



# NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

## Legislative Incarceration Fiscal Note

**Short Title:** 2023 Appropriations Act.  
**Bill Number:** House Bill 259 (Second Edition)  
**Sponsor(s):**

### 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 creates a **new Class A1 misdemeanor**. Each additional person charged under the proposed offense 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. **Because the proposed legislation would create a new offense, there is no historic charge or conviction data** allowing Fiscal Research to make projections about its fiscal impact on the criminal justice system.

Cost of One Charge and Conviction in H.B. 259										
Offense Class	Prosecution and Defense			Active Sentence			Suspended Sentence			
	Admin. Office of the Courts	Indigent Defense Services		DAC - Confinement			DAC - Probation			
Misdemeanor	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

*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.*

## FISCAL IMPACT OF H.B. 259 , V.2

	<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>	-	-	-	-	-
<b>General Fund Impact</b>	<b>No Estimate Available - Refer to Fiscal Analysis section</b>				

### FISCAL ANALYSIS

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#### **Bill Summary:**

Section 19G.3 in the proposed 2023 Appropriations Act would create G.S. 14-32.5, establishing domestic violence (DV) as a **Class A1 misdemeanor**. Specifically, the new charge will apply if a person uses or attempts to use physical force or threatens use of a deadly weapon against another person and the person who commits the offense is:

1. a current/former spouse, parent, or guardian of the victim,
2. an individual with whom victim shares a child in common,
3. an individual who is or has cohabitated with the victim as a spouse, parent, or guardian, or
4. any individual similarly situated to a spouse, parent, or guardian of the victim.

Currently, the conduct covered by the proposed G.S. 14-32.5 could be charged under ten different offenses, depending on the specifics. Of the existing offenses, seven are Class A1 Misdemeanors and so there would be no fiscal impact if the offense was instead charged under the new proposed Class A1 misdemeanor. However, there are three existing offenses that under the proposal could result in elevated charges if the offender and victim have one of the specified relationships. The table below shows the three existing charges that could be impacted if the proposal to establish DV as a Class A1 misdemeanor were enacted.

Offense	Current Class	Potential Class Under G.S. 14-32.5	Charges in CY 2022
Simple Assault G.S. 14-33(a)	Class 2 Misdemeanor	Class A1 Misdemeanor	14,138
Harassing Phone Calls G.S. 14-196	Class 2 Misdemeanor	Class A1 Misdemeanor	972
Communicating Threats G.S. 14-277.1	Class 1 Misdemeanor	Class A1 Misdemeanor	12,839

Source: Administrative Office of the Courts

Currently, harassing phone calls and simple assault are punishable as Class 2 misdemeanors and communicating threats is punishable as a Class 1 misdemeanor. In 2022 there were 27,949 individuals charged with the offense classes described in the table. If any of these existing charges

were committed against individuals covered by the proposed legislation, it could result in elevated charges and could have a financial impact on the criminal justice system. However, there is no data on how many of the violations under current statutes were committed against one of the eligible individuals, and thus could be charged under the proposed G.S. 14-32.5. As a result, Fiscal Research is **unable to project the fiscal impact** of this proposed legislation on the State's criminal justice system. Please refer to the Operating Expenses section below for the average costs of Class A1 misdemeanors.

### **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 expenses 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.
  - **Class A1 misdemeanor charges** carry an average cost of \$580 per charge.
- 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.
  - **Class A1 misdemeanor defendants** utilize IDS in 52% of cases at a cost of \$281 per charge.

#### **Conviction: Active Sentence**

- Department of Adult Correction – Confinement: **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 charge 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.

## Conviction: Suspended Sentence

- Department of Adult Correction – Community Corrections: Misdemeanor 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.
  - **64% of Class A1 misdemeanor convictions** receive a suspended sentence with an average length of 16 months at a cost of \$3,797.

## 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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April 3, 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	Active sentences for misdemeanor convictions are served in County jail.			Misdemeanants do not receive PRS		64%	\$3,797	16
1	\$335	62%	\$237						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.*