



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Incarceration Fiscal Note

Short Title: Impaired Driving Law Revisions.
Bill Number: House Bill 25 (First Edition)
Sponsor(s): Representative Clampitt

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 D Felony	\$5,760	Deputy Clerk: \$54,532	9 new charges = 1 new Deputy Clerk
	Class E Felony	\$2,689		20 new charges = 1 new Deputy Clerk
	Class F Felony	\$1,516		36 new charges = 1 new Deputy Clerk
	Class 1 Misdemeanor	\$274		199 new charges = 1 new Deputy Clerk
Office of Indigent Defense Services	Class D Felony	Percent of cases handled by IDS: 89%		Increased cost to PAC Fund per charge: \$1,568
	Class E Felony	Percent of cases handled by IDS: 79%		Increased cost to PAC Fund per charge: \$867
	Class F Felony	Percent of cases handled by IDS: 74%		Increased cost to PAC Fund per charge: \$826
	Class 1 Misdemeanor	Percent of cases handled by IDS: 39%		Increased cost to PAC Fund per charge: \$205

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 D Felony	100%**	Custody: \$41,925	Correction Officer I: \$49,173	1 new charge = 1 new CO
	Class E Felony	60%	Custody: \$16,770		3 new charges = 1 new CO
	Class F Felony	53%	Custody: \$11,610		4 new charges = 1 new CO
DPS – Community Corrections	Class D Felony	100%**	Post-Release Supervision: \$2,040	Probation Parole Officer (PPO): \$53,760	26 new charges = 1 new PPO
	Class E Felony	60%	Post-Release Supervision: \$2,040		26 new charges = 1 new PPO
	Class F Felony	53%	Post-Release Supervision: \$1,530		35 new charges = 1 new PPO

Class 1: Active sentences are served in county jails and do not require post-release supervision.

CONVICTIONS – SUSPENDED SENTENCE

	<i>Charge</i>	<i>Avg. Probation</i>	<i>Cost per Conviction</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
DPS – Community Corrections	Class D Felony	3%**	Supervision: \$5,950	PPO: \$53,760	9 new charges = 1 new PPO
	Class E Felony	40%	Supervision: \$5,440		10 new charges = 1 new PPO
	Class F Felony	47%	Supervision: \$5,270		10 new charges = 1 new PPO
	Class 1 Misdemeanor	62%	Supervision: \$2,550		21 new charges = 1 new PPO

* All costs annualized

**Active sentence rate estimated as 100% because a non-active sentence for Class D is only available as an exception to sentencing under the felony punishment chart

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 expands the definition of “offense involving impaired driving” by adding “driving while license revoked for impaired driving under G.S. 20-21(a1)” as one of the qualifying offenses. This change expands the scope of four offenses that include “offense involving impaired driving” as an element: a Class D felony, a Class E felony, a Class F felony, and a Class 1 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 these offenses, 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.

The broadening of the definition of “offense involving impaired driving” expands the scope of the following offenses and may increase the charges and convictions related to these offenses:

Offense	Class	Definition	Charges, CY 2020	Convictions, FY 2019-20
G.S. 20-141.4(a5)	Class D	Aggravated felony death by vehicle	15	4
G.S. 20-141.4(a4)	Class E	Aggravated felony serious injury be vehicle	22	10
G.S. 20-138.5	Class F	Habitual impaired driving	262	157
G.S. 20-28(a3)(2)	Class 1 misdemeanor	Failure to appear for two years from date of implied-consent offense charge	4	N/A

Section 2 of the bill amends the grossly aggravating factors under G.S. 20-179(c)(2), (3), and (4) to adjust how certain factors are considered during a sentencing hearing for impaired driving. The changes in this section of the bill may have an impact on the Statewide Misdemeanant Confinement Program.

FISCAL IMPACT OF H.B.25, V.1

	<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>
State Impact					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Estimate Available - Refer to Fiscal Analysis section
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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 1 of the bill broadens the definition of “offense involving impaired driving,” which expands the scope of a Class D felony, a Class E felony, a Class F felony, and a Class 1 misdemeanor 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 D felony would be \$5,760. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 9 charges of the expanded offense would be equivalent to increasing the workload need of the court system by one deputy clerk. The AOC estimate for the average cost to the court for every additional person charged with a Class E felony is \$2,689, which means that 20 charges of the expanded offense would be equivalent to increasing the workload need of the court system by one deputy clerk. The AOC estimate for the average cost to the court for every additional person charged with a Class F misdemeanor is \$1,516, which means that 36 charges of the expanded offense would be equivalent to increasing the workload need of the court system by one deputy clerk. The AOC estimate for the average cost to the court for every additional person charged with a Class 1 misdemeanor is \$274, which means that 199 charges of the expanded 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 89% of Class D felony cases, 79% of Class E felony cases, 74% of Class F felony cases, and 39% of Class 1 misdemeanor cases. The weighted average cost of a new Class D felony is \$1,568 per case for a PAC attorney, adding expert costs. The weighted average cost of a new Class E felony is \$867 per case for a PAC attorney. The weighted average cost of a new Class F felony is \$826 per case for a PAC attorney. The weighted average cost of a new Class 1 misdemeanor is \$205 per case for a PAC attorney.

Department of Public Safety – Prisons

This bill increases the scope of a Class D felony offense, Class E felony offense, Class F felony offense, and Class 1 misdemeanor 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. Please note misdemeanor offenders who receive active sentences will serve them in the local jail.

For resource projections, SPAC estimates the rate of Class D felony convictions resulting in active sentences at 100%, with an average estimated time served of 65 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. 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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class D Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
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, 100% of Class D felony offenders received active sentences averaging 65 months. For every additional Class D felony offender receiving an active sentence, the cost to the prison section will be \$41,925 (\$645 monthly cost times 65 months).

In FY 2019-20, 60% of Class E felony convictions resulted in active sentences, with an average estimated time served of 26 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. 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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	3	3	3	3
20	12	28	34	34	34

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, 60% of Class E felony offenders received active sentences averaging 26 months. For every additional Class E felony offender receiving an active sentence, the cost to the prison section will be \$16,770 (\$645 monthly cost times 26 months).

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. 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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	2	2	2
20	11	19	21	21	21

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, 53% of Class F felony offenders received active sentences averaging 18 months. For every additional Class F felony offender receiving an active sentence, the cost to the prison section will be \$11,610 (\$645 monthly cost times 18 months).

Grossly Aggravating Factors

Section 2 of the bill amends the grossly aggravating factors under G.S. 20-179(c)(2), (3), and (4) to adjust how certain factors are considered during a sentencing hearing for impaired driving. Subsection (2) applies when, at the time of the offense, the defendant drove while their driver's license was revoked pursuant to G.S. 20-28(a1). Each revocation pursuant to G.S. 20-28(a1) in effect at the time of the offense for which the defendant is presently being sentenced is a separate grossly aggravating factor. Subsection (3) requires a finding of a grossly aggravating factor when the defendant's impaired driving at the time of the offense caused serious injury to another person. Each person seriously injured by the defendant's impaired driving is a separate grossly aggravating factor. Subsection (4) provides that it is a grossly aggravating factor when the defendant has certain types of persons present in the vehicle while they are driving impaired. The types of persons include: a child under the age of 18 years; a person with the mental development of a child under the age of 18 years; a person with a physical disability preventing unaided exit from the vehicle. Each person in the vehicle meeting one of the above descriptions is a separate grossly aggravating factor.

To determine the level of punishment for impaired driving offenses, the number and/or type of grossly aggravating factors found by the judge places the defendant in Aggravated Level 1, Level 1, or Level 2. For Aggravated Level 1 offenses, the judge must find three or more grossly aggravating factors. (G.S. 20-179(f3)). Level 1 offenses require a judge to find that the grossly aggravating factor in G.S. 20-179(c)(4) applies or two of the other grossly aggravating factors apply. (G.S. 20-179(g)). If the judge does not find that the aggravating factor in G.S. 20-179(c)(4) applies, the judge must impose the Level 2 punishment if it is determined that only one of the other grossly aggravating factors applies. (G.S. 20-179(g)).

This bill allows the judge to find additional grossly aggravating factors from a single occurrence of impaired driving (e.g., multiple children in the car means a finding of multiple grossly aggravating factors under G.S. 20-179(c)(4)). As the number of aggravating factors determines the level of punishment for impaired driving offenses, the more grossly aggravating factors that a judge can find could potentially mean more Aggravated Level 1, Level 1, and Level 2 convictions. AOC's Automated Criminal Infractions System does not contain data on the application of specific grossly aggravating

factors in DWI sentences. Therefore, it is not possible to provide a projection or threshold number of convictions resulting from the proposed changes.

Misdemeanants convicted of impaired driving offenses serve their sentences through the Statewide Misdemeanant Confinement Program (SMCP). However, due to extended sentences or other extenuating circumstances, some DWI offenders serve their sentences in prison. Therefore, while the bill would have a small impact on the prison population, the bill would have a greater impact on the SMCP.

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.

All misdemeanor offenders may be given suspended sentences exclusively or 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 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 D or Class E felony offender receiving an active sentence, the cost to CCS of 12 months of PRS is \$2,040 per offender (\$170 per month times 12 months). For every additional Class F 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 1 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, 3% of Class D felony offenders received a non-active sentence. The average length of probation imposed for this offense class was 35 months. For every additional Class D felony offender receiving an active sentence, the average cost to CCS would be

\$5,950 (\$170 per month times 35 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 9 convictions of this expanded 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, 40% of Class E felony offenders received suspended sentences. The average length of probation imposed for this offense class was 32 months. For every additional Class E felony offender receiving an active sentence, the average cost to CCS would be \$5,440 (\$170 per month times 32 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 10 convictions of this expanded 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 receiving an active sentence, the average cost to CCS would be \$5,270 (\$170 per month times 31 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 10 convictions of this expanded 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, 62% of Class 1 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 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,550 per offender (\$170 per month times 15 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 21 convictions of the expanded offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO.

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

Department of Public Safety; 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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