



# NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

## Legislative Incarceration Fiscal Note

**Short Title:** NC Department of Insurance Omnibus .-AB  
**Bill Number:** Senate Bill 452 (First Edition)  
**Sponsor(s):** Sen. Todd Johnson, Sen. David W. Craven, Jr., and Sen. Danny Earl Britt, Jr.

### 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 change the scope of an existing Class H felony to include a possible Class C offense. It also creates a new Class 1 misdemeanor and expands the scope of an existing Class 1 misdemeanor. Because existing data is insufficient for the expanded charge and there is no data for the new/expanded charges, **Fiscal Research is unable to project the fiscal impact** of the proposed legislation on the criminal justice system.

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 under S.B. 452 |                             |                           |          |   |           |               |                                      |              |                    |          |              |
|--|-----------------------------|---------------------------|----------|---|-----------|---------------|--------------------------------------|--------------|--------------------|----------|--------------|
| 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.) |
| ▲ H to C   | +\$7,582                    | +4%                       | +\$1,807 | +67%  | +\$55,354 | +75           | +\$712                               | +3           | -33%               | -\$5,933 | -25          |
| Misdemeanor                                      | Cost                        | Rate                      | Cost     | Rate  | Cost      | Length (Days) |                                      |              | Rate               | Cost     | Length (Mo.) |
| New/Expanded 1                                   | \$335                       | 62%                       | \$237    | Active sentences for misdemeanor convictions are served in County jail. |           |               | Misdemeanants do not receive PRS     |              | 64%                | \$3,322  | 14           |

*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. 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 IMPACT OF S.B.452, V.1

|                            | <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:**

This bill amends G.S. 58-2-161, false statement to procure or deny benefit of insurance policy or certificate, to create felony offenses based on the amount of the claim for payment. It is currently a Class H felony to violate this statute. Section 10.(a) of the proposed legislation makes it a Class C felony if the amount of the fraudulent claim is over \$100,000 and maintains the existing Class H felony if the amount is below \$100,000.

In Calendar Year 2022, there were 223 charges for the existing Class H felony under G.S. 58-2-161, and in Fiscal Year 2022, there were 20 convictions. However, the dollar amounts involved in these convictions is unknown, and therefore it cannot be determined how many of these convictions would fall into the new Class C offense category. **Therefore, Fiscal Research cannot provide cost projections for this section.**

Section 10.(b) of the proposed legislation creates a new offense in G.S. 58-33A-93. It makes it a Class 1 misdemeanor when a person willfully and knowingly conducts business as a public adjuster in violation of Article 30, Insurers Supervision, Rehabilitation, and Liquidation, of Chapter 58, Insurance. Because this is a new offense, there is no historic data available for cost projections, and as such **Fiscal Research is unable to provide any cost projections for this section.**

Finally, Section 11 expands the scope of the existing Class 1 misdemeanor under G.S. 58-3-149 by making it unlawful for persons to knowingly prepare, issue, request, or require a certificate of insurance that includes information not contained in the underlying insurance policy. This expansion is effectively a new offense. Because this is a new offense, there is no historic data available for cost projections, and as such **Fiscal Research is unable to provide any cost projections for this section.**

Please refer to the Operating Expenses section below for the average costs of changing a Class H felony to a Class C felony and Class 1 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 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 H felony to a Class C felony** carries an average increased cost of \$7,582 per charge to the judicial system.
  - **Class 1 misdemeanors** carry an average cost of \$335 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.
  - **Compared to Class H felonies, Class C charges** utilize IDS in 4% more cases at a higher cost of \$1,807 per charge.
  - **Class 1 charges** utilize IDS in 62% of cases at a cost of \$237 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 Class C felonies** serve an average active sentence of 86 months at a cost of \$63,473 per conviction, a 67% higher rate of incarceration, an increased average active sentence length of 75 months, and an increased average cost of \$55,354 than Class H felonies.
  - **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 1 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.
- **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 C felons** with active sentences serve 12 months of PRS at a cost of \$2,994, 3 months longer with \$712 in increased expenses compared with Class H felons.
- **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 C convictions** cannot receive a suspended sentence.
  - **67% of Class H convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$5,933.
  - **64% of Class 1 convictions** resulted in a suspended sentence with an average length of 14 months at a cost of \$3,322.

## **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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**ESTIMATE APPROVED BY**

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Brian Matteson, Director of Fiscal Research  
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April 25, 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.*