



# NORTH CAROLINA GENERAL ASSEMBLY

2021 Session

## Legislative Incarceration Fiscal Note

**Short Title:** Organized Retail Theft.  
**Bill Number:** Senate Bill 766 (Second Edition)  
**Sponsor(s):**

### SUMMARY TABLE

#### CHARGES

	<i>Charge</i>	<i>Cost per Charge</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
Administrative Office of the Courts	Class G-> Class C Felony	Increased Cost: \$5,798	Deputy Clerk: \$54,532	9 increased charges = 1 new Deputy Clerk
	Class G-> Class F Felony	Increased Cost: \$266		205 increased charges = 1 new Deputy Clerk
	Class G -> Class H Felony	Decreased Cost: \$417		131 decreased charges = 1 Deputy Clerk position
	Class G Felony	\$1,250		44 new charges = 1 new Deputy Clerk
	Class A1 Misdemeanor	\$475		115 new charges = 1 new Deputy Clerk
Office of Indigent Defense Services	Class G-> Class C Felony	Percent of cases handled by IDS at the increased charge: 82%		Cost to the PAC Fund per increased charge: \$1,272
	Class G-> Class F Felony	Percent of cases handled by IDS at the increased charge: 74%		Cost to the PAC Fund per increased charge: \$194
	Class G -> Class H Felony	Percent of cases handled by IDS at the decreased charge: 78%		Savings to the PAC Fund per decreased charge: \$157
	Class G Felony	Percent of cases handled by IDS: 78%		Increased cost to PAC Fund: \$632
	Class A1 Misdemeanor	Percent of cases handled by IDS: 52%		Increased cost to PAC Fund per charge: \$248

#### CONVICTIONS – ACTIVE SENTENCE

	<i>Charge</i>	<i>Avg. Active</i>	<i>Cost per Conviction</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
DPS – Prisons	Class G-> Class C Felony	100%	Custody cost per increased conviction: \$43,215	Correction Officer I: \$49,173	1 new increased conviction = 1 new CO
	Class G-> Class F Felony	53%	Custody cost per increased conviction: \$2,580		19 new increased conviction = 1 new CO
	Class G -> Class H Felony	34%	Custody savings per decreased conviction: \$2,580		19 new decreased convictions = 1 CO position

	Class G Felony	40%	Custody: \$9,030		5 new convictions = 1 new CO
DPS – Community Corrections	Class G-> Class C Felony	100%	Increase in Post-Release Supervision Cost: \$510	Probation Parole Officer (PPO): \$53,760	105 increased convictions = 1 new PPO
	Class G-> Class F Felony	53%	Post-Release Supervision: \$1,530		35 new, increased, or decreased convictions = 1 PPO
	Class G -> Class H Felony	34%			
	Class G Felony	40%			
	Class A1 Misdemeanor	<i>Active sentences for misdemeanors are served in county jails and do not require post-release supervision.</i>			

### CONVICTIONS – SUSPENDED SENTENCE

	Charge	Avg. Probation	Cost per Conviction	Cost of Staff	Equivalence
DPS – Community Corrections	Class G-> Class C Felony	N/A	Decreased Supervision Cost: \$4,590	PPO: \$53,760	12 new convictions = 1 PPO position
	Class G-> Class F Felony	47%	Increased Supervision Cost: \$680		79 increased convictions = 1 new PPO
	Class G-> Class H Felony	66%	Decreased Supervision Cost: \$170		316 decreased convictions = 1 PPO position
	Class G Felony	60%	Supervision: \$4,590		12 new convictions = 1 new PPO
	Class A1 Misdemeanor	62%	Supervision: \$2,890		19 new convictions = 1 new PPO

\* All costs annualized

### 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 of the proposed bill includes two new escalated offenses and one de-escalated offense, moving an existing charge from a Class G to either a Class H, Class F, Class G, or Class C felony depending on the specifics of the crime. Section 2 of the bill creates two new Class A1 misdemeanor offenses. 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 this offense, the changes in this bill to the offense 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 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 S.B.766, V.2

	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>	<u>FY 2026-27</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

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### 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.

While there is some limited historical data available for charges related to organized retail theft, they are insufficient to predict the impact of this legislation. Specifically, under G.S. 14.86.6.(a1)(1) and G.S. 14.86.6(a), the statutes revised by this bill, there were 4 convictions in FY 2018-19, 8 convictions in FY 2019-20, and 5 convictions in FY 2020-21. However, the new and modified charges created in this bill involve specific dollar thresholds for the value of the goods stolen, the role played by the individual in the crime, amount of damage done to property, and/or whether or not assault occurred during the theft. There is no data available to provide these details on previous’ years conviction or charge data, and as a result, FRD cannot use this data to estimate how many charges or convictions may be impacted by this legislation.

## **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 bill changes a penalty from a Class G offense to a Class H, Class F, or Class C felony offense, depending on the specifics of the crime. Based on the AOC estimate of the average cost to the court for a charge by offense class, the average savings for the court for every person charged with a Class H felony instead of a Class G felony would be \$417. The average cost to the court for every additional person charged with a Class F felony instead of a Class G felony would be \$266. The average cost to the court for every additional person charged with a Class C felony instead of a Class G felony would be \$5,798. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 131 charges of the newly-decreased Class H offense would be equivalent to decreasing the workload need of the court system by one deputy clerk. Similarly, 205 charges of the newly-increased Class F offense would be equivalent to increasing the workload need of the court system by one deputy clerk. Finally, FRD finds that 9 charges of the newly-increased Class C offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

Section 2 of the bill also creates two new Class A1 misdemeanor felony offenses. 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, FRD finds that 115 charges of these new offenses 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 G felony cases. The weighted average cost of a new Class G felony is \$632 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 78% of Class H felony cases. The weighted average cost of a new Class H felony is \$475 per case for a PAC attorney. Therefore, the decreased cost for the newly-decreased Class H charges is \$157 compared to their current Class G cost.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 74% of Class F felony cases. The weighted average cost of a new Class F felony is \$826 per case for a PAC

attorney. Therefore, the increased cost for the newly-increased Class F charges is \$194 compared to their current Class G cost.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 82% of Class C felony cases. The weighted average cost of a new Class C felony is \$1,904 per case for a PAC attorney including expert costs. Therefore, the increased cost for the newly-increased Class C charges is \$1,272 compared to their current Class G cost.

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**

This bill changes a penalty from a Class G felony offense to a Class H, Class F, or Class C felony offense and creates two new Class G felony offenses. 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 this section 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 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.

<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 FY 2019-20, 40% of Class G felony convictions resulted in active sentences, with an average estimated time served of 14 months. The following table shows the estimated annual impact if there were 3 convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G 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>
3 (Threshold)	1	2	2	2	2
20	8	15	15	15	15

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 table shows the estimated annual impact if there were 2 convictions (the threshold) or 20 convictions for this proposed offense per year.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F 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>
2 (Threshold)	1	2	2	2	2
20	11	19	21	21	21

In FY 2019-20, 100% of Class C felony convictions resulted in active sentences with an average estimated time served of 81 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

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class C 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>
1 (Threshold)	1	2	3	4	5
20	20	40	60	80	100

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, 40% of Class G felony offenders received active sentences averaging 14 months. For every additional Class G felony offender receiving an active sentence, the cost to the prison section will be \$9,030.

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 who would previously have received a Class G active sentence, the savings to the prison section will be \$2,580.

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 who would previously have received a Class G active sentence, the cost to the prison section will be \$2,580.

In FY 2019-20, 100% of Class C felony offenders received active sentences averaging 81 months. For every additional Class C felony offender receiving an active sentence who would previously have received a Class G active sentence the cost to the prison section will be \$43,215.

SPAC expects no impact on the prison population from the new A1 misdemeanors created in this bill 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). 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 active sentences for felony offenses result in a minimum of 12 months of post-release supervision (PRS) for B-E 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 G felony offender receiving an active sentence, the cost to CCS of nine months of PRS is \$1,530 per offender.

For every additional Class H felony offender that would formerly have been charged with a Class G felony receiving an active sentence, the cost to CCS of nine months of PRS is \$1,530 per offender.

For every additional Class F felony offender that would formerly have been charged with a Class G felony receiving an active sentence, the cost to CCS of nine months of PRS is \$1,530 per offender.

For every additional Class C felony offender that would formerly have been charged with a Class G felony receiving an active sentence, the cost to CCS of 12 months of PRS is \$510 per offender.

In FY 2019-20, 38% of Class A1 misdemeanor offenders received active sentences. 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, 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 probation parole officer (PPO) is \$53,760, FRD finds that 19

convictions of this new offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO.

In FY 2019-20, 60% of Class G felony offenders received suspended sentences. The average length of probation imposed for this offense class was 27 months. For every additional Class G felony offender receiving a non-active sentence, the average cost to CCS would be \$4,590. Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 12 convictions of these new offenses resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO.

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 who previously would have been charged with a Class G felony receiving a non-active sentence, the average savings to CCS would be \$170. Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 316 convictions of this decreased offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section 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 who previously would have been charged with a Class G felony receiving a non-active sentence, the average cost to CCS would be \$680. Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 79 convictions of this increased offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO.

In FY 2019-20, 100% of Class C felony convictions resulted in active sentences. As a result, for every additional Class C offender who previously would have been charged with a Class G felony and would have received a non-active sentence, the average savings to CCS would be \$4,590.

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## **TECHNICAL CONSIDERATIONS**

N/A

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## **DATA SOURCES**

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

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## **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**

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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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Mark Trogdon, Director of Fiscal Research  
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June 6, 2022



**Signed copy located in the NCGA Principal Clerk's Offices**