bill; see Fiscal Analysis section for details.

### FISCAL IMPACT SUMMARY

Criminal offenses are classified as misdemeanors (Class 3 as the lowest and Class A1 as the highest) and felonies (Class I to Class A). There are three types of legislative changes to offenses that may result in a fiscal impact to the State’s criminal justice system: creating a new offense, changing the class of an existing offense, or changing the scope of an existing offense.

This proposed legislation would **create two new Class H felonies, a new Class A1 misdemeanor, a new Class 3 misdemeanor, increase the class of offense or expand the scope of multiple existing offenses related to assaults on specific types of government and public health personnel, and create a new sentencing enhancement.** Many of these changes represent new charges, and as such there is no data to predict how many individuals may be charged or convicted, and as such **Fiscal Research is unable to project the fiscal impact of these sections on the criminal justice system.** There is some data available for the offenses being expanded or increased, which is detailed in Fiscal Analysis section below.

Each additional person charged under the proposed offenses will have a cost to the judicial system and each additional person convicted will have a cost to the correction system. The **cost of one charge and conviction** is listed in the table below, along with the percent of cases that incur those costs at that offense level.

Cost of One Charge and Conviction											
Offense Class	Prosecution and Defense			Active Sentence					Suspended Sentence		
	Admin. Office of the Courts	Indigent Defense Services		DAC - Confinement			DAC - Post-Release Supervision (PRS)		DAC - Probation		
Felony	Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost	Length (Mo.)
▲ D to B1	+\$16,825	-11%	+\$2,443	No ▲	+\$131,374	+178	No ▲	No ▲	N/A	N/A	N/A
▲ E to B1	+\$20,571	-1%	+\$3,277	+43%	+\$158,682	+215	No ▲	No ▲	-43%	-\$7,356	-31
Expanded E	\$3,281	79%	\$909	57%	\$19,928	27	\$2,994	12	43%	\$7,356	31
Expanded F	\$1,849	74%	\$849	51%	\$13,285	18	\$2,282	9	49%	\$7,119	30
▲ F to E	+\$1,432	+5%	+\$60	+6%	+\$6,643	+9	+712	+3	-6%	+\$237	+1
New H	\$1,016	78%	\$510	33%	\$8,119	11	2,282	9	67%	\$5,933	25
Expanded I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,221	22
Misdem.	Cost	Rate	Cost	Rate	Cost	Length (Days)			Rate	Cost	Length (Mo.)
New A1	\$580	52%	\$281	Active sentences for misdemeanor convictions are served in County jail.			Misdemeanants do not receive PRS.		64%	\$3,797	16
New 3	\$63	14%	\$202						84%	\$3,085	13

Note: Court costs reflect the average cost per disposition. Costs for active sentences, probation, and post-release supervision reflect the total cost of the sentence or supervision period. Costs to the Statewide Misdemeanant Confinement Program (SMCP) only occur for active sentences > 90 days and impaired driving. The triangle symbols (▲) represent change, plus and minus (+/-) symbols reflect the increase or decrease in cost or time from the current to proposed changes in charge levels.

## FISCAL ANALYSIS

### Bill Summary:

**Section (2.1.(a))** of this proposed legislation creates the new G.S. 90-12.03, allowing the NC Medical Board to issue internationally-trained hospital physician employee licenses to eligible physicians. Practicing medicine beyond the limitations of the license is a **new Class 3 misdemeanor**.

**Section (8.2(c))** amends Article 23 of Chapter 95 by adding new G.S. 95-269A (Violation of order issued upon request of a hospital) which creates a **new Class A1 misdemeanor** for any person who knowingly violates a civil protective order issued upon the request of a hospital on behalf of an employee. The offense becomes a **Class H felony** if the person has previously been convicted of two offenses under Chapter 95 or if the person is in possession of a deadly weapon at the time of the violation. The section also creates a **new Class H felony** for knowingly violating a valid hospital-requested protective order while in possession of a deadly weapon by failing to stay away from a place or person.

Because these are new offenses, there is no historic data available for cost projections, and as such **Fiscal Research is unable to provide cost projections for these new charges**. Please refer to the Operating Expenses section below for the average costs of Class H felonies and Class A1 and Class 3 misdemeanors.

**Section (8.2(c))** also contains a sentencing enhancement whereby a person who commits a felony at the time when the person knows the behavior is prohibited by a valid protective order issued at the request of a hospital shall be considered guilty of a felony one class higher than the felony listed in the charging document. While this enhancement would result in increased costs to the criminal justice system, there is no way to determine what felony charges would be covered by this language or how many such charges may occur in a given year. Therefore, **Fiscal Research is unable to provide cost projections for this section.**

**Section (8.3.(a))** amends G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility, by combining the three separate offenses (based on the victim) into one Class B1 felony offense. The three separate offenses are as follows:

**Subsection (a)**, Assault with a firearm upon a law enforcement officer, probation officer, or parole officer while the officer is in the performance of his or her duties, **increases from a Class D felony to a B1 felony.**

- In CY 2022, 78 defendants were charged with violating G.S. 14-34.5(a)
- In FY 2021-22, 11 individuals convicted with violating G.S. 14-34.5(a)
- Fiscal Research estimates that this section will have a **total impact to the State of \$1.4 million in FY 2023-24** due to increased costs to the Administration Office of the Courts (AOC) of approximately \$1.3 million and increased costs to Indigent Defense Services (IDS) of approximately \$133,000.
- A B1 felony conviction also carries a lengthier confinement period (net increase of 178 months), relative to a D felony, at an increased cost of \$131,364 per conviction. However, since the average sentence for a Class D conviction is 64 months, the additional costs associated with a longer sentence are incurred beyond the 5-year projection period for fiscal estimates.

**Subsection (a1)**, Assault with a firearm upon a member of the North Carolina National Guard while the member is in the performance of his or her duties, **increases from a Class E to a Class B1 felony.**

- In CY 2022, 0 defendants were charged with violating G.S. 14-34.5(a1)
- In FY 2021-22, 0 individuals were convicted with violating G.S. 14-34.5(a1)
- FRD believes this section will have **minimal impact, if any**, based on recent charge and conviction data.

**Subsection (b)**, Assault with a firearm upon a person who is employed at a detention facility operated under the jurisdiction of the State or local government while the employee is in the performance of his or her duties, **increases from a Class D felony to a Class B1 felony.**

- In CY 2022, 0 defendants were charged with violating G.S. 14-34.5(b)
- In FY 2021-22, 0 individuals were convicted with violating G.S. 14-34.5(b)

- FRD believes this section will have **minimal impact, if any**, based on recent charge and conviction data.

**Section 8.3.(b)** amends G.S. 14-34.6(c), Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel, (a Class E felony) by excluding the people covered by the proposed Class B1 felony in amended G.S. 14-34.5. (In other words, offenders previously convicted under G.S. 14-34.6(c) would now be charged under the amended G.S. 14-34.5., increasing the charge from a **Class E felony to a Class B1 felony.**)

- In CY 2022, 5 defendants were charged with violating G.S. 14-34.6(c). However, it is unknown which type of official these defendants were charged with assaulting so it cannot be determined how many, if any, of these defendants could be charged under the proposed amended G.S. 14-34.5
- FY 2021-22, 0 individuals were convicted with violating G.S. 14-34.6(c)
- FRD believes this section will have **minimal impact, if any**, based on recent charge and conviction data.

**Section 8.3.(c)** amends G.S. 14-16.6(c) to increase the offense of inflicting serious bodily injury to a legislative officer, executive officer, or court officer from a **Class F to a Class E felony.**

- In CY 2022, 0 defendants were charged with violating G.S. 14-16.6(c)
- In FY 2021-22, 0 individuals were convicted with G.S. 14-16.6(c)
- FRD believes this section will have **minimal impact, if any**, based on recent charge and conviction data.

**Section 8.3.(d)** amends G.S. 14-16.10(1) to expand the definition of “court officer” to include an attorney or person employed by, or acting on behalf of a county DSS, in any capacity, not just juvenile abuse/neglect/dependency proceedings. This **expands the scope of three felonies (Class E, F, and I)** for violating G.S. 14-16.6.

- In CY 2022, 4 defendants were charged with violating G.S. 14-16.6(a)
- In CY 2022, 0 defendants were charged with violating G.S. 14-16.6(b)
- In CY 2022, 0 defendants were charged with violating G.S. 14-16.6(c)
- There is no data available to estimate the impact of the expansion of the definition of “court officer.”
- **FRD is unable to estimate the fiscal impact of this section.**

### **Capital Expenses**

Capital costs emerge when prison bed demand exceeds capacity. Based on the most recent prison population and bed capacity projections from the Sentencing and Policy Advisory Commission (SPAC), the State will have sufficient prison beds available beyond the five-year fiscal note horizon. Therefore, Fiscal Research anticipates there will be **no additional prison capital requirements** as a result of this proposed legislation.

## Operating Expenses

The following section explains the source of potential costs for State agencies because of this proposed legislation. The table in the Fiscal Impact Summary lists the costs specific to the charge or charges included in this proposal.

### **Charge: Prosecution and Defense**

- Administrative Office of the Courts (AOC): Adding new offenses to the criminal code may increase charges, resulting in corresponding increases in court time and workload for judges, clerks, and prosecutors. AOC provides FRD with an average cost based on offense level. Any new charges brought because of this proposed legislation are assumed to carry the following additional average cost to the court system.
  - **Increasing a Class D felony to a Class B1 felony** would carry an average increased cost of \$16,825 per charge to the judicial system.
  - **Increasing a Class E felony to a Class B1 felony** would carry an average increased cost of \$20,571 per charge to the judicial system.
  - **Increasing a Class F felony to a Class E felony** would carry an average increased cost of \$1,432 per charge to the judicial system.
  - **Class E felonies** carry an average cost of \$3,281 per charge to the judicial system.
  - **Class F felonies** carry an average cost of \$1,849 per charge to the judicial system.
  - **Class H felonies** carry an average cost of \$1,016 per charge to the judicial system.
  - **Class I felonies** carry an average cost of \$740 per charge to the judicial system.
  - **Class A1 misdemeanors** carry an average cost of \$580 per charge to the judicial system.
  - **Class 3 misdemeanors** carry an average cost of \$63 per charge to the judicial system.
- Indigent Defense Services (IDS): Persons who cannot afford to hire legal counsel will be provided a public defender (PD), if available, or a private assigned counsel (PAC) attorney paid by IDS. The cost provided is the actual average cost for a PAC attorney and serves as a proxy for the additional workload cost to PD offices.
  - **Increasing a Class D charge to Class B1** would result in an 11% lower rate of IDS utilization but at an increased cost of \$2,443 per charge.
  - **Increasing a Class E charge to Class B1** would result in a 1% lower rate of IDS utilization but at an increased cost of \$3,277 per charge.
  - **Increasing a Class F charge to a Class E** would result in a 5% higher rate of IDS utilization at an increased cost of \$60 per charge.
  - **Class E charges** utilize IDS in 79% of cases at a cost of \$909 per charge.
  - **Class F charges** utilize IDS in 74% of cases at a cost of \$849 per charge.
  - **Class H charges** utilize IDS in 78% of cases at a cost of \$510 per charge.
  - **Class I charges** utilize IDS in 68% of cases at a cost of \$407 per charge.
  - **Class A1 charges** utilize IDS in 52% of cases at a cost of \$281 per charge.
  - **Class 3 charges** utilize IDS in 14% of cases at a cost of \$202 per charge.



## Conviction: Active Sentence

- Department of Adult Correction – Confinement: Felony convictions that result in an active sentence are served in a State prison. The cost to add one offender to the prison system is \$24.26 per day or \$727.80 per month.
  - **100% of both Class D felons and Class B1 felons** serve active sentences. Class B1 felons serve 178 months longer on average than Class D felons at an increased cost of \$131,374 per conviction.
  - **Class B1 felons serve active sentences at a 43% higher rate than Class E felons**, with a 215 month longer average active sentence at an increased cost of \$158,682 per conviction.
  - **Class E felons serve active sentences at a 6% higher rate than Class F felons**, with a 9 month longer average active sentence at an increased cost of \$6,643 per conviction.
  - **57% of Class E felonies** serve an average active sentence of 27 months at a cost of \$19,928 per conviction.
  - **51% of Class F felonies** serve an average active sentence of 18 months at a cost of \$13,285 per conviction.
  - **33% of Class H felonies** serve an average active sentence of 11 months at a cost of \$8,119 per conviction.
  - **15% of Class I felonies** serve an average active sentence of 6 months at a cost of \$4,428 per conviction.
  - **Active sentences for misdemeanor convictions** are served in local jails and only incur costs to the Statewide Misdemeanant Confinement Program (SMCP) when the sentence exceeds 90 days, or the conviction is for impaired driving. Because the **new Class A1 and Class 3 charges** in the proposed legislation doesn't meet either criterion, Fiscal Research anticipates convictions of the new charge resulting in active sentences would have no fiscal impact to the State.
- Department of Adult Correction – Community Corrections: All active sentences from Class B1- I felony convictions result in a period of post-release supervision (PRS) between 12 and 9 months, depending on the severity of the charge. There is a one-time cost of \$146 per PRS hearing. Supervision by a probation officer costs \$237.30 per offender per month.
  - **Class B1 felons, Class D felons, and Class E felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
  - **Compared to Class F felons, Class E felons** with active sentences serve 3 months more of PRS at an increased cost of \$712.
  - **Class E felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
  - **Class F felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
  - **Class H felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
  - **Class I felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
  - **Misdemeanants** do not receive PRS.

## Conviction: Suspended Sentence

- Department of Adult Correction – Community Corrections: Convictions that receive a suspended sentence result in a period of supervised probation based on the severity of the charge and the offender’s prior record. Supervision by a probation officer costs \$237.30 per offender per month.
  - **Class B1 and Class D convictions** cannot receive a suspended sentence.
  - **Changing a Class E charge to a Class B1 charge** would eliminate the possibility of a suspended sentence, resulting in some savings for Community Corrections. **43% of Class E convictions** resulted in a suspended sentence with an average length of 31 months at a cost of \$7,356.
  - **Compared to Class F convictions, Class E convictions** resulted in a suspended sentence in 6% fewer cases, but with an increased average length of 1 month at a cost of \$237.
  - **43% of Class E convictions** resulted in a suspended sentence with an average length of 31 months at a cost of \$7,356.
  - **49% of Class F convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$7,119.
  - **67% of Class H convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$5,933.
  - **85% of Class I convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$5,221.
  - **64% of Class A1 convictions** resulted in a suspended sentence with an average length of 16 months at a cost of \$3,797.
  - **84% of Class 3 convictions** resulted in a suspended sentence with an average length of 13 months at a cost of \$3,085.

## TECHNICAL CONSIDERATIONS

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- Offense changes are typically effective on December 1. FRD assumes that costs incurred in the first year to the judicial and correction systems would be less than annualized costs due to lag time in charges and convictions.
- This estimate assumes that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime rates. Likewise, FRD assumes no deterrent effects for any modifications to criminal penalties. The estimates in this Incarceration Note make no assumptions about the larger impact on crime rates or costs to society or the State.
- This estimate makes no prediction regarding the likelihood that a prosecutor will charge an offense based on any proposed increases or decreases to the offense class level. This estimate also does not attempt to predict the impact of offense class changes on plea negotiations. FRD assumes the proposed offense class is charged and convicted at the same rate as the prior level.
- For reference, Appendix A to this document shows the costs per charge/conviction for each class of offense in North Carolina.

## DATA SOURCES

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Department of Adult Correction; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS**

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This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

**CONTACT INFORMATION**

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Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

**ESTIMATE PREPARED BY**

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June 13, 2023



**Signed copy located in the NCGA Principal Clerk's Offices**



**APPENDIX A: COSTS PER CHARGE/CONVICTION BY OFFENSE CLASS**

Cost of One Charge and Conviction											
	Prosecution and Defense			Active Sentence					Suspended Sentence		
Offense Class	Admin. Office of the Courts	Indigent Defense Services		DAC - Confinement			DAC - Post-Release Supervision (PRS)		DAC - Probation		
Felony	Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost	Length (Mo.)
A	\$55,469	95%	\$11,967	100%	NA	Life	N/A	N/A	0%	N/A	0
B1	\$23,852	78%	\$4,187	100%	\$178,610	242	\$2,994	12	0%	N/A	0
B2	\$17,704	85%	\$4,187	100%	\$115,137	156	\$2,994	12	0%	N/A	0
C	\$8,598	82%	\$2,317	100%	\$63,473	86	\$2,994	12	0%	N/A	0
D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	N/A	0
E	\$3,281	79%	\$909	57%	\$19,928	27	\$2,994	12	43%	\$7,356	31
F	\$1,849	74%	\$849	51%	\$13,285	18	\$2,282	9	49%	\$7,119	30
G	\$1,525	78%	\$706	39%	\$11,071	15	\$2,282	9	61%	\$6,170	26
H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,221	22
Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Days)			Rate	Cost	Length (Mo.)
A1	\$580	52%	\$281						64%	\$3,797	16
1	\$335	62%	\$237				Active sentences for misdemeanor convictions are served in County jail.	Misdemeanants do not receive PRS	64%	\$3,322	14
2	\$178	30%	\$237						78%	\$3,085	13
3	\$63	14%	\$202						84%	\$3,085	13

*Note: Court costs reflect the average cost per disposition. Costs for active sentences, probation, and post-release supervision reflect the total cost of the sentence or supervision period. Costs to the Statewide Misdemeanant Confinement Program (SMCP) only occur for active sentences > 90 days and for impaired driving.*