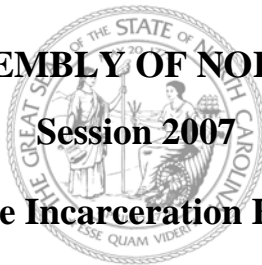


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 887 (Third Edition)
SHORT TITLE: Amend Criminal Offense of Stalking.
SPONSOR(S): Representatives Ray, Underhill, Langdon, and Wiley

	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	Cannot project prison beds beyond 2010/11; beds & cost likely to increase but level cannot be determined; primary cost is for raising violation of court order to Class G . See pages 6-8.				
Recurring		\$1,013,123	\$2,145,437	\$2,209,800	\$2,276,094
Nonrecurring	\$5,290,790				
Judicial					
Recurring	\$180,256	\$309,011	\$309,011	\$309,011	\$309,011
Nonrecurring					
Local Jails	Potential fiscal impact on jail populations due to certain Class 1 and 2 misdemeanors that could be elevated to A1 stalking but amount of impact cannot be determined – See Assumptions and Methodology Pages 5-6.				
TOTAL EXPENDITURES:	\$5,471,046	\$1,322,134	\$2,454,448	\$2,518,811	\$2,585,105
ADDITIONAL PRISON BEDS: (cumulative)*	0	34	72	72	72
POSITIONS: DOC - cumulative	0	13	29	29	29
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2008; applies to offenses committed on or after that date					
*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.					

BILL SUMMARY:

The 3rd edition of House Bill 887 rewrites the law that defines the criminal offense of stalking, to include a course of conduct of two or more acts in which the offender follows, monitors, observes, surveils, threatens, communicates to or about a person, or interferes with a person's property. The bill would increase the penalty for stalking when a court order is in effect, making it a Class F felony. Otherwise, the penalty would remain the same as under current law. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

The 3rd edition of the bill makes two substantive changes. First, the words "without legal purpose" are added on page 2, line 17. Second, subsection (d) of new GS 14-277.3A amends the penalty and nature of the offense of stalking when a court order is in effect. The words "prohibiting similar behavior by the defendant" are replaced by "prohibiting the conduct described under this section by the defendant against the victim." This offense is now a Class F felony (see table below).

CURRENT LAW: Under G.S. 14-277.3, the offense of stalking is committed if a person willfully and repeatedly follows or harasses another person with the intent to place that person in fear of his or her safety or cause that person to suffer emotional distress. "Harassment" is defined as conduct directed at a specific person that torments, terrorizes, or terrifies that person and serves no legitimate purpose. Violation is generally a Class A1 misdemeanor, and a defendant who is sentenced to a community punishment must be placed on supervised probation in addition to any other punishment imposed by the court. However, if the offense is committed in violation of a court order prohibiting similar conduct, violation is a Class H felony. A person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

BILL ANALYSIS: The 3rd edition of House Bill 887 redefines the criminal offense of stalking, and increases the penalty from a Class H felony to a Class F felony when a court order is in effect prohibiting conduct described in Section 1 section one of the bill by the defendant against the victim. Assuming there are no prior offenses, the presumptive minimum sentence for a Class G felony is 10-13 months intermediate or active punishment. The bill would become effective December 1, 2008 and apply to offenses committed on or after that date.

CURRENT LAW	HB 887 PCS
<i>Willfully on more than one occasion follows or is in the presence of, or otherwise harasses, another person without legal purpose. Defines harassment as knowing conduct, including <u>written communication, telephone, fax, e-mail, etc. that is directed at a specific person</u> and torments, terrorizes, or terrifies that person and serves no legitimate purpose.</i>	<i>Willfully on more than one occasion harasses another person without legal purpose, or <u>willfully engages in a course of conduct directed at a specific person.</u> Defines course of conduct as <u>2 or more acts, in which the offender is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about the person, or interferes with a person's property.</u></i>
<i>Requires that defendant have the intent to (1) place the person in reasonable fear for the person's safety or the safety of the person's immediate family or close personal associates, or (2) cause the person emotional distress by placing the person in fear of death, bodily injury or continued harassment</i>	<i>Substitutes specific intent requirement with a "reasonable person" standard; retaining current language regarding the victim's fear for safety and the victim's emotional distress by being in fear of death, bodily injury or continued harassment</i>
General: <i>Class A1 misdemeanor</i> Court order in effect: <i>Class H felony</i> Previous Stalking Offense: <i>Class F felony</i>	Increases penalty when court order in effect to <i>Class F felony</i> ; otherwise, penalty is the same as under current law.

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ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Fiscal Impact Summary

COST COMPARISON –FIRST EDITION OF H 887 VERSUS THIRD EDITION

<u>Cost items</u>	<u>H 887 First Edition</u>	<u>H 887 3rd Edition</u>	<u>Difference</u>
DOC Capital Costs (One-time)	\$14,560,000	\$5,290,790	\$9,269,210
DOC Costs FY 09/10	\$2,800,350	\$1,013,123	\$1,787,227
DOC Costs 10/11	\$5,878,794	\$2,145,437	\$3,733,357
Judicial Costs FY 08/09 (7 months)	\$1,102,000	\$347,738	\$754,262
Judicial Costs FY 09/10	\$1,900,000	\$575,598	\$1,324,402
Estimated # Prison Beds	<u>214</u> by FY 09/10	<u>72</u> by FY 10/11	142 fewer beds

Source: Fiscal Research Division

NOTES:

1. No costs are shown for DOC in FY 08/09 because bill is effective December 1, 2008 and will not impact prison system until FY 09/10; Judicial Branch will be affected starting December 1, 2008.
2. Cost reduction primarily due to keeping basic stalking offense as defined in H 887 at a Class A1 misdemeanor instead of Class H. There will be some cost shifting to local jails for any Class 1 and Class 2 stalking-related misdemeanors, such as communicating threats, which are charged and then convicted as a Class A1 stalking offense.
3. Prison bed and cost estimate for Edition 3 primarily due to estimating 5% of A1 convictions for violating valid protective order could be converted to Class F felony.

Department of Correction – Division of Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of January 2008.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of *additional beds*

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

needed (row five) is always equal to the projected number of additional inmates resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of House Bill 887. As shown, the Sentencing Commission estimates that this specific legislation will add 72 inmates to the prison system by the end of FY 2012-13.

	<u>June 30 2009</u>	<u>June 30 2010</u>	<u>June 30 2011</u>	<u>June 30 2012</u>	<u>June 30 2013</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	40,402	41,073	41,698	42,698	42,518
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	39,908	39,908	40,664	40,664	40,664
3. Projected No. of Beds Over/Under Inmate Population	-494	-1,165	-1,034	-1,854	-2,759
4. Projected No. of Additional Inmates Due to this Bill ³	<i>N/A</i>	<i>34</i>	<i>72</i>	<i>72</i>	<i>72</i>
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	<i>N/A</i>	<i>34</i>	<i>72</i>	<i>72</i>	<i>72</i>

POSITIONS: It is anticipated that by FY 2012-13, approximately 29 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2012-13. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to HB 887; and, the estimated number of new beds required each year through FY 2015-16.

	<u>June 30 2014</u>	<u>June 30 2015</u>	<u>June 30 2016</u>	<u>June 30 2017</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,234	-5,117	-5,996	-6,866
2. Projected No. of Additional Inmates Resulting From (Bill Number)				
3. Estimated No. of New Beds Required Under HB 887			<i>Cannot be determined</i>	

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2008.

³ Criminal penalty bills effective December 1, 2008, should not affect prison population and bed needs until FY 2009-10 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;⁴ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”⁵ Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

Estimated Construction Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$55,000	\$63,000	\$114,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$73,500

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.⁶ As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

Accordingly, given an increase of 72 inmates, bed provision through construction of a “stand alone” facility could cost approximately \$5,290,790 by FY 2012-13; provision through “add-on” could cost approximately \$3,275,250.

OPERATING: Operating costs are based on actual FY 2006-07 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$57.48	\$74.71	\$88.93	\$71.52

Fiscal Research used the cost of a medium custody bed as the basis for calculating prison operating costs shown in this Note.

Methodology for Analysis of Basic Stalking – Class A1

The 3rd edition retains Class A 1 misdemeanor as the penalty for basic stalking; however, the new definitions of stalking offenses in HB 887 could also result in lower level but related misdemeanors being raised to the level of Class A1.

In FY 2006/07, 26% of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class A1 convictions was 50 days. Offenders serving active sentences of 90 days or less are housed in county jails. Any convictions that would result in sentences greater than 90 days as a

⁴ New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

⁵ Close and medium custody “add-on” facilities are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. Add-on facilities built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁶ Office of State Construction, March 24, 2006.

result of being reclassified to Class A1 would have a small impact on the prison population; however, the impact cannot be determined. As shown in the table below, when compared to Class 1 and Class 2 misdemeanor convictions, Class A1 misdemeanor convictions have a higher percentage of active sentences, a longer average estimated time served, and a higher percentage of convictions with sentences greater than 90 days. Class 1 or Class 2 misdemeanor convictions that would be reclassified to Class A1 could impact local jail populations; however, the impact cannot be determined.

Table 3

Offense Class	N	% Active	Average Estimated Time Served in Days	% of Convictions with Sentences Greater than 90 Days
A1	13,462	26%	50	24%
1	94,288	21%	30	15%
2	29,265	19%	12	0.4%

Note: This table excludes convictions that did not fit within the appropriate cell in the Misdemeanor Punishment Chart due to discrepant offense classes, prior conviction levels, or for other reasons. The highest sentence available for Class 2 misdemeanants is 60 days; sentences greater than 90 days may reflect the use of consecutive sentencing. Data for percent of convictions with sentences greater than 90 days is based on all convictions (i.e., it is not limited to convictions receiving active sentences.)

Methodology for Analysis of Increasing Violation of Court Order from Class H felony to Class F

Offenses for which offenders currently convicted would be eligible for conviction of the Class G felony of stalking in violation of a court order include those currently convicted of:

Table 4

G.S.	Description	All? ^a	Class	Total FY 2005/06 Convictions
14-277.3	Stalking	No	H	3
50B-4.1	Violation of valid protective order [domestic violence]	No	A1	1,261

^a The "All?" column denotes whether all convictions for the listed offense would be eligible for conviction under the proposed bill. See the endnotes for explanations of why convictions of certain offenses may not be eligible.

^b Although convictions in all of the prior record/conviction levels would be eligible for conviction of stalking under the proposed bill, convictions in PRL/PCL II and above are more likely to fit the definition of stalking under the proposed bill.

In FY 2006/07, there were three Class H convictions for felony stalking. Under the proposed bill, these convictions could become Class F felonies. Due to the small number of convictions, a more detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model. Using threshold data, if these three convictions were reclassified from Class H to Class F, this would result in the need for one additional prison bed the first year and one additional prison bed the second year.

In addition, it is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2006/07, there were 1,261 Class A1 convictions under 50B that may be eligible to be convicted as Class F felonies under the proposed bill. In FY 2006/07, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class A1 convictions per year that would become Class F convictions under this proposed bill, the

combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Note: The 3rd edition of the bill potentially narrows the offense by requiring that the court order specifically prohibit “the conduct described in this section by the defendant against the victim” as opposed to the language “similar behavior” used in the 2nd edition. It is not known how many fewer convictions may result from the proposed narrowing of the statute.

At the request of Fiscal Research, the Sentencing Commission developed two scenarios regarding the impact of H 887 on the current Class A1 offense class for violating court orders. These scenarios are displayed below:

Scenario A assumes that

- All Class H convictions under G.S. 14-277.3 would be reclassified to Class F
 - 3 of 3 convictions reclassified to Class F
- 5% of convictions under G.S. 50B-4.1 (violation of valid protective order) would be reclassified to Class G
 - 63 of 1,261 convictions reclassified to Class F

Scenario B assumes that

- All Class H convictions under G.S. 14-277.3 would be reclassified to Class F
 - 3 of 3 convictions reclassified to Class F
- 10% of convictions under G.S. 50B-4.1 (violation of valid protective order) would be reclassified to Class F
 - 126 of 1,261 convictions reclassified to Class F

Table 5 –Bed Impact of Violating Protective Order as Class F

Scenario	# Convictions Reclassified	Additional Prison Beds	
		Year 1	Year 2
A	66	34	72
B	129	66	143

Fiscal Research used Scenario A to estimate costs

Table 6 –Fiscal Impact of Violating Protective Order as Class G

<u>Category</u>	<u>FY 08/09</u>	<u>FY 09/10</u>	<u>FY 10/11</u>	<u>FY 11/12</u>	<u>FY 12/13</u>
Prison Beds	0	34	72	72	72
Capital Costs	\$5,290,790				
Operating Costs		\$1,013,123	\$2,145,437	\$2,209,800	\$2,276,094

1. Assumes 5% (63) of 06/07 convictions (1,261) would increase from Class A1 to Class F.

2. Assumes some violations of domestic violence protective orders (DVPOs) under G.S. 50B-4.1 would constitute stalking under the proposed bill after only a single act, such as communicating a threat or other harassment to the victim in violation of the order. Other violations of a DVPO would require multiple acts

to constitute stalking under the “course of conduct” element, such as visiting the victim’s home or workplace or interfering with the victim’s property. Other acts in violation of a DVPO would not constitute “stalking” at all (*e.g.*, failure to make child support payments or attend an abuser treatment program).

3. Fiscal Research developed cost estimates using the cost of medium custody beds for capital and operating costs

Stalking after previous stalking conviction

The proposed bill imposes the same penalty for this offense as under current law (Class F). In FY 2006/07, there were 4 Class F convictions for felony stalking. However, it is not known how many additional convictions may result from the proposed broadening of the current statute.

The bill expands the potential pool of offenses by broadening the universe of behavior that would qualify as stalking. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2006/07, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.⁷

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

⁷ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

For HB 887, Edition 1, AOC originally estimated that 50% of over 32,000 offenders charged with the various misdemeanor threat and harassment crimes shown in Table 1 would be charged with the new stalking offenses. Fiscal Research has adjusted these figures to reflect 10% of these charges due to changes in Editions 2 and 3. Estimated costs are shown in Table 7 below.

Table 7 – Judicial Costs for HB 887

<u>Offense Type</u>	<u>FY08/09 (7 mos.)</u>	<u>FY 09/10</u>	<u>FY 10/11</u>	<u>FY 11/12</u>	<u>FY 12/13</u>
Various Class 1 and Class 2 misdemeanors to Class A1	\$168,376	\$288,645	\$288,645	\$288,645	\$288,645
Violate Order to Class G	\$11,880	\$20,366	\$20,366	\$20,366	\$20,366
TOTAL	\$180,256	\$309,011	\$309,011	\$309,011	\$309,011

ASSUMPTIONS

1. Include 10% of charges for communicating threats, threatening phone calls, and harassing phone calls
2. Assume 1% would go to trial (325) and assume 9% would be pleas (2,925)
3. Calculate difference between cost for current Class 1 and 2 cases versus A1
4. Assume 7 months cost the first year (effective December 1, 2008) and full cost the second year

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

TECHNICAL CONSIDERATIONS: None

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