



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: NC Compassionate Care Act.
Bill Number: Senate Bill 3 (Third Edition)
Sponsor(s):

SUMMARY TABLE

FISCAL IMPACT OF S.B.3, V.3

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

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 contains the following changes to the criminal code: creating a new Class 2 misdemeanor; creating a new Class G felony; creating two new Class H felonies; creating a new Class A1 misdemeanor; creating a new Class 1 misdemeanor; creating a new Class I felony; creating a sentencing enhancement for existing criminal offenses; creating a new Class 3 misdemeanor; and creating an additional new Class 2 misdemeanor. These changes are detailed in the Fiscal Analysis section below. Each additional person charged with any of these crimes will have a cost to the judicial system and each additional person convicted will have a cost to the correction system.

While some charge and conviction data is available for existing offenses related to cannabis, the bill’s criminal offenses are primarily structured around medical use of cannabis and its related regulations and facilities. North Carolina currently has no medical cannabis facilities, making each criminal charge in this bill a new charge. Because new charges have no historic charge or conviction data, staff is unable to make projections about the application of new charges or their conviction rates. Fiscal Research is therefore **unable to project** the proposed legislation’s fiscal impact on the criminal justice system. Available data on charges for related existing offenses has been provided in the Fiscal Analysis section below.

The cost of one charge and conviction for the criminal offense classes included in this proposed legislation is provided in the table below, along with the percent of cases that incur those costs or sentence at each offense level.

| Cost of One Charge and Conviction for New Charges in S.B. 3 | | | | | | | | | | | |
|---|-----------------------------|---------------------------|-------|---|----------|---------------|--------------------------------------|--------------|--------------------|---------|--------------|
| 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.) |
| 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 impaired driving.

FISCAL ANALYSIS

Bill Summary:

S. B. 3 makes a variety of changes to the criminal code related to medical cannabis. **Many of these changes are location-specific**, meaning that the criminal behavior must occur **at a medical cannabis center or production facility**. Because all the changes made to the criminal code are contained in Section 1 of the bill, for ease of reference, the citations below are the section of the General Statutes amended by the bill.

The new G.S. 90-113.117 Subsection (c) creates a new Class 2 misdemeanor for breaching confidentiality related to certain information collected by the Department of Health and Human Services (DHHS) related to medical cannabis.

- Because this is a new offense, Fiscal Research does not have historical data to project the potential fiscal impact of creating this offense. Please refer to the Operating Expenses section below for the average costs of a Class 2 misdemeanor.

The new G.S. 90-113.126 Subsection (a) creates a new Class G felony for anyone who manufactures, sells, delivers, or possesses with intent to manufacture, sell, or deliver cannabis at a medical cannabis center or production facility in violation of the new statutes created in this bill.

- Currently in North Carolina, these actions are covered by G.S. 90-95(b)(2) at the lower offense levels of Class I or Class H, depending on the specifics of the case. In CY 2022, 6,346 defendants were charged under this statute for cannabis. However, this data cannot be used for projections for two reasons:
 - The existing charge data does not differentiate between the existing Class I and Class H charges;
 - The new Class G must occur at a medical cannabis facility, which does not exist in North Carolina. Therefore, this offense is a new offense rather than an increased charge for an existing offense.
- Because this is a new offense, Fiscal Research is unable to provide a projection of the impact from this section. Please refer to the Operating Expenses section below for the average costs of a Class G felony.

The new G.S. 90-113.126 Subsection (b) creates a new Class H felony for anyone who creates, sells, delivers, or possesses with intent to sell or deliver counterfeit cannabis at a medical cannabis center or production facility in violation of the new statutes created in this bill.

- Currently in North Carolina, these same actions are covered by G.S. 90-95(c), which is a Class I felony. In CY 2022, 196 defendants were charged under this statute. However, the new offense must occur at a medical cannabis facility, which does not exist in North Carolina. Therefore, this offense is a new offense rather than an increased charge for an existing offense.
- Because this is a new offense, Fiscal Research is unable to provide a projection of the impact from this section. Please refer to the Operating Expenses section below for the average costs of a Class H felony.

The new G.S. 90-113.126 Subsection (c) creates a new Class A1 misdemeanor for anyone possessing up to 1.5 ounces of cannabis at a medical cannabis center or production facility in violation of the new statutes created in this bill.

- Currently in North Carolina, these same actions are covered by G.S. 90-95(d)(4), which is either a Class 1 or Class 3 misdemeanor depending on the specifics of the case. In CY 2022, there were 16,049 defendants charged with the Class 3 misdemeanor under this statute and 2,960 defendants charged with the Class 1 misdemeanor. However, the new offense must occur at a medical cannabis facility, which does not exist in North Carolina. Therefore, this offense is a new offense rather than an increased charge for an existing offense.
- Because this is a new offense, Fiscal Research is unable to provide a projection of the impact from this section. Please refer to the Operating Expenses section below for the average costs of a Class A1 misdemeanor.

The new G.S. 90-113.126 Subsection (d) creates a new Class H felony for anyone possessing more than 1.5 ounces of cannabis at a medical cannabis center or production facility in violation of the new statutes created in this bill.

- Currently in North Carolina, these same actions are covered by G.S. 90-95(d)(4), which is a Class I felony. In CY 2022, there were 2,404 defendants charged under this statute. However, the new offense must occur at a medical cannabis facility, which does not exist in North

Carolina. Therefore, this offense is a new offense rather than an increased charge for an existing offense.

- Because this is a new offense, Fiscal Research is unable to provide a projection of the impact from this section. Please refer to the Operating Expenses section below for the average costs of a Class H felony.

The new G.S. 90-113.126 Subsection (e) creates a new Class 1 misdemeanor for providing the Department of Health and Human Services (DHHS) with false or misleading information in relation to a medical cannabis registry identification card or license.

- Because this is a new offense, Fiscal Research does not have historical data to project the potential fiscal impact of creating this offense. Please refer to the Operating Expenses section below for the average costs of a Class 1 misdemeanor.

The new G.S. 90-113.126 Subsection (f) creates a new Class I felony for anyone who, after they have been issued a valid medical cannabis registry identification card, is in possession of cannabis in violation of the new statutes created in this bill.

- Because this is a new offense, Fiscal Research does not have historical data to project the potential fiscal impact of creating this offense. Please refer to the Operating Expenses section below for the average costs of a Class I felony.

The new G.S. 90-113.126 Subsection (g) creates an enhancement for violations of G.S. 95-90(h)(1), which lists a series of increasing penalties for the offense of trafficking in cannabis (defined as selling, manufacturing, delivering, transporting or possessing more than 10 pounds of cannabis, with penalties ranging from Class H to Class D felonies). The new subsection stipulates that if there is a conviction under the existing trafficking statutes and the offense was committed at a medical cannabis center or production facility or with cannabis from a medical cannabis center or production facility, the offender shall be sentenced at one felony class higher than the principal convicted felony and that an additional 12 months shall be added to the mandatory minimum sentence. The enhancement is capped at a Class C felony.

- In FY 2022, there were 4 convictions for trafficking in marijuana and 1 conviction for conspiracy to traffic in marijuana. Drug trafficking offenses have mandatory active sentences unless the offender provides substantial assistance to law enforcement. In the data available, 2 of the convicted offenders provided substantial assistance and thus received a suspended sentence rather than an active sentence. Under this proposed bill, it is possible that those providing substantial assistance may not be fully subject to this enhancement.
- Because the enhancement requires the existence of medical cannabis facilities or production centers, Fiscal Research cannot use the historical data available to project the potential fiscal impact of creating this offense.
- This enhancement (one felony higher plus 12 months) would result in the following increased prison sentences (and thus increased costs to DAC) for convictions with active sentences:

| Original Class under GS 95-90(h)(1) | Enhanced Class | Additional Months | Cost to DAC (\$727.80/month) |
|-------------------------------------|----------------|-------------------|------------------------------|
| Class H | Class G | 22 | \$16,012 |
| Class G | Class F | 47 | \$34,207 |
| Class F | Class E | 32 | \$23,290 |
| Class D | Class C | 62 | \$45,124 |

The new G.S. 90-113.126 Subsection (g1) creates a new Class 3 misdemeanor for anyone possessing cannabis in anything other than a closed retailer’s container as packaged, in the passenger part of a vehicle or in a public area.

- Because this is a new offense, Fiscal Research does not have historical data to project the potential fiscal impact of creating this offense. Please refer to the Operating Expenses section below for the average costs of a Class 3 misdemeanor.

The new G.S. 90-113.126 Subsection (g2) creates a new Class 2 misdemeanor for anyone trying to use the medical cannabis system (i.e. entering a medical cannabis center, obtaining or attempting to obtain medical cannabis, etc.) by utilizing a fraudulent or altered registry identification card.

- Because this is a new offense, Fiscal Research does not have historical data to project the potential fiscal impact of creating this offense. Please refer to the Operating Expenses section below for the average costs of a Class 2 misdemeanor.

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, FRD 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 expenses 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 G charges** carry an average cost of \$1,525 per charge.
 - **Class H charges** carry an average cost of \$1,016 per charge.
 - **Class I charges** carry an average cost of \$740 per charge.
 - **Class A1 charges** carry an average cost of \$580 per charge.
 - **Class 1 charges** carry an average cost of \$335 per charge.

- **Class 2 charges** carry an average cost of \$178 per charge.
- **Class 3 charges** carry an average cost of \$63 per charge.
- **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 G defendants** utilize IDS in 78% of cases at a cost of \$706 per charge.
 - **Class H defendants** utilize IDS in 78% of cases at a cost of \$510 per charge.
 - **Class I defendants** utilize IDS in 68% of cases at a cost of \$407 per charge.
 - **Class A1 defendants** utilize IDS in 52% of cases at a cost of \$281 per charge.
 - **Class 1 defendants** utilize IDS in 62% of cases at a cost of \$237 per charge.
 - **Class 2 defendants** utilize IDS in 30% of cases at a cost of \$237 per charge.
 - **Class 3 defendants** 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.
 - **39% of Class G felony convictions** result in an average active sentence of 15 months with a total cost of \$11,071 per sentence.
 - **33% of Class H felony convictions** result in an average active sentence of 11 months with a total cost of \$8,119.
 - **15% of Class I felony convictions** result in an average active sentence of 6 months with a total cost of \$4,428.
 - **Active sentences for misdemeanors** are served in local jails and therefore do not impact State expenses.
- **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. Supervision by a probation officer costs \$237.30 per offender per month.
 - All of the felony charges in this bill would receive **9 months of PRS at a cost of \$2,282.**

Conviction: Suspended Sentence

- **Department of Adult Correction – Community Corrections:** Felony 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.
 - **61% of Class G felony convictions** receive a suspended sentence with an average length of 26 months at a cost of \$6,170.
 - **67% of Class H felony convictions** receive a suspended sentence with an average length of 25 months at a cost of \$5,933.
 - **85% of Class I felony convictions** receive a suspended sentence with an average length of 22 months at a cost of \$5,221.

- **64% of Class A1 misdemeanor convictions** receive a suspended sentence with an average length of 16 months at a cost of \$3,797.
- **64% of Class 1 misdemeanor convictions** receive a suspended sentence with an average length of 14 months at a cost of \$3,322.
- **78% of Class 2 misdemeanor convictions** receive a suspended sentence with an average length of 13 months at a cost of \$3,085.
- **84% of Class 3 misdemeanor convictions** receive a suspended sentence with an average length of 13 months at a cost of \$3,085.

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.

DATA SOURCES

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

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.

ESTIMATE PREPARED BY

Mark White

ESTIMATE APPROVED BY

Brian Matteson, Director of Fiscal Research
Fiscal Research Division
February 24, 2023



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 |
| 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.