



# NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

## Legislative Incarceration Fiscal Note

**Short Title:** The Rakim Shackelford Embalming Fluid Act.  
**Bill Number:** House Bill 278 (First Edition)  
**Sponsor(s):** Rep. Fontenot, Rep. Cotham, and Rep. Winslow

### 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 make statutory amendments prohibiting the sale and possession of embalming fluid. The proposed changes would create new Class D, Class F, Class G, and Class I felonies. Because the proposed legislation would create new felony class offenses **there is no historic charge or conviction data. As a result, Fiscal Research is unable to project the fiscal impact of the proposed legislation on the criminal justice system.**

Each additional person charged under the proposed offenses will have a cost to the judicial system and each additional person convicted will have a cost to the correction system. **The cost of one charge and conviction is listed in the table below**, along with the average percentage of cases that incur those costs at that offense level.

Cost of One Charge and Conviction in H.B. 278, 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		
		Cost	Rate	Cost	Rate	Cost	Length (Days)	Cost	Length (Days)	Rate	Cost
New D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	N/A	0
New F	\$1,849	74%	\$849	51%	\$13,285	18	\$2,282	9	49%	\$7,119	30
New G	\$1,525	78%	\$706	39%	\$11,071	15	\$2,282	9	61%	\$6,169	26
New I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,220	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.

## FISCAL IMPACT OF H.B. 278, V.1 (\$ in)

	<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>	-	-	-	-	-
<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>
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### FISCAL ANALYSIS

#### **Bill Summary**

Section 3 of the proposed legislation would create the new section, G.S. 90-210.29C, **Unlawful sale of embalming fluid**. This new section would prohibit a funeral director, embalmer, or resident trainee from knowingly giving, selling, permitting to be sold, offering for sale, or displaying for sale, embalming fluid other than for purposes within the general scope of their profession. Violation of this new section would be **punishable as a Class I felony**.

Section 4 of the proposed legislation would create Article 5H, Miscellaneous Drug-Related Regulations, section G.S. 90-113.107, **Criminal possession of embalming fluid**. This proposed statute would **prohibit the (1) possession** of embalming fluid for any purpose other than the lawful preservation of dead human bodies by a person authorized by law to engage in such activity, and **(2) sale**, delivery or otherwise distribution of **embalming fluid** to another person with knowledge that the person intends to utilize the embalming fluid for any purpose other than the lawful preservation of dead human bodies by a person authorized by law to engage in such activity. The classification of the new felony offenses is based on the amount of embalming fluid possessed, sold, delivered, or otherwise distributed and are as follows:

- **Less than 28 grams** is punishable as a **Class I felony**.
- **Greater than 28 grams but less than 200 grams** is punishable as a **Class G felony**.
- **Greater than 200 grams but less than 400 grams** is punishable as a **Class F felony**.
- **Greater than 400 grams** would be punishable as a **Class D felony**.

Because the proposed legislation would create new felony class offenses **there is no historic charge or conviction data to serve as a basis for an estimate, as a result, Fiscal Research is unable to project the fiscal impact of the proposed legislation on the criminal justice system**. Please refer to the Operating Expenses below for the average costs of Class D-I felonies.

#### **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 costs 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 felony charges carry an average cost of \$7,027 per charge.
  - Class F felony charges carry an average cost of \$1,849 per charge.
  - Class G felony charges carry an average cost of \$1,525 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.
  - Class D felony defendants utilize IDS in 89% of cases at an average cost of \$1,744.
  - Class F felony defendants utilize IDS in 74% of cases at an average cost of \$849.
  - Class G felony defendants utilize IDS in 78% of cases at an average cost of \$706.
  - Class I felony defendants utilize IDS in 68% of cases at an average cost of \$407.

#### **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.
  - 51% of Class F felony convictions result in an average active sentence of 18 months with a total cost of \$13,285 per sentence.
  - 39% of Class G felony convictions result in an average active sentence of 15 months with a total cost of \$11,071 per sentence.
  - 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) of between 9 and

12 months, depending on the severity of the charge. There is a one-time cost of \$146 per PRS hearing. Supervision by a probation officer costs \$237.30 per offender per month.

- All Class D felons would receive 12 months of PRS at a cost of \$2,994.
- Class F, G, and I felons that served an active sentence would receive 9 months of PRS at a cost of \$2,282.

### **Conviction: Suspended 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) of between 9 and 12 months, depending on the severity of the charge. Supervision by a probation officer costs \$237.30 per offender per month.
  - Class D felony convictions do not result in a suspended sentence.
  - 49% of Class F felony convictions result in a suspended sentence with an average length of 30 months at a cost of \$7,119.
  - 61% of Class G felony convictions result in a suspended sentence with an average length of 26 months at a cost of \$6,170.
  - 85% of Class I felony convictions result in a suspended sentence with an average length of 22 months at a cost of \$5,221.

## **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, Appendix A 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 Adult Correction; 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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Sean Hamel

**ESTIMATE APPROVED BY**

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Brian Matteson, Director of Fiscal Research  
Fiscal Research Division  
March 14, 2023



**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.*