



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

## Legislative Incarceration Fiscal Note

**Short Title:** Move Over Law/Increase Penalties.  
**Bill Number:** House Bill 81 (First Edition)  
**Sponsor(s):** Rep. Jones

### SUMMARY TABLE

#### FISCAL IMPACT OF H.B. 81, V.1 (\$ in millions)

	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
Less Expenditures	3.7	3.7	3.7	3.7	3.7
<b>General Fund Impact</b>	<b>(3.7)</b>	<b>(3.7)</b>	<b>(3.7)</b>	<b>(3.7)</b>	<b>(3.7)</b>
<b>NET STATE IMPACT</b>	<b>(\$3.7)</b>	<b>(\$3.7)</b>	<b>(\$3.7)</b>	<b>(\$3.7)</b>	<b>(\$3.7)</b>

This bill increases a violation under G.S. 20-157(f) from an infraction to a Class 2 misdemeanor, reclassifies an existing felony under G.S. 20-157(h) from a Class 1 misdemeanor to a Class I felony, and reclassifies an existing felony under G.S. 20-157(i) from a Class I felony to a Class F felony.

#### Class 2 Misdemeanor in Subsection (f)

In calendar year 2018, there were 2,462 defendants charged with the infraction of violating subsection (f). The following cost increases may be incurred for every one person charged and convicted of the Class 2 misdemeanor instead of the previous infraction:

- Administrative Office of the Courts: Increased cost of \$80 per case. Assuming a similar number of charges as in CY 2018, **AOC could face increased annual costs of \$196,960** due to the changes in this section of the bill.
- Indigent Defense Services (IDS): \$201 per disposition. Assuming that IDS handles 30% of these cases and that they are all covered by the Private Appointed Counsel fund, **IDS could face increased annual costs of \$148,539** due to the changes in this section of the bill.
- Department of Public Safety (DPS) - Prisons: No cost
- DPS - Community Corrections (CCS): \$2,080 per supervised probation sentence. Assuming that 61% of these cases were to receive a suspended sentence, **CCS could have increased annual costs of \$3,364,480** due to the changes in this bill.

#### Increase of Class 1 Misdemeanor to Class I Felony in Subsection (h)

The bill also increases a Class 1 misdemeanor to a Class I felony. There were no convictions under G.S. 20-157(h) in FY 2017-18. Since there is no historical data on the increased Class I felony or

similar offenses to use as a proxy for predicting the total number of offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following cost increases may be incurred for every one person charged and convicted of the Class I felony instead of the previous Class 1 misdemeanor:

- Administrative Office of the Courts: increased costs of \$283 per disposition (increased from \$233 per disposition for Class 1 misdemeanor to \$516 per disposition for Class I felony)
- Indigent Defense Services: increased costs of \$131 per disposition (increased from \$202 per disposition for Class 1 misdemeanor to \$333 per disposition for Class I felony)
- Department of Public Safety (DPS) - Prisons: \$3,766 per active sentence
- DPS - Community Corrections: Increased costs of \$1,280 per supervised probation sentence (increased from \$2,400 for Class 1 misdemeanor to \$3,680 for Class I felony per supervised probation sentence)

#### Increase of Class I Felony to Class F Felony in Subsection (i)

The bill also increases a Class I felony to a Class F felony. There were no convictions under G.S. 20-157(i) in FY 2017-18. Since there is no historical data on the increased Class F felony or similar offenses to use as a proxy for predicting the total number of offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following cost increases may be incurred for every one person charged and convicted of the Class F felony instead of the previous Class I felony:

- Administrative Office of the Courts: increased costs of \$775 per disposition (increased from \$516 per disposition for Class I to \$1,291 per disposition for Class F)
- Indigent Defense Services: increased costs of \$236 per disposition (increased from \$333 per disposition for Class I to \$569 per disposition for Class F)
- Department of Public Safety (DPS) - Prisons: increase of \$6,456 per active sentence (increased from \$3,766 for Class I to \$10,222 for Class F per active sentence)
- DPS - Community Corrections: Increased costs of \$1,280 per supervised probation sentence (increased from \$3,680 for Class I to \$4,960 for Class F per supervised probation sentence)

#### General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192, the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses.



JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

## **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials 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.

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 used this data to calculate a weighted average of IDS costs.

### **Class 2 Misdemeanor**

Section 2 of the bill elevates an infraction to a Class 2 misdemeanor offense. The elevation of the offense from an infraction to a Class 2 misdemeanor may make appeals to superior court more likely as a Class 2 misdemeanor judgment in district court can be appealed to superior court, whereas an infraction cannot. A violation of subsection (f) is currently waivable under item no. B. 32 of the traffic offenses waiver list. If, because of the punishment increase, the Conference of Chief District Court Judges were to decide to make this offense a mandatory appearance offense, then cases that previously were processed online, by mail, or before a clerk or magistrate, would now require in-court time. On average, the monetary value of court personnel time to process a Class 2 misdemeanor is \$124 per case, while the monetary value to process an infraction is \$44 per case. Therefore, Fiscal Research Division anticipates an increased cost to AOC from the misdemeanor charge in this bill of \$80 per case (\$124 per Class 2 misdemeanor case minus \$44 per infraction case equals \$80 per case difference for the increased charge). In calendar year 2018, there were 2,462 defendants charged with the infraction of violating subsection (f). Assuming similar charges in FY 2019-20, **AOC would have increased costs of \$196,960** (2,462 cases times \$80 increased cost per case equals \$196,960).

In FY 2017-18, the most recent year data is available, 30% of Class 2 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 2 misdemeanor is \$201 per case for a private appointed counsel (PAC) attorney. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred. In calendar year 2018, there were 2,462 defendants charged with the infraction of violating subsection (f). Assuming similar charges in FY 2019-20, if

IDS were to handle 30% of these cases (739 cases), **IDS would have increased costs of \$148,539** (739 cases times \$201 per case equals \$148,539).

#### Increase of Class 1 Misdemeanor to Class I Felony

Section 2 of the bill also increases a Class 1 misdemeanor to a Class I felony offense. Because there were no charges for this offense in FY 2017-18, AOC does not have historical data upon which to estimate the number of charges that might occur. For every additional person charged with a Class 1 misdemeanor, the average cost to the court would be \$233, while for every additional person charged with a Class I felony, the average cost to the court would be \$516. Therefore, the increased average cost to the court for every additional person charged with the increased felony would be \$283 (\$516 minus \$233).

In FY 2017-18, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$333 per case for a PAC attorney. In FY 2017-18, 39% of Class 1 misdemeanor cases were handled through IDS. The weighted average cost of a new Class 1 misdemeanor is \$202 per case for a PAC attorney. Therefore, the increased weighted average cost to IDS for each case charged under the changes in this bill increasing a Class 1 misdemeanor to a Class I felony would be \$131. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

#### Increase of Class I Felony to Class F Felony

Section 2 of the bill also increases a Class I felony offense to a new Class F felony offense. Because there were no charges for this offense in FY 2017-18, AOC does not have historical data upon which to estimate the number of charges that might occur. For every additional person charged with a Class I felony, the average cost to the court would be \$516, while for every additional person charged with a Class F felony, the average cost to the court would be \$1,291. Therefore, the increased average cost to the court for every additional person charged with the increased felony would be \$775 (\$1,291 minus \$516).

In FY 2017-18, 68% of Class I felony cases were handled through IDS. The weighted average cost of a new Class I felony is \$333 per case for a PAC attorney. In FY 2017-18, 74% of Class F felony cases were handled through IDS. The weighted average cost of a new Class F felony is \$569 per case for a PAC attorney. Therefore, the increased weighted average cost to IDS for each case charged under the changes in this bill increasing a Class I felony to a Class F felony would be \$236. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

### **Department of Public Safety – Prisons**

#### Class 2 Misdemeanor

This bill creates a new Class 2 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail.

Increase of Class 1 Misdemeanor to Class I Felony and Class I Felony to Class F Felony

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2017.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2019</b>	<b>June 30 2020</b>	<b>June 30 2021</b>	<b>June 30 2022</b>	<b>June 30 2023</b>
1. Inmates <sup>2</sup>	36,628	36,820	37,115	37,273	37,488
2. Prison Beds (Expanded Capacity)	38,189	38,189	38,189	38,189	38,189
3. Beds Over/(Under) Inmate Population	1,561	1,369	1,0704	916	701
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

Since the bill increases a felony offense that was not charged in FY 2017-18, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

Class I Felony

In FY 2017-18, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions

<sup>1</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2018.

<sup>3</sup> Criminal penalty bills effective December 1, 2019 should not affect prison population and bed needs until FY 2020-21 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
10 (Threshold)	1	2	2	2	2
20	2	5	5	5	5

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 15% of Class I felony offenders received active sentences averaging 7 months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,766 (\$538 monthly cost times 7 months). Because all misdemeanor offenders who receive active sentences will serve them in the local jail, there were no costs to the Corrections Division from any Class 1 misdemeanor convictions in FY 2017-18. Therefore, the cost increase to the Corrections Division from the increase of this offense from Class 1 misdemeanor to Class I felony would be \$3,766.

Class F Felony

In FY 2017-18, 51% of Class F felony convictions resulted in active sentences, with an average estimated time served of 19 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were two convictions (the threshold) or 20 convictions for this proposed offense per year. The five year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class F Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
2 (Threshold)	1	2	3	3	3
20	11	19	22	22	22

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$17.69 per day, or \$538 per month, which includes the cost of food, clothing, and health care. In FY 2017-18, 51% of Class F felony offenders received active sentences averaging 19 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$10,222 (\$538 monthly cost times 19 months). In FY 2017-18, 15% of Class I felony offenders received active

sentences averaging 7 months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$3,766 (\$538 monthly cost times 7 months). Therefore, the cost increase to the Corrections Division from the increase of this offense from Class I felony to Class F felony would be the cost of 12 further months of active sentence, which is \$6,456 (\$538 monthly cost times 12 months).

### **Department of Public Safety – Community Corrections**

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month. All misdemeanor offenders may face the same non-active sentences as felons.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, 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.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$160 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.

#### **Class 2 Misdemeanor**

In FY 2017-18, 39% of Class 2 misdemeanor offenders received active sentences; 61% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class 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 \$2,240 per offender (\$160



per month times 14 months).<sup>4</sup> In calendar year 2018, there were 2,462 defendants charged with the infraction of violating subsection (f). Assuming similar charges in FY 2019-20, if 61% of these cases were to receive a suspended sentence (1,502 cases), **CCS would have increased costs of \$3,364,480** (1,502 cases times \$2,462 per offender for 14 months of supervision equals \$3,364,480).

#### Increase of Class 1 Misdemeanor to Class I Felony

In FY 2017-18, 34% of Class 1 misdemeanor offenders received active sentences; 66% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation would require at least 15 months of supervision. The cost of 15 months of supervision is \$2,400 per offender (\$160 per month times 15 months). In FY 2017-18, 85% of Class I felony offenders received suspended sentences. The average length of probation imposed for this offense class was 23 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,440 per offender (\$160 per month times 9 months).<sup>5</sup> For every offender sentenced to probation, the average cost would be \$3,680 (\$160 per month times 23 months).

Because this bill increases a Class 1 misdemeanor to a Class I felony, the costs to Community Correction from the changes in this bill would be the increased average length of probation from 15 months to 23 months. For every offender sentenced to probation for a Class I felony rather than a Class 1 misdemeanor, the average cost increase to the Department would be \$1,280 (\$160 per month times 8 months).

#### Increase of Class I Felony to Class F Felony

In FY 2017-18, 85% of Class I felony offenders received suspended sentences. The average length of probation imposed for this offense class was 23 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,440 per offender (\$160 per month times 9 months). For every offender sentenced to probation, the average cost would be \$3,680 (\$160 per month times 23 months). In FY 2017-18, 49% of Class F felony offenders received suspended sentences. The average length of probation imposed for this offense class was 31 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). Therefore, at a minimum, one conviction resulting from this bill will require at least 9 months of supervision. The cost of 9 months of supervision is \$1,440 per offender (\$160 per month times 9 months).<sup>6</sup> For every offender sentenced to probation, the average cost would be \$4,960 (\$160 per month times 31 months).

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<sup>4</sup> Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.

<sup>5</sup> Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.

Because this bill increases a Class I felony to a Class F felony, the costs to Community Correction from the changes in this bill would be the increased average length of probation from 23 months to 31 months. For every offender sentenced to probation for a Class F felony rather than a Class I felony, the average cost increase to the Department would be \$1,280 (\$160 per month times 8 months).

## **TECHNICAL CONSIDERATIONS**

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N/A.

## **DATA SOURCES**

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Department of Public Safety; 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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William Childs

## **ESTIMATE APPROVED BY**

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Mark Trogdon, Director of Fiscal Research  
Fiscal Research Division  
March 4, 2019



**Signed copy located in the NCGA Principal Clerk's Offices**

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<sup>6</sup> Due to the effective date of December 1, 2019 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2019-20. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2020-21.