



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

## Legislative Incarceration Fiscal Note

**Short Title:** Broaden Applicability of DV Statutes.  
**Bill Number:** House Bill 33 (First Edition)  
**Sponsor(s):** Representatives Warren, Moffitt, and Zachary

### 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 H Felony	\$833	Deputy Clerk: \$54,532	65 new charges = 1 new Deputy Clerk
	Class A1 Misdemeanor	\$475		115 new charges = 1 new Deputy Clerk
	Class 2 Misdemeanor	\$146		374 new charges = 1 new Deputy Clerk
Office of Indigent Defense Services	Class H Felony	Percent of cases handled by IDS: 78%		Increased cost to PAC Fund per charge: \$475
	Class A1 Misdemeanor	Percent of cases handled by IDS: 52%		Increased cost to PAC Fund per charge: \$248
	Class 2 Misdemeanor	Percent of cases handled by IDS: 30%		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 H Felony	34%	Custody: \$6,450	Correction Officer I: \$49,173	8 new charges = 1 new CO
DPS – Community Corrections			Post-Release Supervision: \$1,530	Probation Parole Officer (PPO): \$53,760	35 new charges = 1 new PPO

*Active sentences for misdemeanors 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 H Felony	66%	Supervision: \$4,420	PPO: \$53,760	12 new charges = 1 new PPO
	Class A1	62%	Supervision: \$2,890		19 new charges = 1 new PPO
	Class 2	70%	Supervision: \$2,380		23 new charges = 1 new PPO

\* All costs annualized

## 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 broadens the definition of “personal relationship,” thereby expanding the potential scenarios in which a Domestic Violence Protective Order (DVPO) may be issued and in which criminal statutes related to violation of DVPOs may apply. 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 this offense, 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 “personal relationship” 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. 50B-4.1(a)	A1 misdemeanor	Violation of a valid DVPO	4,285	1,078
G.S. 50B-4.1(f)	H felony	Violation of a DVPO after 2 Chapter 50B offense convictions	71	20
G.S. 50B-4.1(g)	H felony	Violation of DVPO while in possession of deadly weapon	51	10
G.S. 50B-4.1(g1)	H felony	Enter DV safe house while subject to DVPO	0	0
G.S. 50B-4.2	2 misdemeanor	Make a false statement for DVPO	0	0
G.S. 50B-4.1(d)	Enhancement	Increases charged offense class for felony despite DVPO		

### FISCAL IMPACT OF H.B.33, 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>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
<b>General Fund Impact</b>	<b>No Estimate Available - Refer to Fiscal Analysis section</b>				
<b>NET STATE IMPACT</b>	<b>No Estimate Available - Refer to Fiscal Analysis section</b>				

## **FISCAL ANALYSIS**

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### **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 "personal relationship," which expands the scope of 3 Class H felony offenses, a Class A1 misdemeanor offense, and a Class 2 misdemeanor 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 H felony would be \$833. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 65 charges of the expanded offense is 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 A1 misdemeanor is \$475, which means that 115 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 2 misdemeanor would be \$146, which means that 374 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 78% of Class H felony cases, 52% of Class A1 misdemeanor cases, and 30% of Class 2 misdemeanor cases. The weighted average cost of a new Class H felony is \$475 per case for a PAC attorney. The weighted average cost of a new Class A1 misdemeanor is \$248 per case for a PAC attorney. The weighted average cost of a new Class 2 misdemeanor is \$205 per case for a PAC attorney.

**Department of Public Safety – Prisons**

This bill increases the scope of a Class A1 misdemeanor offense and a Class 2 misdemeanor offense. SPAC expects no impact on the prison population from these changes because all misdemeanor offenders who receive active sentences will serve them in the local jail.

This bill increases the scope of 3 Class H felony offenses. 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.

In FY 2019-20, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months. The following table shows the estimated annual impact if there were 4 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.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	6	11	11	11	11

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, 34% of Class H felony offenders received active sentences averaging 10 months. For every additional Class H felony offender receiving an active sentence, the cost to the prison section will be \$6,450 (\$645 monthly cost times 10 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.

#### *Active Sentence*

In FY 2019-20, 38% of Class A1 misdemeanor offenders and 30% of Class 2 misdemeanor offenders received active sentences. Active misdemeanor sentences are served in local jails and do not require any post-release supervision.

In FY 2019-20, 34% of Class H felony convictions resulted in active sentences. All active sentences for felony offenses result in a minimum of nine months of post-release supervision (PRS) for F-I 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 H 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).

#### *Suspended Sentence*

CCS also oversees probation. In FY 2019-20, 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for this offense class was 26 months. For every additional Class H felony offender receiving an active sentence, the average cost to CCS would be \$4,420 (\$170 per month times 26 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 12 convictions of these expanded offenses 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 A1 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 17 months. Therefore, at a minimum, one Class A1 misdemeanor conviction resulting in probation will require at least 17 months of supervision. The cost of 17 months of supervision is \$2,890 per offender (\$170 per month times 17 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 19 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, 70% of Class 2 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 14 months. Therefore, at a minimum, one Class 2 misdemeanor conviction resulting in probation will require at least 14 months of



supervision. The cost of 14 months of supervision is \$2,380 per offender (\$170 per month times 14 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 23 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.

## **TECHNICAL CONSIDERATIONS**

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N/A.

## **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.

## **ESTIMATE PREPARED BY**

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## **ESTIMATE APPROVED BY**

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March 9, 2021



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