

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1035 (Committee Substitute)

SHORT TITLE: Restorative Justice Act

SPONSOR(S): Representative Michaux

FISCAL IMPACT: **Expenditures:** **Increase (X)** **Decrease ()**
 Revenues: **Increase (X)** **Decrease ()**
 No Impact ()
 No Overall Estimate Available (X)

FUND AFFECTED: **General Fund (X)** **Highway Fund ()** **Local Fund ()**
 Other Fund ()

BILL SUMMARY: (Taken from Inst. of Government Summary)

Adds new article 81B to G.S. Chapter 15A creating varied sentencing options for persons convicted of crimes. Requires Department of Correction (DOC) to develop correctional system with four basic correctional levels: (1) community sanctions; (2) intermediate sanctions; (3) institutional sanctions; and (4) community reintegration services.

Directs that community sanctions level have two primary programs (regular probation and fines) for purpose of making offenders pay restitution and ensuring that misdemeanants and lower-level, nondangerous offenders without extensive prior criminal records comply with all court-ordered conditions of sentence. Provides that offenders sentenced to regular probation shall pay restitution to community and identifiable crime victims; also provides that court may require offenders to perform community service. Sets minimum and maximum terms for regular probation depending on nature of offender. Provides that Division of Adult Probation and Parole (Division of Probation) may administratively reduce regular probation term or increase intensity of probation supervision depending on offender's compliance with court-ordered conditions of sentence (including restitution). Also provides that if offender continues to violate court-ordered conditions, Division of Probation may refer offender to DOC hearing officer to determine whether person should be returned to court to be resentenced at intermediate sanctions level or be kept in regular probation at even higher level of supervision.

Directs that intermediate sanctions level have single primary program (intensive probation) for purpose of making offenders pay restitution; ensuring that misdemeanants, lower-level nondangerous felons with moderate prior criminal records, and mid-level nondangerous felons with short prior criminal records comply with court-ordered conditions of sentence; and effectively rehabilitating offenders by providing specialized treatment programs. Provides that

offenders shall pay restitution to community and identifiable crime victims. Also provides that court may require offenders to perform community service and to participate in any punishment or rehabilitation program recommended by a Community Penalties program. Allows split-sentence option, under which intermediate sanctions offender may be required to serve up to 30 days in county jail, in jurisdictions where DOC and county jail have entered into split-sentence contract. Limits intensive probation case load that each probation officer may carry and sets minimum and maximum period of intensive probation supervision depending on nature of offender. Provides that Division of Probation may administratively reduce term of intensive probation or increase intensity of supervision depending on offender's compliance with court-ordered conditions of sentence (including restitution).

Also provides that if offender continues to violate court-ordered conditions, Division of Probation may refer offender to DOC hearing officer to determine whether person should be returned to court for contempt of court hearing (which carries additional sanction of 180 days of incarceration in DOC institution, not to be credited against original sentence) or be required to participate in shock incarceration program (under which offender can be incarcerated up to 30 days in DOC institution).

Establishes Intermediate Sanctions Commission, consisting of 21 members (appointed by Governor in consultation with President Pro Tem and Speaker) and serving staggered three-year terms. Directs Commission to work with local government, communities, and programs to prepare biannually an intermediate sanctions plan addressing the number of persons eligible for intermediate sanctions in each judicial district; the types of intermediate sanctions program enhancements and number of treatment slots needed for offenders in each district; the cost of treatment slots in each district; and a formula for distributing grant money available to the Commission to each district. Provides that General Assembly shall provide a block of funds to the Commission for the purpose of establishing at least five intermediate sanctions enhancement programs during 1993-94 fiscal year and a block of funds annually thereafter to the Commission for the purpose of implementing a statewide system of intermediate sanctions enhancement programs.

Directs that institutional sanctions level be for purpose of protecting public against dangerous and habitual offenders and providing offenders with opportunity to participate in treatment, educational, and vocational programs designed for rehabilitation. Directs DOC to develop a master plan for institutional treatment, educational, and vocational programs. Also provides that DOC may award incarcerated offenders merit-based good time credits for participating in and completing DOC-certified rehabilitation programs.

Directs that community reintegration services level be for purpose of decreasing recidivism. Directs DOC to develop life-skills training program for all incarcerated offenders who are within one year of their earliest release date; allows DOC to place such offenders in

half-way houses or community-based substance abuse treatment facilities; allows Parole Commission to parole such offenders to intensive parole supervision programs to assist such persons in their transition from prison into the community; and allows DOC to establish ex-offender assistance centers around state.

Also adds section on pretrial diversion services for purpose of identifying persons with mental health or substance abuse problems and diverting them to appropriate mental health and substance abuse programs in lieu of prosecution. Also makes North Carolina Sentencing and Policy Advisory Commission a permanent, independent state agency. Also expands jurisdiction of Community Penalties programs to all persons eligible for intermediate sanctions.

Appropriates from General Fund \$20,200,000 to DOC for 1993-94 fiscal year for described programs, to be allocated as specified in bill; \$300,000 to Department of Justice for 1993-94 fiscal year for restitution collection unit; \$1,500,000 to Administrative Office of Courts for 1993-94 fiscal year for expansion of Community Penalties programs; and \$3,000,000 to Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for 1993-94 fiscal year to expand the Treatment Alternatives to Street Crimes program.

AMENDMENTS/COMMITTEE SUBSTITUTES - May 25, 1993

House committee substitute revises new G.S. 15A-1340.15 to require, rather than just authorize, courts to sentence offenders to community, intermediate, and institutional sanctions as described in bill; also provides that offenders placed in community or intermediate sanctions shall be sentenced in accordance with current G.S. 15A-1342(c) (providing for imposition of probation conditions and activation of suspended sentence of imprisonment on violation of conditions). Revises new G.S. 15A-1340.16 (community sanctions) and G.S. 15A-1340.17 (intermediate sanctions) to set community restitution fee at \$50. Adds new G.S. 15A-1340.16(q) and 15A-1340.17(u) to provide that actions taken by the Dep't of Correction to increase punishment or intensify probation are subject to review under the contested case provisions of G.S. Ch. 150B. Revises G.S. 15A-1340.17(s) to provide that court, on petition of Dep't of Correction hearing officer, may order offenders who repeatedly violate conditions of sentence to serve up to 30 days of shock incarceration in a Dep't of Correction facility (original bill allowed Dep't hearing officer to order shock incarceration). Deletes proposed G.S. 15A-1340.18(o) requiring General Assembly to allocate unspecified amount of funds during 1993-94 fiscal year for pilot intermediate sanctions sentence enhancement programs and unspecified amount of funds annually thereafter for such programs. Deletes G.S. 15A-1340.22 concerning pretrial diversion services for persons with mental health and substance abuse problems. Deletes proposed G.S. 15A-1340.23 making NC Sentencing and Policy Advisory Comm'n a permanent state agency.

EFFECTIVE DATE: Appropriations become effective July 1, 1993.

Remainder of bill becomes effective January 1, 1994.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Correction; Office of Administrative Hearings; Administrative Office of the Courts; Department of Justice; Department of Human Resources.

DEPARTMENT OF CORRECTION

FISCAL IMPACT

FY 93-94 FY 94-95 FY 95-96 FY 96-97 FY 97-98

EXPENDITURES

RECURRING

NON-RECURRING No Estimate Available

REVENUES/RECEIPTS

RECURRING

NON-RECURRING

POSITIONS:

ASSUMPTIONS AND METHODOLOGY: Enactment of HB 1035 is estimated to result in additional spending within the Department of Correction in a number of areas to be outlined below. Additional costs, as identified for purposes of this fiscal note, are based on current sentencing and policy practices where possible. However, the proposed legislation seeks to significantly alter sentencing patterns and correctional programming. **Since the legislation does not specifically outline what categories of offenders would be sentenced to the three distinct levels of correctional programming specified in the bill as community sanctions, intermediate sanctions, and institutional sanctions, estimates of fiscal impact are often impossible.** In order to provide some estimate of fiscal impact, it has been necessary to assume that specific provisions of the proposed legislation are based on the sentencing scheme proposed in HB 277 (Structured Sentencing-2). Note that this bill and HB 277 are similar in that they both seek to expand community and intermediate punishments.

Note, also, that an attempt was made in conjunction with the N.C. Sentencing and Policy Commission to base estimates on the sentencing matrix listed on page 55 of "The Plan for Restoring Justice," the publication prepared by the N.C. Justice Fellowship Task Force (the state-wide policy developmental committee responsible for researching and making the recommendations that are proposed within this legislation). However, the Fellowship's matrix allowed for a number of variables that prohibited any reliable estimate of sentencing outcomes. Hence, although the Fellowship's matrix differs significantly from the Commission's plan, **the Sentencing Commission provides the best available data upon which many of the following estimates are based.** It has been noted by Richard C. Wertz, Director of the N.C. Justice Fellowship Task Force this bill could serve to supplement the expansion of community and intermediate punishment

programs currently proposed by the Sentencing Commission in HB 277 (Structured Sentencing-2).

Accordingly, the following note does not provide a specific estimate for the overall fiscal impact of the proposed legislation. However, estimates of specific provisions contained within the bill are available, although often times based on the Sentencing Commission's data. These estimates have been organized so that additional expenditures required by Department of Correction (DOC) appear first.

Potential revenues and a number of optional spending areas are also listed. Areas of specific expenditure appear in the following order:

- (1) Housing All Non-DWI Sentenced Misdemeanants in Prison;
- (2) Beds/expenditure required by Contempt of Court and Shock Incarceration
- (3) Reduction of Probation/Parole Caseloads;
- (4) Implementation of a New Hearing Officer/Probation Violation Procedure;
- (5) Administrative Procedure Act;
- (6) Establishment of the Intermediate Sanctions Commission;
- (7) Development of a Life-skills Training Program for all Incarcerated Offenders; and,
- (8) DOC Restitution Billing and Collections system.

Following those expenditures and revenues estimated for the DOC are potential expenditures identified to impact the Administrative Office of the Courts, Department of Justice, and Department of Human Resources.

Housing All Non-DWI Sentenced Misdemeanants in Prison (HB 1035 CS, Sec. 15A-1340.14(a), p. 3). The proposed legislation states that the DOC "...shall provide correctional services to all sentenced misdemeanants and felons except misdemeanants sentenced to county jails under G.S. 20-138.1." G.S. 20-138.1 is the impaired driving statute. Drafters of the legislation note that this provision is intended to require that all non-DWI sentenced misdemeanants receiving a sentence less than 180 days be incarcerated in DOC operated prisons instead of local jail facilities as is the current practice. The table below was prepared by the N.C. Sentencing and Policy Advisory Commission and shows the estimated impact of shifting said offenders under the current system and also assuming enactment of HB 277 (effective January 1, 1994). Both sets of estimates assume an average growth rate of 3% per year. It is also assumed that misdemeanants would serve the same amount of time in the DOC as they would serve in county jails. Thus, if inmates are paroled at earlier dates, the following estimates could be reduced.

**Additional Daily Misdemeanant Population
within the DOC**

<u>Fiscal Year</u>	<u>Under Current Sentencing Practices</u>	<u>Assuming Enactment of HB 277</u>
93-94	932	962
94-95	1,884	2,020

95-96	1,926	2,119
96-97	1,966	2,216
97-98	2,006	2,308

Additional state (general fund) expenditures resulting from the shift are calculated in terms of operating (recurring) and capital (non-recurring) costs.

Operating costs are estimated by subtracting the \$14.50 per diem currently paid to counties for state inmates housed in local facilities from additional required operating expenditures. Additional operating or recurring expenditures are calculated at the rate of \$44.53 per minimum custody inmate per day. Hence, additional estimated operating costs for FY 93-94 under current sentencing practices would be [$\$44.53 \times 181 \text{ days (relevant \# of days from bill's 1/1/94 effective date)} \times 932 \text{ inmates}$] - [$\$14.50 \text{ per diem} \times 181 \text{ days} \times 932 \text{ inmates}$]. This calculation yields an additional operating expenditure of \$5,065,821 in FY 93-94. Operating expenditures are calculated in the same manner for FY 94-95 through 97-98 except that they reflect costs for an entire fiscal year rather than just 6 months.

Non-recurring or capital costs are estimated by multiplying the additional beds that would be required by DOC in each fiscal year x \$11,740 (average cost of minimum security bed taken from page VI of the DOC Master Plan based on beds constructed in new and expanded facilities). For FY 93-94, 932 new minimum security beds x \$11,740 yields an expenditure of \$10,941,680. Costs for the remaining years are calculated based on the number of beds required minus the number of new beds already constructed in the preceding year(s).

Estimates for additional recurring and non-recurring capital costs (based on current sentencing practices) through FY 97-98 are summarized in the following table.

FISCAL IMPACT - Current Sentencing Practices

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES*	\$16,007,501	\$31,826,910	\$21,603,870	\$22,018,827	\$2
RECURRING	5,065,821	20,650,430	21,110,790	21,549,227	21
NON-RECURRING	10,941,680	11,176,480	493,080	469,600	46

If this legislation were enacted under the sentencing guidelines proposed in the structured sentencing bill (HB 277), somewhat higher costs would result from those additional inmates shown in the table on page 5. Calculated in the same manner, the following additional expenditure would be required:

FISCAL IMPACT - Proposed Sentencing Practices Under HB 277

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES*	16,522,764	34,562,039	24,388,513	25,428,245	26
RECURRING	5,228,884	22,141,119	23,226,253	24,289,465	25

*** Expenditures do not include inflationary or salary increases.**

Beds/Expenditure Required by Contempt of Court and Shock

Incarceration (HB 1035 CS, Sec. 15A-1340.17(s)(t), p. 8). The proposed legislation authorizes the courts to "sentence intensive probation supervision offenders who have violated the court-ordered conditions of their sentences to up to 180 days of incarceration in a Department of Correction institution for contempt of court." The bill states that the DOC may use up to 4,000 prison beds at any given time for the intensive supervision offenders incarcerated under the contempt of court provision. The period of incarceration would not count toward satisfying the "**original intensive probation supervision sentence**". The bill does not state that the time served would not count toward the original suspended sentence if probation were revoked.

The bill also authorizes the courts to order repeat intensive probation violators "to serve up to 30 days of Shock Incarceration in a Department of Correction Institution" upon petition by a DOC violations hearing officer. The legislation states that the DOC may use up to 1,000 prison beds for this program at any given time. The impact of designating up to 5,000 prison beds for the above two programs can not be estimated for the following reasons:

(1) The bill states that the DOC may use up to 5,000 beds. There is no data to suggest how often judges might order contempt of court or shock incarceration or for how long of a term, and (2), there is no data to suggest how the proposed legislation would affect the expected rates of probation revocation.

Since the bill offers a number of alternatives to address violations prior to court action, it is very likely that current rates of revocation will decline. Using estimates prepared by the N.C. Sentencing and Policy Advisory Commission that have been adjusted to predict future prison populations upon passage of HB 277 (Structured Sentencing-2), limited comparisons can be made:

The Commission estimates that in FY 97-98, there would be approximately 25,835 incarcerated offenders within the DOC under the Structured Sentencing Plan. Of this total, the Commission estimates that 4,885 inmates would be incarcerated for probation revocations. Assuming that there were no probation revocations offenders incarcerated, there would be almost 5000 (i.e., 4,885) available beds to be used for contempt of court and shock incarceration offenders. Obviously, this would be an incorrect assumption; however, without the required data, there is no way to predict the number of beds required for revocations or the proposed programs. In addition, it is possible that a large number of individual offenders could receive both intermediate penalties and eventually be revoked. For these reasons, **no estimate is available.**

FISCAL IMPACT

(Contempt of Court and Shock Incarceration Provisions)

FY 93-94 FY 94-95 FY 95-96 FY 96-97

FY

EXPENDITURES

RECURRING No Estimate Available
NON-RECURRING

TECHNICAL CONSIDERATIONS: Although the bill authorizes the courts to "sentence intensive probation supervision offenders who have violated the court-ordered conditions (emphasis added) of their sentences to up to 180 days of incarceration in a Department of Correction institution for contempt of court," the legislation is not clear regarding what penalties may be imposed by the courts against offenders who violate those additional conditions of probation imposed by a violations hearing officer (i.e., additional community service) or imposed by Division of Adult Probation and Parole (DAPP) when administratively increasing the intensity of supervision (i.e., electronic house arrest).

Reduction of Probation/Parole Caseloads This proposed legislation states that... "(c) caseloads for regular probation offenders shall not exceed 90 offenders per officer on or after July 1, 1995." It also states that intermediate or intensive probation offenders shall be initially placed... "in case loads that do not exceed an offender to probation officer ratio of 25:2...." Offenders who have served at least 30 days in the 25:2 caseloads may be placed in caseloads that do not exceed a ratio of 100:2 for the remainder of their term. The bill states that intermediate sanctions offenders... "who are actively participating in a supervised intermediate sanctions sentence enhancement program..." may be placed... "in administrative caseloads that have no required offender to probation officer ratio limitations." The bill also limits the term (expressed in a range for each type of offender) for which the courts may sentence offenders to regular or intensive probation.

Pertaining to parole caseloads, the legislation states that... "the Parole Commission may parole incarcerated offenders who are within one year of their earliest release dates to an intensive parole supervision program." The bill requires that the intensive parole supervision caseloads not exceed an offender to officer ratio of 60:1.

As previously explained, there is no data - specific to this bill - from which estimates may be made. Hence, it is assumed that the Sentencing Commission's proposal is in place and offenders are distributed throughout community, intermediate, and institutional sanctions programs accordingly. To develop estimates of impact (resulting from expanded community and intermediate sanctions in combination with limited caseloads), a number of assumptions must be made:

(1) The proposed legislation states that the applicability of sentencing options will apply to all criminal offenses other than impaired driving. It is unclear how DWI cases would be kept separate and apart within the Division of Adult Probation and Parole. Also, available data from the Sentencing Commission includes DWI cases in the new sentencing structure. Hence, it is assumed that DWI cases remain within the general offender population and are subject to the same conditions of probation as other sentenced offenders.

(2) It must be determined for what average term offenders will serve on probation. Under existing law and within the Structured Sentencing Plan, regular probationers may receive a term of up to 5 years with no minimum term. Intensive probationers may receive a term of not less than six months and up to five years. The average term served is currently 22.9 months for regular probationers and 9 months for intensive probationers. This bill proposes that regular misdemeanor probationers receive a term of not less than six nor more than 18 months and, that regular felon probationers receive not less than 12 nor more than 30 months. Misdemeanant intensive offenders would receive a term of not less than 12 nor more than 24 months and, felons would receive not less than 18 nor more than 36 months. There is no data available to estimate, reliably, how judges would sentence offenders under these new guidelines nor any data to suggest the average of the actual time offenders would serve.

[Note that it is the current practice of the courts and the Division of Adult Probation and Parole (DAPP) to terminate offenders who have completed all conditions of probation from supervision before the actual sentenced term of probation is served. Also, misdemeanants are generally terminated before felons.]

In the absence of data and since this estimate is being calculated with the assumption that Structured Sentencing is in place, it is also assumed that the average term served by regular probationers is 22.9 months and intensive probationers serve an average of 9 months. If the above terms proposed in this bill were enacted, it is likely that the average term served by regular offenders would decrease at the same time the average term for intensive offenders increased.

Regular Probation: (HB 1035 CS, Sec. 15A-1340.16(1), p. 4).Based on the current offender to officer ratio of about 110:1, the DOC estimates that it would cost approximately \$9,827,094 to fund an additional 183 regular probation officers, 43 stenos, and 43 unit supervisors to implement the proposed 90:1 ratio. [Note that the DAPP has an established ratio of 1 unit supervisor per 7 probation officers and 1 steno. The above figures include 26 unit supervisors to manage the additional officers and 17 supervisors to fund those positions that the division is currently short.] Since the bill would not make the proposed ratio mandatory until July 1, 1995, these costs could be spread over the first two fiscal years.

In addition, new costs would be incurred as more offenders were added to the regular and intensive caseloads as a result of the expanded community and intermediate sanctions and normal growth rates. The following table shows the estimated increase in the regular probation caseload and the estimated number of additional regular probation officers and unit supervisor/steno positions that would be required based on the number of new admissions projected under the Structured Sentencing Plan.

REGULAR PROBATION REQUIREMENTS

INCREASE IN REG.	# OF REQUIRED	# OF REQUIRED
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<u>FISCAL YR.</u> <u>SUP./STENOS</u>	<u>PROBATION CASELOAD</u>	<u>OFFICERS</u>	<u>UNIT</u>
*93-94	1,549	17	2
94-95	4,471	32	5
95-96	11,113	74	11
96-97	14,416	37	5
97-98	17,491	<u>34</u>	<u>5</u>
Total		194	28

*Based on January 1, 1994 effective date.

Expenditures to support the above new positions **and** those positions required to implement the 90:1 caseload ratio for existing caseloads are as follows:

	FISCAL IMPACT - REGULAR PROBATION				FY
	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	
EXPENDITURES*	\$2,945,455	\$11,831,711	\$14,986,056	\$16,547,117	\$1
RECURRING	2,669,458	11,508,566	14,847,219	16,482,980	18
NON-RECURRING	275,997	323,145	138,837	64,137	63
NEW POSITIONS:					
Officer	108	124	74	37	34
Unit Supervisor	23	27	11	5	5
Steno	23	27	11	5	5
TOTAL	154	178	96	47	44

* Based on January 1, 1994 effective date and does not include salary or inflationary increases.

Intensive Probation: (HB 1035 CS, Sec. 15A-1340.17(j)(k)(l), p.6). Current intensive probation caseloads have been maintained at a 25:2 offender-to-officer ratio. Additional resources are not required to meet those ratios prescribed in the proposed legislation for existing caseloads. In fact, assuming that the proposed ratios would not only apply to new admissions but also existing case loads, the current number of intensive teams would exceed the number of teams required, and partially offset the number of additional officers required by increased admissions to the intensive probation program.

As noted above, the legislation states that all offenders sentenced to intensive probation shall initially be placed in caseloads that do not exceed a ratio of 25 offenders per two-officer team. These offenders... "shall serve no less than 30 days nor more than 180 days at this level of intensive probation supervision..." before being transferred to a caseload... "not to exceed an offender to probation officer ratio of 100:2 for the remainder of their sentences." Assuming that the average offender will spend 105 days at the initial level of supervision before being transferred, it is projected that intensive offenders will complete 39% of the 9-month average term at this level. Applying this percentage to the

projected overall (intensive) offender population provides the estimate that--at any given time--39% of the population would be supervised within the 25:2 person ratio while the remaining 61% would be supervised within the 100:2 ratio.

[Note: The bill also provides that... "offenders sentenced to intensive probation supervision who are actively participating in a supervised intermediate sanctions sentence enhancement program..." may be placed in... "administrative caseloads that have no required offender to probation officer ratio limitations...." It is unclear what programs would qualify under this legislation. It is assumed that the number of qualifying offenders would be small and would not significantly affect the following estimates. To the extent that qualifying program slots become available, the estimates below could be reduced.]

The current, overall intensive probation caseload consists of approximately 3,517 offenders. Assuming that offenders sentenced prior to the bill's effective date (who meet the requirements established in the bill) would be eligible to be transferred to the larger caseloads, it is estimated that 76 two-person intensive teams would be required. [(3,517 offenders x 39% = 1,372 offenders requiring the 25 offender per 2 officer ratio/team) (1,372 offenders/25 = 55 intensive teams) (3,517 offenders x 61% = 2,145 offenders transferred to 100 offender per 2 officer ratio/team) (2,145 offenders/100 = 21 intensive teams) (55 + 21 = 76 intensive probation supervision teams)]

Based on the estimate of additional admissions under the Structured Sentencing plan, the following table shows the projected increase in the overall intensive caseload, and the projected number of intensive teams required, applying the above sentence distribution.

INTENSIVE PROBATION REQUIREMENTS

<u>FISCAL YR.</u>	<u>INCREASE IN INTEN. PROBATION CASELOAD</u>	<u># OF 25 TO 2 TEAMS</u>	<u># OF 100 TO 2 TEAMS</u>	<u>TOTAL TEAMS</u>
*93-94	1,958	31	12	43
94-95	4,878	76	30	106
95-96	5,307	83	32	115
96-97	5,748	90	35	125
97-98	6,204	97	38	135

*Based on January 1, 1994 effective date. Team estimate may be inaccurate for the first fiscal year as projected transfers may not yet have reached projected proportions. Total team requirements could be as high as 78.

There are currently 153 two-person intensive teams, and 8 one-person intensive teams employed by the DOC. [Note: The 8 one-person teams exist in smaller counties and may only supervise up to 15 offenders.] As explained above, it is estimated that the existing intensive caseload would require 76 intensive 2-person teams or

approximately 71 two-person teams, and 8 one-person teams, under the proposed legislation. If the proposed 100:2 intensive teams were enacted, this bill would free up approximately 82 teams (i.e., 153 - 71 = 82) to partially offset the additional teams required to supervise the increased overall intensive caseload. [Note: Approximately 26 intensive teams currently supervise intensive parole offenders. As will be discussed in the next section, it is assumed that these intensive supervision slots would be available for intensive probation cases.] Hence, the additional expenditures calculated below are based on the projected number of required teams shown in the table above minus the existing 82 teams. Costs for supervisors and stenos at the ratio of one supervisor and steno per 7 teams are also included.

FISCAL IMPACT - INTENSIVE PROBATION

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES*	\$0	\$2,250,210	\$3,080,406	\$3,966,881	\$4
RECURRING		2,174,529	3,048,717	3,937,988	4,
NEW POSITIONS:					
Int. Officer	0	24	9	10	10
Surv. Officer	0	24	9	10	10
Unit Supervisor	0	3	2	1	2
Steno	<u>0</u>	<u>3</u>	<u>2</u>	<u>1</u>	<u>2</u>
TOTAL	0	54	22	22	22

TECHNICAL CONSIDERATIONS: The legislation does not specifically state that the 100:2 caseloads would apply to offenders sentenced prior to the bill's effective date. The Secretary of Correction notes that, as a general rule, enacted legislation which would affect an offender negatively is not applied to defendants sentenced prior to a bill's effective date. However, legislation in the offender's favor is generally applied. Since the larger, and presumably less rigid, supervision ratio proposed in the current legislation could be argued either way, it may be beneficial to clarify this issue within section 15A-1340.17(k) of the bill.

Parole Caseloads: (HB 1035 CS, Sec. 15A-1340.21(d), p. 12). The legislation states that the... "Parole Commission may parole incarcerated offenders who are within one year of their earliest release date to an intensive parole supervision program..." It also requires that "Intensive parole supervision caseloads" not exceed an offender-to-parole-officer ratio of 60:1. It is unclear if the legislation is intended to establish a new parole program or modify either the existing intensive probation/parole program or the regular parole program. Currently, there is "no intensive parole supervision program" as such. However, offenders may be paroled under intensive supervision and supervised by an intensive probation/parole team. Intensive probation/parole teams currently supervise up to 25 offenders.

It may, however, be the intent of the legislation to parole incarcerated offenders into what is now considered the regular

parole program. It is the policy of the DOC to maintain caseloads within this program at a ratio of 56:1. However, the 146 parole officers employed by the department currently have an average caseload of approximately 94 offenders per officer. To obtain and maintain the 60:1 ratio, an additional 110 parole officers, 19 unit supervisors, and 19 stenos would be required at a first year cost of \$5,540,026 and with annual, recurring costs of \$5,305,669. [As previously noted, DAPP has an established ratio of 1 unit supervisor per 7 officers and 1 steno. Of the additional 19 unit supervisors/stenos required, 16 would be needed to manage the additional officers and 3 would be used to fill the positions that the division is currently short.]

Beyond those estimates made in the preceding paragraph, it is not possible to project the fiscal impact of this bill upon Parole Services. Not only is a clear definition of the bill's intent required, but a determination of how the parole provision would interact with the Structured Sentencing Plan is also required if projections based on the Structured Sentencing matrix are to be made. Until additional clarifying amendments can be adopted, there is no estimate available.

FISCAL IMPACT

FY 93-94

FY 94-95

FY 95-96

FY 96-97

FY

EXPENDITURES

RECURRING

No Estimate Available

NON-RECURRING

Implementation of New Hearing Officer/ Probation Violation Procedure

(HB 1035 CS, Sec. 15A-1340.16(o), p. 4-5)(HB 1035 CS, Sec. 15A-1340.17(r), p. 8). The proposed bill creates a "violations hearing officer." This position is responsible for holding hearings to determine if offenders in violation of their court-ordered conditions of probation should be returned to court or kept on probation at an increased level of supervision. This position is similar to the current parole hearing officer positions. It is also similar to the probation hearing officer positions existing within the Division of Probation, Parole and Pardon Services(DPPPS) in South Carolina.

As reported by the Deputy Commissioner of DPPPS, each hearing officer in South Carolina is able to process about 20 cases per week or approximately 1000 cases per year. The DOC also estimates that each new hearings officer could process approximately 1000 cases per year. This ratio allows for an average of approximately 2 hours per case. Assuming this is a appropriate caseload per officer; and, assuming each time an offender now being reported to court would instead be reported to the hearings officer, estimates of required expenditure can be made using the following limited data.

Neither the DOC nor the Administrative Office of the Courts (AOC) has specific data pertaining to the number of times probation offenders are returned to court for violations. Data is available, however, to indicate the number of offenders returned to court and revoked. [Note: Violators may be returned to court more than once

before having their probation revoked and that some violators are returned to court but not revoked.] Existing DOC and Sentencing and Policy Advisory Commission data indicate approximately 35% of those offenders placed on probation will have their probation revoked. Assuming the violations hearing officers would be required to hear a number of cases as least as great as the expected number of revocations, the following estimates can be made under the current sentencing structure and probation caseloads, and also under the Structured Sentencing Plan proposed in HB 277.

Projected Revocations

Fiscal Year	Under Current Sentencing Practices	Assuming Enactment of HB 277
93-94	12,127	12,512
94-95	12,491	12,887
95-96	12,867	13,273
96-97	13,263	13,671
97-98	13,652	14,081

Using the ratio of 1,000 cases/hearing officer/year, the number of required hearing officer positions can be determined. Based on current expenditure for parole hearing officers, the DOC estimates an annual, operating expenditure of \$45,000 per officer. Dividing the expected number of cases by 1000 (i.e., 1000 cases per officer) and then multiplying by \$45,000 per officer yields the minimum expenditure required for each fiscal year under current sentencing or HB 277. Note that these expenditures are all operating costs as no capital (or non-recurring) costs have been identified. Since the estimated revocation rates are similar under both structures, the following table would apply.

FISCAL IMPACT - Minimum Impact Based on Revocation Data

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES*	\$270,000	\$585,000	\$585,000	\$585,000	\$6
RECURRING	270,000	585,000	585,000	585,000	63
NON-RECURRING	**				

Expenditures do not include inflationary or salary increases.

**** No capital or non-recurring costs identified.**

NEW POSITIONS: 12 1 0 01

This table represents the minimum costs associated with creating enough hearing officer positions to conduct one hearing per offender in cases that would likely result in revocation. Data collected in a survey conducted by the Division of Adult Probation and Parole (DAPP) suggests that this number is in fact a low estimate. After surveying 7 probation units in 7 of the 11 probation branches across the state, DAPP was able to estimate that only 35% of probation violation hearings result in revocation. [This estimate is based on the number of revocations (i.e., 242 revocations) in violation hearings held during January, February and March of 1993 (i.e., 692 violation hearings) for those units participating in the survey.]

Assuming that this estimate is accurate, the following table illustrates the total number of hearings projected based on the DOC survey (i.e., 100% - 35% = a 65% increase in the number of projected violation hearings).

Fiscal Year	Projected Number of Hearings	
	Under Current Sentencing Practices	Assuming Enactment of HB 277
93-94	34,649	35,749
94-95	35,689	36,820
95-96	36,763	37,923
96-97	37,894	39,060
97-98	39,006	40,231

Calculated in the same manner described on page 16, expenditures to hire sufficient hearing officers to process approximately 40,000 violation hearings by FY 97-98 are as follows:

FISCAL IMPACT - Maximum Impact Based on Survey Data

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES*	\$810,000	\$1,665,000	\$1,710,000	\$1,755,000	\$1
RECURRING	810,000	1,665,000	1,710,000	1,755,000	1,
NON-RECURRING**					

* Expenditures do not include inflationary or salary increases.

** No Capital or Non-recurring cost identified.

NEW POSITIONS:	36	1	1	1	1
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To the extent that the new hearing officers divert probation violations from court, some of the additional expenditure could be offset by a savings in the Judicial Branch. South Carolina reports that within its system, 60% of potential probation violation hearings are diverted from court and settled by the hearings officer. Considering that the AOC estimates that the average cost per probation violation hearing to be approximately \$80, there are potential costs diverted from the Judicial Department. Using the projected number of violation hearings based upon the DOC survey and the structured sentencing proposal, projected cost avoidance is as follows:

FISCAL IMPACT - JUDICIAL DEPARTMENT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
SAVINGS					
EXPENDITURES*	(\$857,960)	(\$1,767,360)	(\$1,820,320)	(\$1,874,880)	
	(\$1,931,120)				
RECURRING	(857,960)	(1,767,360)	(1,820,320)	(1,874,880)	
	(1,931,120)				
NON-RECURRING	0	0	0	0	0

* Expenditures do not include inflationary or salary increases.

Administrative Procedure Act (HB 1035 CS, Sec. 15A-1340.16(q), p.5). (HB 1035 CS, Sec. 15A-1340.17(u), p. 8). Under current law, the DOC is exempted from the contested case provisions of the Administrative Procedures Act. The proposed legislation would remove this exemption and allow probationers who do not agree with the violation hearing officer's decision to implement various community sanctions or intensify their probation to appeal the hearing officer's ruling through petitioning the Office of Administrative Hearings. [South Carolina does not have this option available for the sake of comparison.] However, South Carolina does allow probationers to appeal the rulings of hearing officers directly to criminal court. South Carolina reports no known appeals under their system. Reportedly, offenders accept additional community sanctions in lieu of having a criminal court judge (who has the option of revoking probation) preside over the violation hearing.

Since the proposed legislation does not offer the same deterrent for possible appeals, it is estimated by the Office of Administrative Hearings (OAH) that offenders will appeal at the rate of about 5%. This rate is somewhat lower than the 9.5% to 10% rate that parolees appeal parole preliminary hearings. It is also lower than the rate that current misdemeanor probationers appeal probation violation hearings to superior court. [Note: The AOC has no data to indicate the percentage of probation violation hearings appealed. However, during the first quarter of 1993, the AOC has identified 560 relevant misdemeanor appeals. This total includes all districts except for Mecklenburg. Multiplying this figure out over 12 months and allowing a 7% increase for Mecklenburg yields an estimated 3,808 appeals which are equivalent to approximately 10% of the projected number of violation hearings for FY 93-94, based on the Structured Sentencing Proposal and DOC survey results.]

Since approximately 40% of the projected violations are estimated to be forwarded to the appropriate criminal court (see data from South Carolina explained in the preceding section) and since probationers may not be inclined to appeal as often considering the limited extent to which the DOC may increase sanctions internally, the lower estimate of a 5% appeals rate is assumed.

The OAH estimates the following fiscal impact, based on 5%. These expenditures include costs to fund two additional administrative law judges, 1 clerk typist, and ancillary costs including rental office space for the two new judges. Costs for FY 93-94 are calculated from the bill's 1/1/94 effective date.

	FISCAL IMPACT				
	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES*	\$134,306	\$193,411	\$191,611	\$191,611	\$191,611
RECURRING	97,706	190,011	191,611	191,611	191,611
NON-RECURRING	36,600	3,400	0	0	0

* Expenditures do not include inflationary or salary increases **Establishment of the Intermediate Sanctions Commission** (HB 1035 CS, Sec. 15A-1340.18, p. 8). The bill directs that a 21 member

commission... "is established to oversee the development of a statewide Intermediate Sanctions Enhancement Plan and to allocate financial resources for the development and implementation of intermediate sanctions enhancement programs across the State." Members would serve without compensation but would be reimbursed for necessary travel and subsistence expenses as provided in G.S. 138.5 and G.S. 138.6. The Commission is directed to meet at least 4 times per year. Professional staff support is to be provided by the DOC's strategic planning section. Assuming that the Commission meets every 6 weeks or 4 times in FY 93-94 (note bill's effective date of January 1, 1994), every 6 weeks or four times during the initial six month period of FY 94-95, and quarterly thereafter, estimated expenditures are shown in the fiscal impact table below.

	FISCAL IMPACT				FY
	FY 93-94	FY 94-95	FY 95-96	FY 96-97	
EXPENDITURES*	\$14,280	\$20,670	\$14,280	\$14,280	\$14,280
RECURRING	14,280	20,670	14,280	14,280	14,280
NON-RECURRING	0	0	0	0	0

* Expenditures do not include inflationary or salary increases.

Life-Skills Training for All Incarcerated Offenders (HB 1035 CS, Sec. 15A-1340.21(b), p. 12). Upon passage of SB 46 (the Inmate Pilot Program establishing a study course similar to Life-Skills training in six prison facilities), the DOC determined that necessary expenditures would total \$10,000. Since this expenditure represented all custody levels, a female facility and a youth facility, it is assumed that these costs would be representative of costs to institute programs in the remaining 85 facilities operated by DOC. A representative of the DOC noted that these costs are one-time initial costs for materials that could be reissued. Future costs for instructor training and supplemental materials are thought to be minimal. Expanding Life-Skills to the remaining 85 facilities is estimated to be a one time cost of \$141,667 [(\$10,000/6 = \$1,667) (\$1,667 x 85 = \$141,667)]. This expenditure has been included in those costs calculated for FY 93-94 on page 4 of this note.

	FISCAL IMPACT				FY
	FY 93-94	FY 94-95	FY 95-96	FY 96-97	
EXPENDITURES	\$141,667	0	0	0	0
NON-RECURRING	141,667	0	0	0	0
REVENUES/RECEIPTS	0	0	0	0	0

POSITIONS: No New Positions

DOC Restitution Billing and Collections System (HB 1035 CS, Sec. 15A-1340.16(j), p. 4). The proposed legislation directs that the... "Department of Correction shall develop a comprehensive restitution and billing and collections system..." Both regular and intensive probationers would be required to pay all individual and community restitution into this fund. The DOC would then be

responsible for distributing all individual restitution to crime victims within 10 working days. All community restitution would be collected in the "Restitution Fund." [Note that the bill directs all community restitution paid by non-probation community sanction offenders to be paid to the clerk of court and deposited into Intermediate Sanctions Program Development Fund.]

The DOC is authorized to hire indigent offenders placed on regular or intensive probation supervision to do public service work. The bill states that as..."these offenders accumulate public service work hours, the Department may pay off their community and individual restitution obligations out of the Restitution Fund at a rate at least equal to the federal minimum wage."

The proposed legislation does not address or appear to affect the current \$20 per month probation supervision fee established by G.S. 15A-1343(b)6 and (c)1. It is assumed that these payments will continue to be collected by the clerk of court.

To establish a DOC collections and billing system that would accomplish the additional responsibilities listed above, the DOC estimates that additional expenditures would be required in the amount listed below. Expenditures for FY 93-94 are based on the new positions being filled for 10 months of FY 93-94.

FISCAL IMPACT - DOC Restitution Billing & Collection					
	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES*	\$239,675	\$234,175	\$229,998	\$229,998	\$2
RECURRING	195,955	229,998	229,998	229,998	22
NON-RECURRING	43,720	4,177	0	0	0

* **Expenditures do not include inflationary or salary increases.**

POSITIONS: 8 New Positions: 1 Accountant II; 1 Administrative Assistant II; 1 Accounting Clerk Supervisor (V); 3 Accounting Clerk IV; and 2 Clerk Typist IV.

POTENTIAL REVENUE The proposed bill states that offenders sentenced to community sanctions (i.e., a fine or regular probation) or intermediate punishments (i.e., intensive probation) shall be ordered to pay a community restitution fee of \$50. Community sanctions offenders who receive a fine must pay the additional \$50 fee to the clerk of court. Fees collected by the clerks shall be deposited in the Intermediate Sanctions Development Fund to be established and administered by the Intermediate Sanctions Commission. Offenders placed on regular or intensive probation must pay a \$50 community restitution fee to the Department of Correction (DOC) (to be placed in the Restitution Fund) unless the..."court determines that compliance is not possible due to physical or mental limitations of the offender."

The bill also directs that a Special Restitution Collections Unit (see page 29) be established by the Attorney General to initiate civil actions when restitution obligations have not been paid. [Note that section 15A-1340.11 (Applicability of Sentencing Options)

of the proposed legislation states that the bill... "applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1, that occur on or after January 1, 1994." Additional revenue resulting from the new \$50 restitution fee is estimated below.

From Non-DWI Community Sanctions Offenders Not Placed on Probation (HB 1035 CS, Sec. 15A-1340.16(p), p. 5). Based on Structured Sentencing projections prepared by the N.C. Sentencing and Policy Advisory Commission, the following table shows the estimated number of non-DWI misdemeanor and felony offenders sentenced to an unsupervised community sanctions punishment. According to proposed legislation, each of these offenders would be ordered to pay a \$50 community restitution fee.

**Projected Number of Non-DWI Offenders
Sentenced to Unsupervised Community Sanctions**

<u>Fiscal Year</u>	<u># of Offenders</u>
93-94	115,272
95-96	121,177
96-97	124,812
97-98	128,557

Based on current collection rates for all offenders ordered to pay fines to the Clerk of Court, it is estimated by the Administrator for Fiscal Services of the AOC that fees would be collected from approximately 70% of the above offenders. Calculated at \$50 per offender, the projected revenues are shown in the Fiscal Impact table on the following page.

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
REVENUES/REC.*	\$2,017,260	\$4,117,680	\$4,241,195	\$4,368,420	\$4
NON-RECURRING	2,017,260	4,117,680	4,241,195	4,368,420	4,

* Based on January 1, 1994 effective date.

From Non-DWI Offenders Placed on Regular and Intensive Probation (HB 1035 CS, Sec. 15A-1340.16(d), p. 3). (HB 1035 CS, Sec. 15A-1340.17(d), p. 6). As noted above, non-DWI offenders placed on regular and intensive probation would also be required to pay a \$50 community restitution fee unless the court waives the fee due to the physical or mental limitations of the offender. The following estimates of potential revenue are again based upon the Sentencing Commissions estimate of new admissions to the probation programs as a result of the Structured Sentencing plan. Of the projected number of new admissions, approximately 23% are estimated to be DWI offenders (based on the current number of DWI offenders comprising probation caseloads) and have been subtracted from the total.

To determine the number of cases in which the court may waive the community restitution fee, data pertaining to probation supervision

fees has been obtained from the Data Entry Section of the Division of Adult Probation and Parole (DAPP). [Note: Similar to the community restitution fee, all offenders currently placed on probation must pay a \$20 per month probation supervision fee.] Data compiled by DAPP indicates that this fee is waived approximately 21.28% of the time. It is assumed that the community restitution fee will be waived for 21.28% of the new admissions.

Adjusting the number of projected admissions to exclude DWI offenders and cases where the restitution fee is likely to be waived, it is estimated that the DOC would experience a 40% collection rate. [A 40% collection rate is based on data obtained in a recent DOC survey. This survey of 7 probation units in 7 branches across the state required units to count the number of non-DWI offenders ordered to pay supervision fees during the first quarter of 1993, and to determine the % of actual compliance. It was estimated that approximately 40% of non-DWI offenders were paying probation supervision fees as ordered.]

The table on the following page summarizes those steps explained above and shows the total number of offenders from which it is estimated that the DOC would collect community restitution fees.

**# OF PROJECTED PROBATION OFFENDERS EXPECTED TO PAY
COMMUNITY RESTITUTION FEE**

<u>FISCAL YEAR</u>	<u>NEW ADMISSIONS</u> - <u>TOTAL</u>	<u>DWI ADMISSIONS</u> -	<u>FEEES WAIVED</u> -	<u>ESTIMATED # DELINQUENT</u> =
93-94* 6,902	28,467	6,547	4,665	10,353
94-95	57,949 14,050	13,328	9,495	21,076
95-96	59,893 14,522	13,775	9,814	21,782
96-97	61,736 14,968	14,199	10,116	22,453
97-98	63,588 15,418	14,625	10,419	23,126

* Based on bill's 1/1/94 effective date.

Multiplying the number of projected offenders from the "Total" column above x \$50, yields the amount of additional estimated revenue in the table below.

FISCAL IMPACT - ESTIMATED REVENUE FROM COMMUNITY RESTITUTION FEE

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
REVENUES/RECEIPTS	\$345,100	\$702,500	\$726,100	\$748,400	\$7
RECURRING	0	0	0	0	0
NON-RECURRING	345,100	702,500	726,100	748,400	77

The bill directs the Attorney General's Office to establish a Special Restitution Collections Unit on behalf of the state and individual crime victims when restitution obligations have not been met. The estimated impact of this provision of the bill (pertaining to community restitution) can be found on page 29. The Attorney General's Office estimates that an additional \$50,000 to \$60,000 in community restitution may be collected.

OPTIONAL DOC EXPENDITURES In addition to the above expenditures and revenues proposed by this bill, a number of additional expenditures are considered optional. These potential expenditures include: (1) Contractual bed space to be provided by county jails for split-sentence penalty enhancement; (2) block grant appropriations from the General Assembly for the development and expansion of intermediate sanctions enhancement programs; (3) contractual placement of incarcerated offenders into half-way houses or community based substance abuse treatment facilities; and, (4) a network of ex-offender assistance centers across the state. Since these expenditures are not mandatory and since it is uncertain to what degree these options may be pursued, no estimate of fiscal impact is provided.

**ADMINISTRATIVE OFFICE OF THE COURTS
EXPANSION OF COMMUNITY PENALTIES PROGRAM**

FISCAL IMPACT (GENERAL FUND)

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES	\$7,241,236	\$7,883,217	\$8,837,035	\$10,529,474	\$1
NON-RECURRING	0	0	0	0	0
REVENUES/RECEIPTS	0	0	0	0	0
RECURRING					
NON-RECURRING					
NEW POSITIONS **	245	22	32	58	
FIELD STAFF	241	22	32	58	6
AOC STAFF	4	0	0	0	0

* Expenditures appear to be optional and are minimum cost estimates to expand the Community Penalties Program (CPP) to all judicial districts while only providing intermediate sanctions sentencing plans for eligible felons. SEE NARRATIVE BELOW FOR ADDITIONAL INFORMATION.

** All positions are recurring. That is to say that by FY 97-98 a total of 418 new position would be required.

FISCAL IMPACT (LOCAL FUND)

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u>
EXPENDITURES	\$804,582	\$1,391,156	\$1,559,477	\$1,858,142	\$2
NON-RECURRING	0	0	0	0	0

REVENUES/RECEIPTS	0	0	0	0	0
RECURRING					
NON-RECURRING					

* As noted by the AOC: "...new programs are normally required to provide a 10% (local fund) match until the end of their first, full, fiscal year, and a 15% match thereafter. It is highly likely that with an expansion of this size (both in terms of areas served and numbers of clients served), local programs will be unable to meet these additional match requirements. If in fact, local fund dollars are unavailable, the state appropriations figures provided above reflect only 85-90% of the amounts actually needed to implement this legislation for felons. In the future, the state may need to reconsider the matching requirements, particularly as CPP is expanded into more economically disadvantaged areas."

ASSUMPTIONS AND METHODOLOGY: (HB 1035 CS, Sec. 15A-1340.17(P), p. 3). The bill provides that the... "Administrative Office of the Courts AOC may (emphasis added) expand the Community Penalties Program to all judicial districts and to [sic] increase the resources available to Community Penalties programs so that individualized intermediate sanctions sentencing plans can be prepared for the court for all intermediate sanctions offenders..." "The bill changes the meaning of Community Penalties' "targeted" offenders to "...any person convicted of a misdemeanor or felony who is eligible for intermediate sanctions or who is being considered by the court as a candidate for intermediate sanctions..." It directs all intermediate sanctions offenders be sentenced to intensive probation supervision. The Department of Correction is to, among other things..."establish an intermediate sanctions level of correctional programming designed to closely monitor the activities of misdemeanants and lower-level, nondangerous felons with moderate prior criminal records and mid-level, nondangerous felons with short prior criminal records..." The bill appropriates \$1,500,000 to the AOC for the expansion of the Community Penalties Program (CPP).

The following narrative has been provided by the AOC to estimate costs if the CPP were expanded to all judicial districts. **These costs only include expenditures necessary to prepare "individualized intermediate sanctions sentencing plans" for felons eligible for intermediate sanctions punishment.** The proposed legislation includes misdemeanants eligible for intermediate sanctions, but estimates have not been made for this group of offenders due to the lack of reliable data.

In order to provide any estimate of potential costs, the AOC was provided a copy of the sentencing grid (not included or outlined within this bill) by a representative of the Justice Fellowship Task Force that specifies the "sentencing cells" where intermediate sanctions would apply. This grid is a modification of the grid prepared by the N.C. Sentencing and Policy Advisory Commission in preparation of HB 277 (Structured Sentencing-2) but does not include a comparable sentencing scheme for misdemeanants. Data pertaining to felons existing within specific cells of the grid that are eligible

for intermediate punishment was provided by the Sentencing Commission.

Analysis and expenditure estimates-----using the Fellowship Task Force grid--are provided by the AOC for intermediate felony offenders as follows:

"Since the bill envisions the expansion of CPP statewide and the preparation of plans for all intermediate sanctions offenders, appropriations above the \$1,500,00 will be required. Currently, CPP programs are established in districts with approximately 70% of the H I J felon population. New programs would need to be established to cover the remaining areas without programs. Many of these areas are more rural, and programs would be somewhat more difficult to set up. Additional administrative staff would be required at the state level to implement and monitor these new programs.

"In addition, the type of offender on which CPP programs would focus would shift from H I J prison-bound offenders to all intermediate sanctions offenders, who are by definition not prison bound. This group makes up a much larger pool than is currently being served by CPP. As a consequence, many more case developers would need to be hired to develop the plans required by this shift.

"In the following calculations, we assume that in areas already served by CPP programs, all intermediate sanctions offenders will be targeted and plans will be prepared for each one. In areas not yet served, we assume a phased-in process in which 16% of eligible clients will be targeted and plans presented in the first year, followed by percentages of 25%, 40%, 70%, and 100% served in subsequent years.

"The Fiscal Impact table (pg. 26) gives the estimated additional appropriations needed to implement this legislation for felony offenders (above the current operating budget of \$1,518,912). These figures represent total estimated state funds that would be required. The bill's proposed \$1.5 million appropriation has not been subtracted out. These amounts would provide for program expansion statewide, additional personnel in the field to prepare sentencing plans, and four positions in the Administrative Office of the Courts.

"These figures are largely due to the dramatic increase in the projected numbers of plans that would need to be prepared if required for all intermediate sanctions felony offenders. For example, in 1991-92, 812 plans were actually presented in court. In contrast, we estimate that over 5,600 plans would be prepared for felons in the first full year after the implementation of the legislation. This number would rise to 8,450 plans by the fifth year. If plans were also prepared for all misdemeanor intermediate offenders, these figures would be much greater.

TECHNICAL CONSIDERATIONS: As noted by the AOC:

"The act changes the definition of "targeted" offenders from certain misdemeanants and H I J felons "who are facing an imminent and substantial threat of imprisonment" to "any person convicted of a misdemeanor or felony who is eligible for intermediate sanctions or who is being considered by the court as a candidate for intermediate sanctions." If the Community Penalties Program's focus was to be so altered, other conforming legislation would be required to modify the other references to prison or imprisonment (See G.S. 7A-770, -773(1), -774(2), -774(8), and -777).

**DEPARTMENT OF JUSTICE
ATTORNEY GENERAL'S SPECIAL COLLECTIONS UNIT**

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES*	199,743	314,059	314,059	314,059	314,059
RECURRING	157,030	314,059	314,059	314,059	314,059
NON-RECURRING	42,713	0	0	0	0
REVENUES/RECEIPTS**	24,750	52,700	54,455	56,150	57,815
RECURRING	0	0	0	0	0
NON-RECURRING	24,750	52,700	54,455	56,150	57,815

* Expenditures do not include inflationary or salary increases.

** Receipts are based on a 5% collections rate and only include community restitution.

POSITIONS: 4 new Paralegal II positions, 2 Attorney I positions, and 3 Secretary IV positions.

ASSUMPTIONS AND METHODOLOGY: (HB 1035 CS, Sec. 15A-1340.16(k), p. 4). The proposed legislation directs that the... "Attorney General shall establish a Special Restitution Collections Unit which is authorized to initiate civil actions on behalf of the State and individual crime victims when restitution obligations have not been paid..." The bill directs all community and intermediate sanctions offenders (except DWI offenders)* shall be required to pay a \$50 restitution fee unless the court waives the fee due to the physical or mental limitations of the offender. In addition, any offender with an identifiable crime victim must also pay individual restitution. The Department of Correction (DOC), upon establishing a comprehensive restitution billing and collections system, would collect the restitution for regular and intensive probation offenders.

[* Note that section 15A-1340.11 ("Applicability of Sentencing Options") of the proposed legislation states that the bill "applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1, that occur on or after January 1, 1994."]

The bill is unclear if the new Collections Unit would be responsible for initiating civil actions against community sanctions offenders

who do not receive probation (i.e., receiving a fine) and would pay their debt to the Clerk of Court under the proposed legislation. For the purpose of this note, it is assumed that the Collections Unit would do so in few cases.

It is assumed that the Attorney General's Collections Unit would be primarily responsible for initiating actions against probationers who are not paying individual or community restitution to the DOC. To determine the number of potential offenders this might involve, the Division of Adult Probation and Parole (DAPP) completed a survey of 7 probation units in 7 different DAPP branches across the state. The survey asked for the number of DWI and non DWI cases ordered to pay a \$20 per month probation supervision fee during the first quarter of 1993. Of those numbers, it was also asked how many offenders were complying. Survey results indicated that 40% of non-DWI offenders were complying.

Since the bill would only apply to new admissions, the number of new regular and intensive probation admissions as projected by the N.C. Sentencing and Policy Advisory Commission under HB 277 was used as an initial count. Of this total, approximately 23% (based on current probation data) were assumed to be DWI cases and subtracted from the total. An additional 21.28% of these cases was also subtracted as data obtained from the DAPP shows that supervision fees are waived in approximately that number of cases. Of the remaining number of offenders, it was assumed (based on survey results) that 40% of the offenders would meet their obligations voluntarily. The remaining offenders, as shown in the table below, would be potential cases to be referred to the new Collections Unit.

**Projected Number of Offenders Delinquent On
Community or Individual Restitution Payments**

<u>Fiscal Year</u>	<u># of Offenders</u>
93-94	9,896
94-95	21,076
95-96	21,782
96-97	22,453
97-98	23,126

Having obtained this projection, it was further assumed that some unknown number of offenders would eventually pay their obligations and avoid civil action by the Attorney General's Office. Having set a maximum estimate of potential cases, a special deputy of the Tort Claims Section for the Attorney General's Office estimated that 4 paralegals, 2 attorneys, and 3 secretaries would be required to staff the unit. These estimates are based on limited data for the collection of student loans through the AG's office medical debt collection by UNC Memorial Hospital. The above cost estimates include projected travel costs for the 4 paralegals to travel to all 100 counties in order to pursue the appropriate actions in the appropriate courts.

From those actions taken, the Attorney General's Office estimates a 5% collection rate. Since it is unknown how many offenders will be ordered to pay individual restitution, the projected amount of collections only includes money owed for community restitution. Note that the bill establishes that community restitution shall be a set fee of \$50. Hence, the above revenues estimated within the FISCAL IMPACT table on page 29 are 5% of the overall number of offenders projected to be delinquent multiplied by \$50.

**DEPARTMENT OF HUMAN RESOURCES
EXPANSION OF TASC PROGRAM**

**FISCAL IMPACT
(Dollar Figures Are In Millions)**

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES*	\$6.13	\$6.99	\$8.09	\$8.46	\$8.84
RECURRING **	6.13	6.99	8.09	8.46	8.84
NON-RECURRING	0	0	0	0	0
REVENUES/RECEIPTS	0	0	0	0	0
RECURRING					
NON-RECURRING					

* Note that the state currently spends \$1 million in state and federal funds for TASC case management. Local programs provide an additional \$1 million local match. However, there are no match requirements. The projected expenditures in the table above are total cost estimates. To the degree that local programs could provide matching funds, state funds expenditure could be offset.

** Estimates do not include inflationary or salary increases.

POSITIONS:

ASSUMPTIONS AND METHODOLOGY: (HB 1035 CS, Sec. 15A-1340.16(n3) and (o2), p. 4-5) (HB 1035 CS, Sec. 15A-1340.17(q3), p. 75). The above cost estimates were provided by the Budget and Analysis Division of the the N.C. Department of Human Resources (DHR). These figures are estimates of necessary expenditures to implement the sections of HB 1035 pertaining to the Treatment Alternatives to Street Crime (TASC) program operated within the Substance Abuse Services Section of DHR. The estimates are based on expansion of the TASC program to all judicial districts and include required expenditures to serve new offenders sentenced to community and intermediate punishments under the new sentencing structure proposed within HB 277 (Structured Sentencing-2). Hence, in addition to expanding TASC to all judicial districts, the 14 existing TASC programs would need additional resources to appropriately respond to the needs of the offenders and referring agencies. The amount of additional resources was calculated after surveying existing TASC programs to determine the impact of the additional offenders. Those expenditures noted above are operating costs and are not in the figures projected as expenditure to enact HB 277.

The Department notes that in addition to the intermediate and community sanctions offenders referred to the TASC programs as a result of the new sentencing structure, mentally ill adults (within the criminal justice system) could also be case managed through enhanced TASC programs.

SOURCES OF DATA: N.C. Department of Human Resources, Budget and Analysis Division, Substance Abuse Services Section; N.C. Department of Justice, Attorney General's Office; Administrative Office of the Courts, Research and Planning, Information Services Division; N.C. Department of Correction, Division of Adult Probation and Parole, Research and Planning; N.C. Sentencing and Policy Advisory Commission; Justice Fellowship Task Force.

TECHNICAL CONSIDERATIONS: The first drafts of the proposed legislation contained a provision to establish a pretrial diversion program to screen pretrial detainees for mental health and substance abuse problems so that the detainees could be diverted into community based mental health programs and substance abuse rehabilitation programs in lieu of prosecution. This provision was removed, however, the seemingly corresponding appropriations on page 13 of the bill were not deleted.

FISCAL RESEARCH DIVISION

733-4910

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DATE: 14-June-93



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