



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Incarceration Fiscal Note

Short Title: Amend Street Racing Penalties.
Bill Number: House Bill 523 (First Edition)
Sponsor(s): Representative Willingham

SUMMARY TABLE

FISCAL IMPACT OF H.B.523, V.1

	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>
State Impact					
General Fund Revenue					
Less Expenditures	\$ 29,197	\$ 71,327	\$ 73,042	\$ 74,655	\$ 76,250
General Fund Impact	\$ (29,197)	\$ (71,327)	\$ (73,042)	\$ (74,655)	\$ (76,250)
NET STATE IMPACT	(\$29,197)	(\$71,327)	(\$73,042)	(\$74,655)	(\$76,250)

FISCAL IMPACT SUMMARY

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of the offense. Section 1 increases two offenses from a Class 1 misdemeanor to a Class A1 misdemeanor and one offense from a Class 2 misdemeanor to a Class 1 misdemeanor.

The criminal offense modifications in the proposed bill may have a fiscal impact on the judicial and correction systems. Each additional person charged with this crime will result in costs to the judicial system and each additional person convicted will result in costs to the corrections system. The cost increases are based on the difference in the cost under the current law and the proposed changes in charge classification. The cost differences are summarized in the table below.

CHARGES

	<i>Charge</i>	<i>Cost per Charge</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
Administrative Office of the Courts	Class 1 → A1	\$201 increase per charge	Deputy Clerk: \$54,532	217 increased charges = 1 new Deputy Clerk
	Class 2 → 1	\$128 increase per charge		426 increased charges = 1 new Deputy Clerk
Office of Indigent Defense Services	Class 1 → A1	Percent of cases handled by IDS: 52%		Per increased charge to the PAC fund \$43
	Class 2 → 1	Percent of cases handled by IDS: 39%		Per increased charge to the PAC fund \$0

CONVICTIONS – ACTIVE SENTENCE

Active sentences for misdemeanors are served in county jails and do not require post-release supervision.

CONVICTIONS – SUSPENDED SENTENCE

	Charge	Avg. Suspended	Cost per Conviction	Cost of Staff	Equivalence
DPS – Community Corrections	Class 1 → A1	62%	\$340 increase per conviction	Probation Parole Officer (PPO): \$53,760	158 new convictions = 1 new PPO
	Class 2 → 1		\$170 increase per conviction		316 new convictions = 1 new PPO

The costs in the summary table above have been annualized. Fiscal Research estimates the annual fiscal impact in first year to be \$69,516. However, because offense changes are typically effective on December 1. FRD assumes that costs incurred in the first year to the judicial and corrections systems would be less than annualized costs due to lag time in charges and convictions. As a result the estimate in the first year has been prorated to \$29,197. Future costs for the proposed changes have been adjusted for inflation.

FISCAL ANALYSIS

General

The Sentencing and Policy Advisory Commission (SPAC) prepares prison population projections for each bill containing a criminal penalty. SPAC 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.

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of the offense which may lead to an increase/decrease in the number of offenders charged. FRD assumes that new offenses and changes to an offense's scope will have no historical data upon which to estimate the number of charges or convictions that might occur. FRD assumes that a change in offense class may have an unknown effect on charge or conviction numbers. To that end, FRD estimates the average cost to the judicial and correction systems for one additional charge or conviction.

Judicial Branch

The Administrative Office of the Courts (AOC) provides FRD with a fiscal impact analysis for most criminal penalty bills and notes that because the bill proposal would increase a current Class 1 misdemeanor to Class A1, a Class 2 misdemeanor to Class 1, and would increase penalties involving licenses revocation.

Sections 1.(a) and 1.(c) of the bill would increase a penalty from a Class 1 to a Class A1 misdemeanor offense. Based on the AOC estimate of the average cost to the court for a change in offense class, the average fiscal impact would be the increase from \$274 per case to \$475 per case, for a total

increased cost of \$201 per case. Between calendar year 2017 and 2020, there were average of 66.25 defendants charged the offense being modified in 1.(a). There is no available data on charges related to the offense being modified in 1.(c). Assuming that the same number of defendants will be charged under these changes, the estimated additional annual cost to the courts would be \$13,316.

Section 1.(b) of the bill would increase a penalty from a Class 2 offense to a Class 1 misdemeanor offense. Based on the AOC estimate of the average cost to the court for a change in offense class, the average fiscal impact would be the increase from \$146 per case to \$274 per case, for a total increased cost of \$128 per case. Between CY 2017 and 2020, there were average of 419.25 defendants charged with the offense being modified in 1.(b). Assuming that the same number of defendants will be charged under these changes, the estimated additional annual cost to the courts would be \$53,664.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research uses this data to calculate a weighted average of IDS costs for each class of offense. This estimate assumes the appointment of a Private Assigned Counsel (PAC) attorney. In districts that have Public Defender (PD) offices, cases may be handled by those offices. In those instances, this cost may not be incurred, but the PD office may experience costs in terms of greater workload.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 52% of Class A1 misdemeanor cases. The weighted average cost of a new Class 1 misdemeanor is \$205 per case for a PAC attorney. The weighted average cost of a new Class A1 misdemeanor is \$248 per case for a PAC attorney. The per charge increase to the PAC fund is \$43. Assuming the same number charges for the offense being changed in Section 1.(a), the estimated total increase in costs to IDS is \$1,481.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 39% of Class 1 misdemeanor cases. The weighted cost of a Class 1 and Class 2 misdemeanor are \$205. Because the cost to IDS is the for a PAC attorney is the same for Class 1 and 2 misdemeanors, Fiscal Research expects no fiscal impact from the changes proposed in section 1.(b) of the proposed bill.

Department of Public Safety – Prisons

This bill proposes changes increasing two current Class 1 misdemeanors to Class A1 misdemeanors and one Class 2 misdemeanor to a Class 1 misdemeanor. SPAC expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail.

Department of Public Safety – Community Corrections

All misdemeanor offenders may be given suspended sentences exclusively or in conjunction with imprisonment (split-sentence). Under S.L. 2011-192, the Justice Reinvestment Act (JRA), both community and intermediate probation may include sanctions such as electronic monitoring, short-term periods of confinement, community service, substance abuse assessment, monitoring, and treatment, or 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.

Active Sentences

In FY 2019-20, 38% of Class A1 and Class 1 misdemeanor offenders received active sentences. Active misdemeanor sentences are served in local jails and do not require any post-release supervision.

Suspended Sentences

In FY 2019-20, 62% of Class A1 and Class 1 misdemeanor offenders received probation. Supervision by a probation officer costs \$170 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 probation.

The proposed bill would increase an offense from a Class 1 misdemeanor to a Class A1 misdemeanor. The average length of probation imposed for this class 1 misdemeanor is 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,550 per offender. The average length of probation imposed for an A1 misdemeanor was 17 months. Therefore, at a minimum, one Class A1 misdemeanor conviction resulting in probation will require at least 17 months of supervision. The cost of 17 months of supervision is \$2,890 per offender. The difference in probation costs is \$340 increase per conviction. Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 158 new convictions of this changed offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section (CCS) by one PPO. In FY 2019-20 there was 1 convictions under the offense being increased in Section 1.(a) of the bill. Because there was so few conviction for this offense in FY 2019-20 Fiscal Research is unable to provide a reliable estimate for the increase this this offense. Section 2.(b) of the bill would increase an offense from a Class 2 to a Class 1 misdemeanor. The average length of probation imposed for a Class 2 misdemeanor offense was 14 months. Therefore, at a minimum, one Class 2 misdemeanor conviction resulting in probation will require at least 14 months of supervision. The cost of 14 months of supervision is \$2,380 per offender. The average length of probation imposed for a Class 1 misdemeanor was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,550 per offender. The increased cost per conviction is \$170. Because the annual cost of a PPO is \$53,760, FRD finds that 158 new convictions of this changed offense resulting in a suspended sentence would be equivalent to increasing the workload need of CCS by one PPO. In FY 2019-20 there were 10 convictions the offense being increased in Section 1.(b). Fiscal Research finds the estimated fiscal impact of this change would be \$1,054 ($\$170 \times (.62 \times 10)$)

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