



# NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

## Legislative Incarceration Fiscal Note

**Short Title:** Add Tianeptine to Controlled Substance List.  
**Bill Number:** House Bill 903 (First Edition)  
**Sponsor(s):** Rep. Ross, Rep. Sossamon, Rep. Paré, and Rep. White

### 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 add a new drug to the Schedule II Controlled Substances list. There are a host of charges associated with illegal possession, sale, delivery, and creation of substances on the Schedule II list, so adding any new drug effectively creates the following new criminal penalties: 2 Class C felonies, 3 Class D felonies, 3 Class E felonies, 3 Class F felonies, 3 Class G felonies, 2 Class H felonies, 3 Class I felonies, and 2 Class 1 misdemeanors (21 new criminal charges in total). 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.903											
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 D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	\$0	0
New E	\$3,281	79%	\$909	57%	\$19,928	27	\$2,994	12	43%	\$7,356	31
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%	\$6,170	26
New H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
New I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,221	22

Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost	Length (Mo.)
New 1	\$335	62%	\$237			Active sentences for misdemeanor convictions are served in County jail.					
							Misdemeanants do not receive PRS.		64%	\$3,322	14

*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 H.B.903, 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>
<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:**

This proposed legislation would add a new drug to the Schedule II Controlled Substances list. There are a host of charges associated with illegal possession, sale, delivery, and creation of substances on the Schedule II list, so adding any new drug effectively creates the following new criminal penalties: 2 Class C felonies, 3 Class D felonies, 3 Class E felonies, 3 Class F felonies, 3 Class G felonies, 2 Class H felonies, 3 Class I felonies, and 2 Class 1 misdemeanors (21 new criminal charges in total).

Because these are 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 bill.** Please refer to the Operating Expenses section below for the average costs of Class C-I felonies and 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 D felonies** carry an average cost of \$7,027 per charge to the judicial system.
  - **Class E felonies** carry an average cost of \$3,281 per charge to the judicial system.
  - **Class F felonies** carry an average cost of \$1,849 per charge to the judicial system.
  - **Class G felonies** carry an average cost of \$1,525 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 1 misdemeanors** carry an average cost of \$335 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 D charges** utilize IDS in 89% of cases at a cost of \$1,744 per charge.
  - **Class E charges** utilize IDS in 79% of cases at a cost of \$909 per charge.
  - **Class F charges** utilize IDS in 74% of cases at a cost of \$849 per charge.
  - **Class G charges** utilize IDS in 78% of cases at a cost of \$706 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 1 charges** utilize IDS in 62% of cases at a cost of \$237 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.
  - **100% of Class D felonies** serve an average active sentence of 64 months at a cost of \$47,236 per conviction.
  - **57% of Class E felonies** serve an average active sentence of 27 months at a cost of \$19,928 per conviction.

- **51% of Class F felonies** serve an average active sentence of 18 months at a cost of \$13,285 per conviction.
  - **39% of Class G felonies** serve an average active sentence of 15 months at a cost of \$11,071 per conviction.
  - **33% of Class H felonies** serve an average active sentence of 11 months at a cost of \$8,119 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 1 charge** in the proposed legislation doesn't meet either criterion, Fiscal Research anticipates convictions of the new charge resulting in active sentences would have no fiscal impact to the State.
- 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 D felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
    - **Class E felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
    - **Class F felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
    - **Class G felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
    - **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 C convictions** cannot receive a suspended sentence.
  - **Class D convictions** cannot receive a suspended sentence.
  - **43% of Class E convictions** resulted in a suspended sentence with an average length of 31 months at a cost of \$7,356.
  - **49% of Class F convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$7,119.
  - **61% of Class G convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$6,170.
  - **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 1 convictions** resulted in a suspended sentence with an average length of 14 months at a cost of \$3,322.

## **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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## **ESTIMATE APPROVED BY**

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May 7, 2024



**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
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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.*