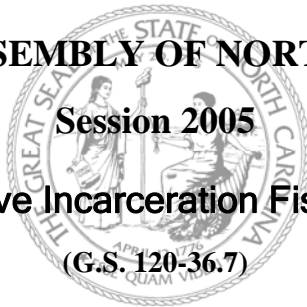


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1896 (Third Edition)
SHORT TITLE: Sex Offender Registration Changes.
SPONSOR(S): Representatives Glazier, Goforth, Farmer-Butterfield, and Ray

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
GENERAL FUND					
Correction					
Recurring					
Nonrecurring					
Judicial					
Recurring					
Nonrecurring					
County Sheriffs					
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS*					
POSITIONS: (cumulative)					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	Unless otherwise stated, the act is effective December 1, 2006, or when it becomes law.				

BILL SUMMARY: Amends the sex offender registration laws, expands the definitions of certain sexual offenses, and creates new criminal penalties. The addition of registration requirements

thereby expands the population of sex offenders who are subject to registration and reporting requirements, as well as noncompliance penalties.

- *Section 1* amends G.S. 14-208.6(5) to add statutory rape or sexual offense of a person 13, 14, or 15 years old, where the defendant is at least six years older, to the list of offenses that require registration in North Carolina.
- *Sections 2 and 3* amend G.S. 14-208.6A and G.S. 14-208.6B to require any adult convicted of an offense that requires registration and any juvenile convicted of such offense to appear in person before the appropriate sheriff to register, verify, and report changes to registration information.
- *Section 4* enacts G.S. 14-208.8A to require any registered offender who works and maintains a temporary residence in a county other than that of his permanent residence to notify the sheriff of the county where the person resides. The offender must provide information concerning his place of employment and temporary address within 48 hours upon knowledge of temporary residence. If the period of temporary residence exceeds 30 days, the offender must notify the sheriff of registration within 10 days upon knowledge. Upon receipt of notice, the sheriff of registry shall immediately forward the information to the Division of Criminal Statistics. The Division shall notify the sheriff of the county where the person is working and temporarily residing. Effective June 1, 2007.
- *Section 5* enacts G.S. 14-208.7(d) providing that all registration required under G.S. 14-208.7 is to be made in person.
- *Section 6* amends G.S. 14-208.9 to require a registered offender who changes address within the county of registry to report in person and provide written notice of that change to the sheriff. If the offender moves to another county, he must report the address change in person and provide written notice to the sheriff of the new county within ten days of the change; he must also provide the sheriff of last registry with written notice within ten days. If the offender moves to another state, he is also required to report in person and provide written notice to the sheriff of last registry within ten days. Changes in academic or employment status at institutions of higher education must also be reported in person to the sheriff of last registry within ten days.
- *Section 7* amends G.S. 14-208.9A to provide that the Division of Criminal Statistics of the Department of Justice shall annually mail a nonforwardable verification form to a registered offender thirty days prior to the anniversary of that offender's initial registration date, and must notify the sheriff of the county of the offender's last reported address when the Division mails the verification form to the offender. A registered offender must return the verification form in person within ten days upon receipt of the verification form. Upon delivery of the form, the sheriff shall take a photograph of the registrant to be included in the form. Should an offender fail to report in person or provide the verification form, the sheriff of registry shall make a reasonable attempt to verify the offender's registered address. During the registration period, the sheriff is authorized to attempt to verify the offender's residence. The sheriff may also request that he take an additional photograph of the offender, if he believes that the current photograph no longer provides a true and accurate likeness of the offender. If requested, the offender must appear in person during normal business hours, and within 72 hours of being requested. Failure to comply with this

specific provision is a Class 1 misdemeanor. Any other violation is failure to register, as provided in G.S. 14-208.11.

- *Section 8* amends G.S. 14-208.11(a) to clarify that *willful* failure to comply with registration requirements is a Class F felony. Conforming changes are made to G.S. 14-208.11(a)(1) and (2) – specific violations of failure to comply.
- *Section 9* enacts G.S. 14-208.11(a)(7) to make conforming changes, identifying failure to notify of out-of-county employment as required under G.S. 14-208.8A as a Class F offense. Effective June 1, 2007.
- *Section 9.1* enacts new 14-208.11A, imposing a duty to report the noncompliance of a sex offender. Certain acts or failures to act, if done with the intent of assisting the offender in eluding law enforcement, are Class H felonies.
- *Section 10* amends G.S. 14-208.12A to provide that the district attorney in the jurisdiction in which the offender resides may petition the court to require a non-compliant offender to continue registration for an additional ten years; the ten-year registration period automatically terminates for compliant offenders.
- *Section 11* enacts G.S. 14-208.16, which makes it a Class F felony for a registrant to knowingly reside or work within 1,000 feet of the property on which any public, private, or parochial school, child care center, or public swimming pool is located, with certain exceptions.
- *Section 12* amends the definition of sexual contact in G.S. 14-27.1(5), thereby making it sexual battery (G.S. 14-27.5A; sexual battery is a Class A1 misdemeanor) for a person to ejaculate, emit, or place semen, urine, or feces upon any part of another person.
- *Section 13* requires the Department of Correction to study and develop a plan to offer mental health treatment for incarcerated sex offenders, intended to reduce the likelihood of recidivism. A preliminary report, including consideration of the fiscal impact of this plan, is to be made by the Department to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services no later than January 15, 2007. A final report to the Oversight Committee and General Assembly is required no later than October 1, 2007.
- *Section 14* provides that the provisions of the bill are severable. If any is held invalid, that invalidity does not affect the other provisions of the act.
- *Section 15* provides that the act is effective when it becomes law, unless otherwise stated.

Source: Adapted from Bill Digest H.B. 1896 (05/10/2006).

ASSUMPTIONS AND METHODOLOGY:

General

In accordance with the provisions of this bill, the following criminal offenses and penalties apply:

- *Section 1:* Adds statutory rape or sexual offense of a person 13, 14, or 15 years old by a person who is at least six years older to the list of offenses that require registration as a sex offender, thereby expanding registration requirements and the pool of potential offenders who might fail to comply with such requirements. Failure to comply is a Class F felony.

- *Sections 2-6, 8-9:* Delineate additional restrictions that are assumed to make compliance with registration requirements more difficult. Failure to comply is a Class F felony.
- *Section 7:* Establishes additional verification requirements and creates a new Class 1 misdemeanor for failure to report in person and submit to an additional photograph. Failure to comply with the additional verification requirements is a Class F felony.
- *Section 9.1:* Imposes the duty to report noncompliance of a sex offender and the new penalty for failure to report in certain circumstances. Violation is a Class H felony.
- *Section 10:* Allows the appropriate District Attorney to petition the court not to terminate the registration requirement after 10 years, and/or to extend that requirement an additional ten years if an offender fails to comply. Failure to comply is a Class F felony.
- *Section 11:* Prohibits a registered sex offender from knowingly residing or working within 1,000 feet of the property on which any public, private, or parochial school, child care center, or public swimming pool is located, with certain exceptions. Violation is a Class F felony.
- *Section 12:* Expands the definition of sexual contact to include the act of “ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.” Sexual contact is a criminal offense under G.S. 14-27.5A (sexual battery); violation is a Class A1 misdemeanor.

Department of Correction

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. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon, or beyond.*

Failure to comply: In 2004-05, there were 147 convictions under G.S. 14-208.11 - failure to comply with sex offender registration requirements. During the same fiscal year, 48% of Class F felony convictions resulted in active sentences, with average minimum and maximum sentences imposed of 18 and 22 months, respectively; 52% of Class F convictions resulted in intermediate sentences. It is not known how many additional offenders might fail to comply with the aforementioned registration requirements. *If, however, only two additional Class F convictions resulted per year due to this bill, the increase would necessitate one additional prison bed the first year, two additional beds the second year, and one additional position the second year. Assuming this threshold and a medium custody level, the construction of additional prison beds could cost the State \$65,340 the first year, and \$141,134 the second year; operating costs could be \$26,680 the first year, and \$54,960 the second.* This threshold should not be construed as an estimate of the fiscal impact of this act. The number of additional convictions resulting from this bill could be much higher than in the threshold provided, or even lower, though presumed unlikely.

The following supplementary example is illustrative of the potential costs that might result from additional convictions of offenders who *willfully* fail to comply with registration requirements. It assumes eight additional convictions per year. It is only a supplementary hypothetical.

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
<i>Additional convictions</i>	4	8	8	8	8
<i>New beds</i>	2	5	6	6	6
<i>Capital costs</i>	\$849,420	\$846,806			
<i>Number of prisoners</i>	2	6	9	9	9
<i>Operating costs</i>	\$53,360	\$164,882	\$254,743	\$262,386	\$270,258

- Eight additional convictions of willful noncompliance are assumed per year, or approximately 5% of the number of convictions under G.S. 14-208.11 in FY 04-05. Because the bill generally takes effect (not all provisions) on December 1, 2006, only half of additional convictions are assumed for FY 06-07.
- Based on FY 04-05 sentencing practice, 48% of additional convictions are presumed to result in active sentences. Of the sentences for each prior year (both intermediate and active), 25% are presumed to result in probation revocations for the current fiscal year, thus increasing the need for additional beds.
- The Department of Correction estimates construction costs per bed, for a medium custody level, of \$60,500 for FY 05-06; 8% inflation is assumed.
- Since the construction of prison beds typically takes two to three years, it is assumed that DOC will need to purchase additional beds from county jails or out-of-state; these costs are not included in the operating cost calculation.
- Given an average minimum sentence imposed of 18 months, half of the operating costs for the prior year are assumed to carry over, represented by halving the number of prisoners whose sentences could potentially carry over into the subsequent fiscal year.
- As of FY 04-05, the Department of Correction estimated daily operating costs of \$68.90 per medium custody prisoner; 3% inflation is assumed.

Failure to submit to additional photograph: Because this is a new offense, there is no historical data from which to estimate the bill's impact on the State's prison population. In 2004-05, 19% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated term imposed of 44.0 days; 79% of convictions resulted in community sentences and 2% resulted in intermediate sentences. *Because offenders serving active sentences of 90 days or less are housed in local jails, additional convictions resulting from this bill would not have an impact on the prison population. The impact on local jail populations is not known.*

Intentional failure to report/harboring sex offender: As a new offense, there is no historical data from which to estimate the impact of this section on the prison population. In FY 2004/05, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year, two additional prison beds the second year, and one additional position the second year. Assuming this threshold and a medium custody level, the construction of additional prison beds could cost the State \$65,340 the first year, and \$141,134 the second year; operating costs could be \$26,680 the first year, and \$54,960 the second.

Residing/working within 1,000 feet of a certain location: Because this is a new offense, there is no historical data from which to estimate the bill's impact on the State's prison population. As a Class F felony offense, the same threshold for non-compliance applies.

Sexual battery: In 2004-05, there were 114 convictions under G.S. 14-27.5A. During the same fiscal year, 25% of Class A1 misdemeanor convictions resulted in active sentences, with an

average estimated time served of 53.8 days; 70% of convictions resulted in community sentences and 5% resulted in intermediate sentences. *Because offenders serving active sentences of 90 days or less are housed in local jails, additional convictions resulting from this bill would not have an impact on the prison population. The impact on local jail populations is not known.*

In addition, any new offenders convicted under the expansion of G.S. 14-27.5A would be required to register on the sex offender registry. Accordingly, the same threshold for non-compliance applies, though it is not known how many additional violations might occur as an indirect result of this broadening.

Program Development: An estimate of potential costs to be incurred by the Department of Correction in the development and administration of the proposed mental health treatment program is unavailable at this time. However, as a condition of the reporting requirement, the Department must consider the fiscal impact of this proposal, specifically the costs of implementation. It is expected that both the development and implementation of such a program will increase workload and generate additional costs to DOC.

Department of Correction – Division of Community Corrections

Assuming some additional intermediate and community sentencing, additional costs for probation supervision would also be incurred. Presently, general supervision from a probation officer costs the Division of Community Corrections \$1.93 per offender, per day. Special sanctions under intermediate sentences generate higher costs. Intensive supervision probation, the most commonly utilized intermediate sanction, costs \$12.95 per offender per day and is for an average of six months; electronic house arrest costs \$6.71. Such costs are projected to begin in FY 2007-2008, due to the effective date of December 1 and the lag time between charge and conviction.

In addition, offenders supervised by DCC are required to pay a \$30 per month supervision fee. Those on electronic house arrest or electronic monitoring must also pay a one-time \$90 fee. This money is collected by the Court System and goes to the General Fund. The percentage of fees actually collected cannot be determined from the Court's records, but survey information indicates that the compliance rate for supervised probationers is around 48%.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts 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.

While the AOC expects the provisions identified in this bill to generate some increase in the workload of district court and superior court judges, court reporters, deputy clerks, and district attorneys, there is no data from which to provide reliable estimates. Thus, an estimate of the additional cost to the court system is unavailable. Court-time costs for a single trial and plea for a Class A1 misdemeanor are an estimated \$3,540 and \$226, respectively; Class 1 misdemeanor costs are an estimated \$3,153 and \$224. For a single trial and plea for a Class F felony, these estimated costs are much higher, \$8,452 and \$409, respectively; Class H felony costs are an estimated \$6,364 and \$298.

County Sheriff's Departments:

Due to a lack of sufficient and reliable cost data, an estimate of the fiscal impact of this bill is unavailable. Currently, the only statutory requirements for Sheriffs are that they 1) photograph and take fingerprints from individuals at the time of registration; 2) immediately send the registration information to the Division of Criminal Information (DCI); and 3) retain the original registration form and other information collection and compile the information as a public record into a county registry. There are, however, no statutory requirements for Sheriffs to monitor or supervise registrants living or working within their counties.

The NC Sheriff's Association provided informal survey data, collected from a select number of counties, indicating that there is considerable variation in the practices among, and costs incurred, by sheriffs' departments for the registering and monitoring of offenders. Some departments do no more than register the offenders as required by current law while other departments have dedicated law enforcement officers whose sole responsibility is to actively monitor sex offenders via telephone contacts, home visits, and other activities. Of the six counties surveyed, the estimated annual registration/monitoring costs ranged from \$100 to \$456 per offender.

This bill could increase sheriffs' workload and cost, primarily in enforcement. Specifically, it would require in-person registration for each type of registration requirement (change of address, change in employment or academic status, etc.), which could result in more field activity by sheriffs and potentially more arrests and convictions. Sheriffs' might also choose to increase monitoring of sex offenders who are required to register in both the county of residence and county where working, if subject to the requirements of this bill.

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

TECHNICAL CONSIDERATIONS: None

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DATE: June 13, 2006



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