



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Protect Our Students Act.-AB
Bill Number: House Bill 142 (Second Edition)
Sponsor(s): Rep. Torbett, Rep. K. Baker, Rep. Johnson, and Rep. Kidwell

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.

The proposed legislation would modify three sections in statute increasing a Class I felony to a Class G in each section and create a new Class I felony. These changes are detailed in the Fiscal Analysis section of this Incarceration Note. Each additional person charged with the crimes in the proposed legislation will impose additional costs on the judicial system, convictions of the charges will have costs to the correction system.

While some charge and conviction data is available, the historic data show few charges and convictions under the changed offense class, Fiscal Research concludes that the bill will have **minimal impact on the criminal justice system’s costs**, because the known cost increases are de minimis and can be addressed by existing resources.

The **cost of one charge and conviction** is provided in the table below, along with the percent of cases that incur the costs or sentence at each offense level proposed in the legislation.

Cost of One Charge and Conviction In H.B. 142, 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.)	
▲ I to G	+\$785	+10%	+\$299	+24%	+\$6,643	+9	no ▲	no ▲	-24%	+\$949	+4	
New 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. The triangle symbols (▲) 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 IMPACT OF H.B.142, 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>
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	-	-	-	-	-
General Fund Impact	Likely Insignificant Budget Cost - Refer to Fiscal Analysis section				

FISCAL ANALYSIS

Bill Summary

H. B. 142 amends general statutes for sexual and indecent activities with students and reporting such conduct in several ways.

Section 1 subsection(a) would amend G.S. 14-27.32(b), reclassifying sexual activity between student and school personnel—other than a teacher, administrator, student teacher, safety officer, or coach—who is fewer than four years older than the student from a Class I to G felony.

- **In CY 2022, 1 defendant was charged** with violating G.S. 14-27.32(b). If the same number of defendants are charged under the proposed changes, **the estimated additional annual cost to the courts would be \$785.**
- In FY 2021-22 there were **no convictions under** G.S. 14-27.32(b). If the same number of convictions occur, this would result in no additional cost to the correction system.
- Fiscal Research projects minimal fiscal impact from this section.

Section 1 subsection(b) would amend G.S. 14-202.4(a)&(b), reclassifying two felony offenses for taking indecent liberties with a student from Class I to G felonies. First the proposed change reclassifies taking indecent liberties with a student of any age if the defendant is a teacher, administrator, student teacher, safety officer, or coach from a Class I to G felony.

- **In CY 2022, 4 defendants were charged** with violating G.S. 14-202.4(a). If the same number of defendants are charged under the proposed changes, **the estimated annual cost to the courts would be \$3,140.**
- In FY 2021-22 there was **one conviction under** G.S. 14-202.4(a). If the same number of convictions occur, this would result in an **estimated additional annual cost to the correction system that ranges between \$949 and \$6,643, depending on if the conviction resulted in an active or suspended sentence.**
- Fiscal Research projects minimal fiscal impact from this section.

The second proposed change reclassifies taking indecent liberties with a student if the defendant is school personnel other than a teacher, administrator, student teacher, safety officer, or coach and fewer than four years older than the student from a Class I to G felony.

- **In CY 2022, 25 defendants were charged** with violating G.S. 14-202.4(b). If the same number of defendants are charged under the proposed changes, **the estimated annual cost to the courts would be \$19,625.**
- In FY 2021-22 there were **no convictions under** G.S. 14-202.4(b). If the same number of convictions occur, this would result in no additional cost to the correction system.
- Fiscal Research projects minimal fiscal impact from this section.

Section 2 subsection(a) would create a new class I felony for failing to report misconduct or inflicting injury on a child—that was non accidental or in self-defense that resulted in dismissal, disciplinary action, or resignation to the State Board of Education. Because this section in the proposed legislation would create a new offense, there is no historic charge or conviction data that would allow Fiscal Research to make projections about its fiscal impact on the criminal justice system.

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, Fiscal Research 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)**: Making changes or 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.
 - **Increasing a charge from a Class I to a Class G** carries an average increased cost of \$785 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.
 - **Increasing a charge from a Class I to a Class G** increases IDS utilization by 10% and cost by \$299 per charge.
 - **Class I defendants** utilize IDS in 68% of cases at a cost of \$407 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.
 - **Increasing a charge from a Class I to a Class G** increases the probability of receiving an active sentence by 24%, the average sentence length by 9 months, and the average active sentence cost by \$6,643 per conviction under the new offense classification.
 - **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) between 12 and 9 months, depending on the severity of the charge. There is a one-time cost of \$146 per PRS hearing and supervision by a probation officer which costs \$237.30 per offender per month.
 - **All Class I and G felons**, whether new convictions under the new offenses or as a result of the increased penalty for an existing offense, **receive 9 months of PRS at a cost of \$2,282.**

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 \$237.30 per offender per month.
 - **Increasing a charge from a Class I to a Class G felony** decreases the probability of receiving an active sentence by 24%, but increases the average sentence length by 4 months, and the average active sentence cost by \$949 per conviction under the new offense classification.
 - **85% of Class H felony convictions** receive 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 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

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

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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	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.