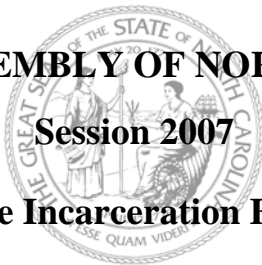


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 1736 (Third Edition)

SHORT TITLE: Sex Offender/Register E-Mail Address.-AB

SPONSOR(S): Senator Purcell

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
REVENUES					
DOJ	Some revenue anticipated for database information released to entities, however amount will not be significant.				
EXPENDITURES					
Judicial	Some additional costs expected, however amount cannot be determined.				
DOJ	\$580,800	\$268,624	\$276,682	\$284,982	\$293,531
CCPS	\$250,000				
DOC	\$1,008,000	\$460,874	\$474,701	\$488,942	\$503,610
Total Expenditures	\$1,838,800	\$729,498	\$751,383	\$773,924	\$797,141
PRISON BEDS:					
(cumulative)*	N/A	6	16	16	16
POSITIONS					
(cumulative)*					
DOC		3	6	6	6
DOJ	3	3	3	3	3
POSITIONS (cumulative):	3	9	9	9	9
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction, Department of Justice (DOJ), Department of Crime Control and Public Safety (CCPS) and the Judicial Branch.					
EFFECTIVE DATE: May 1, 2009 (Except as otherwise noted) and applies to persons who are required to be registered under Article 27A on or after that date.					

BILL SUMMARY:

This act would require persons required to register on the State sex offender registry to include any identifier the person uses or intends to use for the purpose of communicating on the Internet. The identifying information would be available to entities that provide Internet services for the purpose of allowing the entity to prescreen users, or for comparison with the registry for the purpose of protecting minors. The act applies to persons who are on the sex offender registry on or after May 1, 2009.

More specifically, if enacted S 1736 would:

1. Amend GS 14-208.6 to include definitions of electronic mail, entity, instant message, Internet, and online identifier. It also amends the definition of sexually violent offense to include permitting or committing an act of prostitution of a juvenile and allowing or committing a sexual act upon a juvenile.
2. Amend GS 14-208.7 to require a person registering for the sex offender registry to provide any online identifier that the person uses or intends to use.
3. Amend GS 14-208.8(a) to clarify all of the responsibilities of the penal institution regarding the registration of a sex offender prior to the offender's release.
4. Amend GS 14-208.9 to require a person registered as a sex offender to provide information of any new online identifiers to the sheriff in person within 10 days of the change. The bill directs the sheriff to forward any new information to the Division of Criminal Information of the Department of Justice (Division).
5. Amend GS 14-208.9A to require a registrant at the time of the semiannual verification with the county registry to provide updated information regarding the use of previously reported online identifiers and as to any new online identifiers.

Amend GS 14-208.11(a) to make the failure of a registered person to inform the registering sheriff of any new online identifiers or changes to existing online identifiers the registrant uses or intends to use a Class F Felony.

6. Amends GS 14-208.14 to require the Division to maintain a system that allows an entity to compare the database of registered users of that entity to the list of sex offender registrants' online identifiers.

7. Enact a new section (GS 14-208.15A) directing the Division to develop rules regarding the release of information concerning an offender's online identifier to allow an entity to prescreen users or for comparison with information held by the entity. Provides for the process for an entity to apply to the Division to access database information and authorizes the Division to charge an entity \$100 annually. Requires an entity to report the online identifier of a person, regardless of whether the person is included in the statewide registry to the Cyber Tip Line at the National Center for Missing and Exploited Children if either of the following occurs: the entity receives a (1) complaint that a user of the entity's service that a person is using the service to solicit a minor by computer to commit an unlawful sex act, or (2) a report that a user may be posting or

transmitting material that contains a visual representation of a minor engaged in sexual activity. Provides that an entity that acts in good faith to comply with this section is immune from civil or criminal liability resulting from (1) the entity's refusal to provide service to a person based on a reasonable belief that the person was subject to registration under state sex offender registry laws, or (2) a persons criminal or tortuous acts against a minor with whom the person communicates via the entity's system.

S1736 requires the Administrative Office of the Courts, in consultation with other agencies and associations, to develop a procedure by December 1, 2008 for notifying the Division and sheriffs of any person subject to registration who does not receive an active prison term. This becomes effective when the bill becomes law.

The bill also appropriates \$250,000 for the 2008-09 fiscal year from the General Fund to the Department of Crime Control and Public Safety to be allocated to the Governor's Crime Commission to award grants of up to \$25,000 each to eligible sheriffs' offices to assist with the enforcement of the state's sex offender laws. Funds are intended to supplement, not supplant existing funds and are non-reverting. Also, directs the Commission to establish criteria for awarding the grants.

If ratified, this bill will become effective May 1, 2009 (Except as otherwise noted) and applies to persons who are required to be registered under Article 27A on or after that date.

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.

Department of Correction – Division of Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of January 2008.

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.* Therefore, the number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of S1736. As shown, the Sentencing Commission estimates that this specific legislation will add 16 inmates to the prison system by the end of FY 2012-13.

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

	June 30 2009	June 30 2010	June 30 2011	June 30 2012	June 30 2013
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	40,402	41,073	41,698	42,698	42,518
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	39,908	39,908	40,664	40,664	40,664
3. Projected No. of Beds Over/Under Inmate Population	-494	-1,165	-1,034	-1,854	-2,759
4. <i>Projected No. of Additional Inmates Due to this Bill</i> ³	<i>N/A</i>	<i>6</i>	<i>16</i>	<i>16</i>	<i>16</i>
5. <i>No. of Additional Beds Needed Each Fiscal Year Due to this Bill</i>	<i>N/A</i>	<i>6</i>	<i>16</i>	<i>16</i>	<i>16</i>

(Prison bed projections can only be projected through 2011 due to the fact that the Sentencing Commission's prison bed projection model can only predict the impact over 2 years due to a lack of historical data.)

POSITIONS: It is anticipated that by FY 2012-13, approximately 6 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill's impact over a five-year horizon, through FY 2012-13. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to S1736; and, the estimated number of new beds required each year through FY 2016-17.

	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Available Beds (Over/Under) Under Current Structured Sentencing	-3,593	-4,423	-5,261	-6,137
2. <i>Projected No. of Additional Inmates Resulting From S1736</i>			<i>Cannot be determined</i>	
3. <i>Estimated No. of New Beds Required Under S1736</i>			<i>Cannot be determined</i>	

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;⁴ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2008.

³ Criminal penalty bills effective December 1, 2008, should not affect prison population and bed needs until FY 2009-10 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

on.”⁵ Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

Estimated Construction Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$55,000	\$63,000	\$114,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$73,500

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.⁶ As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

Accordingly, given an increase of 16 inmates, bed provision through construction of a “stand alone” facility could cost approximately \$1,008,000 by FY 2012-13; provision through “add-on” could cost approximately \$624,000.

OPERATING: Operating costs are based on actual FY 2006-07 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$57.48	\$74.71	\$88.93	\$71.52

Department of Correction – Division of Community Corrections

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, 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.⁷

⁴ New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

⁵ Close and medium custody “add-on” facilities are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. Add-on facilities built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁶ Office of State Construction, March 24, 2006.

⁷ 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.

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 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 \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 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.

In FY 2006/07, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for six additional prison beds the first year (2009) and ten additional prison beds the second year (2010).

Department of Justice

DOJ currently operates the sex offender registry database. S1736 requires that the Department expand on the database to collect Internet identification information. DOJ estimates that it will cost \$735,718 in 2008-09 and \$380,233 in 2009-10 to implement this bill. The additional costs are associated with database development/maintenance, software/equipment purchases and additional staff positions to support the database’s expanded purpose. These estimates have been adjusted based on information received from the agency to more accurately reflect the anticipated cost of implementing this bill. More specifically, the following adjustments were made:

Fiscal Research Division Adjustments

		DOJ Estimate	FRD Estimate
		Recurring	Recurring
Total Requirements		\$ 735,718	\$ 580,800
2	Benefits/Medical	\$ 63,020	\$ 39,000
3	Office Lease	\$ 23,625	\$ 0
4	Operating Expenses	\$ 17,660	\$ 11,500
Total Recurring		\$ 380,233	\$ 260,800
		Nonrecurring	Nonrecurring
5	IT Contractors	\$ 254,139	\$ 254,000
6	Furniture	\$ 16,000	\$ 10,600
7	Auto/Accessories	\$ 23,800	\$ 23,200
8	Computers	\$ 46,897	\$ 21,000
9	Training, Equipment and Software	\$ 14,649	\$ 11,200
Total Nonrecurring		\$ 355,485	\$ 320,000

Position cost reduction. The agency estimate included funding for 5 staff positions to support the database’s expanded purpose. Two IT positions for database development and maintenance, a Computer Crimes Agent to investigate/apprehend violators and two Information Processing Technicians to support database operations and ensure data input accuracy. The two Information Processing Technician positions were taken out of the agency’s estimate. The agency already has staff doing information monitoring/database support functions for the sex offender registry. This

bill does not create a new process. It adds an additional function to the information monitoring process. This bill will not increase agency's workload enough to require two additional staff positions. *-\$89,648*

Offices Lease cost reduction The agency indicated that they will need an additional 1,500 square feet of work space to accommodate the staff positions requested at a total cost of \$23,625. As part of their FY 2008-09 agency budget request, the agency requested 45 staff positions to support the agency's operations with no request for additional office space to accommodate the new staff positions. It is very unlikely that the agency will be receiving one-fourth of these positions in the budget. The agency should have space to accommodate the three staff positions needed to implement this bill. The agency estimate was reduced to eliminate the costs built in for lease space. *-\$23,625*

Furniture cost reduction The agency requested \$16,000 for furniture cost. This amount was reduced to reflect the amount of furniture needed to accommodate three staff positions recommended. *-\$5,400*

Computer cost reduction The agency estimate for computer costs was reduced base on the number of units needed to accommodate the three staff positions. Amounts requested for high-tech computers for similar functions in prior agency requests further justifies this reduction. *-\$25,897*

Training, equipment, software and operating cost reduction The amount requested for training, equipment, software other operating expenses was reduced to reflect the amount needed for three staff positions. Also, the agency mentioned that some of the software costs were already included in the computer cost estimate. *-\$10,341*

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.

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: Jean Sandaire

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

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