

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: HB 304 1st Edition
SHORT TITLE: Stalking/Supervised Probation is Minimum
SPONSOR(S): Representatives Setzer; and Glazier

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
Correction					
Recurring	\$0	\$26,000 or less	\$46,300 or less each year		
Judicial					
Recurring	Unable to determine exact amount; dependent upon whether there is an increase in revocation hearings and appeals.				
TOTAL EXPENDITURES:	Unable to determine exact amount.				
ADDITIONAL PRISON BEDS*	Unable to determine exact number of beds; no substantial impact anticipated				
POSITIONS: (cumulative)	Unable to determine exact amount.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch				
EFFECTIVE DATE:	December 1, 2003				
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY: HB 304 amends G.S. 14-277.3(b) to require that a person convicted of a stalking offense and who is sentenced to community punishment be placed on supervised probation in addition to any other punishment imposed by the court.

ASSUMPTIONS AND METHODOLOGY:

Current G.S. 14-277.3(b) makes stalking a Class A1 misdemeanor, unless a court order is in effect prohibiting similar behavior by that person (which in turn is a Class H felony) or the person has been previously convicted of a stalking offense (which in turn is a Class F felony).

While offenders convicted of a Class A1 misdemeanor and some offenders convicted of a Class H felony (based on prior record level) are currently eligible to receive community punishment under the sentencing grid, offenders convicted of the Class F felony are only eligible for intermediate and active punishments.

Prior to March 1, 2002, stalking was punishable as a Class 1 misdemeanor, a Class A1 misdemeanor, and a Class I felony. Effective March 1, 2002, the punishment for misdemeanor and felony stalking was reclassified. The Class 1 misdemeanor was raised to a Class A1 misdemeanor, the Class A1 misdemeanor was raised to a Class H felony, and the Class I felony was raised to a Class F felony. The reclassification of these offenses to more serious offense classes results in a change in the dispositions available, with fewer community punishments available based on the offender's offense class and prior record level. Due to this change, the historic data typically used to predict costs associated with changing a criminal penalty is not as relevant, and it is more difficult to predict the number of offenders who would be affected. ***For this fiscal analysis, we assume that the number of offenders affected will be less than or equal to the number who would have been affected in FY 2001-02.***

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

In FY 2001-2002¹, there were 93 convictions for misdemeanor stalking and 2 convictions for felony stalking. Of the 93 convictions for misdemeanor stalking, 78 received a community punishment and the remainder received an active sentence. Of those receiving a community punishment, 39 were placed on supervised probation and 39 were placed on unsupervised probation. Both of the convictions for felony stalking resulted in community punishments with supervised probation. It is important to note that the number of offenders placed on unsupervised community punishment may decrease significantly due to the reclassification of stalking offenses.

¹ The effective date of the reclassification of stalking offenses was over halfway into the year on which the FY 2001-2002 data are based. Due to the lag-time between arrest and conviction, the reclassification of these offenses is not evident in the FY 2001-2002 data.

Because no data is available concerning the number of stalking offenders sentenced *only* under the reclassified stalking statutes, we cannot determine the number of offenders who may be convicted of a Class A1 misdemeanor and sentenced to unsupervised community punishment. However, due to the increase in offense class in March 2002, it is likely that fewer misdemeanor stalking offenders are now sentenced to unsupervised probation. We assume, therefore, that 39 or fewer offenders would be affected by this bill each year. For those offenders who are affected, community punishment costs would increase. Costs for unsupervised probation range from \$0 to \$.73 per day (the higher cost is for offenders assigned to community service). HB 304 would require these offenders to be sentenced to supervised community punishment at a daily cost per offender of \$1.83/day.

In addition, supervised offenders are more likely to have violations discovered, and therefore more likely to have their probation revoked. Thus, this legislation could increase the number of probation revocations. For the Class A1 misdemeanor offense, a community punishment is authorized for all three prior conviction levels. However, it is likely that the majority of stalking misdemeanants given unsupervised probation under current statute fall under Prior Record Level 1. Overall, average active time served for Class A1 misdemeanants in Prior Record Level 1 is 32 days. Active sentences of 30 to 90 days are served in county jails, but paid for by DOC at a rate of \$18 per day.

Our cost estimate assumes the following:

- 39 offenders or fewer would be affected by this bill.
- Most of the affected offenders fall in Prior Record Level I.
- Increased costs per affected offender would range from \$1.10 to \$1.83 per day for community supervision. (Maximum increase to Community Corrections would be \$1.83.)
- No more than 51 percent of the offenders currently serving unsupervised probation would be revoked; these offenders would serve active sentences at county jails, at a cost to the DOC of \$18 per day.
- Offenders who are moved from unsupervised to supervised probation under this legislation will have the same success rates and average time spent on probation as the average offender with the same offense class and prior record level.

The average daily cost for a Class A1 offender who successfully completes supervised probation is \$1.83, and the average daily cost for a revoked Class A1 offender in Prior Record Level I is \$2.95. Approximately 50 percent of Class A1 misdemeanants on community supervision are unsuccessful, and the average active time served for Class A1 misdemeanants in Prior Record Level 1 is 32 days. Therefore, we estimate the following *maximum* cost increases:

- 20 offenders revoked to jail @ \$1.83/day for 429 days (community supervision) and \$18/day for 32 days (jail time once revoked) – average daily cost = \$2.95/offender
- 19 offenders successfully completing community supervision @ \$1.83 per day for 549 days

Total cost would be *no more than* \$26,000 in the first year and \$46,300 in subsequent years, due to revocations.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC data indicate that during calendar year 2002, there were 833 charges of misdemeanor stalking and 16 of felony stalking. Currently, the court has the discretion to impose supervised probation, unsupervised probation, fines, as well as any regular condition of probation and other sanctions or conditions of probation that are not defined as intermediate punishment. Thus, some convicted offenders sentenced to community punishment that do not currently receive supervised probation, would be placed on supervised probation in addition to any other punishment imposed by the court. AOC does not anticipate a major impact on litigation strategies or costs. However, there could be a substantial impact on the court as a result of required supervised probation under the bill; with the larger pool of probationers, there would also be more probation violations, and more probation revocation hearings and appeals.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

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