



# NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

## Legislative Incarceration Fiscal Note

**Short Title:** Protect Critical Infrastructure.  
**Bill Number:** Senate Bill 58 (Second Edition)  
**Sponsor(s):** Sen. Tom McInnis, Sen. Danny Earl Britt, Jr., and Sen. Paul Newton

### 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 makes the following eight offense changes: **creates a new Class C felony, a new Class B2 felony, increases an offense from a Class A1 misdemeanor to a Class I felony and expands the scope of the Class I felony, increases an offense from a Class H to a Class G felony, increases an offense from a Class I to a Class C felony and expands the scope of the Class C felony, and increases an offense from a Class 1 misdemeanor to a Class C felony.** 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 average percentage of cases that incur those costs at that offense level.

The charge and conviction data for the existing criminal offenses is provided under Fiscal Analysis. Fiscal Research concludes that this legislation will have **minimal impact** on the criminal justice system’s costs because the known cost increases are minimal.

Cost of One Charge and Conviction in SB 58, v.2											
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		
		Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost
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
▲ I to C	+\$7,858	+14%	+\$1,910	+85%	+\$59,045	+80	+\$712	+3	0%	N/A	0
▲ 1 to C	+\$8,263	+20%	+\$2,081	+100%	+\$63,473	+86	+\$712	+3	-64%	-\$3,322	(14)
▲ H to G	+\$509	no ▲	+\$509	+6%	+\$11,071	+15	no ▲	no ▲	6%	\$237	1
▲ A1 to I	+\$160	+16%	+\$126	+15%	+\$4,428	+6	+\$2,282	+9	21%	\$1,424	6

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. 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 IMPACT OF S.B.58, V.2

	<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>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
<b>General Fund Impact</b>	<b>Likely Insignificant Budget Cost - Refer to Fiscal Analysis section</b>				

## FISCAL ANALYSIS

### Bill Summary

**Section 1 subsection (c) creates a Class C felony** for a person to knowingly and willfully destroy, injure, or otherwise damage, or attempt to destroy, injure, or otherwise damage, an energy facility. If the damage results in the death of another, the **offense becomes a Class B2 felony**.

- Under G.S. 14-156, it is currently a Class 2 misdemeanor to willfully and wantonly, and without consent of the owner, injure, displace, or destroy fixtures and other property of electric power companies. Under G.S. 14-152, it is a Class 3 misdemeanor to willfully, wantonly, or maliciously obstruct, injure, or destroy fixtures and other property of gas companies. This proposed legislation would repeal these existing misdemeanors. **AOC does not have an offense code for G.S. 14-156 or G.S. 14-152 which is some indication that these offenses are infrequently charged.**
- Because the Class C and B2 felonies are new offenses, **Fiscal Research does not have historical data to project the potential fiscal impact of creating these offenses.** Please refer to the Operating Expenses section below for the average costs of a Class B2 and C felonies.

**Section 2 subsection (c)** amends G.S. 14-159.12, first degree trespass, by **increasing from a Class A1 misdemeanor to a Class I felony** the offense of trespassing on the premises of certain facilities and **expanding the scope of the offense** to include facilities owned by a public utility or local government for the treatment of wastewater.

- In 2022, 62 individuals were charged with violating G.S. 14-159.12(c). If the same number of defendants were charged after passage of this proposed legislation, **the annual additional cost to AOC would be \$9,920 and the annual additional cost to IDS would be \$8,102.**
- In FY 2021-22, 4 individuals were convicted with violating G.S. 14-159.12(c). If the same number of defendants were convicted after passage of this proposed legislation, **the additional cost to the corrections system would range between \$5,696 and \$26,840 over the life of the sentence**, depending on whether the convictions result in suspended or active sentences.

- Fiscal Research is unable to predict how many charges or convictions may result from expanding the scope of the offense to include wastewater treatment facilities.
- **Fiscal Research projects minimal fiscal impact from this section.**

**Section 2 subsection (d) increases from a Class H to a Class G felony** the offense of committing first degree trespass with the intent to disrupt normal operation of the facility or committing an act that places the offended or others on the premises at risk of serious bodily injury.

- In 2022, 9 individuals were charged with violating G.S. 14-159.12(d). If the same number of defendants were charged after passage of this proposed legislation, **the annual additional cost to AOC would be \$4,581 and the annual additional cost to IDS would be \$1,764.**
- In FY 2021-22, 2 individuals were convicted with violating G.S. 14-159.12(d). If the same number of defendants were convicted after passage of this proposed legislation, **the additional cost to the corrections system would range between \$5,904 and \$24,205 over the life of the sentence,** depending on whether the convictions result in suspended or active sentences.
- **Fiscal Research projects minimal fiscal impact from this section.**

**Section 3** amends G.S. 14-154, injuring wires and other fixtures of telephone, telegraph, and electric power companies, by increasing and decreasing the scope and **increasing the offense class from a Class I felony to a Class C felony.** Regarding scope, the proposed legislation would exclude electric equipment and fixtures as these violations would be covered by the new Class C and **expand the scope to include broadband equipment and fixtures.**

- In 2022, there were 34 charges under G.S. 14-154. If the same number of defendants were charged after passage of this proposed legislation, **the annual additional cost to AOC would be \$267,172 and the annual additional cost to IDS would be \$55,525.**
- In FY 2021-22, there was 1 Class I felony conviction under G.S. 14-154. If the same number of defendants were convicted after passage of this proposed legislation, **the additional average cost to the correction system would be between \$59,756 and \$61,246 over the life of the sentence.**
- Fiscal Research is unable to predict how many charges or convictions may result from expanding the scope of the offense to include broadband equipment and fixtures.
- **Fiscal Research projects minimal fiscal impact from this section.**

**Section 4** repeals G.S. 14-152 and G.S. 14-156 which included misdemeanor offenses related to injuring the property of gas and electric companies.

**Section 5** amends G.S. 62-323 to **increase from a Class 1 misdemeanor to a Class C felony** the offense of willful injury to property of public utility.

- AOC does not have an offense code for violations of G.S. 62-323 which is some indication that this offense is infrequently charged.
- **Fiscal Research projects minimal fiscal impact from this section.**

### **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 B2 felony charges carry an average cost of \$17,704 per charge.
  - Class C felony charges carry an average cost of 8,598 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 B2 felony defendants utilize IDS in 85% of cases at an average cost of \$4,187.
  - Class C felony defendants utilize IDS in 82% of cases at an average cost of \$2,317.

#### **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 B2 felony convictions result in an average active sentence of 156 months with a total cost of \$115,137 per sentence.
  - 100% of C felony convictions result in an average active sentence of 86 months with a total cost of \$63,473 per sentence.
- **Department of Adult Correction – Community Corrections**: All active sentences from Class B1- I felony convictions result in a period of post-release supervision (PRS) of between 9 and 12 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 B2 and C felons would receive 9 months of PRS at a cost of \$2,282.

#### **Conviction: Suspended Sentence**

- **Department of Adult Correction – Community Corrections**: All active sentences from Class B1- I felony convictions result in a period of post-release supervision (PRS) of between 9 and 12 months, depending on the severity of the charge. Supervision by a probation officer costs \$237.30 per offender per month.
  - Class B2 and C felony convictions do not result in a suspended sentence.

## **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 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 Public Safety; 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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March 7, 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				Active sentences for misdemeanor convictions are served in County jail.	Misdemeanants do not receive PRS	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.*