

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE (INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: SB 346 (Third Edition)
SHORT TITLE: Amend Stalking/Domestic Violence Laws
SPONSOR(S): Senator Rand

FISCAL IMPACT		
Yes (X)	No ()	No Estimate Available (X)

	(In millions)				
	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>
GENERAL FUND					
Correction					
Recurring	\$0	\$27,173	\$55,977	\$118,357	\$207,319
Judicial					
Jury Fees	\$7,492	\$22,704	\$22,704	\$22,704	\$22,704
Indigent Defense	\$16,493	\$54,978	\$60,476	\$66,523	\$73,176
TOTAL EXPENDITURES	<u>\$23,985</u>	<u>\$104,855</u>	<u>\$139,157</u>	<u>\$207,584</u>	<u>\$303,199</u>

Section 1 (G.S. 14-277.3): For new stalking misdemeanor offenses, impact on county jails is expected but no estimate is available; fiscal impact on Judicial Branch can be absorbed with existing resources. For felony stalking offenses, Judicial Branch is expected to incur costs as shown above; and impact on the Department of Correction is expected but cannot be determined.

Section 2 (G.S. 15A-534.1(a)): Pretrial release conditions are expected to have a fiscal impact on the Judicial Branch, but cannot be estimated.

Section 3 (G.S. 50B-1 (a)): Fiscal impact on the Judicial Branch expected but cannot be estimated.

Section 4 (new in 3rd edition—G.S.50B-2(c1)): Amends statute governing expiration of ex parte orders – no fiscal impact anticipated

Section 5 (was Section 4 in old edition) (G.S. 50B-4.1): A fiscal impact is expected on the Judicial Branch and DOC as a result of a new felony offense for repeat violations of protective orders (G.S. 50B-4.1(f)). However, it cannot be estimated at this time. The enhanced felony class for felonies that violate a protective order (G.S. 50B-4.1(d)) is expected to have a fiscal impact on the Department of Correction as shown above; an impact on the Judicial Branch is expected but not available.

POSITIONS: It is anticipated that approximately 1 position would be needed to supervise the additional inmates housed under this bill by the year 2005-06. This is based on inmate to employee ratios, provided by the Division of Prisons, for close, medium, and minimum custody facilities. For the five-year fiscal note horizon, it is recommended that a ratio of 2.5 inmates to one employee be used for each custody level.

NOTE: It is possible indigent defense costs and DOC costs identified in this note could be covered by legislation passed since the Fiscal Note on the second edition was completed on May 8, 2001. SB 1005

authorized new prison beds and additional indigent defense funds. The final determination on whether new prison beds needed due to this bill cannot be determined until 2002 when new, official prison population projections and prison capacity needs are released.

PRINCIPAL DEPARTMENT (S) & PROGRAM (S) AFFECTED: Dept. of Correction: Judicial Branch, County Jails

EFFECTIVE DATE: This act becomes effective March 1, 2002, and applies to offenses committed on or after that date.

NOTE: *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:

Section 1 of the proposed bill revises G.S. 14-277.3 by broadening the definition of stalking and enhancing the penalty. Under the bill, a person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence of, *or otherwise harasses*, another person, without legal purpose and with the intent to place the person in reasonable fear either for the person's safety or the safety of their immediate family or close personal associates. It further enhances violation of this section to a Class A1 misdemeanor from a Class 1, and to Class H felony from a Class I felony if done when there is a court order in effect prohibiting similar behavior. The bill also provides that a person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

Section 2 revises GS 15A-534.1(a) to add that a judge must determine pretrial release conditions in all cases in which the defendant is charged with committing a felony under a variety of specified offenses (including rape and sexual offenses, assault, kidnapping, and arson) upon current or past domestic partners.

Section 3 revises GS 50B-1(a) to include continued harassment that inflicts substantial emotional distress within the definition of domestic violence. Under Section 4, GS 50B-4.1 is amended to provide that a person committing a felony while knowingly violating a valid protective order shall be guilty of a felony one class higher than the principal felony (unless that is a Class A or B1 felony or the multiple offense felony created by this law) and makes fourth offense of violation of a valid protective order a Class H felony.

Section 4 amends statute governing expiration of ex parte orders by magistrates so orders would no longer expire within 72 hours. Instead, schedules case for next day district court is in session.

Section 5 expands punishment for violating a domestic violence protective order. Persons committing felonies prohibited by the order would be punished a t one higher felony class. Also adds new Class H felony for knowingly violating a protective order three separate times.

Section 6 changes effective date to March 1, 2002.

ASSUMPTIONS AND METHODOLOGY: Department of Correction and the Judicial Branch

Section 1: Stalking Offenses (Misdemeanor Offenses, G.S. 14-277.3)

The proposed bill expands the scope of the stalking offense to cover harassing conduct and enhances violation of G.S. 14-277.3 to a Class A1 misdemeanor. The bill defines harass or harassment as knowing conduct communicated by any means (written, printed, telephonic, or electronic) directed at a specific person that annoys, torments, terrorizes, or terrifies that person and that serves no legitimate purpose. Consequently, additional charges and jail sentences may result since some people would be charged with the broader stalking offense created by this bill that might not otherwise be charged with any offense under the current law, and offenders currently charged with Class 1 would be upgraded to Class A1

There were 86 Class 1 misdemeanor convictions for stalking and 14 Class A1 misdemeanor convictions for stalking during FY 1999/2000, according to the NC Sentencing Commission. In addition, the Administrative Office of the Courts (AOC) reports that for a similar period (CY 2000) data indicate that 830 defendants were charged with misdemeanor stalking (Class 1 and Class A1 misdemeanors).

While it is not known how many additional sentences will result from broadening the definition of stalking, Fiscal Research does not expect the expansion of scope and reclassification of Class 1 misdemeanor convictions to Class A1 misdemeanor convictions to have an impact on the prison population. However, the reclassification and the expansion of scope could have an impact on local jail populations. In FY 1999/2000, 19% of Class A1 misdemeanor convictions resulted in active sentences. The average sentence length imposed was 69 days. Offenders serving active sentences of 90 days or less are housed in county jails.

AOC cannot provide an estimate on the increase in district court workload that would result from the enhancement of the misdemeanor offenses from Class 1 to Class A1, or from the expansion of scope. But, given the number of offenders currently charged and that any expected increase in Judicial Branch workload is spread statewide, Fiscal Research estimates the impact from this section of the bill can be absorbed with existing resources.

Section 1: Stalking Offenses (Felony Offenses, G.S. 14-277.3)

The proposed bill enhances violation of this section to a Class H felony from a misdemeanor if done when there is a court order in effect prohibiting similar behavior. The bill also provides that a person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. Given these penalty upgrades and the expansion of scope, some defendants would face longer sentences, and in some cases, be ineligible for community sanctions. It also can be expected that the defense and prosecution would be more vigorous, resulting in more time and cost to the courts.

During CY 1999/2000 there were 15 defendants charged with felony stalking (Class I), according to the AOC. The Sentencing Commission reports that for a similar period (FY 1999/2000) there were no Class I felony convictions for stalking.

While it cannot be assumed that the 14 Class A1 convictions for stalking in FY 1999/2000 were committed while a court order was in place, the Sentencing Commission can estimate the impact on the prison population under various scenarios. If, for example, there are 15 convictions for stalking with a court order in place that move from Class A1 to Class H, this would result in the need for four additional prison beds the first year and eight additional prison beds the second year.

If there are five convictions for repeated stalking that move from Class I to Class F, this would result in the need for three additional prison beds the first year and five additional prison beds the second year.

While it is not known how many offenders will be sentenced as a result of the penalty enhancements, Fiscal Research assumes there may be an impact on the Department of Correction since there are no surplus prison beds available for the five year Fiscal Note horizon and beyond, and each active sentence would create the need for an additional prison bed.

AOC is unable to provide at this time an estimate on the impact to the court system from the Class F felony enhancement, but has provided analysis on the Class H felony enhancement if done when there is a court order in effect prohibiting similar behavior. Although they do not have data on the exact number of such defendants, they note the percentage could be very high given the very large number of Chapter 50B protective order cases. In calendar year 2000, there 25,766 protective order cases under Chapter 50B. They, therefore, estimate conservatively that a minimum of 7% (between 5% and 10%) of the CY1999/2000 misdemeanor stalking charges, or 58 defendants would be charged under the bill with the Class H felony.

In addition, they estimate that 7% of defendants charged with harassing/threatening telephone calls (Class 2 misdemeanor) and those charged with communicating threats (Class 1 misdemeanor) could be charged under the broad language of the bill. There were 6,154 and 24,097 defendants charged in CY 2000, respectively. Thus, they estimate 430 of the defendants charged with harassing/threatening telephone calls and 1,686 defendants charged with communicating threats would be charged with the Class H felony under the bill, for a total of 2,116 defendants. Added to the 58 defendants, AOC would estimate 2,174 defendants would be charged with felonies under the bill instead of misdemeanor under current law.

Assuming that 2% of these defendants would go to trial, 43 felony trials at 2 days (12 hours) in superior court is estimated. The jury fees associated with the new superior court trials are estimated at \$22,704 for the 43 trials (\$528 for each 2-day trial).

Along with jury fees, these new superior court trials would be associated with personnel costs and indigent defense costs. However, Fiscal Research does not include personnel costs in its calculation if the workload increase is less than 3,600 (3,600 = 2 fulltime positions). With this particular amendment, workload is only estimated to increase by 1,494 hours.

In addition to those defendants going to trial, AOC estimates that 60%, or 1,304 defendants, would plead guilty. AOC estimates that about 60% of these defendants, or 26 defendants with felony trials and 782 defendants with guilty pleas, would be found indigent and receive court-appointed counsel. For trials, AOC estimates 12 in-court hours and 5 additional hours of preparation time would be need for a total of 17 hours. At a cost of \$60 per hour, AOC estimates indigent costs for trials at \$26,520 (26 trials x 17 hours x \$60). For guilty pleas, AOC expects an additional half hour of preparation time would be needed. At a cost of \$60 per hour, AOC estimates indigent costs for guilty pleas at \$23,460 (782 pleas x .5 hours x \$60). Indigent cost for a full year would total \$49,980. AOC, further, estimates that indigency cost would increase by 10% each year, during the five-year Fiscal Note horizon.

(For third edition of SB 346, these jury fees and indigent defense costs are adjusted for March 1, 2002 effective date on Page 1 of this Note)

Section 2: Pretrial Release Conditions Under Chapter 50B

This bill amends GS 15A-534.1(a) to add that a judge must determine pretrial release conditions in all cases in which the defendant is charged with committing a felony under Articles 7A (Rape and Other Sex Offenses), 8 (Assaults), 10 (Kidnapping and Abduction), or 15 (Arson and Other Burnings), upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married. Current G.S. 15A-534 provides that a judicial official (not only a judge) must determine pretrial release conditions for a defendant not covered under current G.S. 15A-534.1(a). Thus, magistrates would no longer be able to determine pretrial release conditions for

defendants charged with various sex offenses (including rape and sexual offenses, assault, kidnapping, and arson) that involve domestic relationships defined under the bill.

AOC cannot provide an estimate on the impact to the court system as a result of this provision. Nevertheless, they note that there are numerous offenses covered under the specified articles to which the bill would apply. For example, one such offense is first-degree and second degree kidnapping, in which AOC data for calendar year 2000 indicates that 1,447 defendants were charged with this offense. Thus, given the number of new offenses to which this provision could apply, Fiscal Research and AOC would anticipate a fiscal impact on the courts.

Section 3: Expanded Definition of Domestic Violence (G.S. 50B-1(a))

Similar to the expanded scope of stalking offenses under the bill (discussed previously), the bill adds harassing conduct to the definition of domestic violence. The broad definition for harassment can be expected to result in new charges being filed, more protective orders being sought and entered by the court, and thus, additional violations of protective orders. However AOC has no data from which to estimate the extent of this impact on the courts. Given that this change affects the definition of domestic violence for the entire Chapter, Fiscal Research and AOC assumes it could have a very substantial impact on court workload.

Section 5: New Felony for Repeat Violations of Protective Orders (G.S. 50B-4.1(f))

Fiscal Research anticipates a fiscal impact on the courts and the prison population from this section of the bill. In FY 1999/2000 there were 929 convictions for violation of a protective order, with 331 having three or more prior conviction points. In addition, the AOC data indicate there were 3,274 defendants charged with a misdemeanor violation of a domestic violence protective order under G.S. 50B-4.1. While the AOC database contains information on the number of prior conviction points, it does not contain information about the specific offenses that are used to calculate the number of points. Therefore, it is not known how many offenders have knowingly violated a valid protective order and have previously been convicted of three Chapter 50B offenses.

The Sentencing Commission notes if, for example, there were three convictions that moved from a Class A1 misdemeanor to a Class H felony, the combination of active sentences and probation revocations would result in the need for one prison bed the first year and two prison beds the second year. If, for example, there were 100 convictions that moved from a Class A1 misdemeanor to a Class H felony, the combination of active sentences and probation revocations would result in the need for 22 prison beds the first year and 50 prison beds the second year.

According to AOC, the number of cases that may result is unknown and there is no estimate available of the fiscal impact on the Judicial Branch. Notwithstanding, Fiscal Research assumes there will be a fiscal impact on the Judicial Branch.

Section 5: Enhanced Felony Class for Felonies that Violate a Protective Order (G.S. 50B-4.1(d))

As indicated earlier, the section of the bill amends G.S. 50B-4.1 to punish a person who commits any felony at the time the person knows the behavior is prohibited by a valid protective order with a felony one class higher than the principal felony.

AOC is unable to provide an estimate on the Judicial Branch as a result of this provision. Fiscal Research assumes there will be a fiscal impact given the felony enhancement.

During FY 1999/2000 there were 19 felony convictions associated with the violation of a valid protective order. Since the conditions of the protective order are not computerized, it is not known whether all of these convictions would increase one felony offense class as proposed. For purposes of simulation, it was assumed that all 19 felony convictions would increase by one offense class.

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* That means the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add 3 inmates to the prison system by the end of FY 2005-06.

	<u>June 30</u> <u>2002</u>	<u>June 30</u> <u>2003</u>	<u>June 30</u> <u>2004</u>	<u>June 30</u> <u>2005</u>	<u>June 30</u> <u>2006</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	33,141	33,954	34,738	35,682	36,590
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	32,544	32,712	32,712	32,712	32,712
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-597	-1,242	-2,026	-2970	-3,878
4. No. of Projected Additional Inmates Due to this Bill³	0	1	1	2	3
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill³	0	1	1	2	3

NOTE: This Fiscal Note does not update these numbers for the third edition. It is possible that with the new prison beds authorized in SB 1005, the beds created by this bill could be absorbed by DOC, but that information will not be finally determined until new population projections and bed capacity numbers are available in 2002.

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January, 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rates forecast by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

² Projected number of prison beds is based on beds completed or funded and under construction as of 1/11/01. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. **These bed capacity figures do not include the 3,000 new beds proposed by the Department of Correction for operation in 2003 and 04 nor the potential loss in bed capacity due to any proposals in the 2001 Session to eliminate prison beds or close prisons.**

³ Criminal Penalty bills effective March 1, 2001 will not affect inmate population until 2001-02 due to lag time between when an offense is committed and an offender is sentenced.

OTHER ASSUMPTIONS:

1. The assumptions for number of active sentences and number of probation revocations assume the same percentage as found for Class E offenders in FY 1999/2000. Assumes no changes in judicial or prosecutorial behavior regarding convictions for this offense.
2. Assumes no deterrent effects as a result of the bill.

FISCAL IMPACT BEYOND FIVE YEARS -- Fiscal Notes look at the impact of a bill through the year 2006. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Inmates Due to This Bill	4	5	6	7
Available Beds	-4,848	-5,771	-6,688	-7,597
New Beds Needed	4	5	6	7

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

- Close Custody – 29%
- Medium Custody –44%
- Minimum Custody –27%

NOTE: *The Department of Correction indicates that the prison system is under capacity in close custody beds only. However, in assigning the true cost of this bill, the Fiscal Research Division considered the number of beds needed at each custody level due to this bill.*

OPERATING: Operating costs are based on actual 1999-2000 costs for each custody level as provided by the Department of Correction on November 1, 2000. A 3% per year inflationary rate has been added to these 99-2000 costs to determine the five-year recurring costs estimated in the Fiscal Impact Table on Page 1.

DAILY INMATE OPERATING COST 99-2000

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Statewide Average</u>
Daily Cost Per Inmate (99-2000)	\$52.52	\$68.13	\$75.32	\$63.65

These costs include security, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons.

NOTE: *Operating costs will be calculated as follows: number of offenders times daily cost per inmate for each custody level = total operating costs. For bills that increase inmate population in 2002 or 2003, only operating costs are included in the estimate of fiscal impact. This methodology is based on the following assumption. It is not practical to assume that Correction can build prisons quickly enough to house additional offenders before 2003-04. In practice, DOC will have to purchase additional beds out of state or in county jails or*

establish temporary beds until construction can be completed. Based on previous contract costs for purchasing beds, the DOC statewide average cost for 99-2000 will be the base cost of buying a prison bed.

METHODOLOGY FOR CALCULATING PRISON BED COSTS: Sentencing Commission projections and DOC estimates of custody levels and operating costs (illustrated previously) were the basis for calculating the number of beds needed each year. Due to the gap between the time a felony offense is committed and the offender is sentenced, the effective date for prison impact is estimated to be 6/1/2002. Therefore, fiscal impact for FY 2002 is for the month of June only, or 1/12 of the annual bed operating cost. Fiscal Year 2003 represents the first full year, and in this case the first year in which a prison bed is needed.

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

TECHNICAL CONSIDERATIONS: The bill's change of felony level will require a change in how stalking is cited in the Victim's Rights Act (Article 46 of Chapter 15A) if stalking is still to be covered. The current law defines a *victim* as a person against whom there is probable cause to believe that one of the crimes listed has been committed. Stalking is one of the offenses specifically listed for Class I felony violations. Under the bill, the felony offense of stalking is a Class H or Class F felony and not a Class I felony, as provided under current law. If it is the intent of the General Assembly that stalking continue to be covered under the Victim's Rights Act, then it should amend the specific listing of this section among Class H or Class F felonies pursuant to the change in the bill, instead of a Class I felony.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Jim Mills

APPROVED BY: James D. Johnson

DATE: December 6, 2001



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