



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Expedited Removal of Unauthorized Persons.
Bill Number: House Bill 966 (First Edition)
Sponsor(s): Rep. Tyson, Rep. Howard, Rep. K. Hall, and Rep. Biggs

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 would increase the penalty for willful and wanton injury to real property from a **Class 1 misdemeanor** to a **Class H felony** if the damage is valued at \$1,000 or more. Using recent charge and conviction data, if all defendants were to meet this threshold, **Fiscal Research finds that this increase could have a fiscal impact of up to \$3,845,643 annually for the judicial system and up to \$2,690,910 annually for the correction system.** Additionally, the legislation would create new **Class C and H felonies** related to fraudulently advertising or renting residential property. Because these are new charges, there is no data to predict how many individuals may be charged or convicted. **Therefore, 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 percent of cases that incur those costs at that offense level.

Cost of One Charge and Conviction under H.966v1											
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 C	\$8,598	82%	\$2,317	100%	\$63,473	86	\$2,994	12	0%	\$0	0
New H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
▲ 1 to H	\$681	16%	\$274	33%	\$8,119	11	\$2,282	9	3%	\$2,610	11

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 IMPACT OF H.B.966, V.1

	<u>FY 2024-25</u>	<u>FY 2025-26</u>	<u>FY 2026-27</u>	<u>FY 2027-28</u>	<u>FY 2028-29</u>
State Impact					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
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. **NOTE:** Bill includes a \$10,000 NR appropriation in FY 2024-25.

FISCAL ANALYSIS

Bill Summary:

Section (2) appropriates \$10,000 of nonrecurring funds to NCAOC for the purpose of developing the complaint form to implement the process provided by Section (1). This section is effective July 1, 2024.

Section (3) amends G.S. 14-127 (Willful and wanton injury to real property) by increasing the penalty from a **Class 1 misdemeanor** to a **Class H felony** if the damage that resulted from the injury is valued at \$1,000 or more. This section is effective December 1, 2024 and applies to offenses committed on or after that date.

- In CY 2023, there were 5,306 defendants charged with violating G.S. 14-127. Court data does not specify the dollar value of damage. However, **if all defendants met the \$1,000 threshold, the annual additional cost to AOC would be \$3,613,386 and the annual additional costs to IDS would be \$232,257.**
- In FY 2021-22, there were 534 convictions for H.S. 14-127. Court data does not specify the dollar value of damage. However, **if all FY 2021-22 defendants met the \$1,000 threshold, the annual additional cost to the correction system would be \$2,690,910.**

Section (4) amends Article 20 of Chapter 14 by adding a new section G.S. 14-117.8 (Fraudulent advertisements and transactions involving residential real property). Proposed G.S. 14-117.8(c)(1) creates a new **Class C felony** for unlawfully renting or leasing a residential real property to another knowing that the renter or lessor has no lawful ownership or leasehold interest in the property. Proposed G.S. 14-117.8(c)(2) creates a new **Class H felony** for unlawfully listing or advertising a residential real property for rent, lease, or sale knowing the purported renter, lessor, or seller has no legal title or authority to rent, lease, or sell the property. (*See technical considerations*). This section is effective December 1, 2024 and applies to offenses committed on or after that date.



- Because these are new offenses, there is no historic data available for cost projections, and as such **Fiscal Research is unable to provide cost projections for this section**. Please refer to the Operating Expenses section below for the average costs of Class C and H felonies as well as the impact of enhancing Class 1 misdemeanors.

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, Fiscal Research 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 C felonies** carry an average cost of \$8,598 per charge to the judicial system.
 - **Class H felonies** carry an average cost of \$1,016 per charge to the judicial system.
 - Increasing a **Class 1 misdemeanor** to a **Class H felony** would carry an average increased cost of \$681 per charge to the judicial system.
- 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 C charges** utilize IDS in 82% of cases at a cost of \$2,317 per charge.
 - **Class H charges** utilize IDS in 78% of cases at a cost of \$510 per charge.
 - Increasing **Class 1 charges** to **Class H charges** would utilize IDS in 16% more cases at an increased cost of \$274 per 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 C felonies** serve an average active sentence of 86 months at a cost of \$63,473 per conviction.
 - **33% of Class H felonies** serve an average active sentence of 11 months at a cost of \$8,119 per conviction.

- **Class 1 misdemeanors** are served in county jails rather than state prison facilities. Any increased charges at the **Class H level** as a result of this legislation will result in the same statistics as displayed immediately above for **Class H felonies**.
- 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. There is a one-time cost of \$146 per PRS hearing. Supervision by a probation officer costs \$237.30 per offender per month.
 - **Class C felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class H felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
 - **Misdemeanants** do not receive PRS.

Conviction: Suspended Sentence

- Department of Adult Correction – Community Corrections: 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 \$237.30 per offender per month.
 - **Class C convictions** cannot receive a suspended sentence.
 - **67% of Class H convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$5,933.
 - **Class H convictions** are 3% more likely to receive a suspended sentence than in **Class 1 convictions**, with an increased average length of 11 months and increased average cost of \$2610.

TECHNICAL CONSIDERATIONS

- AOC notes the following technical items:
 - On page 3, line 16: The reference to “Section 1.1” should likely be “Section 1.(a)”.
 - On page 3, line 17: An effective date of “when it becomes law” does not provide any lead time for NCAOC to consult with the NC Sheriff’s Association to develop and implement the complaint form. NCAOC recommends an effective date for this section to be either 7/1/2024, as it is for the appropriation in Section 2.(b), or move Section 1.(b) language to Section 2.(a).
 - On page 3, lines 44 and 47: The term “renter” is typically used to describe the individual taking possession of the property from the owner. Here, it seems the term is referring to the individual who is providing the property to the lessee. This could lead to erroneous filings or interpretation of the law.
- 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

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

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.

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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.