



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Gun Violence Prevention Act.
Bill Number: Senate Bill 650 (Second Edition)
Sponsor(s):

SUMMARY TABLE

FISCAL IMPACT OF S.B.650, V.2

| | <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>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> |
| General Fund Impact | Likely Significant Budget Cost - Refer to Fiscal Analysis section | | | | |

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 would **create a new Class D, a new Class E, and a new Class G felony**. Because these are new charges, there is no data to predict how many individuals may be charged or convicted. **Therefore, Fiscal Research is unable to project the fiscal impact** of the proposed legislation on the criminal justice system. However, it is likely that the bill’s changes to the criminal justice system **would have a significant impact** on both capital and operating expenses for the State’s criminal justice system.

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 percent of cases that incur those costs at that offense level.

| Cost of One Charge and Conviction under S.B. 650 v.2 | | | | | | | | | | | |
|--|-----------------------------|---------------------------|---------|-------------------|----------|--------------|--------------------------------------|--------------|--------------------|---------|--------------|
| 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 | | |
| 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 | \$3,281 | 79% | \$909 | 57% | \$19,928 | 27 | \$2,994 | 12 | 43% | \$7,356 | 31 |
| G | \$1,525 | 78% | \$706 | 39% | \$11,071 | 15 | \$2,282 | 9 | 61% | \$6,170 | 26 |

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.

FISCAL ANALYSIS

Bill Summary:

Section 1 of the proposed legislation creates the new G.S. 14-415.1A, Possession of certain weapons by felon during the commission or attempted commission of a felony. Subsection (a) provides definitions. Subsection (b) establishes the underlying offense, making it unlawful for any person prohibited from possessing a firearm or weapon of mass death and destruction to possess such a weapon during the commission or attempted commission of a felony. Subsection (c) establishes the class of offense for violating Subsection (b) depending on the circumstances of the event. The bill makes it a **Class D felony** to discharge the illegally possessed weapon during the commission of a felony, a **Class E felony** to brandish the weapon (that is, displaying the weapon or making its presence known to another person) during the commission of a felony, and a **Class G felony** for any other violation of Subsection (b). Subsection (d) requires that the new charges in Subsection (c) be considered as separate offenses from the underlying felony offense and from the existing Class G felony of possession of a firearm by a convicted felon.

Because these are new offenses, there is no historic data available for cost projections, and as such **Fiscal Research is unable to provide operating cost projections for this bill.** However, it should be noted that the bill's changes to the criminal justice system **may have a significant impact** on both capital and operating expenses for the State's criminal justice system. Please refer to the Capital Expenses section for a discussion of the potential impacts to the State's prison capacity and to the Operating Expenses section for the average costs of Class D, E and G 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 approximately 3,500 beds available at the end of the five-year window and approximately 1,740 beds available at the end of the ten-year window.

However, SPAC notes that while it is impossible to predict how many individuals who are prohibited from possessing firearms would possess, brandish, or discharge those weapons during the commission of a felony, it is possible to estimate the pool of potential offenders under the statute created by this bill. SPAC estimates the pool of potential new Class D offenders to be approximately 1,170 per year, the pool of potential new Class E offenders to be approximately 880 per year, and the pool of potential new Class G offenders to be approximately 40 per year. In addition, 100% of Class D convictions serve active sentences of approximately 64 months.

It is unlikely that all of these potential offenders will commit the new offenses included in this bill. However, if, for example, 25% of the new Class D offenders in the potential pool were convicted, prison bed demand would increase by nearly 1,300 beds over the next five years, utilizing approximately 1/3rd of the State's current availability. This scenario illustrates the rapidity with which the charges included in this bill could put additional capacity pressures on the adult correction system.

Operating Expenses

The following section explains the source of potential costs 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 felonies** carry an average cost of \$7,027 per charge to the judicial system.
 - **Class E felonies** carry an average cost of \$3,281 per charge to the judicial system.
 - **Class G felonies** carry an average cost of \$1,525 per charge to the judicial system.
- **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.
 - **Class E charges** utilize IDS in 79% of cases at a cost of \$909 per charge.
 - **Class G charges** utilize IDS in 78% of cases at a cost of \$706 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 felonies** serve an average active sentence of 64 months at a cost of \$47,236 per conviction.

- **57% of Class E felonies** serve an average active sentence of 27 months at a cost of \$19,928 per conviction.
- **39% of Class G felonies** serve an average active sentence of 15 months at a cost of \$11,071 per conviction.
- 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. There is a one-time cost of \$146 per PRS hearing. Supervision by a probation officer costs \$237.30 per offender per month.
 - **Class D felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class E felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class G felons** with active sentences serve 9 months of PRS at a cost of \$2,282.

Conviction: Suspended Sentence

- Department of Adult Correction – Community Corrections: 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 \$237.30 per offender per month.
 - **Class D convictions** cannot receive a suspended sentence.
 - **43% of Class E convictions** resulted in a suspended sentence with an average length of 31 months at a cost of \$7,356.
 - **61% of Class G convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$6,170.

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.

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June 28, 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.