

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2005**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 1209 (Second Edition)

**SHORT TITLE:** Sexual Battery/Sex Offender Registry/DNA.

**SPONSOR(S):**

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>	Exact amount cannot be determined (see pgs. 2 and 4 for details).				
<b>Judicial</b>	Exact amount cannot be determined (see pg. 2 for details).				
<b>Justice</b>	\$1,800	\$3,000	\$3,100	\$3,200	\$3,200
	<i>Potential federal grant funds could offset 90 percent of the Justice costs.</i>				
<b>LOCAL GOVERNMENTS</b>					
	Exact amount cannot be determined (see pg. 4 for details).				
<b>ADDITIONAL PRISON BEDS*</b>					
	Exact amount cannot be determined (see pg. 2 for details). For every two Class F felony convictions per year, one prison bed would be needed in the first year and three beds would be needed in the second year.				
<b>POSITIONS: (cumulative)</b>					
	Exact amount cannot be determined (see pg. 2 for details).				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Department of Justice; Local Governments					
<b>EFFECTIVE DATE:</b> December 1, 2005					
<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:** This bill would add sexual battery (G.S. 14-27.5A) to the list of sexually violent offenses under G.S. 14-208.6(5) for which convicted offenders must register under the Sex Offender Registry Program. The bill would additionally amend G.S. 15A-266.4 to require that a DNA sample be obtained after conviction for sexual battery.

## ASSUMPTIONS AND METHODOLOGY:

### **Impact of Adding Sexual Battery Offenses to the Sex Offender Registry Program**

Requiring additional offenders to register as sex offenders could lead to some increase in the number of individuals prosecuted for failing to comply with registration requirements, a Class F felony. For any increase in the number of charges and convictions for this offense, there would be an associated cost to the Courts and Department of Correction, as well as an increase in prison bed needs. However, as these offenders have not been required to register in the past and no data is available regarding the likelihood that offenders convicted of a specific offense will violate the registration requirements, the number of prison beds needed cannot be projected and the exact cost cannot be determined.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

***Department of Correction:*** The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. 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.*

In calendar year 2004 there were 71 Class A1 misdemeanor convictions under G.S. 14-27.5A for sexual battery. Under this bill, these offenders would be required to register as sex offenders per G.S. 14-208. A violation of the sex offender registry requirements is a Class F felony, for which there were 108 convictions in FY 2003-04. Requiring additional individuals to register as sex offenders could lead to some increase in Class F felony convictions for failing to comply with the registration requirements.

***Active Sentences:*** In FY 2003-04, 47 percent of Class F felony convictions resulted in active sentences, and the average minimum active sentence length was 19 months with a corresponding maximum of 24 months. If, for example, there were two additional Class F convictions per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and three beds in the second year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

***Non-Active Sentences:*** In FY 2003-04, 53 percent of Class F convictions resulted in intermediate sanctions and the average length of supervision was 32 months. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. This estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.

**Judicial Branch:** For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC data for CY 2004 show 384 defendants charged under current G.S. 14-208.11 for violating sex offender registration requirements. Requiring offenders convicted of sexual battery to register as sex offenders could lead to some increase in the number of individuals prosecuted for failing to comply with those requirements. For any additional Class F felony charges under G.S. 14-208.11, there would be additional workload in superior court.

Based on the costs of time in court, attorney preparation, and jury fees, AOC estimates that the average cost of processing a single Class F felony charge via trial is \$5,475. The estimated cost of indigent defense, for any trial in which it is necessary, would be an additional \$2,704. However, based on prior-year data, the majority of charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$397 per plea.

**Department of Justice:** The Department believes that its Sex Offender Registry database can absorb an increase of less than 100 offenders per year without additional expense.

#### **Impact of Collecting DNA Samples from Sexual Battery Offenders**

Costs below are calculated based on the 71 reported convictions for sexual battery in 2004. Costs on the front page box assume an increase of two percent annually in the number of convictions. Due to the December 1 effective date, costs on the front page box are for seven months of FY 2005-06. Costs are rounded to the nearest \$100.

**Department of Justice:** The State Bureau of Investigation (SBI) crime lab is responsible for analyzing, storing, and entering DNA samples into the database. Currently, the lab sends DNA samples from convicted offenders to a private vendor, who analyzes the samples and returns them, along with an electronic copy of DNA profiles, to the lab. The SBI applies for grant funds from the National Institute of Justice annually; these funds are paid directly to the private vendor for analysis costs. The SBI lab maintains quality control by reanalyzing five percent of the samples. A computer analyst uploads the DNA profiles into the state and national Combined DNA Index System (CODIS).

In 2004, there were 71 convictions for sexual battery. Assuming that the SBI used federal grant funds to outsource the DNA samples resulting from these convictions, SBI analysts would reanalyze four samples at a cost of approximately \$40 each in materials. Anticipated federal grant funds of approximately \$50 per sample would be paid directly to a private lab, for a total of \$160 in SBI costs and \$3,600 in federal grant funds. If the SBI did not receive federal grants and analyzed all 71 samples in-house, the cost in materials and supplies would be \$2,840. The addition of 71 DNA samples would not require additional personnel.

The SBI also provides DNA sample kits to local law enforcement at no charge. These kits cost \$1.98 each, for a total of approximately \$141.

***Department of Correction and County Jails:*** Sexual battery is a Class A1 misdemeanor. The majority of offenders convicted of sexual battery would either serve non-active sentences or sentences in county jails. Based on active rates and sentence lengths for Class A1 misdemeanants in FY 2003-04, approximately 8 of the 71 sexual battery offenders in 2004 could have served active sentences in a Department of Correction facility. For those offenders, the Department would incur costs of \$4.50 per offender in supplies and postage to obtain the DNA sample and submit it to the SBI. Each sample would also require 15 minutes of a correction officer and prison nurse's time. For the remaining 63 offenders serving non-active or jail sentences, county jails would incur the costs of obtaining and mailing the samples. The SBI provides DNA collection kits to the counties at no cost; therefore, county costs would include \$0.50 in postage per kit and personnel time or contractual personnel costs.

***Other Potential Costs:***

(1) The addition of sexual batterer DNA samples to the convicted offender DNA database could result in more matches for unsolved crimes. These matches would require confirmation and investigation by the SBI, and could result in additional criminal charges and convictions.

(2) In 2003, the Dorothea Dix Psychiatric Hospital housed 31 offenders found Not Guilty by Reason of Insanity. If an offender is found Not Guilty by Reason of Insanity on a charge of sexual battery, and sentenced to a Department of Health and Human Services facility such as Dorothea Dix, that facility would bear the cost of collecting the DNA sample. Since the facilities are staffed with medical personnel, it appears that the cost to DHHS to collect and transmit DNA samples would be minimal. We assume that the SBI would supply collection kits and DHHS would be responsible for postage costs.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Justice

**TECHNICAL CONSIDERATIONS:** None

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