



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Incarceration Fiscal Note

Short Title: Prevent Rioting and Civil Disorder.
Bill Number: House Bill 805 (First Edition)
Sponsor(s): Representatives Moore, McNeill, Miller, and Sauls

SUMMARY TABLES

CHARGES

Agency	Charge	Cost per Charge	Cost of Staff	Equivalence
Administrative Office of the Courts	New Class D Felony	\$5,760	Deputy Clerk: \$54,532	9 new charges = 1 new Deputy Clerk
	New Class E Felony	\$2,689		20 new charges = 1 new Deputy Clerk
	Class F → Class E Felony	\$1,173 in increased costs		46 increased charges = 1 new Deputy Clerk
	Expanded Class F Felony	\$1,516		36 new charges = 1 new Deputy Clerk
	Class H → Class F Felony	\$683 in increased costs		80 increased charges = 1 new Deputy Clerk
	Expanded Class H Felony	\$833		65 new charges = 1 new Deputy Clerk
	Class I → Class H Felony	\$226 in increased costs		241 increased charges = 1 new Deputy Clerk
	Class 1 → Class A1 Misdemeanor	\$201 in increased costs		271 increased charges = 1 new Deputy Clerk

Agency	Charge	Percent of Cases Handled by IDS	Increased Cost to the PAC Fund per Charge
Office of Indigent Defense Services	New Class D Felony	89%	\$1,568
	New Class E Felony	79%	\$867
	Class F → Class E Felony		\$41 increase
	Expanded Class F Felony	74%	\$826
	Class H → Class F Felony		\$351 increase
	Expanded Class H Felony	78%	\$475
	Class I → Class H Felony		\$79 increase
	Class 1 → Class A1 Misdemeanor	52%	\$43 increase

CONVICTIONS – ACTIVE SENTENCE

Agency	Charge	Avg. Active	Cost per Conviction	Cost of Staff	Equivalence
DPS – Prisons	New Class D Felony	100%**	Custody: \$41,925	Correction Officer I: \$49,173	1 new conviction = 1 new CO
	New Class E Felony	60%	Custody: \$16,770		3 new convictions = 1 new CO

	Class F → Class E Felony		Custody: \$5,160 increase in costs		10 increased convictions = 1 new CO	
	Expanded Class F Felony	53%	Custody: \$11,610		4 new convictions = 1 new CO	
	Class H → Class F Felony		Custody: \$5,160 increase in costs		10 increased convictions = 1 new CO	
	Expanded Class H Felony	34%	Custody: \$6,450		8 new convictions = 1 new CO	
	Class I → Class H Felony		Custody: \$2,580 increase in costs		19 increased convictions = 1 new CO	
	Class 1 → Class A1 Misdemeanor	<i>Active sentences for misdemeanors are served in county jails and do not require post-release supervision.</i>				
	DPS – Community Corrections	New Class D Felony	100%**	Post-Release Supervision (PRS): \$2,040	Probation Parole Officer (PPO): \$53,760	26 new convictions = 1 new PPO
		New Class E Felony	60%	PRS: \$2,040		26 new convictions = 1 new PPO
Class F → Class E Felony		Increased PRS Costs: \$510		105 increased convictions = 1 new PPO		
Expanded Class F Felony		53%	PRS: \$1,530	35 new convictions = 1 new PPO		
Class H → Class F Felony			<i>No change in PRS Costs</i>			
Expanded Class H Felony		34%	PRS: \$1,530	PPO: \$53,760		35 new convictions = 1 new PPO
Class I → Class H Felony			<i>No change in PRS Costs</i>			
Class 1 → Class A1 Misdemeanor		<i>Active sentences for misdemeanors are served in county jails and do not require post-release supervision.</i>				

CONVICTIONS – SUSPENDED SENTENCE

Agency	Charge	Avg. Probation	Cost of Supervision per Conviction	Cost of Staff	Equivalence
DPS – Community Corrections	New Class D Felony	3%**	\$5,950	PPO: \$53,760	9 new convictions = 1 new PPO
	New Class E Felony	40%	\$5,440		10 new convictions = 1 new PPO
	Class F → Class E Felony		Increased Cost: \$170		316 increased convictions = 1 new PPO
	Expanded Class F Felony	47%	\$5,270		10 new convictions = 1 new PPO
	Class H → Class F Felony		Increased Cost: \$850		63 increased convictions = 1 new PPO
	Expanded Class H Felony	66%	\$4,420		12 new convictions = 1 new PPO

	Class I → Class H Felony		Increased Cost: \$680		79 increased convictions = 1 new PPO
	Class 1 → Class A1 Misdemeanor	62%	Increased Cost: \$340		158 increased convictions = 1 new PPO

* All costs annualized

**Active sentence rate estimated as 100% because a non-active sentence for Class D is only available as an exception to sentencing under the felony punishment chart

FISCAL IMPACT SUMMARY

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of an offense. Section 1 of the proposed bill would create a new Class D felony offense, create a new Class E felony offense, increase a Class F felony to a Class E felony offense, increase a Class H felony to a Class F felony offense, expand the scope of a Class H felony offense, and increase a Class 1 misdemeanor to a Class A1 misdemeanor. Section 3 of the bill would expand the scope of an existing Class F felony offense and increase a Class I felony to a Class H felony offense.

The criminal offense modifications in the proposed bill may have a fiscal impact on the judicial and correction systems. However, despite some historical data on these offenses, the changes in this bill to the offenses leave the frequency of future charges and convictions uncertain, and the Fiscal Research Division (FRD) is unable to provide a reasonable estimate of the total fiscal impact. Each additional person charged with these crimes 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 above.

FISCAL IMPACT OF H.B.805, 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	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Estimate Available - Refer to Fiscal Analysis section
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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 or 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. Fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in charges and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 1 of the proposed bill would amend G.S. 14-288.2 to create a new Class D felony offense, create a new Class E felony offense, increase a Class F felony to a Class E felony offense, increase a Class H felony to a Class F felony offense, expand the scope of a Class H felony offense, and increase a Class 1 misdemeanor to a Class A1 misdemeanor. In calendar year 2020, 107 defendants were charged with felony inciting to riot under G.S. 14-288.2. However, under this statute, there are two felony rioting offenses discussed separately in subsection (c) and subsection (e). AOC does not have data to differentiate how many of the 107 defendants would be charged under any of the modified offenses. As a result, FRD cannot provide a reasonable estimate for the proposed changes to this violation class.

Section 3 of the bill would amend G.S. 14-288.9 to expand the scope of an existing Class F felony offense and increase a Class I felony to a Class H felony offense. In calendar year 2020, there were 6 defendants charged with violating G.S. 14-288.9 under the offense code for assault on emergency personnel (not involving a deadly weapon). AOC does not have data to differentiate how many of the 6 defendants would be charged under either the expanded offense or the elevated offense. As a result, FRD cannot provide a reasonable estimate for the proposed changes to this violation class.

The table below shows the cost to AOC from the changes in this bill, along with the equivalence between the cost of a charge to the cost of hiring a new deputy clerk.

<i>Charge</i>	<i>Cost to AOC per Charge</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
New Class D Felony	\$5,760	Deputy Clerk: \$54,532	9 new charges = 1 new Deputy Clerk
New Class E Felony	\$2,689		20 new charges = 1 new Deputy Clerk
Class F → Class E Felony	\$1,173 in increased costs		46 increased charges = 1 new Deputy Clerk
Expanded Class F Felony	\$1,516		36 new charges = 1 new Deputy Clerk

Class H → Class F Felony	\$683 in increased costs		80 increased charges = 1 new Deputy Clerk
Expanded Class H Felony	\$833		65 new charges = 1 new Deputy Clerk
Class I → Class H Felony	\$226 in increased costs		241 increased charges = 1 new Deputy Clerk
Class 1 → Class A1 Misdemeanor	\$201 in increased costs		271 increased charges = 1 new Deputy Clerk

Section 4 of the bill would amend G.S. 15A-534.8 in a way that is functionally similar to those pretrial provisions set forth in G.S. 15A-534.1, pretrial release for domestic violence cases, and G.S. 15A-534.7, pretrial release for threats of mass violence. While this amended language could generate an increase to the workload of judicial branch staff, especially district court judge workload, AOC does not have data with which to project the extent of the workload impact the proposed changes will impact the courts. As a result, FRD cannot provide a reasonable estimate for the cost of the proposed changes in this section.

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.

The table below shows the different offense modifications in Section 1 and 3 of the bill, along with the average percent of cases handled by IDS at each class level or increased class level based on three years of fiscal data from FY 2016-17 to FY 2018-19 and the weighted average cost of each change per case for a PAC attorney.

<i>Charge</i>	<i>Percent of Cases Handled by IDS</i>	<i>Increased Cost to the PAC Fund per Charge</i>
New Class D Felony	89%	\$1,568
New Class E Felony	79%	\$867
Class F → Class E Felony		\$41 increase
Expanded Class F Felony	74%	\$826
Class H → Class F Felony		\$351 increase
Expanded Class H Felony	78%	\$475
Class I → Class H Felony		\$79 increase
Class 1 → Class A1 Misdemeanor	52%	\$43 increase

Department of Public Safety – Prisons

Section 1 of the proposed bill would create a new Class D felony offense, create a new Class E felony offense, increase a Class F felony to a Class E felony offense, increase a Class H felony to a Class F felony offense, expand the scope of a Class H felony offense, and increase a Class 1 misdemeanor to a Class A1 misdemeanor. Section 3 of the bill would expand the scope of an existing Class F felony offense and increase a Class I felony to a Class H felony offense. Based on the most recent population

projections and estimated bed capacity, the Prisons division will have surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional prison beds will be required from the changes in this bill. SPAC provides a threshold analysis when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

The five-year estimates in each section below take into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group. In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system based on FY 2019-20 expenditures is \$21.22 per day, or \$645 per month, which includes the cost of food, clothing, and health care.

New Class D Felony

For resource projections, SPAC estimates the rate of Class D felony convictions resulting in active sentences at 100%, with an average estimated time served of 65 months. The following table shows the estimated annual impact if there were 1 conviction (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
1 (Threshold)	1	2	3	4	5
20	20	40	60	80	100

In FY 2019-20, 100% of Class D felony offenders received active sentences averaging 65 months. For every additional Class D felony offender receiving an active sentence, the cost to the prison section will be \$41,925 (\$645 monthly cost times 65 months).

New Class E Felony

In FY 2019-20, 60% of Class E felony convictions resulted in active sentences, with an average estimated time served of 26 months. The following table shows the estimated annual impact if there were 2 convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	3	3	3	3
20	12	28	34	34	34

In FY 2019-20, 60% of Class E felony offenders received active sentences averaging 26 months. For every additional Class E felony offender receiving an active sentence, the cost to the prison section will be \$16,770 (\$645 monthly cost times 26 months).

Increased Class F to Class E Felony

In FY 2019-20, 60% of Class E felony convictions resulted in active sentences, with an average estimated time served of 26 months, while 53% of Class F felony convictions resulted in active sentences, with an average estimated time served of 18 months. The following table shows the estimated annual impact if there were 2 convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Increased Class F to Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	0	1	1	1	1
20	1	9	13	13	13

While for every additional Class E felony offender receiving an active sentence, the cost to the prison section will be \$16,770 (\$645 monthly cost times 26 months), for every additional Class F felony offender receiving an active sentence, the cost to the prison section will be \$11,610 (\$645 monthly cost times 18 months). Therefore, for every additional increased Class F to Class E felony offender receiving an active sentence, the cost to the prison section will be \$5,160 (\$16,770 minus \$11,610).

Expanded Class F Felony

In FY 2019-20, 53% of Class F felony convictions resulted in active sentences, with an average estimated time served of 18 months. The following tables show the estimated annual impact if there were 2 convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	2	2	2
20	11	19	21	21	21

In FY 2019-20, 53% of Class F felony offenders received active sentences averaging 18 months. For every additional Class F felony offender receiving an active sentence, the cost to the prison section will be \$11,610 (\$645 monthly cost times 18 months).

Increased Class H to Class F Felony

In FY 2019-20, 53% of Class F felony convictions resulted in active sentences, with an average estimated time served of 18 months, while 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months. The following tables show the

estimated annual impact if there were 4 convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Increased Class H to Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	5	8	10	10	10

While for every additional Class F felony offender receiving an active sentence, the cost to the prison section will be \$11,610 (\$645 monthly cost times 18 months), for every additional Class H felony offender receiving an active sentence, the cost to the prison section will be \$6,450 (\$645 monthly cost times 10 months). Therefore, for every additional increased Class H to Class F felony offender receiving an active sentence, the cost to the prison section will be \$5,160 (\$11,610 minus \$6,450).

Expanded Class H Felony

In FY 2019-20, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months. The following table shows the estimated annual impact if there were 4 convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	6	11	11	11	11

In FY 2019-20, 34% of Class H felony offenders received active sentences averaging 10 months. For every additional Class H felony offender receiving an active sentence, the cost to the prison section will be \$6,450 (\$645 monthly cost times 10 months).

Increased Class I to Class H Felony

In FY 2019-20, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months, while 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 6 months. The following tables show the estimated annual impact if there were 10 convictions (the threshold) or 20 convictions for this proposed offense per year.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Increased Class I to Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
10 (Threshold)	2	2	2	2	2
20	6	6	6	6	6

While for every additional Class H felony offender receiving an active sentence, the cost to the prison section will be \$6,450 (\$645 monthly cost times 10 months), for every additional Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,870 (\$645 monthly cost times 6 months). Therefore, for every additional increased Class I to Class H felony offender receiving an active sentence, the cost to the prison section will be \$2,580 (\$6,450 minus \$3,870).

Increased Class 1 to Class A1 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 felony offenders may be given exclusively active or suspended sentences or suspended in conjunction with imprisonment (split-sentence). 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 Sentence

All active sentences for felony offenses result in a minimum of 12 months of post-release supervision (PRS) for B-E level offenses. All active sentences for felony offenses result in a minimum of nine months of post-release supervision (PRS) for F-I level offenses. All types of PRS are supervised by the Community Corrections Section (CCS). Based on FY 2019-20 expenditures, 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.

For every additional Class D or Class E felony offender receiving an active sentence, the cost to CCS of 12 months of PRS is \$2,040 per offender (\$170 per month times 12 months). For every addition offender receiving an active sentence under the expanded Class F, expanded Class H, increased Class H to Class F, or increased Class I to Class H felonies, the cost to CCS of nine months of PRS is \$1,530 per offender (\$170 per month times 9 months). For every offender receiving an active sentence under the increased Class F to Class E offense, the cost to CCS would be \$510 for an additional three months of PRS (\$170 per month times 3 months).

Suspended Sentence

CCS also oversees probation. In FY 2019-20, 3% of Class D felony offenders received a non-active sentence. The average length of probation imposed for this offense class was 35 months. For every additional Class D felony offender receiving a non-active sentence, the average cost to CCS would be \$5,950 (\$170 per month times 35 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 9 convictions of this new offense resulting in a suspended sentence would be equivalent to increasing the workload need of CCS by one PPO.

In FY 2019-20, 40% of Class E felony offenders received suspended sentences. The average length of probation imposed for this offense class was 32 months. For every additional Class E felony offender receiving a non-active sentence, the average cost to CCS would be \$5,440 (\$170 per month times 32 months). Because the annual cost of a PPO is \$53,760, FRD finds that 10 convictions of this new offense resulting in a suspended sentence would be equivalent to increasing the workload need of CCS by one PPO.

In FY 2019-20, 47% of Class F felony offenders received suspended sentences. The average length of probation imposed for this offense class was 31 months. For every additional Class F felony offender receiving a non-active sentence, the average cost to CCS would be \$5,270 (\$170 per month times 31 months). Because the annual cost of a PPO is \$53,760, FRD finds that 10 convictions of this expanded offense resulting in a suspended sentence would be equivalent to increasing the workload need of CCS by one PPO. For every additional felony offender receiving a non-active sentence convicted of the increased penalty from Class F to Class E, the average cost to CCS would be \$170 (\$170 per month times increase from 31 to 32 months [one month]).

In FY 2019-20, 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for this offense class was 26 months. For every additional Class H felony offender receiving a non-active sentence, the average cost to CCS would be \$4,420 (\$170 per month times 26 months). Because the annual cost of a PPO is \$53,760, FRD finds that 12 convictions of this expanded offense resulting in a suspended sentence would be equivalent to increasing the workload need of CCS by one PPO. For every additional felony offender receiving a non-active sentence convicted of the increased penalty from Class H to Class F, the average cost to CCS would be \$850 (\$170 per month times increase from 26 to 31 months [5 months]).

In FY 2019-20, 85% of Class I felony offenders received suspended sentences. The average length of probation imposed for this offense class was 22 months. For every additional felony offender receiving a non-active sentence convicted of the increased penalty from Class I to Class H, the average cost to CCS would be \$680 (\$170 per month times increase from 22 to 26 months [4 months]).

In FY 2019-20, 62% of Class 1 misdemeanor offenders and 62% of Class A1 misdemeanor offenders received probation. The average length of probation imposed for a Class 1 offense was 15 months, while the average length of probation imposed for a Class A1 offense was 17 months. Therefore, for every additional misdemeanor offender receiving a non-active sentence convicted of the increased penalty from Class 1 to Class A1, the average cost to CCS would be \$340 (\$170 per month times increase from 15 to 17 months [2 months]).

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

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

LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

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

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

ESTIMATE PREPARED BY

William Childs

ESTIMATE APPROVED BY

Mark Trogdon, Director of Fiscal Research
Fiscal Research Division
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Signed copy located in the NCGA Principal Clerk's Offices