



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Incarceration Fiscal Note

Short Title: NC Consumer Fireworks Safety Act.
Bill Number: House Bill 652 (First Edition)
Sponsor(s): Representatives Szoka, Bell, Hardister, and Brody

SUMMARY TABLE

CHARGES

	<i>Charge</i>	<i>Cost per Charge</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
Administrative Office of the Courts	New / Expanded Class 1	\$274	Deputy Clerk: \$54,532	199 new charges = 1 new Deputy Clerk
	Class 2 → Class 1	\$128 in increased costs		426 increased charges = 1 new Deputy Clerk
	Class 2 → no offense	<i>\$146 in decreased costs per charge avoided</i>		
Office of Indigent Defense Services	New / Expanded Class 1	Percent of cases handled by IDS: 39%		Cost to PAC Fund per charge: \$205
	Class 2 → Class 1			<i>No change in impact to the PAC fund</i>
	Class 2 → no offense			<i>\$205 decrease in PAC Fund costs per charge avoided</i>

CONVICTIONS – ACTIVE SENTENCE

Active sentences for misdemeanors are served in county jails and do not require post-release supervision.

CONVICTIONS – SUSPENDED SENTENCE

	<i>Charge</i>	<i>Avg. Suspended</i>	<i>Cost per Conviction</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
DPS – Community Corrections	New / Expanded Class 1	62%	Supervision: \$2,550	Probation Parole Officer (PPO): \$53,760	21 new convictions = 1 new PPO
	Class 2 → Class 1		Increased supervision costs: \$170		316 increased convictions = 1 new PPO
	Class 2 → no offense		<i>Decreased supervision costs: \$2,380 per conviction avoided</i>		

* All costs annualized

FISCAL IMPACT SUMMARY

Section 1 of the proposed bill would amend G.S. 14-410 to authorize the possession, advertising, sale, use, transportation, handling, and discharging within the State of consumer fireworks, provided that the local governments adopt an ordinance allowing it and that all requirements specified in the bill are adhered to. This behavior is currently a Class 2 misdemeanor under G.S. 14-415. Failure to comply with the new requirements specified in this bill would continue to constitute a Class 2 misdemeanor. While there were 70 charges in 2020 and 2 convictions in FY 2019-20 for the Class 2 misdemeanor, the Fiscal Research Division (FRD) does not have data on how many, if any, of these charges would be made lawful under the proposed legislation. If local governments adopt ordinances allowing the use and sale of consumer fireworks, and if these regulations are followed, FRD finds that there may be a decrease in charges and convictions under this change.

Section 1 also amends G.S. 14-410(b) by raising the minimum customer age for the purchase of consumer fireworks from 16 to 18 and increasing the offense class for selling to persons under the age of 18 from a Class 2 to a Class 1 misdemeanor. In calendar year 2020 there were no defendants charged with violating G.S. 14-410(b). With no data to predict the impact of this expansion of the offense and increase in offense class, FRD cannot estimate the impact of this change.

Section 4 creates a new Class 1 misdemeanor for the sale, transfer, or distribution of consumer fireworks, sparkling device, or novelties at a fireworks retail stand or tent that does not comply with the requirements of G.S. 58-821A-122.

The criminal offense modifications in the proposed bill may have a fiscal impact on the judicial and correction systems. However, despite some historical data for some of the offenses, the changes in this bill to the offenses leave the frequency of future charges and convictions uncertain, and FRD is unable to provide a reasonable estimate of the total fiscal impact. Each additional person charged with these crimes will result in costs to the judicial system and each additional person convicted will result in costs to the corrections 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 corrections systems would be less than annualized costs due to lag time in charges and convictions.

FISCAL IMPACT OF H.B.652, 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/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 changes a penalty from a Class 2 to a Class 1 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 the increased Class 1 misdemeanor offense would be an additional \$128. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 426 charges of this changed offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

Section 1 expands the scope of a Class 1 misdemeanor offense and Section 4 of the bill creates a new Class 1 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 1 misdemeanor would be \$274. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 199 charges of either the expanded offense or the new offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

Section 1 eliminates a Class 2 misdemeanor offense under certain circumstances. 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 2 misdemeanor would be \$146. Through the changes described in Section 1 of the bill, the court would avoid \$146 for every charge avoided.

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 39% of Class 1 misdemeanor cases. The weighted average cost of a new Class 1 misdemeanor is \$205 per case for a PAC attorney. The weighted average cost of a Class 2 misdemeanor is also \$205 per case for a PAC attorney, so FRD finds no change in fiscal impact from the increased offense. Every charge avoided through the changes in Section 1 that eliminate a Class 2 misdemeanor will allow IDS to avoid \$205 in costs to the PAC Fund.

Department of Public Safety – Prisons

This bill changes a penalty from a Class 2 misdemeanor to a Class 1 misdemeanor offense and also creates a new Class 1 misdemeanor offense. SPAC expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail.

Department of Public Safety – Community Corrections

All misdemeanor offenders may be given suspended sentences exclusively or 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 Sentences

In FY 2019-20, 38% of Class 1 misdemeanor offenders received active sentences. Active misdemeanor sentences are served in local jails and do not require any post-release supervision.

Suspended Sentences

In FY 2019-20, 62% of Class 1 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 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,550 per offender (\$170 per month times 15 months). Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 316 convictions of the changed offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO. For the new Class 1 misdemeanor, FRD finds that 21 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.



In FY 2019-20, 70% of Class 2 misdemeanor offenders received 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). By eliminating the Class 2 misdemeanor as described in Section 1 of the bill, CCS would avoid costs of \$2,380 for each conviction avoided.

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission

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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