



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Criminal Law Revisions.
Bill Number: House Bill 237 (First Edition)
Sponsor(s): Rep. Torbett, Rep. Greene, Rep. Faircloth, and Rep. Carson Smith

SUMMARY TABLE

FISCAL IMPACT OF H.B.237, 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>
State Impact					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
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.

Section 1 of this proposed legislation creates a **new Class C felony** and a **new Class H felony for the offense of money laundering. Because these are new offenses, there is no historical data to project a fiscal impact.** 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 first table below, along with the average percentage of cases that incur those costs at that offense level.

Section 2 **increases the class of all misdemeanor and felony offenses by one level and requires an active sentence**, if the option is available at the higher level, **for any individual convicted of a misdemeanor or felony who concealed or attempted to conceal their identity during the offense**, as defined in the legislation. **The one class sentence enhancement would result in lengthier sentences.** The additional confinement months and costs for one elevated conviction are listed in Table 2 below. **Furthermore, the elimination of judicial discretion in sentencing would increase the number of individuals who serve an active sentence in prison** instead of a suspended sentence in the community. The increases in the rates of active sentences are also listed in Table 2. **It is unknown how many individuals conceal their identity during an offense, but the impact to the corrections system as a result of these changes is likely significant.** Please refer to the Fiscal Analysis section for additional details.

Table 1: Cost of One Charge and Conviction in H.B. 237, v.1											
	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.)
New C	\$8,598	82%	\$2,317	100%	\$63,473	86	\$2,994	12	0%	N/A	0
New H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25

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.

Table 2: Cost of Sentence Enhancement and Mandatory Active Sentence in H.B. 237, v.1						
	Active Sentence			Suspended Sentence		
Enhanced Offense Class	DAC - Confinement			DAC - Probation		
Felony	Rate	Additional Months	Additional Cost	Rate	Cost	Length (Mo.)
▲ B1 to A	100%	Indeterminate	Indeterminate	0%	N/A	N/A
▲ B2 to B1	100%	+86	+\$62,591	0%	N/A	N/A
▲ C to B2	100%	+70	+\$50,946	0%	N/A	N/A
▲ D to C	100%	+22	+\$16,012	0%	N/A	N/A
▲ E to D	100%	+37	+\$26,929	0%	N/A	N/A
▲ F to E	▲ 57% to 100%	+9	+\$6,550	Proposed legislation would eliminate judicial discretion to impose a suspended sentence.		
▲ G to F	▲ 51% to 100%	+3	+\$2,183			
▲ H to G	▲ 39% to 100%	+4	+\$2,911			
▲ I to H	▲ 33% to 100%	+5	+\$3,639			
▲ A1 Misdemeanor to I	▲ 0% to 100%	+6	+\$4,367			
Misdemeanor	Rate	Additional Days	Additional Cost	Rate	Cost	Length (Mo.)
▲ 1 to A1 ▲ 2 to 1 ▲ 3 to 2	Active sentences for misdemeanor convictions are served in County jail.			Proposed legislation would eliminate judicial discretion to impose a suspended sentence.		

Note: Costs for active sentences reflect the total cost of the sentence. Costs to the Statewide Misdemeanant Confinement Program (SMCP) only occur for active sentences > 90 days and impaired driving. The triangle symbols (▲) represent change, plus (+) symbols reflect the increase in cost or time from the current to proposed changes in charge levels.

FISCAL ANALYSIS

Bill Summary

Section 1 of the proposed legislation creates G.S. 14-118.8, Money Laundering. A person commits the offense of money laundering if the person knowingly does any of the following: 1) acquires or

maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity; 2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; 3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity; or 4) finances or invests, or intends to finance or invest, funds that the person believes are intended to further the commission of criminal activity. Violation would be a **Class H felony** if the value of the proceeds or funds is less than \$100,000 and a **Class C felony** if the value is \$100,000 or more.

Because these are new offenses, there is no historic data available for cost projections, and as such **Fiscal Research is unable to provide a cost projection for Section 1.** Please refer to the Operating Expenses section below for the average costs of Class C and H felonies.

Section 2 creates a sentence enhancement of one class higher if the defendant is convicted of a misdemeanor or felony and the defendant was wearing a mask, hood, or other clothing or device to conceal the defendant's identity. Additionally, it requires the courts to impose an active sentence if the enhanced class permits imprisonment, thereby eliminating judicial discretion to sentence an offender to a suspended sentence.

There is no historical data on the number of convicted defendants who concealed or attempted to conceal their identity while committing an offense. As a result, Fiscal Research is unable to provide a precise projection of the impact of this section on the corrections system. However, there would be an impact on the prison population for each elevated sentence as the higher offense class results in longer prison sentences. Furthermore, requiring imprisonment when the option is available would significantly increase the rate of active sentences. Specifically, an active sentence would be required for any sentence enhanced to a Class E, F, G, or H felony and any sentence enhanced to a Class I felony if the defendant had a prior record level of IV, V, or VI.

In CY 2022, there were 28,704 individuals convicted of a Class A1 misdemeanor through Class B1 felony and thus could potentially be imprisoned or experience a lengthier sentence under this proposed legislation. For illustrative purposes only, if 10% of CY 2022 offenders attempted to conceal their identity, the lengthier sentences due to the increased class would cost \$18.7 million over the life of their sentences. The increased prison bed demand due to the mandatory active sentence would result in an additional 1,436 individuals incarcerated in State prisons each year. The annual operating cost for one offender is \$8,855, and so under this illustration, additional confinement costs for 1,436 individuals would be \$12.7 million in the first year alone. Subsequent year costs would increase further as additional individuals enter prison in subsequent years and require beds that have not yet been fully vacated by releases from the prior year. As a result, **Fiscal Research projects a likely significant fiscal impact to the corrections system under Section 2.**

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 618 prison beds available under standard operating capacity for FY 2023-24. Due to a lack of applicable data, Fiscal Research is unable to estimate the impact of this proposed legislation on prison capital requirements.

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 new 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 felonies** carry an average cost of \$8,598 per charge to the judicial system.
 - **Class H felonies** carry an average cost of \$1,016 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 C charges** utilize IDS in 82% of cases at a cost of \$2,317 per charge.
 - **Class H charges** utilize IDS in 78% of cases at a cost of \$510 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 C felonies** serve an average active sentence of 86 months at a cost of \$63,473 per conviction.
 - **33% of Class H felonies** serve an average active sentence of 11 months at a cost of \$8,119 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 C felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class H 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 C convictions** cannot receive a suspended sentence.
 - **67% of Class H convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$5,933.

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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April 13, 2023



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