



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Care for Women, Children, and Families Act.
Bill Number: Senate Bill 20 (Fifth Edition)
Sponsor(s):

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 create **new Class A, B1, B2, and D felonies and new A1 and 3 misdemeanors**. In addition, the proposal would **expand an existing class H and I felonies and two A1 misdemeanors**. Because several of these are new offenses, 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 in S.B. 20, v.5											
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 A	\$55,469	95%	\$11,967	100%	NA	Life	N/A	N/A	0%	N/A	0
New B1	\$23,852	78%	\$4,187	100%	\$178,610	242	\$2,994	12	0%	N/A	0
New B2	\$17,704	85%	\$4,187	100%	\$115,137	156	\$2,994	12	0%	N/A	0
New D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	N/A	0
Expanded H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
Expanded 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.)
New A1	\$580	52%	\$281	Active sentences for misdemeanor convictions are served in County jail.			Misdemeanants do not receive PRS.		64%	\$3,797	16
Expanded A1	\$580	52%	\$281						64%	\$3,797	16
New 3	\$63	14%	\$202	N/A - Only a fine can be imposed					N/A - Only a fine can be imposed		

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.

FISCAL IMPACT OF S.B.20 v.5

	<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>
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

FISCAL ANALYSIS

Bill Summary:

The proposed legislation makes a number of changes that could impact the criminal justice system.

Part 1 of the bill makes various revisions to the General Statutes to change the timing and circumstances for when abortions can be performed legally compared to current law. In addition, Section 1.4 amends G.S. 90-21.121 to include racial makeup and the presence of Down syndrome as

prohibited reasons for performing an abortion. Under existing State law it is a Class H felony to use drugs or instruments to destroy an unborn child (G.S. 14-44) and a Class I felony to use drugs or instruments to produce miscarriage or injure pregnant women (G.S. 14-45). By narrowing the circumstances under which a lawful abortion can occur, this proposed legislation expands the pool of possible violations under G.S. 14-44 and G.S. 14-45. The Administrative Office of the Courts (AOC) does not have an offense code for either statute, indicating the offenses are infrequently charged or infrequently result in convictions. There is no data to predict how many new charges or convictions may occur under the expanded offenses. As a result, **Fiscal Research is unable to provide any cost projections for this section of the bill.** Please refer to the Operating Expenses section below for the average costs of Class H and Class I felonies.

Section 2.2 of the proposed legislation modifies the regulations in G.S. 131E regarding abortion clinics. The new G.S. 131E-153.7 would make it a **Class 3 misdemeanor** to own or operate an abortion clinic without a license. The provision specifies that the violator will only be subject to fines of not more than \$50 for the first offense and not more than \$500 for each subsequent offense. Each day of continuing violation of this new statute after conviction is considered a separate offense. Because this is a new offense, there is no historic data available for cost projections, and as such **Fiscal Research is unable to provide any cost projections for this section of the bill.** Please refer to the Operating Expenses section below for the average costs of Class 3 misdemeanors.

Part 3 of the proposed legislation amends Chapter 90 of the General Statutes to add the new Article 1M, the “Born-Alive Abortion Survivors Protection Act.” The new G.S. 90-21.145 would add criminal penalties for certain actions related to infants who are born alive, defined in the bill as a member of the species *Homo sapiens* who is completely expelled or extracted from his or her mother at any stage of development who after expulsion or extraction breathes, has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction results from natural labor, induced labor, cesarean section, or induced abortion.

The new G.S. 90-21.145.(a) would create **two new Class D felonies** (with an accompanying fine of up to \$250,000) for health care practitioners who fail to follow requirements laid out in the new G.S. 90-21.142 for providing proper care to a child born alive during an abortion or attempted abortion or for failing to follow the requirements laid out in the new G.S. 90-21.143 for mandatory reporting of noncompliance with G.S. 90-21.142.

The new G.S. 90-21.145.(b) would require that any person who intentionally performs or attempts to perform an overt act that kills a child born alive be punished under G.S. 14-17.(c) for murder. G.S. 14-17.(c) gives prosecutorial and judicial discretion to determine the degree of murder (first or second degree). Depending on the circumstances, murder in this case could be charged as either a **Class A, Class B1, or Class B2 felony.**

Because Part 3 creates new offenses, there is no historic data available for cost projections, and as such **Fiscal Research is unable to provide any cost projections for this section of the bill.** Please refer to the Operating Expenses section below for the average costs of Class A, Class B1, Class B2, and Class D felonies.

Section 4.3.(g) creates a **new Class I felony** for practicing midwifery without being approved under G.S. 90-178.3 while falsely representing oneself as being approved. Currently, any person who practices or offers to practice or holds oneself out to practice midwifery unless approved to do so is guilty of a Class 3 misdemeanor. AOC does not have an offense code for this offense which is some indication that it is infrequently charged and/or infrequently results in convictions.

Due to the lack of an offense code related to practicing midwifery without being approved, **Fiscal Research estimates minimal fiscal impact** from this section. Please refer to the Operating Expenses section below for the average cost of a Class I felony.

Section 6.2 and 6.4 of the proposed legislation would also modify the procedure for legally surrendering an infant by eliminating a parent's ability to surrender an infant to "any adult" and the existing timeframe for a parent to safely surrender an infant from 6-30 days, found in G.S. 14-322.3, granting the surrendering parent immunity from being charged with **Class A1 misdemeanor** child abuse under G.S. 14-318.2. as specified in G.S. 7B-500.(d). Eliminating "any adult" as a group that can receive a surrendered infant and remain immune from Class A1 misdemeanor charges could expand the pool of offenders subject to charges. In addition, expanding the timeframe could narrow the pool of offenders subject to charges. However, the level of detail in the available charge and conviction data is not sufficient to determine if the violations or convictions were due to conformance with the safe surrender procedure and as result, **Fiscal Research is unable to project the fiscal impact of this section.** Please refer to the Operating Expenses section below for the average cost of a Class A1 misdemeanor.

Section 8.2.(a) amends G.S. 14-33(c) to **expand an existing Class A1 misdemeanor** to include the offense of assaulting a pregnant woman. The offense of assault on a female by a male person at least 18 years of age is currently included in the existing Class A1 misdemeanor.

There is no data to predict how many charges or convictions may occur under the expanded definition. As a result, **Fiscal Research is unable to provide any cost projections for this section of the bill.** Please refer to the Operating Expenses section below for the average cost of a Class A1 misdemeanor.

Section 8.3.(a) would create a **new Class A1 misdemeanor** for the offense of domestic violence. Specifically, the new charge will apply if a person uses or attempts to use physical force or threatens use of a deadly weapon against another person and the person who commits the offense is:

1. a current/former spouse, parent, or guardian of the victim,
2. an individual with whom victim shares a child in common,
3. an individual who is or has cohabitated with the victim as a spouse, parent, or guardian, or
4. any individual similarly situated to a spouse, parent, or guardian of the victim.

Currently, the conduct covered by the proposed G.S. 14-32.5 could be charged under ten different offenses, depending on the specifics. Of the existing offenses, seven are Class A1 Misdemeanors and so there would be no fiscal impact if the offense was instead charged under the new proposed Class A1 misdemeanor. However, there are three existing offenses that under the proposal could result in elevated charges if the offender and victim have one of the specified relationships. The table

below shows the three existing charges that could be impacted if the proposal to establish DV as a Class A1 misdemeanor were enacted.

Offense	Current Class	Potential Class Under G.S. 14-32.5	Charges in CY 2022
Simple Assault G.S. 14-33(a)	Class 2 Misdemeanor	Class A1 Misdemeanor	14,138
Harassing Phone Calls G.S. 14-196	Class 2 Misdemeanor	Class A1 Misdemeanor	972
Communicating Threats G.S. 14-277.1	Class 1 Misdemeanor	Class A1 Misdemeanor	12,839

Source: Administrative Office of the Courts

Currently, harassing phone calls and simple assault are punishable as Class 2 misdemeanors and communicating threats is punishable as a Class 1 misdemeanor. In 2022 there were 27,949 individuals charged with the offense classes described in the table. If any of these existing charges were committed against individuals covered by the proposed legislation, it could result in elevated charges and could have a financial impact on the criminal justice system. However, there is no data on how many of the violations under current statutes were committed against one of the eligible individuals, and thus could be charged under the proposed G.S. 14-32.5. As a result, **Fiscal Research is unable to project the fiscal impact** of this section on the State's criminal justice system. Please refer to the Operating Expenses section below for the average costs of Class A1 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 A felonies** carry an average cost of \$55,469 per charge to the judicial system.
 - **Class B1 felonies** carry an average cost of \$23,852 per charge to the judicial system.
 - **Class B2 felonies** carry an average cost of \$17,704 per charge to the judicial system.
 - **Class D felonies** carry an average cost of \$7,027 per charge to the judicial system.
 - **Class H felonies** carry an average cost of \$1,016 per charge to the judicial system.

- **Class I felonies** carry an average cost of \$740 per charge to the judicial system.
- **Class A1 misdemeanors** carry an average cost of \$580 per charge to the judicial system.
- **Class 3 misdemeanors** carry an average cost of \$63 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 A charges** utilize IDS in 95% of cases at a cost of \$11,967 per charge.
 - **Class B1 charges** utilize IDS in 78% of cases at a cost of \$4,187 per charge.
 - **Class B2 charges** utilize IDS in 85% of cases at a cost of \$4,187 per charge.
 - **Class D charges** utilize IDS in 89% of cases at a cost of \$1,744 per charge.
 - **Class H charges** utilize IDS in 78% of cases at a cost of \$510 per charge.
 - **Class I charges** utilize IDS in 68% of cases at a cost of \$407 per charge.
 - **Class A1 charges** utilize IDS in 52% of cases at a cost of \$281 per charge.
 - **Class 3 charges** utilize IDS in 14% of cases at a cost of \$202 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 A felonies** serve an active sentence of life in prison or receive capital punishment. Because there is no set end date to these sentences, Fiscal Research cannot provide an average cost of incarceration for Class A felonies.
 - **100% of Class B1 felonies** serve an average active sentence of 242 months at a cost of \$178,610 per conviction.
 - **100% of Class B2 felonies** serve an average active sentence of 156 months at a cost of \$115,137 per conviction.
 - **100% of Class D felonies** serve an average active sentence of 64 months at a cost of \$47,236 per conviction.
 - **33% of Class H felonies** serve an average active sentence of 11 months at a cost of \$8,119 per conviction.
 - **15% of Class I felonies** serve an average active sentence of 6 months at a cost of \$4,428 per conviction.
 - **Active sentences for misdemeanor convictions** are served in local jails and only incur costs to the Statewide Misdemeanant Confinement Program (SMCP) when the sentence exceeds 90 days, or the conviction is for impaired driving. Because the **new Class A1 and Class 3 charges** in the proposed legislation don't meet either criterion, Fiscal Research anticipates convictions of these charges would have no fiscal impact to the State. (Note: the proposed legislation states that individuals convicted of the Class 3 misdemeanor will be subject only to a fine and thus will not receive a 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) 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 A felons** are not released from prison and therefore do not serve PRS.
 - **Class B1 felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class B2 felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class D 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.
 - **Class I 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 A convictions** cannot receive a suspended sentence.
 - **Class B1 convictions** cannot receive a suspended sentence.
 - **Class B2 convictions** cannot receive a suspended sentence.
 - **Class D 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.
 - **85% of Class I convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$5,221.
 - **64% of Class A1 convictions** resulted in a suspended sentence with an average length of 16 months at a cost of \$3,797.
 - **84% of Class 3 convictions** resulted in a suspended sentence with an average length of 13 months at a cost of \$3,085. (Note: the proposed legislation states that individuals convicted of the Class 3 misdemeanor will be subject only to a fine and thus will not receive a suspended sentence).

TECHNICAL CONSIDERATIONS

- 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.
- Fiscal Research received analysis from the Sentencing and Policy Advisory Commission regarding this proposed legislation after the initial Incarceration Note was published on May 3, 2023. In this updated version, Fiscal Research has revised the analysis of section 4.3.(g) based on the Commission's response. All other sections remain unchanged.

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						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.