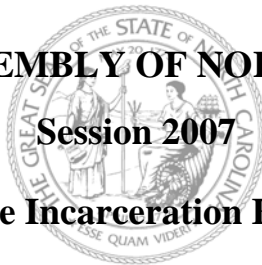


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1003 (Fifth Edition)
SHORT TITLE: Probation Violation Changes.
SPONSOR(S): Representatives Barnhart, Johnson, and Steen

Table with columns for Fiscal Impact (Yes, No, No Estimate Available) and rows for General Fund, Prison Beds, and Positions. Includes a note about the fiscal analysis being independent of other bills.

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.

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

The 4<sup>th</sup> and 5<sup>th</sup> editions of the House Bill 1003 add sections 2-4. Section 2 makes technical corrections. Section 3-4 would amend the authority to revoke probation after the period has expired to allow the court to extend the period of probation, with or without modification, after the period has expired as long as certain conditions are met.

## **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recent period of supervised probation, parole, or post-release supervision, and it does not require that the defendant was revoked for the violation.<sup>1</sup>

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**

#### **Section 1**

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

---

<sup>1</sup> Source: North Carolina Sentencing and Policy Advisory Commission.

for which they could have been placed on supervised probation, parole, or post-release supervision, and could have failed to comply with conditions.<sup>2</sup>

*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.*

Section 3-4

Currently, the court has the authority to revoke probation after the period of probation has expired as long as the State has filed a written motion with the clerk before the period expired indicating its intent to conduct a revocation hearing and the court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier. The North Carolina Court of Appeals has held that the court does not have the authority to extend the period of probation after the period expires.

These sections would amend the authority to revoke probation after the period has expired to allow the court to extend the period of probation, with or without modification, after the period has expired as long as certain conditions are met (the bill replaces the current conditions):

1. A written violation report was filed with the clerk before the period expired.
2. The court finds that the probationer did violate one or more conditions of probation before the period expired.
3. The court finds for good cause shown and stated that the probation should be extended, modified, or revoked.

If the court opts to extend the period of probation, the court may extend the period of probation up to the maximum allowed under G.S. 15A-1342(a), which is five years.

The following table shows the range of recommended lengths of the period of probation under G.S. 15A-1343.2 for offenders sentenced under structured sentencing as well as the average supervised probation sentence lengths imposed during FY 2006/07:

| Offender     | Punishment   | Recommended Length of Probation (G.S. 15A-1343.2) | Average Supervised Probation Sentence Length (FY 2006/07) |
|--------------|--------------|---|---|
| Misdemeanant | Community    | 6 to 18 months                                    | 16 months   |
|              | Intermediate | 12 to 24 months                                   | 20 months   |
| Felon        | Community    | 12 to 30 months                                   | 25 months   |
|              | Intermediate | 18 to 36 months                                   | 32 months   |

<sup>2</sup> 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 offenders would receive an extended period of probation (up to five years) and how many would have their conditions modified (including moving from a community punishment to an intermediate punishment) under the proposed bill. This bill would impact probation resources as a result of the extended supervisory period and modifications of probation; however, the exact impact on the Division of Community Corrections cannot be determined.

It is also not known how many of the offenders who receive an extended period of probation would have subsequent probation violations that could result in modification or revocation. The proposed bill would impact the prison population through revocations for violations of the extended period of probation; however, its impact cannot be determined.

### **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.

Section 4 expands current GS 15A-1344(f) by providing the court with the additional authority to extend the probation period up to 3 years or modify the conditions of probation after expiration of the probation period if certain conditions are met (the amended subsection replaces the two existing conditions with three new ones). AOC has no data from which to estimate the number of defendants who would be subject to an extended or modified probation under the amended GS 15A-1344(f). The extended probation periods could increase the opportunity for defendants to commit violations, thus increasing the number of revocation hearings. Without data to project the number of such hearings, it is not possible to determine the impact on the court system.

**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, Denise Thomas

**APPROVED BY:**

Lynn Muchmore, Director  
Fiscal Research Division



**DATE:** July 1, 2008

**Signed Copy Located in the NCGA Principal Clerk's Offices**