



# NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

## Legislative Incarceration Fiscal Note

**Short Title:** Novel Opioid Control Act of 2023.  
**Bill Number:** House Bill 258 (First Edition)  
**Sponsor(s):** Rep. Blackwell, Rep. Arp, Rep. Lambeth, and Rep. Sasser

### 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 makes various amendments to the Controlled Substances Act to update chemical names and add substances to the existing controlled substance Schedule I. The proposed changes would expand the scope of existing Class C, Class D, Class E, Class F, Class G, Class H, and Class I felonies. **Fiscal Research is unable to predict the number of charges or convictions that may result from expanding the list of controlled substances.**

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. 258, v.1											
Offense Class	Prosecution and Defense			Active Sentence					Suspended Sentence		
	Admin. Office of the Courts	Indigent Defense Services		DAC - Confinement			DAC - Post-Release Supervision (PRS)		DAC - Probation		
		Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost
Expanded C	\$8,598	82%	\$2,317	100%	\$63,473	86	\$2,994	12	0%	N/A	0
Expanded D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	N/A	0
Expanded E	\$3,281	79%	\$909	57%	\$19,928	27	\$2,994	12	43%	\$7,356	31
Expanded F	\$1,849	74%	\$849	51%	\$13,285	18	\$2,282	9	49%	\$7,119	30
Expanded G	\$1,525	78%	\$706	39%	\$11,071	15	\$2,282	9	61%	\$6,170	26
Expanded H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
Expanded I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,221	22

*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.*

**FISCAL IMPACT OF H.B.258, V.1**

	<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>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
<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>
-------------------------	---

**FISCAL ANALYSIS**

This bill makes various amendments to the Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes. Sections 1(a), 1(c), and 1(f) amends G.S. 90-89 by: 1) adding new substances to the list of opiates that are classified as Schedule I controlled substances under G.S. 90-89(1), 2) adding new subsection 1(b) to classify nitazene derivatives as Schedule I controlled substances, and 3) adding an additional variant to the list of substituted cathinones as a Schedule I stimulant under G.S. 90-89(5)(j).

Expanding the list of substances that are classified as Schedule I controlled substances increases the number of potential offenders that could be charged with a violation of either G.S. 90-95 for possessing, selling, delivering and/or manufacturing a Schedule I Controlled substance or G.S. 90-98 for attempting or conspiring to commit such an offense. The penalties for these offenses range from a Class I to a Class C felony, depending on the quantity of the substance in question and the act performed.

- Under G.S. 90-95(c) it is a **Class I felony** to create, sell, or deliver, or possess with intent to sell or deliver a counterfeit Schedule I controlled substance as proscribed by G.S. 90-95(a)(2).
- Under G.S. 90-95(d)(1) it is a **Class I felony** to possess a Schedule I controlled substance as proscribed by G.S. 90-95(a)(3).
- Under G.S. 90-98 it is a **Class I felony** to attempt or conspire to commit the Class I offenses set forth above.
- Under G.S. 90-95(b)(1) it is a **Class H felony** to manufacture or deliver, or possess with intent to manufacture, sell or deliver a Schedule I controlled substance as proscribed by G.S. 90-95(a)(1).
- Under G.S. 90-98 it is a **Class H felony** to attempt or conspire to commit the Class H offense set forth above.
- Under G.S. 90-95(b)(1) it is a **Class G felony** to sell a Schedule I controlled substance as proscribed by G.S. 90-95(a)(1).

- Under G.S. 90-95.4(a)(1) it is a **Class G felony** for a person 18 to 20 years old to hire or intentionally employ a minor more than 13 years old to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.
- Under G.S. 90-98 it is a **Class G felony** to attempt or conspire to commit the Class G offenses set forth above.
- Under G.S. 90-95.4(a)(1) it is a **Class F felony** for a person 18 to 20 years old to hire or intentionally employ a minor more than 13 years old to sell a Schedule I controlled substance.
- Under G.S. 90-95.4(a)(2) it is a **Class F felony** for a person 18 to 20 years old to hire or intentionally employ a minor 13 years old or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.
- Under G.S. 90-98 it is a **Class F felony** to attempt or conspire to commit the Class F offenses set forth above.
- Under G.S. 90-95.4(a)(2) it is a **Class E felony** for a person 18 to 20 years old to hire or intentionally employ a minor 13 years old or younger to sell a Schedule I controlled substance.
- Under G.S. 90-95.4(b)(1) it is a **Class E felony** for a person 21 years old or older to hire or intentionally employ a minor more than 13 years old to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.
- Under G.S. 90-98 it is a **Class E felony** to attempt or conspire to commit the Class E offenses set forth above.
- Under G.S. 90-95.4(b)(1) it is a **Class D felony** for a person 21 years old or older to hire or intentionally employ a minor more than 13 years old to sell a Schedule I controlled substance.
- Under G.S. 90-95.4(b)(2) it is a **Class D felony** for a person 21 years old or older to hire or intentionally employ a minor 13 years old or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver, a Schedule I controlled substance.
- Under G.S. 90-98 it is a **Class D felony** to attempt or conspire to commit the Class D offenses set forth above.
- Under G.S. 90-95.4(b)(2) it is a **Class C felony** for a person 21 years old or older to hire or intentionally employ a minor 13 years old or younger to sell a Schedule I controlled substance.
- Under G.S. 90-98 it is a **Class C felony** to attempt or conspire to commit the Class C offense set forth above.

**Fiscal Research is unable to predict how many charges or convictions may result from expanding the list of controlled substances.** Please refer to the Operating Expenses below for the average costs of Class C-I felonies.

### **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 C felony charges carry an average cost of \$8,598 per charge.
  - Class D felony charges carry an average cost of \$7,027 per charge.
  - Class E felony charges carry an average cost of \$3,281 per charge.
  - Class F felony charges carry an average cost of \$1,849 per charge.
  - Class G felony charges carry an average cost of \$1,525 per charge.
  - Class H felony charges carry an average cost of \$1,016 per charge.
  - Class I felony charges carry an average cost of \$740 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 C felony defendants utilize IDS in 82% of cases at an average cost of \$2,317.
  - Class D felony defendants utilize IDS in 89% of cases at an average cost of \$1,744.
  - Class E felony defendants utilize IDS in 79% of cases at an average cost of \$909.
  - Class F felony defendants utilize IDS in 74% of cases at an average cost of \$849.
  - Class G felony defendants utilize IDS in 78% of cases at an average cost of \$706.
  - Class H felony defendants utilize IDS in 78% of cases at an average cost of \$510.
  - Class I felony defendants utilize IDS in 68% of cases at an average cost of \$407.

### **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 C felony convictions result in an average active sentence of 86 months with a total cost of \$63,473 per sentence.
  - 100% of Class D felony convictions result in an average active sentence of 64 months with a total cost of \$47,236 per sentence.
  - 57% of Class E felony convictions result in an average active sentence of 27 months with a total cost of \$19,928 per sentence.
  - 51% of Class F felony convictions result in an average active sentence of 18 months with a total cost of \$13,285 per sentence.
  - 39% of Class G felony convictions result in an average active sentence of 15 months with a total cost of \$11,071 per sentence.

- 33% of Class H felony convictions result in an average active sentence of 11 months with a total cost of \$8,119 per sentence.
- 15% of Class I felony convictions result in an average active sentence of 6 months with a total cost of \$4,428 per sentence.
- Department of Adult Correction – Community Corrections: All active sentences from Class B1- I felony convictions result in a period of post-release supervision (PRS) of between 9 and 12 months, depending on the severity of the charge. There is a one-time cost of \$146 per PRS hearing. Supervision by a probation officer costs \$237.30 per offender per month.
  - All Class C and D felons would receive 12 months of PRS at a cost of \$2,994.
  - Class E felons that served an active sentence would receive 12 months of PRS at a cost of \$2,994.
  - Class F, G, H, and I felons that served an active sentence would receive 9 months of PRS at a cost of \$2,282.

### **Conviction: Suspended Sentence**

- Department of Adult Correction – Community Corrections: All active sentences from Class B1- I felony convictions result in a period of post-release supervision (PRS) of between 9 and 12 months, depending on the severity of the charge. Supervision by a probation officer costs \$237.30 per offender per month.
  - Class C and D felony convictions do not result in a suspended sentence.
  - 43% of Class E felony convictions result in a suspended sentence with an average length of 31 months at a cost of \$7,356.
  - 49% of Class F felony convictions result in a suspended sentence with an average length of 30 months at a cost of \$7,119.
  - 61% of Class G felony convictions result in a suspended sentence with an average length of 26 months at a cost of \$6,170.
  - 67% of Class H felony convictions result in a suspended sentence with an average length of 25 months at a cost of \$5,933.
  - 85% of Class I felony convictions result in a suspended sentence with an average length of 22 months at a cost of \$5,221.

## **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**

---

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

## **ESTIMATE PREPARED BY**

---

Morgan Weiss

## **ESTIMATE APPROVED BY**

---

Brian Matteson, Director of Fiscal Research  
Fiscal Research Division  
March 14, 2023



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

**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				Active sentences for misdemeanor convictions are served in County jail.	Misdemeanants do not receive PRS	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.*