



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Fentanyl Drug Offenses and Related Changes.
Bill Number: Senate Bill 189 (Second Edition)
Sponsor(s):

SUMMARY TABLE

PARTIAL FISCAL IMPACT OF S.B.189, 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> |
|----------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| State Impact | | | | | |
| General Fund Revenue | - | - | - | - | - |
| Less Expenditures | - | 856,050 | 856,050 | 856,050 | 856,050 |
| General Fund Impact | - | (856,050) | (856,050) | (856,050) | (856,050) |

Note: These costs represent the average annual costs to the Administrative Office of the Courts and Indigent Defense Services for one of the four changes to the criminal code included in this bill; costs to the Dept. of Adult Correction for this charge will occur outside of the five year window. Costs for the remaining three charges in this bill cannot be estimated.

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: creates a new Class C felony; creates a new Class B2 felony; reclassifies an existing Class C felony to a Class B2 felony; and reclassifies an existing Class B2 felony to a Class B1 felony. 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.

Several of the charges included in this bill are new charges and therefore **have no data available** for projecting fiscal impact. Using the **limited charge and conviction data** available for **some of the existing offenses** related to death by distribution, Fiscal Research estimates the **partial fiscal impact** of this proposed legislation to be **\$710,268 per year to the Administrative Office of the Courts (AOC), \$145,782 per year to Indigent Defense Services (IDS), and \$571,257 to the Department of Adult Correction (DAC)** per annual number of convictions over the lifespan of the sentences. DAC’s projected costs from the increased charges

will be experienced outside of the five-year window that is the typical purview of Fiscal Research cost projections. The low number of convictions (9) in the existing data make future projections uncertain, and as such these estimates should not be considered predictive. Available data on the 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 S.B.189 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 | | |
| Felony | Cost | Rate | Cost | Rate | Cost | Length (Mo.) | Cost | Length (Mo.) | Rate | Cost | Length (Mo.) |
| ▲ B2 to B1 | +\$6,148 | -7% | No ▲ | 100% | +\$63,473 | +86 | No ▲ | No ▲ | 0% | N/A | 0 |
| B2 | \$17,704 | 85% | \$4,187 | 100% | \$115,137 | 156 | \$2,994 | 12 | 0% | N/A | 0 |
| ▲ C to B2 | +\$9,106 | +3% | +\$1,869 | 100% | +\$51,664 | +70 | No ▲ | No ▲ | 0% | N/A | 0 |
| C | \$8,598 | 82% | \$2,317 | 100% | \$63,473 | 86 | \$2,994 | 12 | 0% | N/A | 0 |

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

Bill Summary:

Section 2.(b) of S.B. 189 amends G.S. 14-18.4 in several ways.

The new G.S. 14-18.4.(a1) defines the new criminal offense of Death by Distribution Through Unlawful Delivery of Certain Controlled Substances. The new G.S. 14-18.4.(h).(1) makes violation of subsection (a1) a Class C felony.

- 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 C felony.

The new G.S. 14-18.4.(a2) defines the new criminal offense of Death by Distribution Through Unlawful Delivery with Malice of Certain Controlled Substances. The new G.S. 14-18.4.(h).(1a) makes violation of subsection (a2) a Class B2 felony.

- 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 B2 felony.

The new G.S. 14-18.4.(b) amends the existing criminal offense of Death by Distribution of Certain Controlled Substances to add the words “Through Unlawful Sale” to the offense’s definition and to eliminate the previous requirement of malice for this offense. The new G.S. 14-18.4.(h).(1a) makes violation of subsection (b) a Class B2 felony.

- The previous offense under G.S. 14-18.4.(b) was a Class C felony. In FY 2022, there were 78 charges and 9 convictions under this statute.
- Compared to Class C felonies, Class B2 felonies carry an average increased cost of \$9,106 to AOC per charge and a 3% higher IDS utilization rate with an averaged increased cost of \$1,869. If the same number of charges in FY 2022 were to carry forward into each successive year following passage of this proposed legislation, there would be an **average increased cost to AOC of \$710,268 per year and an average increased cost to IDS of \$145,782 per year.**
- Both Class C and Class B2 felony convictions always receive active sentences. Class C felons have an average active sentence length of 86 months (7.17 years) while Class B2 felons have an average active sentence length of 156 months (13 years). Any new convictions under this bill would therefore serve an additional 70 months in prison at an average additional cost of \$63,473 per conviction.
- The earliest this additional cost would impact DAC would be in 2031, beyond the five-year window that is the typical purview of Fiscal Research cost projections. If the same number (9) of convictions in FY 2022 were to carry forward, there would be **an average increased cost to DAC of \$571,257 per annual number of convictions** over the lifespan of the sentences.
- The low number of convictions (9) in the existing data make future projections uncertain, and as such these estimates should not be considered predictive. Please refer to the Operating Expenses section below for the average costs of increasing a Class C felony to a Class B2.

The new G.S. 14-18.4.(c) amends the existing criminal offense of Aggravated Death by Distribution of Certain Controlled Substances to add the words “Through Unlawful Sale” to the offense’s definition, deleting the element that the person did not act with malice, and by extending the period for a previous conviction of certain offenses from seven years to ten years. The new G.S. 14-18.4.(h).(2) makes violation of subsection (c) a Class B1 felony.

- The previous offense under G.S. 14-18.4.(c) was a Class B2 felony. In FY 2022, there were 5 charges and 0 convictions under this statute.
- It is unknown how many of the existing charges would fall under the new parameters of the charge as amended by this bill. Therefore, Fiscal Research is unable to predict the fiscal impact of this new charge. Please refer to the Operating Expenses section below for the average costs of increasing a Class B2 felony to a Class B1.

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.
 - **Increasing a charge from a Class B2 to a Class B1** carries an average increased cost of \$6,148 per charge.
 - **Class B2 charges** carry an average cost of \$17,704 per charge.
 - **Increasing a charge from a Class C to a Class B2** carries an average increased cost of \$9,106 per charge.
 - **Class C 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.
 - **Increasing a charge from a Class B2 to a Class B1** reduces IDS utilization by 7% and carries no change in cost.
 - **Class B2 charges** utilize IDS in 85% of cases at an average cost of \$4,187 per charge.
 - **Increasing a charge from a Class C to a Class B** increases IDS utilization by 3% and increase costs by \$1,869 per charge.
 - **Class C charges** utilize IDS in 82% of cases at an average cost of \$2,317 per charge.

Conviction: Active Sentence

- **Department of Adult Correction – Confinement**: Felony convictions that result in an active sentence are served in a State prison. The cost to add one offender to the prison system is \$24.26 per day or \$727.80 per month.
 - **100% of Class B1, B2, and C felonies serve active sentences.**
 - **Increasing a conviction from Class B2 to Class B1** carries an average increased sentence of 86 months at a cost of \$63,473 per conviction.
 - **Class B2 felonies** serve an average active sentence of 158 months at a cost of \$115,137 per conviction.



- **Increasing a conviction from Class C to Class B2** carries an average increased sentence of 70 months at a cost of \$51,664 per conviction.
- **Class C felonies** serve an average active sentence of 86 months at a cost of \$63,473 per conviction.
- 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 \$249.50 per offender per month.
 - **All Class B1, Class B2, and Class C**, whether new convictions under the new offenses or as a result of the increased penalty for an existing offense, **receive 12 months of PRS at a cost of \$2,994.**

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 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

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.

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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.