



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Protect Those Who Serve and Protect Act.
Bill Number: House Bill 34 (Third Edition)
Sponsor(s):

SUMMARY TABLE

MINIMUM* FISCAL IMPACT OF H.B.34, V.3

	<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>
State Impact					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	<u>1,442,113</u>	<u>1,475,466</u>	<u>1,505,899</u>	<u>1,535,127</u>	<u>1,565,518</u>
General Fund Impact	(1,442,113)	(1,475,466)	(1,505,899)	(1,535,127)	(1,565,518)
NET STATE IMPACT	(\$1,442,113)	(\$1,475,466)	(\$1,505,899)	(\$1,535,127)	(\$1,565,518)

*Additional unknown criminal justice costs associated with this bill; see Fiscal Analysis section for details.

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 creates two **new Class D felonies**, a **new Class H felony**, and **one new Class A1 Misdemeanor**. The proposed legislation would also modify existing criminal offenses by **increasing a charge for a Class E to a D felony**, a **Class F to E felony**, and a **Class I to an H felony**. In addition, the proposed changes would increase **an infraction to a Class I felony** and expand **the eligible pool of victims covered under the offense**. Because infractions are not treated as criminal offenses, the **modification increasing an infraction to a Class I felony is treated like a new offense**. Many of these changes represent new charges, and as such there is no data to predict how many individuals may be charged or convicted, and as such **Fiscal Research is unable to project the fiscal impact of these sections on the criminal justice system**. There is some data available for the offenses being expanded or increased, which is detailed in Fiscal Analysis section below.

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 average percentage of cases that incur those costs at that offense level.

Cost of One Charge and Conviction in H.B. 34, v.3											
	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.)
D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	N/A	0
▲ E to D	+\$3,746	+10%	+\$835	+6%	+\$27,308	+37	No ▲	No ▲	-43%	-\$7,356	-31
▲ F to E	+\$1,432	+5%	+\$60	+6%	+\$6,643	+9	+\$712	+3	-6%	+\$237	+1
H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
▲ I to H	+\$276	+10%	+\$103	+18%	+\$3,690	+5	No ▲	No ▲	-18%	+712	+3
I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,221	22
Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Days)	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

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 impaired driving. The triangle symbol (▲) 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 ANALYSIS

Section 2 of H. B. 34 would enact a **new G.S. 14-34.1A**, making it a **Class H felony** for any person to discharge or attempt to discharge any firearm or barreled weapon into any unoccupied emergency vehicle. Because the proposed section would create a new offense there is no historic charge or conviction data that allows Fiscal Research to make projections about this new charge.

Section 3 would amend G.S. 14-34.1A, Criminal use of a laser device, in three ways. The proposed changes would introduce a new subdivision **reclassifying** intentionally pointing a laser device at law enforcement officers or other emergency and frontline personnel, while the person is in the performance of his or her duties, from an **infraction to Class I felony**. The proposed amendment also **expands the pool of potential victims covered by the elevated charge to other law enforcement and frontline workers**. Because infractions are not treated as criminal offenses, the proposed **change from an infraction to a Class I felony is treated like a new offense**. Section 3 also establishes a **new Class A1 misdemeanor** for intentionally pointing a laser device at a law enforcement or rescue animal while performing its duties. The new charges in this proposed section do not have historic charge or conviction data. As a result, Fiscal Research is unable to project how new charges and expanding the scope of potential victims proposed in Section 3 impacts the criminal justice system.

Section 4 would amend G.S. 14-34.2, Assault with a deadly weapon on government employees, by increasing the penalty **from a Class F felony to a Class E felony**.

- In CY 2022, there were 358 defendants charged with violating G.S. 14-34.2.
- In FY 2021-22 there were 76 offenders convicted of violating G.S. 14-34.2.
- Fiscal Research estimates the proposed changes in this section will have a **total impact to the State of \$879,258 in FY2023-24** due to increased costs to the Administrative Office of the Courts (AOC) of approximately \$512,656, increased costs to Indigent Defense Services (IDS) of approximately \$16,989, and increased costs to the Department of Adult Corrections (DAC) of approximately \$349,613.

Section 5 would amend G.S. 14-34.5(a1), Assault with a firearm on a member of the National Guard by increasing the penalty from a **Class E felony to a Class D felony**. AOC does not have a specific offense code for G.S. 14-34.5(a1) The absence of an offense code provides some indication that violations are infrequently charged. As a result, the fiscal impact cannot be determined.

Section 6 would amend G.S. 14-34.7 Assault on a Law Enforcement Officer (LEO), probation/parole officer, National Guard, or detention facility employee by increasing the penalties under subsections (a), (a1), and (b) from a **Class F felony to a Class E felony**.

- In CY 2022, there were 127 defendants charged with violating G.S. 14-34.7(a)-(b)
- In FY 2021-22 there were 20 offenders convicted of violating G.S. 14-34.7(a)-(b).
- Fiscal Research estimates the proposed changes in this section will have a **total impact to the State of \$280,077 in FY2023-24** due to increased costs to AOC of approximately \$181,864, increased costs to IDS of approximately \$6,020, and increased costs to DAC of approximately \$92,193.

It would also amend subsection (c) by increasing the penalty from a **Class I felony to a Class H felony**.

- In CY 2022, there were 520 defendants charged with violating G.S. 14-34.7(c).
- In FY 2021-22 there were 79 offenders convicted of violating G.S. 14-34.7(c).
- Fiscal Research estimates the proposed changes in this section will have a **total impact to the State of \$282,778 in FY2023-24** due to increased costs to AOC of approximately \$143,520, increased costs to IDS of approximately \$5,371, and increased costs to DAC of approximately \$133,887.

Section (7) would amend G.S. 14-32, Assault with a deadly weapon with intent to kill or inflict serious injury by adding subsections (d) and (e), which create **two new Class D felonies** for assault on an emergency worker with a deadly weapon and either (d) inflicts serious injury, or (e) with intent to kill. Although adding subsections (d) and (e) to the statute would create new Class D felonies, in practice, these acts would likely be prosecuted under G.S. 14-32 (b) and (c) currently, essentially **increasing the penalty from the current Class E felonies** listed in (b) and (c), **to Class D felonies** in new (d) and (e), when the victim is an emergency worker as defined in new subsection (f). However, there is no data to determine the number of the violations where the victim was an emergency worker. As a result, Fiscal Research cannot estimate the fiscal impact of this proposed section.

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, FRD 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 expenses 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.
 - **Class D charges** carry an average cost of \$7,027 per charge.
 - **Increasing a Class E felony to a Class D felony charge** would carry an average increased cost of \$3,746 per charge.
 - **Increasing a Class F felony to a Class E felony charge** would carry an average increased cost of \$1,432 per charge.
 - **Class H charges** carry an average cost of \$1,016 per charge.
 - **Increasing a Class I felony to a Class H felony charge** would carry an average increased cost of \$276 per charge.
 - **Class I charges** carry an average cost of \$740 per charge.
 - **Class A1 charges** carry an average cost of \$580 per charge.

- **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.
 - **Class D charges** utilize IDS in 89% of cases at a cost of \$1,744 per charge.
 - **Increasing a Class E charge to a Class D felony charge** would result in a 10% higher rate of IDS utilization at an increased cost of \$835 per charge.
 - **Increasing a Class F charge to a Class E felony charge** would result in a 5% higher rate of IDS utilization at an increased cost of \$60 per charge.
 - **Class H charges** utilize IDS in 78% of cases at a cost of \$510 per charge.
 - **Increasing a Class I charge to a Class H felony charge** would result in a 10% higher rate of IDS utilization at an increased cost of \$103 per charge.
 - **Class I charges** utilize IDS in 68% of cases at a cost of \$407 per charge.
 - **Class A1 charges** utilize IDS in 52% of cases at a cost of \$281 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 D convictions** serve an average active sentence of 64 months at a cost of \$47,236 per conviction.
 - **Class D felons serve active sentences at a 6% higher rate than Class E felons**, with a 37 month longer average active sentence at an increased cost of \$27,308 per conviction.
 - **Class E felons serve active sentences at a 6% higher rate than Class F felons**, with a 9 month longer average active sentence at an increased cost of \$6,643 per conviction.
 - **33% of Class H felony convictions** result in an average active sentence of 11 months with a total cost of \$8,119.
 - **Class H felons serve active sentences at a 18% higher rate than Class I felons**, with a 5 month longer average active sentence at an increased cost of \$3,690 per conviction.
 - **15% of Class I felony convictions** result in an average active sentence of 6 months with a total cost of \$4,428.
 - **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 A1 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. Supervision by a probation officer costs \$249.50 per offender per month.
 - **Class D felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class D and E felons** with active sentences serve 12 months of PRS at a cost of \$2,994, as result there is no change in the cost of PRS for the increased charge.
 - **Compared to Class F felons, Class E felons** with active sentences serve 3 months more of PRS at an increased cost of \$712.
 - **Class H and I felons** with active sentences serve 9 months of PRS at a cost of \$2,282, as result there is no change in the cost of PRS for the increased charge.
 - **Class I felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
 - Misdemeanants do not receive PRS.

Conviction: Suspended Sentence

- Department of Adult Correction – Community Corrections: Felony 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 \$249.50 per offender per month.



- **Class D convictions** cannot receive a suspended sentence.
- **Changing a Class E charge to a Class D charge** would eliminate the possibility of a suspended sentence, resulting in some savings for Community Corrections. 43% of Class E convictions resulted in a suspended sentence with an average length of 31 months at a cost of \$7,356.
- **Compared to Class F convictions, Class E convictions** resulted in a suspended sentence in 6% fewer cases, but with an increased average length of 1 month at a cost of \$237.
- **67% of Class H felony convictions** receive a suspended sentence with an average length of 25 months at a cost of \$5,933.
- **Compared to Class I convictions, Class H convictions** resulted in a suspended sentence in 18% fewer cases, but with an increased average length of 3 months at a cost of \$712.
- **85% of Class I felony convictions** receive a suspended sentence with an average length of 22 months at a cost of \$5,221.
- **64% of Class A1 misdemeanor convictions** receive a suspended sentence with an average length of 16 months at a cost of \$3,797.

TECHNICAL CONSIDERATIONS

- 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

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

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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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						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.