

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 29 (Second Edition)
SHORT TITLE: Sex Offender GPS/DOC Requests.
SPONSOR(S): Representatives Goforth and Ray

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction					
Prisons/Jails	Criminal penalty changes will increase prison population and result in fiscal impact but the impact should not be significant. Could be small impact on local jails due to new Class 1 misdemeanor.				
Comm. Corrections	Changes in bill to GPS requirements are primarily technical and should have limited impact on cost and # of offenders supervised				
Judicial	Increased court time and fiscal impact due to additional hearings but fiscal impact cannot be determined				
TOTAL EXPENDITURES:	Cannot be determined				
ADDITIONAL PRISON BEDS: (cumulative)*					
POSITIONS: (cumulative)					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: December 1, 2007					
<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: Amends Part 5 (Sex Offender Monitoring) of Article 27A (Sex Offender and Public Protection Registration Programs) of GS Chapter 14 by enacting four new sections as follows:

Court Determination. Adds new GS 14-208.40A requiring that during the sentencing phase for an offense under GS 14-208.6(4), the District Attorney must present any evidence that (1) the offender is a recidivist, (2) the conviction offense was an aggravated offense, or (3) the offense involved physical, mental, or sexual abuse of a minor. If the court finds that the offender is in one of the categories requiring monitoring, the court must make a finding of fact specifying whether one or more of the three factors listed above are present. If the offender is a recidivist or has committed an aggravated offense, the court must order the offender to enroll in a satellite-based monitoring program for life; if the offense involved the physical, mental, or sexual abuse of a minor, a risk assessment must be conducted before the court determines the period of time, if any, the offender must be enrolled in a satellite-based monitoring program.

DOC Determination. Adds new GS 14-208.40B requiring the Department of Correction (DOC) to determine whether satellite-based monitoring is required for an offender when the court has not made a determination. Sets out the process for review of DOC's determination.

Enrollment. Adds new GS 14-208.40C requiring offenders subject to satellite-based monitoring to enroll as follows: (1) for offenders who receive an active sentence, before their release from the Division of Prisons; and (2) for offenders receiving intermediate sentences or community service sentences, immediately upon sentencing.

Notification. Adds a new GS 14-208.40D requiring DOC to use certified mail to notify an offender of the requirement to enroll if the offender is not under DOC supervision at the time the enrollment determination is made. Notification must include the date the offender must appear to enroll; if that date has passed when the offender receives the notification, the offender has ten days from receipt of the notification to appear.

Makes conforming changes to GS 14-208.40.

Unsupervised Probation. Amends GS 14-208.42 to require an offender to enroll in satellite-based monitoring (1) for life if the offender is classified as a sexually violent predator, is a recidivist, or is convicted of an aggravated offense; or (2) for a time period ordered by the court if the offender has committed an offense involving the physical, mental, or sexual abuse of a minor and, based on DOC's risk assessment, requires the highest possible level of supervision and monitoring. Also requires the defendant to remain on unsupervised probation unless (1) enrollment in the satellite-based monitoring is terminated under GS 14-208.36 or (2) the time period set by the court expires.

Device Tampering. Amends GS 14-208.44 to include intentionally interfering with the proper functioning of a satellite-based monitoring device as a Class E felony. Adds a definition of enroll.

Conditions of Probation. Amends GS 15A-1343(b) to provide that defendants placed on unsupervised probation pursuant to the monitoring program are not subject to the following regular conditions of probation: paying a supervision fee, notifying the probation officer of failure to retain employment, and visiting with their probation officer at a Division of Prisons facility.

Amends GS 15A-1343(b2) to add as a special condition of probation that the defendant must submit to warrantless searches at reasonable times of the defendant's person, vehicle, and premises for purposes specified by the court and reasonably related to the probation supervision. When the warrantless search involves testing for illegal drugs and the results are positive, the probationer may be required to reimburse the costs of drug screening and testing.

Immediate Family. Amends GS 14-208.16 (Residential Restrictions) to expand the definition of immediate family members for the purposes of determining a registrant's residential address.

Effective Dates. Determination of monitoring provisions are effective for sentences entered on or after December 1, 2007; device tampering provisions are effective for offenses committed on or after December 1, 2007; conditions of probation changes are effective for persons placed on probation on or after December 1, 2007.

April 16, 2007

H 29. SEX OFFENDER GPS/DOC REQUESTS. Filed 1/29/07. House committee substitute makes the following changes to 1st edition. Modifies proposed GS 14-208.40A to include an offender classified as a sexually violent predator under GS 14-208.20 in those who must enroll in a satellite-based monitoring program for life. Also amends proposed language to require a finding that the offense is not an aggravated offense and that the offender is not a recidivist before ordering a risk assessment of the offender.

Modifies proposed GS 14-208.40B to provide that when an offender is convicted of a reportable conviction and there has not been a determination by the court whether the offender must enroll in satellite-based monitoring, the Department of Corrections (DOC) must make an initial determination of whether the offenders falls into one of the categories in GS 14-208.40(a), and if so, schedule a hearing in the court in which the offender resides no sooner than 15 days from the date that notification is mailed to the offender. At the hearing if it is determined that the offender falls into one of the categories described in GS 14-208.40(a), the court must make findings of fact under GS 14-208.40A, and order the offender to enroll in satellite-based monitoring for life if it is found that the offender has been classified as a sexually violent predator or is a recidivist, or if the conviction offense was an aggravated offense. Also provides for ordering DOC to do a risk assessment of the offender to determine the level of supervision and monitoring necessary. Previously proposed language required DOC to make a determination to require satellite-based monitoring for an offender convicted of a reportable conviction defined by GS 14-208.6(4) and determined by DOC to fall into a category in GS 14-208.33(a), and allowed an offender to file a petition with the court after enrolling in satellite-based monitoring. If the court found that the offender did not fall into one of the categories in GS 14-208.33(a), the offender was released from the monitoring program.

Amends GS 14-208.42 to require an offender required to enroll in satellite-based monitoring under GS 14-208.40A or GS 14-208.40B to continue in the monitoring program for the period required unless the requirement is terminated, once the offender's sentence and any terms of parole or post-release supervision are completed. Gives DOC the authority to have contact with the offender for purposes related to the monitoring program and requires the offender to cooperate with DOC. Previously proposed changes to GS 14-208.42 required offenders in a category described in GS 14-208.33(a) to enroll in satellite-based monitoring for life or for a period ordered by the court depending on the type of offense.

Amends GS 14-208.44 to make it a Class 1 misdemeanor for a person required to enroll in the satellite-based monitoring program to fail to provide necessary information or to fail to cooperate with DOC. Modifies proposed definition of enroll. Modifies proposed changes to the definition of immediate family member in GS 14-208.16(d).

Enacts new GS 14-208.43(d1) to provide that if the Post-Release Supervision and Parole Commission is notified by DOC that the offender has been released from the requirement to register as a sex offender, the commission must order the termination of the monitoring requirement upon request by the offender.

Amends GS 14-208.45 to specify that when a person is required to enroll in the monitoring program under GS 14-208.40A or GS 14-208.40B, DOC may exempt the person from the enrollment fee only when there is good cause and upon request by the enrollee. Makes technical changes.

Removes proposed GS 14-208.40D (notification of certain offenders) and proposed changes to GS15A-1343(b) (regular conditions of probation). Makes conforming changes to GS 15A-1374(b)(11) and GS 15A-1368.4(b1) concerning conditions of parole. Makes technical and conforming changes to GS 14-208.41 and GS 143B-266(e), and to effective dates
Source: Bill Digest H.B. 29 (01/29/0200).

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.

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. Because of the bed situation any criminal penalty change will increase the prison population and have fiscal impact. HB 28 makes minor modifications to penalties for offenders on whose sanctions include Global Positioning Systems (GPS). The increase in prison population, jail population, and the resulting fiscal impact are not expected to be significant.

Department of Correction –Division of Prisons

Criminal Penalty Changes

SECTION 6: Current GS 14-208-44 makes it a Class E felony for a person to intentionally tamper with, remove, or vandalize a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program. HB 29 expands the definition by adding “or otherwise interfere with the proper functioning” of a device. It remains a Class E felony.

It is not known how many additional convictions may result from the proposed broadening of the current statute. Since G.S. 14-208.44 was enacted in 2006, there is no historical data available for this offense. Pertinent facts include:

- In FY 2005/06, 51% of Class E convictions resulted in active sentences, with an average estimated time served of 31 months. *If, for example, there were two additional Class E convictions per year 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.*
- Since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Section 6, Subsection (c), makes it a Class 1 misdemeanor for a person required to enroll in a satellite-based monitoring program to fail to provide necessary information to the Department, or fail to cooperate with the Department's guidelines and regulations for the program. It is currently a condition of probation, parole, and post-release supervision that the offender submit to satellite-based monitoring. Since this condition was recently enacted (December 1, 2006), there is no historical data available regarding the number of offenders who violate this condition. Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. Impact on local jail populations is likely but unknown.

Sections 7, 8 and 9 expand the potential use of warrantless searches for sex offenders which could lead to further revocations and increase prison population but the impact of these changes cannot be determined.

Section 7 amends G.S. 15A-1343(b2), Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor, to add condition (9) that requires the probationer to submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present. The search may include a search of the probationer's computer or other electronic mechanism which may contain electronic data.

There is currently a special condition of probation available to the judge in all cases which requires the probationer to submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present. (G.S. 15A-1343(b1)(7)) The current condition does not mention searching the probationer's computer or

other electronic mechanism which may contain electronic data. It is not known how often this condition is currently imposed on sex offenders and persons convicted of offenses involving physical, mental, or sexual abuse of a minor who are placed on probation. Nor is it known how often this condition results in violations.

Based on data provided to Fiscal Research Division as of February 11, 2006, there were 2,111 registered sex offenders supervised by the Division of Community Corrections (DCC) on probation. Violation of special conditions of probation could result in modification of the conditions of probation or in revocation of probation. It can be expected that some offenders subject to this condition will violate this condition, have their probation revoked, and have their suspended sentences activated. Therefore, the proposed amendment may have an impact on the prison population as a result of revocations for violations relating to this special condition. However, its impact cannot be determined.

Section 8 amends G.S. 15A-1374, Conditions of Parole, to expand the existing condition in subsection (b)(11) as follows:

- to include warrantless searches by a parole officer;
- to include warrantless searches of the parolee's vehicle and premises while the parolee is present; and
- if the parolee was convicted of a reportable sex offense, warrantless searches of the parolee's computer or other electronic mechanism which may contain electronic data.

Based on data provided to Fiscal Research Division as of February 11, 2006, there were 95 registered sex offenders supervised by the DCC on parole. Violation of conditions of parole could result in modification of the conditions of parole or in revocation of parole. It can be expected that some offenders subject to this condition will violate this condition, have their parole revoked, and have the remainders of their sentences activated. Therefore, the proposed amendment may have an impact on the prison population as a result of revocations for violations relating to this condition. However, its impact cannot be determined.

Section 9 amends G.S. 15A-1368.4(b1), Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor, to add condition (8) that requires a post-release supervisee to submit at reasonable times to warrantless searches by a post-release supervision officer of the supervisee's person and of the supervisee's vehicle and premises while the supervisee is present. The search may include a search of the supervisee's computer or other electronic mechanism which may contain electronic data.

There is currently a controlling condition of post-release supervision available to the Commission in all cases which requires the supervisee to submit at reasonable times to searches by a post-release supervision officer of the supervisee's person. (G.S. 15A-1368.4(e)(10)) The condition does not include warrantless searches, the supervisee's vehicle or premises, and searching the supervisee's computer or other electronic mechanism which may contain electronic data. It is not known how often this condition is currently imposed on sex offenders and persons convicted of offenses involving physical, mental, or sexual abuse of a minor who are placed on post-release supervision. Nor is it known how often this condition results in violations.

Based on data provided to Fiscal Research Division as of February 11, 2006, there were 338 registered sex offenders supervised by the DCC on post-release supervision. Violation of controlling conditions of post-release supervision could result in modification of the conditions of post-release supervision or in revocation of post-release supervision. It can be expected that some offenders subject to this condition will violate this condition, have their post-release supervision revoked, and return to prison for the nine months remaining on their sentences. Therefore, the proposed amendment may have an impact on the prison population as a result of revocations for violations relating to this condition. However, its impact cannot be determined.

Department of Correction – Division of Community Corrections—Global Positioning Systems

HB 1896 (2006 Session) originally established the GPS system for monitoring certain sex offenders. The fiscal note for HB 1896 included the projected number of offenders to be affected by HB 1896 and the estimated fiscal impact.

Based on discussions with General Assembly legal staff and DOC Community Corrections staff, it appears the changes in HB 29 are primarily technical in regards to use of GPS. Thus, HB 29 should not have a direct affect on the cost of GPS or the number of offenders to be supervised. HB 291 continues to classify offenders into two Tiers as in HB 1896: Tier 1 offenders are the most serious (violent offenders, recidivists, etc) and will be on lifetime GPS, while Tier 2 are mid-level offenders who are at risk of re-offending. HB 29 continues to give DOC the authority to conduct risk assessments of Tier 2 offenders and make recommendations but makes the final decision for use of GPS the responsibility of the courts.

Regarding the cost of GPS generally, as of April 2007, the number of offenders on GPS was below initial projections. Until projections are updated by DOC, anticipated costs cannot be determined. *Regardless, these costs are not driven by HB 29.*

Department of Correction – Division of Community Corrections Supervision of Offenders

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, and 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.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 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 \$7.71 to \$14.97, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost

¹ 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.

per intermediate offender is \$14.97 for the initial six-month intensive duration, and \$1.96 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.

HB 29 expands the scope of the current Class E felony for tampering with a GPS monitoring device. In 2005-06, 51% of Class E felons received active sentences and 49% received intermediate punishments. Any increase in convictions due to the expanded Class E felony would likely result in increased intermediate supervision but the number of new convictions and cost cannot be determined.²

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%.

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.

New criminal penalties, increased use of warrantless searches, and court hearings to finalize use of GPS will increase court time and cost but an amount cannot be determined

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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DATE: April 25, 2007



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² Due to the effective date of December 1, 2007 and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2007-08. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2008-09.