



# NORTH CAROLINA GENERAL ASSEMBLY

2025 Session

## Legislative Incarceration Fiscal Note

**Short Title:** Criminal Law Changes.  
**Bill Number:** House Bill 308 (Second Edition)  
**Sponsor(s):**

### SUMMARY TABLE

| PARTIAL FISCAL IMPACT OF H.B.308, V.2*                                |  |                   |                   |                   |                   |
|---|--|-------------------|-------------------|-------------------|-------------------|
|   | <u>FY 2025-26</u>  | <u>FY 2026-27</u> | <u>FY 2027-28</u> | <u>FY 2028-29</u> | <u>FY 2029-30</u> |
| <b>State Impact</b>   |  |                   |                   |                   |                   |
| General Fund Revenue  | \$ -   | \$ -              | \$ -              | \$ -              | \$ -              |
| Less Expenditures   | \$ -   | \$ 4,851,031      | \$ 4,851,031      | \$ 4,851,031      | \$ 4,851,031      |
| <b>General Fund Impact</b>  | <b>Partial Estimate Available - Refer to Fiscal Analysis section</b> |                   |                   |                   |                   |
| <b>NET STATE IMPACT</b>   | <b>Partial Estimate Available - Refer to Fiscal Analysis section</b> |                   |                   |                   |                   |
| <b>TECHNICAL CONSIDERATIONS: See Technical Considerations Section</b> |  |                   |                   |                   |                   |

*\*This table assumes that the full known costs to the judicial and correctional systems are realized beginning in year two of this analysis. For each convicted cohort of offenders, actual costs to the correctional system are likely to be realized incrementally over time based on the length of sentences.*

### 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 creates multiple new offenses, enhances the sentencing class for some existing offenses, and expands the scope of multiple existing offenses. The bill also changes how multiple active sentences are to be served in the absence of an explicit determination by the judge. Currently, when a judge does not specify how multiple sentences should run, the presumption is for them to run *concurrently*. This legislation changes that default to a presumption that multiple sentences will run consecutively.

**The changes in this bill are expected to cost the State at least \$4.8 million annually resulting from the increased offense levels for existing charges.** Further, adding new charges and changing the default presumption for how multiple sentences will run is likely to pose additional substantial costs to the State, though there is limited historical data to predict the precise scope and

scale of these impacts. **Therefore, Fiscal Research is only able to provide a partial projection of the fiscal impact** that this legislation may have 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 |                             |                           |       |                   |         |              |                                      |              |                    |         |              |
|-----------------------------------|-----------------------------|---------------------------|-------|-------------------|---------|--------------|--------------------------------------|--------------|--------------------|---------|--------------|
| 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.) |
| ▲ F to E                          | \$1,833                     | 5%                        | \$125 | 3%                | \$6,209 | 8            | \$842                                | 3            | -3%                | \$562   | 2            |
| ▲ H to G                          | \$651                       | 0%                        | \$142 | 5%                | \$3,881 | 5            | \$0                                  | 0            | -5%                | \$562   | 2            |
| H                                 | \$1,300                     | 78%                       | \$517 | 36%               | \$7,761 | 10           | \$2,527                              | 9            | 64%                | \$6,739 | 24           |

*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 ANALYSIS

**Section 1** of the bill amends G.S. 14-32.4. – *assault inflicting serious bodily injury; strangulation; penalties* – to increase the offense classification of two existing charges, add a new definition of “strangulation,” and establish a new charge related to assault by strangulation.

**Section 1.(a)** increases the offense class for assault that inflicts serious bodily injury. This bill **raises that existing offense from a Class F felony to a Class E felony**. In CY 2024, 1,021 defendants were charged under this existing offense. If the same number of defendants are charged under this new proposed statute, the costs to the judicial system would be as follows:

- \$1,871,493 for AOC resulting from 1,021 charges X an average additional cost of \$1,833 per charge for a Class E felony compared to a Class F felony.
- \$139,698 for Indigent Defense Services (IDS) for public defense services from 1,021 charges X the average additional cost per charge for 79% of Class E felony cases that use IDS services compared to 74% of Class F felonies that use IDS services.

In FY 2024, there were 130 convictions for this offense under C.S. 14-32.4. If the same number of convictions occurred under the new proposed legislation, the costs to the correction system would be as follows:

- \$514,554 for the Department of Adult Correction (DAC) for active prison sentences. This is the difference between the average cost of confinement for 54% of convictions under the old Class F felony versus confinement costs for 57% of Class E felony convictions.

- \$109,460 for DAC community supervision for post-release supervision (PRS). This is the difference between the cost of 9-months of PRS for a Class F felony versus the 12-months of PRS for the new Class E felony.
- Savings of \$1,460 for DAC community supervision for parole. This is the difference between the cost of parole for 46% of convictions under the old Class F felony versus the parole costs for 43% of Class E felony convictions.

This would result in a **total additional cost to the State of \$2,633,745** for the increased offense classification.

**Subsection (a1)** includes a new definition for “strangulation,” to specify that the act is done “by obstructing the nose and mouth of the person.”

**Subsection (a2) creates a new Class H felony offense for assault by strangulation.** The new definition of “strangulation” may increase the number of assaults that now qualify for this Class H felony but may have previously been classified under lower-level offenses. However, because this is a new offense, there is no data available to estimate how many charges or convictions may occur as a result.

**Section 1.(b) increases the offense class from a Class H felony to a Class G felony for assault by strangulation which inflicts physical injury.** In CY 2024, 2,733 defendants were charged under this existing offense. If the same number of defendants are charged under this new proposed statute, the costs to the judicial system would be as follows:

- \$1,779,183 for AOC resulting from 2,733 charges X an average additional cost of \$651 per charge for a Class G felony compared to a Class H felony.
- IDS costs are expected to remain the same, as there is no added usage of IDS services, on average, for Class G felonies relative to Class H felonies.

In FY 2024, there were 222 convictions for this offense under C.S. 14-32.4. If the same number of convictions occurred under the new proposed legislation, the costs to the correction system would be as follows:

- \$439,350 for the Department of Adult Correction (DAC) for active prison sentences. This is the difference between the average cost of confinement for 36% of convictions under the old Class H felony versus confinement costs for 41% Class G felony convictions.
- There are no differences in cost to DAC for PRS under this change because Class H and Class G felonies carry the same average PRS cost and duration.
- Savings of \$1,247 for DAC community supervision for parole. This is the difference between the cost of parole for 64% of convictions under the old Class H felony versus the parole costs for 59% of Class G felony convictions.

This would result in a **total additional cost to the State of \$2,217,286** for the increased offense classification.

**Section 2.(a)** amends G.S. 14-33 – *misdemeanor assaults, batteries, affrays* – to add subsection (e), which provides that an offense under this section shall not be considered a lesser included offense of the existing offenses in G.S. 14-32.5 – *misdemeanor crime of domestic violence*.

**Section 2.(b)** amends G.S. 14-33.2 – *habitual misdemeanor assault* – by adding G.S. 14-32.5 – *misdemeanor crime of domestic violence* – to the list of offenses for which a person can be convicted of habitual misdemeanor assault. This expands the scope of those who could be convicted of a Class H felony under G.S. 14-33.2. This section also adds G.S. 14-32.5 to the eligible prior convictions for misdemeanor assault which could further expand the scope of the habitual offense. Because these changes expand the scope of additional offenses, it is not known how many additional charges or convictions may result, and therefore, **Fiscal Research is unable to project the fiscal impact of this change.**

**Section 3** of the bill creates a new Class H felony for *habitual domestic violence* when the offender has two or more prior convictions under G.S. 14-32.5 or has one or more conviction under G.S. 14-32.5 and a conviction for assault on a victim who fits the relationship criteria of G.S. 14-32.5(a)(1-5). The new initial offense is a Class H felony, but each subsequently qualifying violation classifies as one offense level higher, not to exceed a Class C felony. Since this section creates new offenses, **there is no historical data to estimate the impacts of potential additional charges or convictions, or how many offenders may become repeat offenders who qualify for enhanced sentences.**

**Section 4** of the bill adds to several petition-based expunction statutes to include a criterion that the petitioner have no outstanding warrants, pending criminal charges, not be under indictment or on pretrial release, etc., equivalent to the criterion currently appearing in G.S. 15A-145.5. This change would likely require the courts system to modify some existing forms; however, **there is not sufficient data to estimate the costs associated with this change.**

**Section 6** of the bill amends G.S. 15A-1354 – *concurrent and consecutive terms of imprisonment* – such that **when a judge does not specify whether multiple sentences should run concurrently or consecutively, the presumption would be for sentences to run consecutively.** Currently, when a judge does not specify how the sentences should run, the presumption is for multiple sentences to run concurrently. This applies when multiple sentences are imposed at the same time and when a sentence is imposed on a person who is already serving a sentence. Though it is not possible to know how many sentences this change will affect, **this section will likely spur a substantial increase in prison bed capacity demand.**

#### **Additional Considerations Regarding Section 6**

It is possible that the potential Section 6 impacts outlined in the following sections of this analysis may be mitigated by judicial behavior at sentencing. Because this section makes consecutive sentences the presumed sentencing structure but does not require it, judges may still assign concurrent sentences where the law permits. Therefore, the impacts of this change may be moderated if judges more frequently specify concurrent sentences rather than relying on the default sentencing standard as is currently common practice.

While it is not possible to know precisely how many sentences that may have previously run concurrently will default to running consecutively under this change, the Sentencing Policy and Advisory Commission (SPAC) provided an “eligible pool analysis” of cases which may be affected.

In FY 2024, there were 27,088 felony convictions under the Structured Sentencing Act (SSA). Of these convictions, 14,764 (55%) had two or more convictions as part of their sentencing episode, which indicates that one or more could run consecutively. Of these episodes with multiple convictions, 4,379 (30%) received consecutive sentences while the remaining 10,385 (70%) received either concurrent sentences or the offenses were consolidated for judgment (data does not indicate which was used). These remaining 10,385 episodes represent the eligible pool of judgements that did not receive consecutive sentences but now could receive consecutive sentences under this proposed legislation (this analysis assumes that those who received consecutive sentences would continue to do so).

On average, the estimated total time served for active sentences is significantly longer for sentences served consecutively compared to concurrently. The table below compares the average estimated time served between consecutive and concurrent sentences for FY 2024 felony convictions with multiple active sentences.

**Table 1: FY 2024 Felony Convictions with 2 or More Convictions in Sentencing Episode**

| Offense Class | FY 2024 Convictions | Active Sentences      |           |                                     | Eligible Pool: Concurrent or Consolidated Sentences |           |                                     |
|---------------|---------------------|-----------------------|-----------|-------------------------------------|---|-----------|-------------------------------------|
|               |                     | Consecutive Sentences |           | Avg. Estimated Time Served (Months) | #   | %         | Avg. Estimated Time Served (Months) |
|               |                     | #                     | %         |                                     |   |           |                                     |
| Class A       | 47                  | 30                    | 64        | Life/Death                          | 17  | 36        | Life/Death                          |
| Class B1      | 268                 | 83                    | 31        | 344                                 | 185   | 69        | 213                                 |
| Class B2      | 136                 | 27                    | 20        | 256                                 | 109   | 80        | 128                                 |
| Class C       | 533                 | 135                   | 25        | 147                                 | 398   | 75        | 69                                  |
| Class D       | 629                 | 127                   | 20        | 95                                  | 502   | 80        | 57                                  |
| Class E       | 925                 | 289                   | 31        | 40                                  | 636   | 69        | 22                                  |
| Class F       | 743                 | 332                   | 45        | 29                                  | 411   | 55        | 14                                  |
| Class G       | 958                 | 326                   | 34        | 26                                  | 632   | 66        | 12                                  |
| Class H       | 2,158               | 583                   | 27        | 19                                  | 1,575   | 73        | 8                                   |
| Class I       | 469                 | 82                    | 17        | 12                                  | 387   | 83        | 5                                   |
| <b>Total</b>  | <b>6,866</b>        | <b>2,014</b>          | <b>29</b> | <b>54</b>                           | <b>4,852</b>  | <b>71</b> | <b>31</b>                           |

For many offense classes, the average length of time served is nearly doubled for consecutive sentences versus concurrent sentences.

**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 approximately 2,443 beds available at the end of the five-year window and approximately 1,461 beds available at the end of the ten-year window.

In response to this bill, prison bed impact will occur for each active sentence to which consecutive sentences are applied by default due to the increase in time served. The scale of impact on the prison population will depend on the number and offense class of each of the convictions and sentences imposed in the sentencing episode that would now be served consecutively but **could range from an additional 171 prison beds impacted to 859 beds or more.**

Based on average estimated time served by offense class, impact will occur within the five-year projection period for Class E – Class I convictions and outside the 5-year projection period for Class A – Class D convictions. The estimated prison bed impacts from Class E – I convictions based on a share of eligible sentences which may now be served consecutively are as follows:

- 171 additional bed demand in 5 years for impact on 10% of the eligible pool
- 431 additional bed demand in 5 years for impact on 25% of the eligible pool
- 859 additional bed demand in 5 years for impact on 50% of the eligible pool

This suggests that prison bed demand resulting from this legislation could **utilize approximately 35% of the State’s current projected prison bed availability over the next 5 years.**

Impacts outside of the 5-year window covered by this analysis are also likely to be substantial as higher-level felonies carry substantially longer sentences. For example, per the SPAC data provided in Table 1, the average length of sentence for a B1 offender serving consecutive sentences is 131 months (10 years and 11 months) *longer* than the average length of sentence for a B1 offender serving concurrent sentences. This will produce a stacking effect in later years, significantly reducing prison bed turnover and therefore prison bed availability.

### **Operating Expenses**

The table in the Fiscal Impact Summary lists the costs specific to the charge or charges included in this proposal.

### **Conclusion**

In summary, the proposed changes in this legislation **are estimated to cost the State at least \$4.8 million more per year** and may result in the occupation of 35% or more of available prison bed capacity within 5 years with likely greater prison capacity impacts beyond the 5-year time frame covered by this analysis.

## **TECHNICAL CONSIDERATIONS**

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- Due to delays in updated data availability, FRD must utilize some 2023 data for Incarceration Notes for the beginning of the 2025 long session. Any changes are not expected to be significant, but FRD does plan to revisit Incarceration Notes prepared prior to the availability of updated data when and where appropriate later in the session.
- 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.

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## **DATA SOURCES**

Department of Adult Correction; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

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## **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.

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## **CONTACT INFORMATION**

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March 25, 2025



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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.*