



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

## Legislative Incarceration Fiscal Note

**Short Title:** Protect Those Who Serve and Protect Act.  
**Bill Number:** House Bill 36 (Second Edition)  
**Sponsor(s):** Representatives Hastings, Saine, C. Smith, and K. Baker

### SUMMARY TABLE

#### CHARGES

	Charge	Cost per Charge	Cost of Staff	Equivalence
Administrative Office of the Courts	Class H Felony	\$833	Deputy Clerk: \$54,532	65 new charges = 1 new Deputy Clerk
	Class I Felony	\$607		90 new charges = 1 new Deputy Clerk
	Class A1 Misdemeanor	\$475		115 new charges = 1 new Deputy Clerk
Office of Indigent Defense Services	Class H Felony	Percent of cases handled by IDS: 78%		Increased cost to PAC Fund: \$475
	Class I Felony	Percent of cases handled by IDS: 68%		Increased cost to PAC Fund: \$396
	Class A1 Misdemeanor	Percent of cases handled by IDS: 52%		Increased cost to PAC Fund per charge: \$248

#### CONVICTIONS – ACTIVE SENTENCE

	Charge	Avg. Active	Cost per Conviction	Cost of Staff	Equivalence
DPS – Prisons	Class H Felony	34%	Custody: \$6,450	Correction Officer I: \$49,173	8 new charges = 1 new CO
	Class I Felony	15%	Custody: \$3,870		13 new charges = 1 new CO
DPS – Community Corrections	Class H Felony	34%	Post-Release Supervision: \$1,530	Probation Parole Officer (PPO): \$53,760	35 new charges = 1 new PPO
	Class I Felony	15%			

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

#### CONVICTIONS – SUSPENDED SENTENCE

	Charge	Avg. Probation	Cost per Conviction	Cost of Staff	Equivalence
DPS – Community Corrections	Class H Felony	66%	Supervision: \$4,420	PPO: \$53,760	12 new charges = 1 new PPO
	Class I Felony	85%	Supervision: \$3,740		14 new charges = 1 new PPO
	Class A1 Misdemeanor	62%	Supervision: \$2,890		19 new charges = 1 new PPO

\* All costs annualized

**FISCAL IMPACT SUMMARY**

Section 2 of this bill creates a new Class H felony offense. Section 3 of this bill increases a penalty from an infraction to a Class I felony and expands the scope of the offense. Section 3 also creates a new Class A1 misdemeanor offense. The criminal offense modifications in the proposed bill may have a fiscal impact on the judicial and correction systems. However, due to a lack of sufficient historical data on this offense or similar offenses, the Fiscal Research Division (FRD) is unable to provide a reasonable estimate of the total fiscal impact. Each additional person charged with this crime will have a cost to the judicial system and each additional person convicted will have a cost to the correction system. All costs in the tables above have been annualized. 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.

**FISCAL IMPACT OF H.B. 36, V.2**

	<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>
<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>				

<b>NET STATE IMPACT</b>	<b>No Estimate Available - Refer to Fiscal Analysis section</b>
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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 2 of the bill creates a new Class H felony offense. Based on the AOC estimate of the average cost to the court for a charge by offense class, the average cost to the court for every additional person charged with a Class H felony would be \$833. Because the annual cost of a deputy clerk is \$54,532, 65 charges of this new offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

Section 3 of the bill changes a penalty from an infraction offense to a Class I felony offense. Based on the AOC estimate of the average cost to the court for a charge by offense class, the average cost to the court for every additional person charged with a Class I felony would be \$607. Because the annual cost of a deputy clerk is \$54,532, 90 charges of the changed offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

Section 3 of the bill also creates a new Class A1 misdemeanor offense. Based on the AOC estimate of the average cost to the court for a charge by offense class, the average cost to the court for every additional person charged with a Class A1 misdemeanor would be \$475. Because the annual cost of a deputy clerk is \$54,532 115 charges of this new offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

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 78% of Class H felony cases. The weighted average cost of a new Class H felony is \$475 per case for a PAC attorney. In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 68% of Class I felony cases. The weighted average cost of a new Class I felony is \$396 per case for a PAC attorney. 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 A1 misdemeanor is \$248 per case for a PAC attorney.

## **Department of Public Safety – Prisons**

### **Class H Felony**



This bill creates a new 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.

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. The five-year estimate takes 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. rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

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

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. 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).

Class I Felony

This bill also changes a penalty from an infraction offense to a Class I 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.

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

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class I Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
10 (Threshold)	1	3	3	3	3
20	2	5	5	5	5

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. In FY 2019-20, 15% of Class I felony offenders received active sentences averaging 6 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).

#### Class A1 Misdemeanor

Finally, the bill creates a new Class A1 misdemeanor offense. 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). All felony offenders may be given exclusively active or suspended sentences or suspended 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 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 H and Class I felony offender receiving an active sentence, the cost to CCS of nine months of PRS is \$1,530 per offender (\$170 per month times 9 months).

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

*Suspended Sentence*

CCS also oversees probation. 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 an active sentence, the average cost to CCS would be \$4,420 (\$170 per month times 26 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, 12 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, 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 Class I felony offender receiving an active sentence, the average cost to CCS would be \$3,740 (\$170 per month times 22 months). Because the annual cost of a PPO is \$53,760, 14 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, 62% of Class A1 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 average length of probation imposed for this class of offense 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 (\$170 per month times 17 months). Because the annual cost of a PPO is \$53,760, FRD 19 convictions of this new offense resulting in a suspended sentence would be equivalent to increasing the workload need of CCS by one PPO.

**ESTIMATE PREPARED BY**

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