



NORTH CAROLINA GENERAL ASSEMBLY

2023 Session

Legislative Incarceration Fiscal Note

Short Title: Unmasking Mobs and Criminals.
Bill Number: House Bill 237 (Fourth Edition)
Sponsor(s):

SUMMARY TABLE

FISCAL IMPACT OF PCSCSCE-38, V.3

	<u>FY 2024-25</u>	<u>FY 2025-26</u>	<u>FY 2026-27</u>	<u>FY 2027-28</u>	<u>FY 2028-29</u>
State Impact					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	Likely Significant Budget Cost - 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.

Section 1 of the proposed legislation **expands the scope of five offenses (four Class 1 misdemeanors and one Class H felony)** by eliminating the exemption for any person wearing a mask for physical health or safety purposes.

Section 2 **increases the class of all misdemeanor and felony offenses by one level and requires an active sentence**, if the option is available at the higher level, **for any individual convicted of a misdemeanor or felony who concealed or attempted to conceal their identity during the offense**, as defined in the legislation. **The one class sentence enhancement would result in lengthier sentences.** The additional confinement months and costs for one elevated conviction are listed in Table 2 below. **Furthermore, the elimination of judicial discretion in sentencing would increase the number of individuals who serve an active sentence in prison** instead of a suspended sentence in the community. The increases in the rates of active sentences are also listed in Table 2. **It is unknown how many individuals conceal their identity during an offense, but the impact to the corrections system is likely significant.**

Section 4 **increases the class of an existing offense** related to standing, sitting, or lying upon highways or streets, if the person does so while participating in a demonstration, from a Class 2 misdemeanor to a Class A1 misdemeanor for a person’s first offense and to a Class H felony for second or subsequent offenses. Please refer to the Fiscal Analysis section for additional details on these sections.

Table 1: Cost of One Charge and Conviction in PCS H237-CSCE-38 v.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.)
Expanded H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
▲ 2 to H	▲ \$838	▲ 48%	▲ \$274	33%	\$8,119	11	\$2,282	9	▲ -11%	▲ \$2,848	▲ 12
Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost	Length (Mo.)
▲ 2 to A1	▲ \$402	▲ 22%	▲ \$44	Active sentences for misdemeanor convictions are served in county jail.			Misdemeanants do not receive PRS.		▲ -14%	▲ \$712	▲ 3
Expanded 1	\$335	62%	\$237						64%	\$3,322	14

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.

Table 2: Cost of Sentencing Enhancement and Mandatory Active Sentence in PCS H237-CSCE-38, v.3

Enhanced Offense Class	CY 2022	Active Sentence			Suspended Sentence		
		DAC - Confinement			DAC - Probation		
Felony	Number of Convictions	Rate	Additional Months	Additional Cost	Rate	Cost	Length (Mo.)
▲ B1 to A	294	100%	Life	NA	0%	N/A	N/A
▲ B2 to B1	168	100%	86	\$63,473	0%	N/A	N/A
▲ C to B2	551	100%	70	\$51,664	0%	N/A	N/A
▲ D to C	777	100%	22	\$16,237	0%	N/A	N/A
▲ E to D	1,784	100%	37	\$27,308	0%	N/A	N/A
▲ F to E	2,128	▲ 57% to 100%	9	\$6,643	Proposed legislation would eliminate judicial discretion to impose a suspended sentence.		
▲ G to F	3,628	▲ 51% to 100%	3	\$2,214			
▲ H to G	9,787	▲ 39% to 100%	4	\$2,952			
▲ I to H	6,575	▲ 33% to 100%	5	\$3,690			
▲ A1 Misdemeanor to I	8,296	▲ 0% to 100%	6	\$4,428			
Misdemeanor	Number of Convictions	Rate	Additional Days	Additional Cost	Rate	Cost	Length (Mo.)
▲ 1 to A1	12,300	Active sentences for misdemeanor convictions are served in County jail.			Proposed legislation would eliminate judicial discretion for a suspended sentence.		
▲ 2 to 1	4,401						
▲ 3 to 2	5,909						

Note: 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.

FISCAL ANALYSIS

Section 1 of the proposed legislation expands the scope of five offenses by amending G.S. 14-12.11 to eliminate the exemption for any person wearing a mask for the purpose of ensuring the physical health or safety of the wearer or others. The underlying offenses are found in G.S. 14-12.7, 14-12.8, 22 14-12.9, and 14-12.10, all of which are Class 1 misdemeanors, and G.S. 14- 12.14, which is a Class H felony. The Administrative Office of the Courts (AOC) currently does not have specific offense codes for violations of G.S 14-12.7, 14-12.8, 22 14-12.9, 14-12.10 or G.S. 14-12.14. The lack of an AOC offense code is some indication that these offenses are infrequently charged and/or infrequently result in convictions. **Fiscal Research estimates minimal fiscal impact from Section 1.**

Section 2 creates a sentence enhancement of one class higher if the defendant is convicted of a misdemeanor or felony and it is found that the person wore a mask or other clothing or device that concealed or attempted to conceal the person's identity. Additionally, it requires the courts to impose an active sentence if the enhanced class permits imprisonment, thereby eliminating judicial discretion to sentence an offender to a suspended sentence.

There is no historical data on the number of convicted defendants who concealed or attempted to conceal their identity while committing an offense. As a result, Fiscal Research is unable to provide a precise projection of the impact of this section on the corrections system. However, there would be an impact on the prison population for each elevated sentence as the higher offense class results in longer prison sentences. Furthermore, requiring imprisonment when the option is available would significantly increase the rate of active sentences. Specifically, an active sentence would be required for any sentence enhanced to a Class E, F, G, or H felony and any sentence enhanced to a Class I felony if the defendant had a prior record level of IV, V, or VI.

In FY 2022, there were 33,988 individuals convicted of a Class A1 misdemeanor through Class B1 felony and thus could potentially be imprisoned or experience a lengthier sentence under this proposed legislation. For illustrative purposes only, if 10% of FY 2022 offenders attempted to conceal their identity, 3,400 individuals would receive lengthier sentences due to the increased class at a cost of \$16.9 million over the life of their sentences. Furthermore, the mandatory active sentence would significantly increase prison bed demand. Continuing with the illustration, requiring an active sentence would result in 2,138 additional individuals incarcerated in State prisons that would otherwise be supervised in the community or, for Class A1 misdemeanants, serving their sentence in county jail. The annual operating cost for one offender is \$8,856, and so under this illustration, additional confinement costs for 2,138 individuals would be \$18.9 million in the first year alone. Subsequent year costs would increase further as additional individuals enter prison in subsequent years and require beds that have not yet been fully vacated by releases from the prior year. As a result, **Fiscal Research projects a likely significant fiscal impact to the corrections system under Section 2.**

Section 4 amends G.S. 20-174.1, Standing, sitting, or lying upon highways or streets prohibited. Currently, it is a Class 2 misdemeanor for a person to willfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic. This section would make it a Class A1 misdemeanor to engage in the offense while participating in a demonstration intended to

prohibit or impede the use of the highway or street. For second or subsequent offenses, it would be elevated to a Class H felony. In 2023, 635 defendants were charged with violating G.S. 20-174.1. In FY 2021-22, there were 74 convictions under G.S. 20-174.1. There is no underlying data to determine how many were participating in a demonstration. **Thus, Fiscal Research is unable to project the fiscal impact of Section 4.**

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 806 prison beds available under standard operating capacity for FY 2023-24. Due to a lack of applicable data, Fiscal Research is unable to estimate the impact of this proposed legislation on prison capital requirements.

Operating Expenses

The following section explains the source of potential costs 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 A felonies** carry an average cost of \$55,469 per charge to the judicial system.
 - **Class B1 felonies** carry an average cost of \$23,852 per charge to the judicial system.
 - **Class B2 felonies** carry an average cost of \$17,704 per charge to the judicial system.
 - **Class C felonies** carry an average cost of \$8,598 per charge to the judicial system.
 - **Class D felonies** carry an average cost of \$7,027 per charge to the judicial system.
 - **Class E felonies** carry an average cost of \$3,281 per charge to the judicial system.
 - **Class F felonies** carry an average cost of \$1,849 per charge to the judicial system.
 - **Class G felonies** carry an average cost of \$1,525 per charge to the judicial system.
 - **Class H felonies** carry an average cost of \$1,016 per charge to the judicial system.
 - **Class I felonies** carry an average cost of \$740 per charge to the judicial system.
 - **Class A1 misdemeanors** carry an average cost of \$580 per charge to the judicial system.
 - **Class 1 misdemeanors** carry an average cost of \$335 per charge to the judicial system.
 - **Class 2 misdemeanors** carry an average cost of \$178 per charge to the judicial system.
 - **Class 3 misdemeanors** carry an average cost of \$63 per charge to the judicial system.
- **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 A charges** utilize IDS in 95% of cases at a cost of \$11,967 per charge.
- **Class B1 charges** utilize IDS in 78% of cases at a cost of \$4,187 per charge.
- **Class B2 charges** utilize IDS in 85% of cases at a cost of \$4,187 per charge.
- **Class C charges** utilize IDS in 82% of cases at a cost of \$2,317 per charge.
- **Class D charges** utilize IDS in 89% of cases at a cost of \$1,744 per charge.
- **Class E charges** utilize IDS in 79% of cases at a cost of \$909 per charge.
- **Class F charges** utilize IDS in 74% of cases at a cost of \$849 per charge.
- **Class G charges** utilize IDS in 78% of cases at a cost of \$706 per charge.
- **Class H charges** utilize IDS in 78% of cases at a cost of \$510 per charge.
- **Class I charges** utilize IDS in 68% of cases at a cost of \$407 per charge.
- **Class A1 charges** utilize IDS in 52% of cases at a cost of \$281 per charge.
- **Class 1 charges** utilize IDS in 62% of cases at a cost of \$237 per charge.
- **Class 2 charges** utilize IDS in 30% of cases at a cost of \$237 per charge.
- **Class 3 charges** 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.
 - **100% of Class A felonies** serve an active sentence of life in prison or receive capital punishment. Because there is no set end date to these sentences, Fiscal Research cannot provide an average cost of incarceration for Class A felonies.
 - **100% of Class B1 felonies** serve an average active sentence of 242 months at a cost of \$178,610 per conviction.
 - **100% of Class B2 felonies** serve an average active sentence of 156 months at a cost of \$115,137 per conviction.
 - **100% of Class C felonies** serve an average active sentence of 86 months at a cost of \$63,473 per conviction.
 - **100% of Class D felonies** serve an average active sentence of 64 months at a cost of \$47,236 per conviction.
 - **57% of Class E felonies** serve an average active sentence of 27 months at a cost of \$19,928 per conviction.
 - **51% of Class F felonies** serve an average active sentence of 18 months at a cost of \$13,285 per conviction.
 - **39% of Class G felonies** serve an average active sentence of 15 months at a cost of \$11,071 per conviction.
 - **33% of Class H felonies** serve an average active sentence of 11 months at a cost of \$8,119 per conviction.
 - **15% of Class I felonies** serve an average active sentence of 6 months at a cost of \$4,428 per conviction.
 - **Active sentences for misdemeanor convictions** are served in local jails and only incur costs to the Statewide Misdemeanant Confinement Program (SMCP) when the sentence exceeds 90 days, or the conviction is for impaired driving. Because the **new Class 1 and A1 offenses** in the proposed legislation do not meet either criterion,

Fiscal Research anticipates convictions of the new charge resulting in active sentences would have no fiscal impact to the State.

- 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. There is a one-time cost of \$146 per PRS hearing. Supervision by a probation officer costs \$237.30 per offender per month.
 - **Class A felons** are not released from prison and therefore do not serve PRS.
 - **Class B1 felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class B2 felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class C felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class D felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class E felons** with active sentences serve 12 months of PRS at a cost of \$2,994.
 - **Class F felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
 - **Class G felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
 - **Class H felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
 - **Class I felons** with active sentences serve 9 months of PRS at a cost of \$2,282.
 - **Misdemeanants** do not receive PRS.

Conviction: Suspended Sentence

- Department of Adult Correction – Community Corrections: 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.
 - **Class A convictions** cannot receive a suspended sentence.
 - **Class B1 convictions** cannot receive a suspended sentence.
 - **Class B2 convictions** cannot receive a suspended sentence.
 - **Class C convictions** cannot receive a suspended sentence.
 - **Class D convictions** cannot receive a suspended sentence.
 - **43% of Class E convictions** resulted in a suspended sentence with an average length of 31 months at a cost of \$7,356.
 - **49% of Class F convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$7,119.
 - **61% of Class G convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$6,170.
 - **67% of Class H convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$5,933.
 - **85% of Class I convictions** resulted in a suspended sentence with an average length of 25 months at a cost of \$5,221.
 - **64% of Class A1 convictions** resulted in a suspended sentence with an average length of 16 months at a cost of \$3,797.
 - **64% of Class 1 convictions** resulted in a suspended sentence with an average length of 14 months at a cost of \$3,322.
 - **78% of Class 2 convictions** resulted in a suspended sentence with an average length of 13 months at a cost of \$3,085.

- **84% of Class 3 convictions** resulted in 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 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

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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.