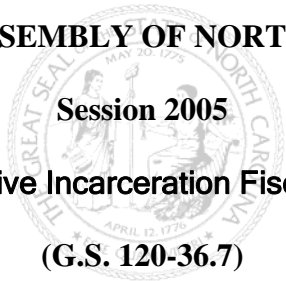


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1896 (7th Edition)
SHORT TITLE: Sex Offender Registration Changes.
SPONSOR(S): Representatives Goforth, Ray, Glazier, and Farmer-Butterfield

	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>
<u>HIGHWAY FUND</u>					
DMV					
Personnel (0-3)	\$0 - \$60,400	\$0 - \$106,648	\$0 - \$109,847	\$0 - \$113,143	\$0 - \$116,537
Equipment	\$0 - \$11,100	-	-	-	-
Uniforms	\$0 - \$900	\$0 - \$900	\$0 - \$900	\$0 - \$900	\$0 - \$900
TOTAL H.F.	\$0 - \$74,400	\$0 - \$107,548	\$0 - \$110,747	\$0 - \$114,043	\$0 - \$117,437
<u>GENERAL FUND</u>					
Prisons –Operating	\$147,673	\$380,255	\$391,662	\$403,412	\$414,515
Prisons-Capital	\$980,100				
Comm. Corr. ®	\$1,236,448	\$2,326,347	\$2,952,771	\$3,580,323	\$4,245,394
Comm. Corr. (NR)	\$70,770				
Judicial	Increase in court time and costs but amount cannot be determined				
Local Law	Local costs will increase for handling new registration requirements				
Enforcement.	and enforcing new/revised criminal penalties but a statewide cost				
Justice (Registry)	estimate cannot be determined				
Recurring	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Non-recurring	\$93,600				
REVENUES (GPS)	\$13,500	\$6,885	\$6,885	\$6,885	\$6,885
TOTAL G.F.	\$2,553,591	\$2,731,602	\$3,369,433	\$4,008,735	\$4,684,909
EXPENDITURES					
POSITIONS:	(5-DCC;2	(5-DCC;6	(5-DCC;6	(5-DCC;6	(5-DCC;6
(cumulative)	prisons)	prisons)	prisons)	prisons)	prisons)
NEW PRISON	6	15	Prison bed needs will increase but number		
BEDS			cannot be determined		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of					
Correction: Prisons and Community Corrections(DCC); Judicial Branch; Department of Justice;					
Local Govt., Dept of Transportation (DMV)					
Note: <u>Estimated costs to Correction</u> (Prisons and Community Corrections) are for Section 15					

of this bill -- GPS Monitoring. Comm. Corr. costs assume 300 offenders for 6 months in FY 2006-07. The prison costs and bed numbers are based only on a two year projection of offenders that could be convicted of tampering with GPS devices. The capital costs of 15 beds could be forgone if DOC uses available funds to keep offenders in county jail longer (\$87,600 in FY 07 and \$219,000 in FY 08). Finally, other criminal penalties in this bill could lead to an increase in prison population but the number of beds and cost cannot be determined

EFFECTIVE DATE: Unless otherwise stated, Dec. 1, 2006 or when bill becomes law

**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:

May 10, 2006

H 1896. SEX OFFENDER REGISTRATION CHANGES. Filed 5/10/06. TO AMEND THE LAWS REGARDING THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO MAKE CHANGES TO OTHER STATUTES REGARDING SEX OFFENDERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

Section 1 of the act amends GS 14-208.6(5) to add the offense of statutory rape to the list of offenses that require registration in North Carolina.

Sections 2 and 3 amend GS 14-208.6A and GS 14-208.6B, respectively, to require any adult convicted of an offense that requires registration and any juvenile convicted as an adult of an offense that requires registration to appear in person before the appropriate sheriff to register and to verify and report changes to registration information.

Section 4 enacts GS 14-208.7(a2), which requires any person who must register and who works part-time or full-time in a county that is not the person's residence for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, to maintain registration with the sheriff of the county where the person works as well as the sheriff of the county of residence.

Section 5 enacts GS 14-208.7(d), which provides that after the initial registration, for which no fee is required, each registered offender must pay an annual fee of \$100 to the sheriff of the county in which the offender is registered. to cover the costs of administering the registration laws.

Section 6 enacts GS 14-208.7(e) providing that all registration required under GS 14-208.7 is to be made in person.

Section 7 amends GS 14-208.9 by adding the requirement that a registered offender who moves from one county to another county must report the address change in person to the sheriff of the new county as well as the county from which the offender moved.

Section 8 amends GS 14-208.9A(a) to provide that the Division of Criminal Statistics of the Department of Justice (as custodian of the statewide registry) must notify the sheriff of the county of the registered offender's last reported address when the Division mails a verification form to the offender. It also requires a registered offender to return the verification form in person and include a current photograph of himself or herself with each verification form, and provides that the sheriff

may take a photograph for inclusion with the form if the photo provided by the offender does not provide an accurate likeness of the offender. Section 8 also adds a new subsection (b) to GS 14-208.9A granting each sheriff the discretion to require a registered offender to verify the offender's registration information and to provide an updated photograph more frequently than required by statute.

Section 9 makes conforming changes to GS 14-208.11(a)(1) and (2) (imposing a criminal penalty for failure to comply with the registration laws).

Section 10 amends GS 14-208.12A by (1) eliminating from subsection (a) the automatic termination of the ten-year registration requirement when an offender has failed to comply with registration laws, and (2) adding a new subsection (c) providing that the Attorney General or appropriate district attorney may petition the court to require a non-compliant offender to continue registration for an additional ten years.

Section 11 enacts GS 14-208.16, which makes it a Class F felony for a registrant knowingly to reside or work within 1000 feet of property on which any of the following is located: a public, private, or parochial school; a licensed day care center; any other child care facility; or a public or private swimming pool, with certain specified exceptions.

Section 12 amends GS 14.27.1(5) (the definition of sexual contact) and therefore makes it a 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.

While the bill provides that it is effective when it becomes law, each individual section has an effective date of December 1, 2006.

June 12, 2006

H 1896. SEX OFFENDER REGISTRATION CHANGES. Filed 5/10/06. House committee substitute makes the following changes to 2nd edition, and rewrites the title to specify each provision of the bill. Modifies the proposed expansion of the definition of "sexually violent offense" in GS 14-208.6(5) to exclude violation of GS 14-27.7A(b) (statutory rape or sexual offense of a person who is 13, 14, or 15 years old where the defendant is less than six years older than that person). Modifies section 4 (requirements in cases of out-of-county employment) by (1) recodifying the requirements as new GS 14-208.8A; (2) limiting the requirements to cases of out-of-county employment in which the person establishes temporary residence (including transient accommodations) in the county of employment; (3) deleting the requirement of registering with the sheriff in the county of employment and temporary residence and requiring the sheriff of the county of primary residence, upon receiving notice of the out-of-county employment and temporary residence, to notify the Division of Motor Vehicles, which then notifies the sheriff of the county of employment and temporary residence; (4) specifying the time period in which notice must be given; and (5) changing the effective date from December 1, 2006, to June 1, 2007. Deletes proposed GS 14-208.7(d) imposing fees for registration. Modifies the proposed changes to GS 14-208.9 (change of address) to (1) clarify the requirements that apply only if the person changes address within the same county and (2) remove the time limit for reporting to the sheriff of the new county if the person moves to a new county within the state.

Modifies GS 14-208.9A to (1) change the date for the annual verification form and notice; (2) delete the proposed requirement that the person provide a photograph, instead providing that all photographs will be taken by the sheriff when the person returns the verification form; (3) authorize the sheriff to verify the person's continued residence and require an additional photograph; and (4) make noncompliance with the additional photograph requirement punishable

as a Class 1 misdemeanor. Modifies GS 14-208.11(a) to (1) limit the Class F felony offenses to willful acts or failures to act and (2) include as an offense the failure to comply with the out-of-county employment notice requirements of proposed GS 14-208.8A. Modifies proposed revisions to GS 14-208.12A (termination of registration requirement) to (1) provide that only willful failure to comply authorizes the district attorney to petition for the registration requirement to be maintained; (2) delete the authority of the Attorney General to petition; and (3) provide that the requirement may be maintained for any period not to exceed ten years (second edition specified, for ten years).

Enacts a new GS 14-208.11A imposing a duty to report noncompliance of a sex offender and punishing as a Class H felony certain acts or failures to act if done with the intent of assisting the offender in eluding a law enforcement agency, effective for offenses committed on or after December 1, 2006. Modifies proposed GS 14-208.16 to delete work restrictions, to delete private swimming pools from the residency restrictions in subsection (a), to exclude home schools from the restriction on residing near a school, to clarify what constitutes establishment of residency, and to make stylistic language changes.

Adds captions to various statutory provisions. Requires the Department of Correction to study and develop a plan for mental health treatment of incarcerated sex offenders, with the goal of reducing the likelihood of recidivism, and to report to the General Assembly and the Joint Legislative Oversight Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services by October 1, 2007. Adds a severability clause in section 14.

July 6, 2006

H 1896. SEX OFFENDER REGISTRATION CHANGES. Filed 5/10/06. Senate committee substitute makes the following changes to 3rd edition. Amends GS 14-208.7 to provide that registration must be maintained for a period of at least 10 years following the date of initial county registration (prior law provided that registration must be maintained for 10 years following release from a penal institution, or if no active time was imposed, for 10 years following conviction for a reportable offense). Modifies amendments to GS 14-208.9 pertaining to reporting on address changes, including adding a new subsection containing reporting requirements for individuals who indicate a desire to reside in another state or jurisdiction and later decide to remain in the state. Amends GS 14-208.9A to require semiannual instead of annual verification of registration information and makes changes effective December 1, 2006. Creates two additional new Class F felonies for failure to report in person and reporting an intent to reside in another state but remaining in the state without notifying the Sheriff, effective June 1, 2007, and applying to offenses committed on or after that date. Modifies intent required for new felony offenses in GS 14-208.11A to require an intent to assist the offender in eluding arrest. Modifies changes to GS 14-208.12A to require the registrant to petition the superior court to terminate the registration period. Sets out standards for ruling on the petition, provides for notice to the district attorney, and for re-petitioning in the event of denial. Deletes new GS 14-208.16 (residential restrictions). Enacts new GS 14-208.24A making it a Class F felony for a person with a lifetime registration requirement to work at any place where the person would instruct, supervise, or care for minors, effective December 1, 2006. Amends GS 14-208.28 to require reporting on behalf of juveniles semiannually instead of annually. Enacts new GS 15A-1341(d) requiring probation officers to conduct a search of the defendant's name against the registration information compiled under the sex offender registration act. Enacts a new Part 5 of GS Chapter 14, Article 27A requiring the Department of Correction (DOC) to use a specified electronic monitoring system for certain lifetime registrants.

Provides for use of an alternate system. Creates a new Class F felony offense for failing to enroll and a new Class E felony for intentionally tampering with, removing, or vandalizing a device. Provides for an enrollment fee of \$90, and for fee waiver. Provides that DOC must establish the program by January 1, 2007. Effective when it becomes law, with specified exception. Requires the DOC to (1) issue a Request for Proposal for electronic monitoring equipment and monitoring services and (2) to develop a graduated risk assessment program that identifies persons who may not be lifetime registrants, but may need extraordinary supervision under similar conditions as a lifetime registrant. Makes conforming and technical changes.

July 12, 2006

H 1896. SEX OFFENDER REGISTRATION CHANGES. Filed 5/10/06. Senate committee substitute makes the following changes to 4th edition. Amends GS 14-208.9A (verification of registration information) effective December 1, 2006, to authorize the sheriff to attempt to verify the offender's address, provide a procedure for the sheriff to obtain an updated photograph of the offender, and enact a new Class 1 misdemeanor for failing to comply with the sheriff's request for a new photograph. Adds a new Article 10A to GS Chapter 14, pertaining to Human Trafficking. Enacts new felony offenses that apply when a person: (1) knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude; (2) knowingly and willfully holds another in involuntary servitude; or (3) knowingly subjects or maintains another in sexual servitude. All of the new felony offenses are Class F felonies if the victim is an adult and Class C felonies if the victim is a minor. Repeals GS 14-43.2, the current provision criminalizing involuntary servitude. Makes it a Class 1 misdemeanor for a party to a contract for labor to fail to report a claim of involuntary servitude that has been reported to him or her. Amends the kidnapping statute (GS 14-39) to add the new felonies to the list of prohibited purposes of the confinement, restraint, or removal. Includes the new sexual servitude felonies in the definition of a sexually violent offense in GS 14-208.6(5), thus triggering sex offender reporting for these offenses. The new Article is effective December 1, 2006, and applies to offenses committed on or after that date. Makes technical changes and conforms title

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

July 19, 2006

H1896 SEX OFFENDER REGISTRATION CHANGES (6th edition) Senate Committee substitute makes the following major changes to the 5th edition:

- ***The 6th edition*** requires the sheriff to give written proof of registration to an offender upon registering (Section 5)
- Changes Section 7 to allows offenders 72 hours to appear for a photograph (was 48 hours in 5th edition)
- Revises Section 11, *Prohibit sexual predator from working or volunteering for child-involved activities*, to add additional restrictions and to clarify intent of language in 5th edition
- Section 8 is revised to clarify that a person is considered to have met registration and verification requirements if the person is incarcerated or in custody and the person notifies the

official in charge of the facility of their sex offender status. These persons must register no later than 10 days after release.

- Creates new Section 19 (and moves “Human Trafficking” from Section 19 in 5th edition to Section 20 in 6th edition): that requires anyone with a final conviction of a sex offense that required registration in another state must register on the NC Sex Offender Registry upon moving to North Carolina. Section 19 also adds new language requiring DMV to provide notices of NC sex offender registration requirements to each person applying for a drivers license or other types of permits and identification. Also sets requirements for issuance of licenses to sex offenders from other states and requires DMV to check the National Sex Offender Registry for each out of state applicant. Applicants that falsely assert on an affidavit that one’s name is not on the National Registry are subject to a Class 1 or 2 misdemeanor.
- Section 20, Human Trafficking, adds a new criminal penalty: It will be a Class H felony for willfully giving false information in response to an official inquiry by a sworn agent of the State Bureau of Investigation

SOURCE: Fiscal Research Division July 19, 2006

July 20th 7th edition

Adds phrase “Jessica’s Law” to long title of bill

ASSUMPTIONS AND METHODOLOGY:

GENERAL

This Fiscal Note is organized in five sections, corresponding to the five major areas of the bill with potential fiscal impact: Section I: Global Positioning System Monitoring of Sex Offenders (Section 15); Section II: Other Criminal Penalties (various Sections of this bill); Section III. Sex Offender Registration and Enforcement (various parts of Sections 1-14), Section IV, DMV Check of National Sex Offender Registry; and, V Miscellaneous.

SECTION I. ASSUMPTIONS AND METHODOLOGY: GPS MONITORING OF SEX OFFENDERS (Section 15 of bill)

A. Department of Correction – Division of Prisons

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.

The chart below compares the projected inmate population to available prison bed capacity system-wide and shows 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 five) is always equal to the projected additional inmates due to a bill (row four).

Rows four and five in the chart show the impact of this specific bill. As shown in bold in the chart below, the Sentencing Commission estimates that this specific legislation will add **15** inmates to the prison system by the end of FY 2007-08. *This estimate pertains solely to the Class E penalty*

for tampering with a GPS monitoring device (G.S. 14-208.37). The impact of other criminal penalties is assessed in Section II and IV of this fiscal note.

Table I. Projected Impact on Prison Population/Beds (GPS)

	June 30 <u>2007</u>	June 30 <u>2008</u>	June 30 <u>2009</u>	June 30 <u>2010</u>	June 30 <u>2011</u>
1. Projected No. Of Inmates Under Current Structured Sentencing Act ¹	38,616	39,114	39,674	40,444	41,276
2. Projected No. of Prison Beds (DOC Expanded Capacity) ²	37,973	38,869	38,869	38,869	38,869
3. No. of Beds Over/Under Current Structured Sentencing Act	-643	-245	-805	-1,575	-2,407
4. No. of Projected Additional Inmates <u>Due to this Bill</u>	6	15	Cannot be determined		
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	6	15	Cannot be determined		

G.S. 14-208.37 Tampering with GPS device – Class E felony (Was Class C in SB 1204 Edition 2)

Under Structured Sentencing, Class E offenders are required to receive an active sentence. In FY 2004/05, the average estimated time served for a convicted Class E offender was 30 months, but only 49% receive an active sentence. It is not known how many offenders might be sentenced as a result of this proposed penalty. *If, for example, there were two convictions for this offense, the combination of active sentences and probation revocation would result in the need for one additional prison bed the first year and two additional prison beds the second year.*

The Sentencing Commission notes that since this is a new offense, the prison population model cannot project long-term population growth due to this offense. While an official projection cannot be made by the Commission, Fiscal Research asked the Commission to provide prison population estimates based on DCC data on the current numbers of sex offenders who abscond from probation, parole, or post release supervision. This number is between 3 and 5% of the total cases.

Using this approach, of the projected 300 sex offenders required to enroll in GPS under this bill, DOC estimates that 3-5% may be charged with intentionally tampering with, removing, or vandalizing GPS monitoring equipment. The Sentencing Commission, using DCC numbers, indicated that if there were 9 (or 3% of 300) Class E convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for 5 additional prison beds the first year and 11 additional prison beds the second year. Alternatively, if there were 12 (or 4% of 300 offenders) Class E convictions for this offense per year, the combination of

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2006 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.

² Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 19, 2005. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

active sentences and probation revocations would result in the need for 6 additional prison beds the first year and 15 additional prison beds the second year.

Fiscal Research used the middle range for estimating prison beds and cost - a 4% “tampering” rate, which could potentially result in the need for 6 prison beds the first year and 15 the second. Years three through five cannot be determined.

Estimates by DCC in the growth of offenders under GPS were used for projecting growth in prison population and in the implementation and use of a GPS system in DCC:

Table II. Department of Community Corrections Offender Projections for GPS

<u>FY 06-07</u>	<u>FY 07-08</u>	<u>FY 08-09</u>	<u>FY 09-10</u>	<u>FY 10-11</u>
300	453	606	759	912

Positions: It is anticipated that approximately 6 prison positions would be needed to supervise the additional inmates by FY 2007-08. This position total includes security, program, and administrative personnel at a ratio of 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 for the 2006 Session look at the impact of a bill through FY 2011. However, if there is information available on the impact of this bill in later years, it will be provided. *The fiscal impact beyond the five year window cannot be determined by the Sentencing Commission since there is no data that allows for estimates beyond the first five years.*

Table III. Impact Beyond Five Years

	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
Inmates Due to This Bill	Cannot be determined			
Available Beds (over/under)	Cannot be determined			
New Beds Needed	Cannot be determined			

Construction: Construction costs for new prison beds, as listed in the following chart, are based on estimated FY 2005-06 costs for each custody level as provided by the Department of Correction. The cost figures are the midpoint of the estimated cost range. An inflation rate of 8% per year is applied to future years (*Office of State Construction, March 24, 2006*). Assumptions used for cost figures include: (1) stand-alone facilities built for expanded operating capacity; (2) single cells for close custody prisons; and, (3) dormitories for medium and minimum custody. Also it is assumed that it takes three years from the time funding is authorized to completion of construction, so funding is estimated three years prior to when beds are needed.

Construction cost is estimated at \$65,340 per bed for FY 2006-07 based on FY 2005-06 average costs of a medium custody bed, plus 8% inflation. It is assumed that 15 beds needed by FY 2007-08 would be funded in FY 2006-07 in order to have beds on line as quickly as possible. Cost is estimated at \$980,100 for FY 2006-07.

Table IV. Construction Cost Estimates By Custody Level

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Construction Cost Per Bed 2005/06	\$56,500	\$60,500	\$104,500

* Construction costs, where applicable, are shown as non-recurring costs in the Fiscal Impact Table on page one of this note. These costs assume that funds to construct prison beds should be budgeted three years in advance since building a prison typically requires three years for planning, design, and construction.

NOTE: If beds were not constructed, DOC would need to pay counties \$40 a day to hold DOC prisoners until a prison bed becomes available. The cost is \$40 a day and would be \$87,600 in FY 2006-07 and \$219,000 in FY 2007-08.

Operating: Operating costs are based on actual FY 2004-05 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 3% annual inflation rate will be added each year to the base costs for FY 2004-05 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

It is assumed the cost per bed will be the average cost per bed statewide or \$24,612 per bed in FY 2006-07 (2004-05 costs in table below plus inflation). The cost for 6 beds in FY 2006-07 is \$147,673 and \$380,255 for 15 beds by Year 2.

Table V. Daily Inmate Operating Cost FY 2004-05

Custody Level	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<i>Statewide Average</i>
Daily Cost Per Inmate (FY 2004-05)	\$51.25	\$68.90	\$74.52	\$63.56

G.S. 14-208.37 Failure to enroll in GPS Program – Class F Felony

The Sentencing Commission noted that as a new offense, there is no historical data from which to estimate its impact on the prison population. In FY 2004-05, 48% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. It is not known how many new sentences might result. If, however, there were two Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. [Note: The estimate for the second year is currently based on a 2% growth rate for felony convictions. The second year estimate may need to be revised upward based on DOC’s estimate of growth.]

Based on discussions with DCC, Fiscal Research believes the new Class F felony would have little or no impact on the prison system. Current practice for regular electronic monitoring is for the DCC officer to attach the device at the time of release from prison, or upon placement on probation. It is assumed the same practice would be used for GPS monitoring, so “failure to enroll” criminal penalties are unlikely.

B. Department of Correction – Division of Community Corrections (DCC): GPS Monitoring System

Under HB 1896, DCC must establish the sex offender GPS monitoring program by January 1, 2007 for the two tiers of sex offenders, as defined in Section 15, which will be on parole, post-release supervision, or probation supervision. This includes all offenders who fit criteria in the bill and are on probation, post release, or parole after the date the bill is ratified (not just offenders after Jan 1, 07). HB 1896 4th edition also continues the GPS monitoring program for the life of the offender if the offender is in Tier 1, the highest risk category (lifetime registrant/sexually violent predator, recidivist, or convicted of certain aggravated offense).

4th edition: Section 15 of this bill includes the amount of funds agreed to by the Budget conferees in the ratified SB 1741 for this GPS program -- \$1,307,218 (\$70,770 is non-recurring). DCC estimates costs to carry out monitoring requirements in this bill to be at least \$1,775,330 (\$70,770 non-recurring). This cost estimate is the result of language in this bill that requires all offenders released or sentenced to probation, parole or post release in FY 2006-07, and meeting sex offender criteria in this bill, to enroll in GPS.

*(Note to 5th edition. Fiscal Research has further reviewed DOC assumptions and offender counts and now believes that the GPS monitoring program can be carried out in FY 2006-07 at the amount funded in the Conference Budget in SB 1741. Given that the 300 offenders covered under this bill will only be on GPS for 6 months, from January to June 30, 2007, the vendor costs and personnel costs such as overtime can be reduced from the original \$1.775 million to \$1.307 million. **NOTE:** Due to some degree of unpredictability, any additional costs above the amount appropriated in SB 1741, for such areas as contractual services or temporary overtime pay, can be funded with lapsed salaries for one year only; this authority is given in Section 15 of this bill*

(NOTE: No change in 6th edition of bill or fiscal note for GPS monitoring)

The primary costs to operate this 24 hour a day program are 5 positions (4 processing assistants and one GPS manager, on-call and overtime pay for probation/parole officers, and 6 months contractual services with a GPS vendor to operate the technology component of the system.

1896 also requires Tier 1 offenders (highest risk/lifetime sex offender registry) to stay on GPS monitoring and go on unsupervised probation when their sentence and period of supervision is complete. *For the most part, the cost of continuing GPS on the highest risk offenders after their term of DOC supervision will not occur until after the five year fiscal note window.*

C. Department of Correction – Division of Community Corrections: GPS Supervision Fee

HB 1896 establishes a \$90 one time fee to be charged to each offender. These funds will be allocated to the Department of Correction. The fee is the same fee charged to offenders put on electronic monitoring.

The maximum amount collected the first year would be \$27,000 (300 offenders times \$90) in FY 2006-07. However, it is unlikely that the full amount will be collected. The regular electronic

monitoring fee was established in FY 2004-05 and collections have been low. However, it is anticipated that collection of this new fee could be at least 50%, given that HB 1902 gives offenders some opportunity to pay the fee on a payment schedule, like regular probation fees. The estimated rate of collection for regular probation fees is approximately 50%.

For purposes of this fiscal note, a 50% collection rate is assumed and detailed in the box on page 1 of this Note. For FY 2006-07, with 300 offenders it is assumed that \$13,500 will be collected (150 of 300 offenders times \$90) and \$6,885 for the subsequent years (additional 153 offenders each year @ \$90 times 153/2).

D. 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.

SECTION II. ASSUMPTIONS AND METHODOLOGY – OTHER CRIMINAL PENALTIES

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

- *Sections 1-14:* Amends various statutes or adds new penalties to make non-compliance with the registration requirements delineated in this bill a Class F felony.
- *Section 9.1:* Creates a new Class H felony offense for failure to report offender non-compliance with registration requirements, with the intent of assisting the offender in eluding arrest.
- *Section 11:* Creates a new Class F felony offense for any Tier 1 offender to work or volunteer at any place where children congregate such as day care.
- *Section 12:* Expands definition of sexual contact as used to determine Sexual battery charges (Class A1 misdemeanor)
- **Section 19 was added to 5th ed. (6th edition moves this to Section 20)** *It creates three new criminal offenses: Human Trafficking; Involuntary Servitude; and Sexual Servitude. These crimes will be Class F felonies if offense was against an adult and Class C if against a minor. Also expands definition of kidnapping to include kidnapping for these purposes.*
- **Section 20 in 6th edition, Human Trafficking,** *is the same as the 5th edition except for the addition of a new criminal penalty: a Class H felony if false or misleading information is provided to a sworn SBI agent.*

A. Department of Correction – Division of Prisons

G.S. 14-208.11 Failure to comply with sex offender registration requirements

In FY 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, 47% of Class F felony convictions

resulted in active sentences, with an average estimated time served of 18 months; 53% 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 as a result of this bill, the increase would necessitate one additional prison bed the first year and two additional beds 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.*

G.S. 14-208.11A Failure to report non-compliance (Section 9.1)

Because this is a new offense, there is no historical data from which to estimate its impact 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. It is not known how many new sentences might result. *However, 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 and two additional beds the second year. The same costs for the Class F threshold apply.*

G.S. 14-208.24A Prohibited from working/volunteer for child involved activities (Section 11)

As a new offense, there is no historical data from which to estimate its impact on the prison population. In FY 2004-05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. It is not known how many new sentences might result. *The same Class F threshold applies.*

GS 14-27.1(5) Sexual offense definitions. Sexual contact

Expands definition of sexual contact which is anticipated to primarily affect sexual battery cases. In FY 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.

GS 14-43.4 through 43.7 Human Trafficking (New in 5th edition) (Becomes Section 20 in 6th edition)

Chapter 14 is amended to add three new offenses: human trafficking, sexual servitude and involuntary servitude (major rewrite of current statute). Each offense is Class F if committed against an adult and Class C if against a minor. The current statute for Involuntary servitude and the offenses of prostitution and prostituting a minor are the closest related offenses in the statutes to these offenses. The Sentencing Commission notes that the Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of involuntary servitude or

prostitution. *The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.* It is not known how many additional convictions may result from these proposed offenses. In FY 2004-05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. *Two Class F convictions would result in one additional prison bed the first year and two the second.*

The required Class C offense if the victim is a minor will have fiscal impact on the prison system. All Class C convictions require active time and the average time in prison is 97 months. However, there is no way to determine how many new offenses will occur or estimate costs.

Section 19 20 (6th edition) also expands definition of kidnapping to include kidnapping for purposes of sexual servitude and related offenses. It is possible many kidnapping cases already involve such conduct and are prosecuted as kidnapping, thus there may not be a substantial number of new kidnapping cases or major costs due to this change.

The 6th edition also adds a new criminal penalty--: a Class H felony to willfully give false information or mislead a sworn SBI agent. Because this is a new offense, there is no historical data from which to estimate its impact 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. It is not known how many new sentences might result. *However, 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 and two additional beds the second year. The same costs for the Class F threshold apply.*

(NOTE for 7th edition: Fiscal Research was able to obtain information from the Sentencing Commission on the current Class 2 misdemeanor for giving false reports to law enforcement agencies. There were 351 convictions in 2004/05 with 73 or 21% of these offenders receiving active (jail) time. However, neither the Commission, the AOC or the SBI could identify how many of these cases involved SBI agents or how many cases have occurred that fit the definition of the proposed new Class H. Therefore, FRD still cannot form a solid basis for estimating future offenses or cost.)

B. 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 2007-08, 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%.

C. 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.

SECTION III. ASSUMPTIONS AND METHODOLOGY – SEX OFFENDER REGISTRATION REQUIREMENTS AND ENFORCEMENT OF SEX OFFENDER REGISTRATION LAWS

H1896 makes a number of modifications to sex offender registration requirements including:

- Adds statutory rape (**and sexual servitude –5th edition**) to list of offenses requiring registration
- Requires offenders to handle changes in registration information and verification of information in-person. These include change of address, intent to move out of state, academic and employment status, etc. Many of these changes are currently handled by mail or phone.
- Changes annual verification of registration information to every six months.
- Adds a new reporting requirement on intent to move out of state,
- Adds a new reporting requirement for out of county employment.
- Requires offenders who are required to register for 10 years on the NC Sex Offender Registry to remain on the registry until petitioning the courts and receiving court approval to be removed from the registry.
- Requires sex offenders on 10 year registry to petition the court in order to be removed from the registry.

Department of Justice

DOJ is responsible for operation and maintenance of the central N.C. Sex Offender Registry and the law enforcement sex offender database. DOJ estimates that requiring verification every 6 months will require doubling of postage charges for notices from \$25,000 to \$50,000 annually.

DOJ also estimates one-time charges for updating the sex offender registry and law enforcement data base. DOJ estimates contract costs of \$93,600, or 1,040 hours at \$90 dollars an hour. This is based on the need to make changes to the database by the bill's effective date, add new felony violations to database and upgrade systems to comply with proposed changes in 10 year registration requirements.

County Sheriffs' Departments:

HB 1896 could increase sheriffs' workload and cost, primarily in enforcement, by requiring in-person registration for each type of registration requirement (change of address, change in employment or academic status, etc.). HB 1896 also changes the verification of offender information requirement to every six months (now annual). *These additional requirements will increase processing time and could result in more field activity by sheriffs and potentially more arrests and convictions.*

Due to a lack of sufficient and reliable cost data, the Fiscal Research Division is unable to estimate the fiscal impact of the proposed legislation on county sheriff departments. Presently, 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 in a county registry. There are no statutory requirements for Sheriffs to monitor or supervise registrants living or working within their counties.

The North Carolina Sheriffs' 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 related to registering and monitoring 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. From this data, it is not possible to determine the system wide impact on local government.

SECTION IV. DMV Notices/National Sex Offender Registry Check

ASSUMPTIONS AND METHODOLOGY:

A. Division of Motor Vehicles

DMV estimates the need for three new positions statewide and associated costs to carry out requirements of Section 19 of this bill (Notices and check of National Registry). Fiscal Research believes these requirements may be met within existing resources; however, this law may result in additional waiting times for customers. The fiscal note impact statement on page 1 shows a cost range from \$0 to a little over \$100,000 annually in order to acknowledge the potential cost of this bill: The following assumptions for this cost range apply:

- Written notice of the sex offender registration requirements may be provided to each applicant at minimal cost, appended to the required affidavits upon application.
- All local driver's license offices and mobile units are currently equipped with computers and internet connections. *Thus, registry searches could be provided at no additional fixed cost.* However, to maintain the current quality level of customer service and handle the additional workload that this proposed service would entail, additional positions may be necessary.
- Presently, the North Carolina Department of Transportation, Division of Motor Vehicles estimates approximately 320,000 first time customers at its driver license offices for FY 2006-07. Of those, approximately 40% are projected to be born in other states; therefore, it is estimated that approximately 128,000 searches will be conducted each year. Each search is assumed to take approximately 1-2 minutes on average, and the printing and signing of the affidavit approximately one minute – for a total of nearly 6,400 additional customer hours. Hence, it is estimated that three additional, full-time equivalent positions would be needed to provide this service.
- Any impact on DMV workload as a result of required testimony is assumed to be minimal.
- Any positions would be filled in December, per the effective date of the bill. Thus, this fiscal estimate accounts for up to three positions beginning in December 1, 2006. These positions are annualized beginning in FY 2007-08, with a 3% cost-of-living adjustment included.

B. 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.*

Section 1: By amending the definition of a “reportable conviction” to include a final conviction in another state, this bill increases the number of persons eligible for conviction of failure to register as a sex offender, a Class F felony (G.S. 14-208.11). In FY 2004-05, there were 147 convictions under G.S. 14-208.11. For the same fiscal year, 48% of Class F felony convictions resulted in active sentences, with average minimum and maximum terms imposed of 18 and 22 months, respectively; 52% of those convicted received intermediate punishments, primarily special and intensive supervision probation.

Though it is not known how many additional violations might occur as a result of this bill, *if two additional convictions occurred per year, it would necessitate one additional prison bed the first year and two additional beds 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.

Sections 3 and 4: Create two new offenses for falsely asserting on an affidavit that one's name does not appear on the National Sex Offender Public Registry: 1) a Class 1 misdemeanor for a violation while attempting to obtain a driver license (G.S. 20-30(5)), and 2) a Class 2 misdemeanor for a violation while attempting to obtain a special identification card (G.S. 20-37.8). Because these are new offenses, there is no historical data from which to estimate the impact of these proposed penalties on the State's prison population. In FY 2004-05, 19% of Class 1 misdemeanor convictions resulted in active sentences, and only 16% of Class 2 misdemeanor convictions resulted in active sentences. The average terms served for each class were 44 and 23 days, respectively. *Since offenders serving active sentences of 90 days or less are housed in county jails, additional convictions resulting from this bill would not have a significant impact on the State's prison population. The impact on local prisons cannot be determined.*

Community Corrections: Assuming some intermediate and community sentencing, additional costs for probation supervision could 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 (includes probation officer cost) and is for an average of six months; electronic house arrest costs \$6.71 (plus \$1.93 daily supervision cost). Such costs are projected to begin in FY 2007-08, 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%.

C. Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of a specific bill. For such 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.

In calendar year 2003, there were 176 out-of-state sex offenders registered in North Carolina; 198 registered in 2004; and 260 registered in 2005.³ However, these numbers do not distinguish among new entries, nor it is known how many offenders came off the registry each year. In addition, it is not known how many out-of-state offenders would apply for driver's licenses, learner's permits, instruction permits, or identification cards; or if so, when the application would occur. Thus, the AOC cannot project the number of out-of-state offenders who would violate the provisions of this bill, or who would petition for hearings upon denial or revocation.

However, any additional charges or petitions resulting from this bill would increase judicial workload, thereby generating additional costs to the court system. The AOC estimates court-time

³ Registered offenders whose crimes were committed out-of-state, and which require registration under North Carolina law.

costs for a single Class F felony jury trial of \$8,452; a Class 1 misdemeanor \$3,153; and a Class 2 misdemeanor \$2,380. Estimated court-time costs per plea are \$409 for Class F; \$224 for Class 1; and \$211 for Class 2.

D. County Sheriffs' Departments

Current statutory requirements for Sheriffs are that they 1) photograph and take fingerprints from sex offenders 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 collected, and compile the information as a public record into a county registry. Accordingly, it is assumed that a copy of this registration information would suffice as proof of registry for the offender, at minimal additional cost to sheriffs' departments.

V. Other Miscellaneous Costs

Department of Correction

Treatment Program Development (Section 18): 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.*

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Justice, NC Sheriffs Association, Office of State Construction; and, Department of Transportation (Division of Motor Vehicles).

TECHNICAL CONSIDERATIONS: None

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