



# NORTH CAROLINA GENERAL ASSEMBLY

## 2023 Session

### Legislative Incarceration Fiscal Note

**Short Title:** Prevent Rioting and Civil Disorder.  
**Bill Number:** House Bill 40 (First Edition)  
**Sponsor(s):** Rep. Moore, Rep. Sauls, Rep. Miller, and Rep. Willingham

#### SUMMARY TABLE

#### FISCAL IMPACT OF H.B.40, 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	-	-	-	-	-
<u>Less Expenditures</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>General Fund Impact</b>	<b>Likely Insignificant Budget Cost - Refer to Fiscal Analysis section</b>				

#### 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 contains the following seven changes to the criminal code: increasing a Class H felony to a Class F; creating a new Class E; increasing a Class 1 misdemeanor to a Class A1; increasing a Class F to a Class E; creating a new Class D; expanding the scope of an existing Class H; and increasing a Class I to a Class H. These changes are detailed in the Fiscal Analysis section below. Each additional person charged with any of these crimes will have a cost to the judicial system and each additional person convicted will have a cost to the correction system.

While some charge and conviction data is available, most of the data lacks sufficient specificity to determine how the new proposed offense structure would impact those charges and convictions. Due to these challenges, Fiscal Research is unable to provide a full projection of the proposed legislation’s fiscal impact on the criminal justice system. However, FRD concludes that the bill will have **minimal impact, if any**, on the criminal justice system’s costs, because the known cost increases are minimal 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 those costs or sentence at each offense level.

**Cost of One Charge and Conviction for Offenses in H.B.40, 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		
Felony	Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost	Length (Mo.)
New D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	N/A	no ▲
New E	\$3,281	79%	\$909	57%	\$19,928	27	\$2,994	12	43%	\$7,356	31
▲ F to E	+\$1,432	+5%	+\$60	+6%	\$6,643	+9	\$712	+3	-6%	+\$237	+1
▲ H to F	+\$833	-4%	+\$339	+18%	\$5,166	+7	no ▲	no ▲	-18%	+\$1,187	+5
Expanded H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
▲ I to H	+\$276	+10%	+\$79	+18%	\$3,690	+9	no ▲	no ▲	-18%	+\$712	+3
Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Days)	Cost	Length (Days)	Rate	Cost	Length (Mo.)
▲ 1 to A1	+\$245	-10%	+\$44		No Cost			NA	no ▲	+\$475	+2

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 impaired driving. 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 ANALYSIS**

**Bill Summary:**

H. B. 40 amends G.S. 14-288.2 (Riot; inciting to riot; punishments) in several ways.

**Section 1 subsection (c1)** increases the offense for willfully participating in a riot and causing property damage in excess of \$1,500 or serious bodily injury from a **Class H to F** felony.

- As currently written, G.S. 14-288.2 includes three felony offenses (two Class H felonies and one Class F). All three offenses were combined into one offense code in the court’s systems. **In CY 2022, 42 defendants were charged with felony rioting.** However, due to the combined offense code, it is impossible to determine how many, if any, of the 42 charges were for the offense of causing property damage in excess of \$1,500 or serious bodily injury.
- In FY 2021-22, there was **1 conviction for G.S. 14-288.2(c)**. However, it is not known whether the conviction was for the offense in (c1) that is proposed to be increased or the other Class H offense in (c2) (having a dangerous weapon or substance in one’s possession).
- Due to the lack of specificity in the data, Fiscal Research cannot provide a full projection of the impact of increasing the offense from a Class H to F felony. The total fiscal impact to the judicial system could range from a low of \$0 to a high of \$44,478. **Fiscal Research projects minimal fiscal impact from this section.**

**Subsection (c2)** creates a **Class E** felony if a person causes a death during a riot.

- Because this is a new offense, Fiscal Research does not have historical data to project the potential fiscal impact of creating this offense. Please refer to the Operating Expenses section below for the average costs of a Class E felony.

**Subsection (d)** increases the offense for willfully inciting others to engage in a riot from a **Class 1 to an A1** misdemeanor.

- As currently written, G.S. 14-288.2 contains two Class 1 misdemeanor offenses. However, both offenses were combined into one offense code in the court’s system. **In CY 2022, 32 defendants were charged with misdemeanor rioting.** However, due to the combined offense code, it is impossible to determine how many, if any, of the 32 charges were for the offense of willfully inciting others to engage in a riot. Similarly, **the conviction data shows 14 Class 1 convictions** but does not differentiate between the two offenses.
- Due to the lack of specificity in the data, Fiscal Research cannot provide a full projection of the impact of increasing the offense from a Class 1 to an A1 misdemeanor. The total fiscal impact to the judicial system from this section could range from a low of \$0 to a high of \$9,431. The total fiscal impact to the corrections system from this section could range from a low of \$0 to a high of \$6,636. **Fiscal Research projects minimal fiscal impact to the State from this change.**

**Subsection (e)** increases the offense of inciting a riot that causes \$1,500 or more in damages or serious bodily injury from a **Class F to E felony**.

- As described earlier, three felony offenses were combined into one offense code. In CY 2022, 42 defendants were charged with felony rioting, but it is impossible to determine how many, if any, of the 42 charges were for the offense of inciting a riot that causes \$1,500 or more in damages or serious bodily injury.
- In FY 2021-22, **1 individual was convicted with violating G.S. 14-288.2(e)**
- Due to the lack of specificity in the data, Fiscal Research cannot provide a full projection of the impact of increasing the offense from a Class F to E felony. The total fiscal impact to the judicial system from this section could range from a low of \$0 to a high of \$63,825. **Fiscal Research projects minimal fiscal impact to the State from this change.**

**Subsection (e1)** creates a **Class D** offense for inciting a riot that results in a death.

- Because this is a new offense, Fiscal Research does not have historical data to project the potential fiscal impact of creating this offense. Please refer to the Operating Expenses section below for the average costs of a Class D felony.

**Section (3)** expands the definition of “emergency personnel” to include members of the North Carolina National Guard and persons lawfully discharging or attempting to discharge official duties during an emergency or riot. **Subsection (c)** increases the offense for committing assault on emergency personnel from a **Class I to H** felony and removes the requirement the assault result in physical injury.

- In CY 2022, **11 defendants** were charged with assault on emergency personnel (not involving a deadly weapon) under the existing Class I felony, **with 0 convictions.** If the

same number of defendants were charged after passage of this proposed legislation, the annual additional cost to AOC would be \$3,036 and the annual additional cost to IDS would be \$1,136. Additional costs to the correction system are dependent on a conviction.

- No data is available to estimate the impact of the expansion of the definition of “emergency personnel” or the removal of the requirement the assault result in physical injury.
- Fiscal Research projects minimal fiscal impact to the State from increasing the offense class but is unable to estimate the impact of expanding this offense.

### **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 D charges** carry an average cost of \$7,027 per charge.
  - **Class E charges** carry an average cost of \$3,281 per charge.
  - **Increasing a charge from a Class F to a Class E** carries an average increased cost of \$1,432 per charge.
  - **Increasing a charge from a Class H to a Class F** carries an average increased cost of \$833 per charge.
  - **Class H charges** carry an average cost of \$1,016 per charge.
  - **Increasing a charge from a Class I to a Class H** carries an average increased cost of \$276 per charge.
  - **Increasing a charge from a Class 1 to a Class A1** carries an average increased cost of \$245 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 D defendants** utilize IDS in 89% of cases at a cost of \$1,744 per charge.
  - **Class E defendants** utilize IDS in 79% of cases at a cost of \$909 per charge.
  - **Increasing a charge from a Class F to a Class E** increases IDS utilization by 5% and increase costs by \$60 per charge.

- **Increasing a charge from a Class H to a Class F** decreases IDS utilization by 4% but will increase costs by \$339 per utilizing charge.
- **Class H charges**, utilize IDS in 78% of cases at a cost of \$510 per charge.
- **Increasing a charge from a Class I to a Class H** increases IDS utilization by 10% and increase costs by \$79 per charge.
- **Increasing a charge from a Class 1 to a Class A1** decreases IDS utilization by 10% but will increase costs by \$44 per utilizing 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 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.
  - **Increasing a charge from Class F to a Class E** increases the probability of receiving an active sentence by 6%, the average active sentence length by 9 months, and the average active sentence cost by \$6,643 per conviction under the new offense class.
  - **Increasing a charge from Class H to a Class F** increases the probability of receiving active sentence by 18%, the average active sentence length by 7 months, and the average active sentence cost by \$5,166 per conviction under the new offense class.
  - **35% of Class H felony convictions** result in an average active sentence of 11 months with a total cost of \$8,119.
  - **Increasing a charge from Class I to a Class H** increases the probability of receiving an active sentence by 18%, the average active sentence length by 9 months, and the average active cost by \$3,690 per conviction under the new offense class.
  - **Active sentences for misdemeanors** are served in local jails and therefore do not impact State expenses.
- 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. Supervision by a probation officer costs \$249.50 per offender per month.
  - **Class D and Class E felons** receive 12 months of PRS at a cost of \$2,994.
  - **New Class E felons who would have previously been convicted as Class F** receive an additional 3 months of PRS at an increased cost of \$712.
  - **All Class F and Class H 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 \$249.50 per offender per month.

- **100% of Class D felony convictions** serve active sentences and thus will not increase costs in this area.
- **43% of Class E felony convictions** receive a suspended sentence with an average length of 31 months at a cost of \$7,356.
- **Increasing a charge from Class F to a Class E** decreases probability of receiving a suspended sentence by 6%, but increases the average suspended sentence length by 1 month, and the average cost by \$237 per conviction under the new offense class.
- **Increasing a charge from Class H to a Class F** decreases the probability of receiving a suspended sentence by 18%, increase the average suspended sentence length by 5 months, and the average cost by \$1,187 per conviction under the new offense class.
- **67% of Class H felony convictions** receive a suspended sentence with an average length of 25 months at a cost of \$4,420.
- **Increasing a charge from Class I to a Class H** decreases the probability of receiving a suspended sentence by 18%, but increases the average suspended sentence length by 3 months, and the average cost by \$712 per conviction under the new offense class.
- **Increasing a charge from Class 1 to a Class A1** does not change the probability of receiving a suspended sentence, but it will increase the average suspended sentence length by 2 months, and the average cost by \$475 per conviction under the new offense class.

## TECHNICAL CONSIDERATIONS

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- 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, the Appendix to this document shows the costs per charge/conviction for each class of offense in North Carolina.

## DATA SOURCES

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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**

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

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February 7, 2023



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