

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 1003 (Third Edition)

SHORT TITLE: Aggravating Factor/No Probation Compliance.

SPONSOR(S): Representatives Barnhart, Johnson, and Steen

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
GENERAL FUND					
Correction	Fiscal impact on Courts and Corrections could potentially be significant; however, the amount cannot be determined. See pages 2-4.				
Judicial					
TOTAL EXPENDITURES:	Amount cannot be determined.				
ADDITIONAL PRISON BEDS: (cumulative)*	Impact on prison population is indeterminate, but could be significant.				
POSITIONS: (cumulative)	Amount cannot be determined.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	December 1, 2008.				
<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: House Bill 1003 amends G.S. 15A-1340.16(d), which lists the aggravating factors applicable to sentencing under Structured Sentencing, to include a defendant’s failure to comply with the conditions of release when placed on supervised probation, parole, or post-release supervision as an aggravating factor. The third edition amends GS 15A-1340.16(d) to clarify that the willful noncompliance of the conditions of a defendant’s release must have occurred during the 10-year period prior to commission of the offense to be considered at sentencing. The act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

Source: Adapted from Bill Digest H.B. 1003 (06/04/0200).

ASSUMPTIONS AND METHODOLOGY:

General

The proposed aggravating factor would permit a judge to sentence from the aggravated range upon a defendant's plea or finding by a jury that the defendant (i.e. repeat offender) previously failed to comply with the conditions of release when placed on supervised probation, parole, or post-release supervision. The factor is not limited to the defendant's most recent period of supervised probation, parole, or post-release supervision, and it does not require that the defendant was revoked for the violation.¹

The Administrative Office of the Courts' Automated Criminal Information System (ACIS) does not maintain information on the application of aggravating or mitigating factors, thereby providing no data concerning the effect of existing factors. Moreover, because this new factor is unique, there is no reliable basis upon which to estimate its applicability.

It is not known how many offenders would become subject to aggravated sentences as a result of this proposal. In addition, because sentencing determinations are based upon the weighing of multiple aggravating and mitigating factors, where applicable, it is unclear in which specific instances this factor will control. *Thus, Fiscal Research cannot determine the impact of this particular factor.* However, based on current Courts and Corrections resource levels, and the factor's applicability to a wide range of offenses (and offense classes), this legislation could potentially generate a significant fiscal impact.

Corrections

The potential pool of offenders subject to this aggravating factor includes all future defendants who have, at some time, previously been placed on probation, parole, or post-release supervision and have failed to comply with conditions (revocation is not required). Accordingly, the proposed factor could apply to a wide range of offenses, for which the impact of aggravated sentencing varies considerably by offense class. Generally, the impact of an aggravated factor, in the absence of counterbalancing mitigating factors, increases as offense severity increases. *Consequently, for affected convictions, the impact of this factor on low-level felonies could prove marginal, while its impact on the most serious felonies could prove substantial.*

The aggravated sentence range allows the judge to impose a sentence that is up to 25% longer than the longest sentence in the presumptive sentence range. During FY 2006/07, 3% (n=303) of all felony convictions receiving an active sentence were in the aggravated sentence range. Of the 31,781 felony convictions in FY 2006/07, 23,776 (75%) were in Prior Record Level II or higher; this suggests that a large portion of these 23,776 offenders may have at least one prior conviction for which they could have been placed on supervised probation, parole, or post-release supervision, and could have failed to comply with conditions.²

¹ Source: North Carolina Sentencing and Policy Advisory Commission.

² Felony prior record level calculation (G.S. 15A-1340.14(b)(7)) currently assigns one prior record level point if the current offense was committed while the defendant was on supervised or unsupervised probation, parole, or post-release supervision. While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the basis by which the points were assigned.

It is not known how many additional offenders would receive an aggravated sentence as a result of this legislation. As a result, the impact of this aggravating factor on the state's prison population is indeterminate; however, the factor's breadth of applicability suggests that the impact could be substantial. Since there are no surplus prison beds available over the five year horizon or beyond, any resultant impact will increase the demand for prison beds. Presently, it costs \$68,040 to construct a new medium custody prison bed within a stand alone facility (new prison), and \$28,087 annually to operate that bed.

Judicial

Because offenders subject to this aggravating factor could face longer active sentences, the AOC expects that affected cases would experience more vigorous defense and prosecution. As a result, it is anticipated that court-time requirements, personnel workload, and the associated costs of case disposal (personnel needs, physical resources, etc.) will increase. Because most felony offenses are tried in Superior Court, it is assumed that Superior Court personnel will be most impacted by any resultant change in litigation tactics. It is not known how many offenders would become subject to this aggravating factor; however, the factor's potential applicability suggests that the impact on workload could be significant, necessitating additional resources.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Scott Tesh and Denise Thomas

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

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