



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Incarceration Fiscal Note

Short Title: Arson Law Revisions.
Bill Number: House Bill 315 (First Edition)
Sponsor(s): Representatives McNeill, Boles, Saine, and Carter

SUMMARY TABLES

CHARGES

Agency	Charge	Cost	Cost of Staff	Equivalence to 1 Dep. Clerk
Administrative Office of the Courts	New Class D Felony	\$5,760 per charge	Deputy Clerk: \$54,532	9 new charges
	Increase Class E->D	\$3,071 per increased charge		18 increased charges
	Increase Class F->D	\$4,244 per increased charge		13 increased charges
	Increase Class H->D	\$4,927 per increased charge		11 increased charges
	New and Expanded Class E Felony	\$2,689 per charge		20 new charges
	Increase Class F->E	\$1,173 per increased charge		46 increased charges
	Increase Class H->E	\$1,856 per increased charge		29 increased charges
	New Class F Felony	\$1,516 per charge		36 new charges

Agency	Charge	Percent Handled by IDS	Increased Cost to PAC Fund
Office of Indigent Defense Services	New Class D Felony	Class D Felony cases: 89%	Per charge: \$1,568
	Increase Class E->D		Per increased charge: \$701
	Increase Class F->D		Per increased charge: \$742
	Increase Class H->D		Per increased charge: \$1,093
	New and Expanded Class E Felony	Class E Felony cases: 79%	Per charge: \$867
	Increase Class F->E		Per increased charge: \$41
	Increase Class H->E		Per increased charge: \$392
	New Class F Felony	Class F Felony cases: 74%	Per charge: \$826

CONVICTIONS – ACTIVE SENTENCE

Agency	Charge	Avg. Active	Cost of Custody per Conviction	Cost of Staff	Equivalence to 1 CO
DPS – Prisons	New Class D Felony	100%**	\$41,925	Correction Officer I: \$49,173	1 new conviction
	Increase Class E->D		Increase: \$25,155		2 increased convictions
	Increase Class F->D		Increase: \$30,315		2 increased convictions
	Increase Class H->D		Increase: \$35,475		1 increased conviction
	New and Expanded Class E Felony	60%	\$16,770		3 new convictions
	Increase Class F->E		Increase: \$5,160		10 increased convictions
	Increase Class H->E		Increase: \$10,320		5 increased convictions
	New Class F Felony		53%		\$11,610

Agency	Charge	Avg. Active	Cost of Post-Release Supervision per Conviction	Cost of Staff	Equivalence to 1 PPO
DPS – Community Corrections	New Class D Felony	100%**	\$2,040	Probation Parole Officer (PPO): \$53,760	26 new convictions
	Increase Class E->D		Increased cost: \$0		No impact from increased conviction
	Increase Class F->D		Increased cost: \$510		105 increased convictions
	Increase Class H->D	60%	\$2,040		26 new convictions
	New and Expanded Class E Felony		Increased cost: \$510		105 increased convictions
	Increase Class F->E		Increased cost: \$510		105 increased convictions
	Increase Class H->E	53%	\$1,530		

CONVICTIONS – SUSPENDED SENTENCE

Agency	Charge	Avg. Probation	Cost of Supervision per Conviction	Cost of Staff	Equivalence to 1 PPO
DPS – Community Corrections	New Class D Felony	3%**	\$5,950	PPO: \$53,760	9 new convictions
	Increase Class E->D		Increased cost: \$510		105 increased convictions
	Increase Class F->D		Increased cost: \$680		79 increased convictions
	Increase Class H->D		Increased cost: \$1,530		35 increased convictions
	New and Expanded Class E Felony	40%	\$5,440		10 new convictions
	Increase Class F->E		Increased cost: \$170		316 increased convictions
	Increase Class H->E		Increased cost: \$1,020		53 increased convictions
	New Class F Felony	47%	\$5,270		

* All costs annualized

**Active sentence rate estimated as 100% because a non-active sentence for Class D is only available as an exception to sentencing under the felony punishment chart

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.(g)(b) of the proposed bill includes a new Class D felony offense, a change of an offense from Class E to Class D, a change of an offense from Class F to Class D, and a change of an offense from Class H to Class D. Section 1.(g)(c) of the bill includes a new Class E felony offense, a change of an offense from Class F to Class E, and a change of an offense from Class H to Class E. Section 2.(b) expands the scope of an existing Class E felony. Section 2.(c) includes a new Class F felony.

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 these offenses 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 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. 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.

FISCAL IMPACT OF H.B.315, 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				

FISCAL ANALYSIS

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.

Section 1.(g)(b) of the bill creates a new Class D felony offense and Section 1.(g)(c) creates a new Class E felony offense. Besides behavior covered under these new offenses, they would each replace the following existing Class E, Class F, and Class H felonies.

Statute	Description	Offense Class
G.S. 14-59	Burning of certain public buildings	Class F
G.S. 14-60	Burning of schoolhouses or buildings of educational institutions	Class F
G.S. 14-61	Burning of certain bridges and buildings	Class F
G.S. 14-62	Burning of certain buildings	Class F

G.S. 14-62.1	Burning of building or structure in process of construction	Class H
G.S. 14-62.2	Burning of churches and certain other religious buildings	Class E
G.S. 14-64	Burning of ginhouses and tobacco houses	Class H
G.S. 14-67.1	Burning other buildings	Class H

SOURCE: SPAC, FY 2019-20 Structured Sentencing Simulation Data

The Administrative Office of the Courts (AOC) reports that in CY2020, there were 57 offenders charged with one of the offenses that will be replaced with the new Class D or new Class E felony. SPAC reports that in FY 2019-20, there were 9 convictions of these same offenses. Despite this historical data on these particular offenses, the changes in this bill to these offenses leave the frequency of future charges and convictions uncertain. In addition to the new Class D and new Class E felonies, Section 2.(b) expands the scope of an existing Class E felony and Section 2.(c) includes a new Class F felony.

Judicial Branch

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.

Class D Felony

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 D felony would be \$5,760. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 9 charges of this new offense would be equivalent to increasing the workload need of the court system by one deputy clerk. Based on the AOC estimate for the average cost to the court for Class E (\$2,689), Class F (\$1,516), and Class H felonies (\$833), the cost to AOC for any charge that would increase from one of these classes to Class D would be as follows:

- Increase from Class E to Class D: \$3,071 with 18 increased charges equivalent to the cost of a deputy clerk;
- Increase from Class F to Class D: \$4,244 with 13 increased charges equivalent to the cost of a deputy clerk; and
- Increase from Class H to Class D: \$4,927 with 11 increased charges equivalent to the cost of a 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 89% of Class D felony cases. The weighted average cost of a new Class D felony is \$1,568 per case for a PAC attorney including expert costs. Based on the weighted average costs to IDS of a Class E (\$867), Class F (\$826), and Class H (\$475), the weighted average cost to IDS for any charge that would increase from one of these classes to Class D would be as follows:

- Increase from Class E to Class D: \$701;
- Increase from Class F to Class D: \$742; and
- Increase from Class H to Class D: \$1,093.

Class E Felony

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 E felony would be \$2,689. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 20 charges of this new offense would be equivalent to increasing the workload need of the court system by one deputy clerk. Based on the AOC estimate for the average cost to the court for Class F (\$1,516), and Class H felonies (\$833), the cost to AOC for any charge that would increase from one of these classes to Class E would be as follows:

- Increase from Class F to Class E: \$1,173 with 46 increased charges equivalent to the cost of a deputy clerk; and
- Increase from Class H to Class E: \$1,856 with 29 increased charges equivalent to the cost of a deputy clerk.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 79% of Class E felony cases. The weighted average cost of a new Class E felony is \$867 per case for a PAC attorney. Based on the weighted average costs to IDS of a Class F (\$826) and Class H (\$475), the weighted average cost to IDS for any charge that would increase from one of these classes to Class E would be as follows:

- Increase from Class F to Class D: \$41; and
- Increase from Class H to Class D: \$392.

Class F Felony

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 F felony would be \$1,516. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 36 charges of this new offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 74% of Class F felony cases. The weighted average cost of a new Class F felony is \$826 per case for a PAC attorney.

Department of Public Safety – Prisons

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.

Class D Felony

For resource projections, SPAC estimates the rate of Class D felony convictions resulting in active sentences at 100%, with an average estimated time served of 65 months. The following table shows the estimated annual impact if there were 1 conviction (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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions					
Class D 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

Although Prisons will not face 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, 100% of Class D felony offenders received active sentences averaging 65 months. For every additional Class D felony offender receiving an active sentence, the cost to the prison section will be \$41,925 (\$645 monthly cost times 65 months). The cost of each new conviction is equivalent to the cost to the prison system of one additional Correctional Officer I (CO). Based on per diem costs over average sentence for Class E (\$16,770), Class F (\$11,610), and Class H (\$6,450), the increased per diem cost to the prison system for every additional Class D felony offender receiving an active sentence who would have previously received a lower sentence would be as follows:

- Increase from Class E to Class D: \$25,155, with two additional convictions equivalent to the cost of one CO;
- Increase from Class F to Class D: \$30,315, with two additional convictions equivalent to the cost of one CO; and
- Increase from Class H to Class D: \$35,475, with one additional conviction equivalent to the cost of one CO.

Class E Felony

In FY 2019-20, 60% of Class E felony convictions resulted in active sentences, with an average estimated time served of 26 months. The following table shows the estimated annual impact if there were 2 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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class E Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	3	3	3	3
20	12	28	34	34	34

The per-diem 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, 60% of Class E felony offenders received active sentences averaging 26 months. For every additional Class E felony offender receiving an active sentence, the cost to the prison section will be \$16,770 (\$645 monthly cost times 26 months). The cost of every three new convictions is equivalent to the cost to the prison system of one additional Correctional Officer I (CO). Based on per diem costs over average sentence for Class F (\$11,610) and Class H (\$6,450), the increased per diem cost to the prison system for every additional Class D felony offender receiving an active sentence who would have previously received a lower sentence would be as follows:

- Increase from Class F to Class E: \$5,160, with 10 additional convictions equivalent to the cost of one CO; and
- Increase from Class H to Class E: \$10,320, with 5 additional convictions equivalent to the cost of one CO.

Class F Felony

In FY 2019-20, 53% of Class F felony convictions resulted in active sentences, with an average estimated time served of 18 months. The following table shows the estimated annual impact if there were 2 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.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
2 (Threshold)	1	2	2	2	2
20	11	19	21	21	21

The per-diem 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, 53% of Class F felony offenders received active sentences averaging 18 months. For every additional Class F felony offender receiving an active sentence, the cost to the prison section will be \$11,610 (\$645 monthly cost times 18 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

All active sentences for felony offenses result in a minimum of 12 months of post-release supervision (PRS) for B-E level offenses and nine months of 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 D 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). Because PRS for Class E offenders is equal to that for Class D offenders, there would be no additional costs for those offenders who would have received an active Class E felony sentence prior to the changes in this bill but who would receive an active Class D felony sentence following these changes. For offenders who would have received an active Class F or Class H felony prior to the changes in this bill, the cost of increased PRS for the active Class D sentence, would be \$510 for each offender.

For every additional Class E 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). For offenders who would have received an active Class F or Class H felony prior to the changes in this bill, the cost of increased PRS for the active Class E sentence, would be \$510 for each offender.

For every additional Class F 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, 3% of Class D felony offenders received a non-active sentence. The average length of probation imposed for this offense class was 35 months. For every additional Class D felony offender receiving a non-active sentence, the average cost to CCS would be \$5,950 (\$170 per month times 35 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 9 convictions of this new offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO. Based on the average cost to CCS for offenders receiving a non-active sentence for Class E (\$5,440), Class F (\$5,270), and Class H (\$4,420), the increased cost to CCS for every additional Class D felony offender receiving a non-active sentence who would have previously received a lower sentence would be as follows:

- Increase from Class E to Class D: \$510, with 105 additional convictions equivalent to the cost of one PPO;

- Increase from Class F to Class D: \$680, with 79 additional convictions equivalent to the cost of one PPO; and
- Increase from Class H to Class D: \$1,530, with 35 additional convictions equivalent to the cost of one CO.

In FY 2019-20, 40% of Class E felony offenders received suspended sentences. The average length of probation imposed for this offense class was 32 months. For every additional Class E felony offender receiving a non-active sentence, the average cost to CCS would be \$5,440 (\$170 per month times 32 months). Because the annual cost of a PPO is \$53,760, FRD finds that 10 convictions of this new offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO. Based on the average cost to CCS for offenders receiving a non-active sentence for Class F (\$5,270) and Class H (\$4,420), the increased cost to CCS for every additional Class E felony offender receiving an non-active sentence who would have previously received a lower sentence would be as follows:

- Increase from Class F to Class E: \$170, with 316 additional convictions equivalent to the cost of one PPO; and
- Increase from Class H to Class D: \$1,020, with 53 additional convictions equivalent to the cost of one CO.

In FY 2019-20, 47% of Class F felony offenders received suspended sentences. The average length of probation imposed for this offense class was 31 months. For every additional Class F felony offender receiving a non-active sentence, the average cost to CCS would be \$5,270 (\$170 per month times 31 months). Because the annual cost of a PPO is \$53,760, FRD finds that 10 convictions of this new offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO.

TECHNICAL CONSIDERATIONS

N/A.

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



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