



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Fiscal Note

Short Title: Const. Amend./Life at Fertilization.
Bill Number: House Bill 158 (First Edition)
Sponsor(s): Representatives Pittman and Brody

SUMMARY TABLE

FISCAL IMPACT OF H.B.158, 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	-	-	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Estimate Available - Refer to Fiscal Analysis section
-------------------------	---

TECHNICAL CONSIDERATIONS: See Technical Considerations Section

FISCAL IMPACT SUMMARY

This bill would add Section 39, Life begins at fertilization, to Article I of the North Carolina Constitution. Section 39 would direct that a distinct and separate human life begins at fertilization. Any person who willfully seeks to destroy the life of another person, by any means, at any stage of life, or succeeds in doing so, shall be held accountable for attempted murder or for first degree murder, respectively. The bill directs that the amendment will be submitted to the qualified voters of the State at the general election of 2022.

The costs of processing a constitutional amendment are borne by the Department of the Secretary of State. The Fiscal Research Division (FRD) finds that there would be a one-time cost to the agency of approximately \$11,140.

The language of the proposed amendment would apply existing legal personal protections to fertilized human ova, which is known in the singular as a zygote, during gestation into a fetus. While this bill does not include language to implement these changes, the changes could result in an increase in live births, thus increasing Medicaid costs. The prosecution, defense, and incarceration of offenders who violate the implementing language for the proposed amendment could have a cost to agencies of the justice system. Without implementing language or clear data about potential offenders, however, FRD is unable to estimate a cost from this aspect of the bill. Potential costs are discussed in the Fiscal Analysis below.

FISCAL ANALYSIS

Potential Impact to Secretary of State

The Department of the Secretary of State (SOS) staffs the Constitutional Amendments Publication Commission (CAPC) and is responsible for distributing explanations of proposed constitutional amendments to county boards of elections.

Assuming 2 hours are required for a CAPC meeting, the cost for holding a meeting is approximately \$1,140. That estimate includes charges for a videographer (\$475 for half a day), court reporting and transcription services ($\$127.50 \times 2 \text{ hours} = \255), and security services (5 law enforcement officers at $\$41.25 \text{ per hour} \times 2 \text{ hours} = \412.50). In the past, meeting space has been donated for CAPC meetings. If space is not donated in the future, the costs for holding a meeting would increase by \$850.

Moreover, SOS estimates a cost of \$10,000 for printing and mailing constitutional amendment explanations to all 100 county boards of elections.

Potential Impact on Medicaid Program

More than 20,000 abortions are performed annually in North Carolina. If the proposed Constitutional Amendment is approved and enacted, some portion of the pregnancies that currently end in abortion would instead result in additional births. Medicaid pays for approximately half of the births in the State, so an increase in the number of births is likely to increase Medicaid expenditures. The State share of Medicaid expenses for a single birth is approximately \$3,625, and the rest of a child's first year on Medicaid costs the State approximately \$3,325. After the first year of a child's life, the State share of Medicaid expenses decreases to approximately \$640 per year per child.

Potential Impact on Judicial and Correctional Systems

The bill would apply existing legal personal protections to fertilized human ova, which known in the singular as a zygote, during gestation into a fetus and beyond. The bill would expand first-degree and attempted murder to include anyone who terminates or assists in terminating a fetus or zygote after fertilization. These offenses are currently a Class A felony and Class B2 felony, respectively. Without implementing language, FRD is unable to estimate the costs from this aspect of the bill, but as both of these offenses currently exist, FRD assumes that the implementing language would expand the scope of an existing Class A felony and an existing Class B2 felony to include this larger pool of victims. The criminal offense modifications in the bill may have a fiscal impact on the judicial and correction systems. However, the changes in this bill leave the frequency of future charges and convictions uncertain, and 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. Using the assumptions explained below FRD finds that the average cost to the judicial and correctional systems for a Class A charge and conviction is \$504,074 and the average cost to the judicial and correctional systems for a Class B2 charge and conviction is \$123,284.



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.

The bill would presumably expand the scope of a Class A felony offense and a Class B2 felony offense. 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 A felony would be \$45,466 and the average cost to the court for every additional person charged with a Class B2 felony would be \$14,511.

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 95% of Class A felony cases. The weighted average cost of a new Class A felony is \$9,043 per case for a PAC attorney including expert costs. Similarly, in an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 85% of Class B2 felony cases. The weighted average cost of a new Class B2 felony is \$4,178 per case for a PAC attorney including expert costs.

Department of Public Safety – Prisons

The bill would presumably expand the scope of a Class A felony offense and a Class B2 felony 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. The Sentencing and Policy Advisory Commission (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.

Under Structured Sentencing, Class A offenders may receive a sentence of either death or life without parole. Offenders who are less than 18 years of age at offense may receive a sentence of life with parole. All Class A felony convictions result in active sentences. In a study of Class A offenders over 8 years from FY 2012-13 through FY 2019-20, SPAC found that the median age at sentencing in North Carolina is 30.0 years. An internal study at the Department of Public Safety (DPS) found that the average life expectancy for a person sentencing to life without parole is 58.1 years, or 697

months.¹ Assuming an average sentencing age and an average life expectancy, this indicates that a Class A felony offender serving a sentence of life without parole will serve an average of 28.1 years.

In FY 2019-20, all Class B2 felony convictions resulted in active sentences with an average estimated time served of 159 months. The following table shows the estimated annual impact on prison beds if there were 1 conviction (the threshold) or 20 convictions for either a Class A or a Class B2 felony conviction per year. The five-year estimate takes into account growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class A or Class B2 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. All Class A felony offenders receive active sentences averaging 697 months, as estimated above. For every additional Class A felony offender, the cost to the prison section will be \$449,565 (\$645 monthly cost times 697 months). In FY 2019-20, all Class B2 felony offenders received active sentences averaging 159 months. For every additional Class B2 felony offender, the cost to the prison section will be \$102,555 (\$645 monthly cost times 159 months).

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 Class B2 felony convictions result in active sentences. 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 B2 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).

¹ The data are for other states; DPS does not have enough information on the average life expectancy for a person convicted of a Class A felony in North Carolina.

TECHNICAL CONSIDERATIONS

The bill proposes a constitutional amendment but does not propose implementing language. FRD is not considering in this estimate any other legal protections or statutory crimes against a person as they may apply under prosecutorial discretion because the bill only mentions first-degree murder and attempted murder.

DATA SOURCES

THE ADMINISTRATIVE OFFICE OF THE COURTS; THE DEPARTMENT OF PUBLIC SAFETY; THE OFFICE OF INDIGENT DEFENSE SERVICES; SENTENCING AND POLICY ADVISORY COMMISSION; THE DEPARTMENT OF HEALTH AND HUMAN SERVICES; THE DEPARTMENT OF THE SECRETARY OF STATE

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.

ESTIMATE PREPARED BY

William Childs
Mark Collins
Grant Schwab

ESTIMATE APPROVED BY

Mark Trogdon, Director of Fiscal Research

Fiscal Research Division
June 22, 2021



Signed copy located in the NCGA Principal Clerk's Offices