

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1117 (First Edition)

SHORT TITLE: Sex Offender Can't Drive Bus with Children.

SPONSOR(S): Representative Tucker

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES	\$0	\$0	\$0	\$0	\$0
EXPENDITURES					
Department of Transportation	\$16,320	\$3,366	\$3,366	\$3,366	\$3,366
Department of Correction – Prisons		Indeterminate fiscal impact			
Department of Correction – Probation		Indeterminate fiscal impact			
Judicial Branch		Indeterminate fiscal impact			
POSITIONS (cumulative):	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles, Department of Transportation Information Technology					
EFFECTIVE DATE: This bill becomes effective December 1, 2009.					

BILL SUMMARY:

Under current law, Article 27A of GS Chapter 14 (Article 27A) requires persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law enforcement agencies. This bill adds a new section, GS 14-208.19, Commercial drivers license restrictions, in Article 27A, prohibiting the Division of Motor Vehicles (DMV) from issuing or renewing a commercial driver’s license with a P or S endorsement (allows the person to drive a commercial passenger vehicle or school bus) to any person who is required to register under Article 27A. The prohibition also applies to issuing a commercial learner’s permit. The bill

provides that the prohibition is effective for the period of time during which the person is required to maintain registration under Article 27A.

The bill enacts a new GS 20-27.1 to make it a Class F felony for a sex offender required to register under Article 27A to drive a commercial passenger vehicle or a school bus without the appropriate commercial driver's license because the offender is disqualified from obtaining that license.

The bill enacts a new GS 20-17.9 directing the DMV to revoke the commercial driver's license with a P or S endorsement of any person convicted of any offense on or after December 1, 2009, that requires registration under Article 27A.

The bill also amends GS 20-17.4, adding new subsection (n), to provide that if a person registered under Article 27A on December 1, 2009, also has a valid commercial drivers license with a P or S endorsement that was issued on or before December 1, 2009, then that person is not disqualified under proposed subsection (n) until the person's existing license expires, providing that the person does not commit a subsequent offense that requires registration under Article 27A.

The bill enacts a new GS 20-37.14A directing the DMV not to issue or renew a commercial driver's license with a P or S endorsement to any person required to register under Article 27A.

The bill requires the DMV to search the statewide registry and the National Sex Offender Public Registry prior to issuing the commercial driver's license with a P or S endorsement to determine if the person is currently registered as a sex offender. Additionally, it prescribes the DMV's responsibilities to ascertain the status of applicants for a commercial driver's license with a P or S endorsement. It provides a person denied such a license with a right to file a petition within 30 days of the denial for a hearing in the superior court of the county where the person resides, to the resident judge of the district or judge holding the court of that district, or to the special or emergency judge holding a court in the district. The bill makes it a Class I felony for any person to make a false affidavit or knowingly swear or affirm falsely to any information required by the terms of this section to be affirmed or sworn.

It also makes a conforming change to GS 20-37.13.

The bill is effective December 1, 2009. It applies to persons whose initial registration under Article 27A occurs on or after December 1, 2009, and to persons who are registered under Article 27A prior to December 1, 2009, and continue to be registered on or after December 1, 2009. It provides that the criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009.

ASSUMPTIONS AND METHODOLOGY:

DIVISION OF MOTOR VEHICLES

The DMV estimates the project will require a total of 134 hours to complete State Automated Driver License System (SADLS) modifications. At \$85 an hour, the total estimated cost for DMV personnel is \$11,390, to include system development and project management. Office of Information Technology Services (ITS) costs to support system modifications will add 25 percent to the development costs (\$8,330), or \$2,082.50. A 20 percent change budget adds an additional \$2,847.50, for a total development cost of \$16,320.

Maintaining the system changes will cost \$2,550 per year, based on 24 hours at \$85 per hour. Annual operations cost, based on five percent of total development cost, will add an additional \$816, for a total annual cost of \$3,366.

The following list of assumptions was used to develop the estimated cost:

1. No additional statuses, restrictions, suspension codes, or special endorsements are required.
2. No changes in the length or duration of privileges extended or denied are required.
3. No additional hardware is needed.
4. No integration with external sex offender registries is required.
5. With the Department's current workload and resource constraints, the required system changes could not be implemented before June 2010.

DEPARTMENT OF CORRECTION – DIVISION OF PRISONS

The North Carolina 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.

Section 4.

G.S. 20-27.1 would make it a Class F felony offense for any person to drive a commercial passenger vehicle or a school bus without a valid commercial drivers license with a P or S endorsement because that person has been convicted of a violation requiring registration under Article 27A of Chapter 14 of the General Statutes (The Sex Offender Registry). Because 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 convicted and sentenced under the proposed bill.* In FY 2007-08, 55% of Class F felony convictions resulted in active sentences, with an average estimated time served of 19 months. If, for example, there were two Class F felony 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 three additional prison beds the second year.

Section 6.

G.S. 20-37.14A(c) would make it unlawful for any person to make a false affidavit or to knowingly swear or affirm falsely to any matter or thing required to be affirmed to or sworn when the Division of Motor Vehicles is unable to access either the statewide sex offender registry or all of the states' information contained in the National Sex Offender Registry, but the person is otherwise qualified to obtain a commercial license with a P or S endorsement. A violation of this section would be a Class I felony. Because 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 convicted and sentenced under the proposed bill.* In FY 2007/08, 16% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I felony 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 four additional prison beds the second year.

Effective December 1, 2009, and applies to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2009, and to persons who are registered under Article 27A of Chapter 14 of the General Statutes prior to December 1, 2009, and

continue to be registered on or after December 1, 2009. The criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009.

It is important to note that 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 and beyond.* Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

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.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 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.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

JUDICIAL BRANCH

The Administrative Office of the Courts (AOC) 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.

There are approximately 12,000 registered sex offenders residing in North Carolina. AOC cannot determine the number who would (a) apply for a commercial license (CDL), (b) apply for such a license when national sex offender registration information was unavailable and therefore have the opportunity to falsely swear an affidavit, or (c) drive a vehicle requiring a CDL with the P or S

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.

endorsement after having the CDL revoked, not renewed, or denied as a result of being a convicted sex offender. Thus, *AOC cannot estimate the fiscal impact that may result from the passage of this bill.*

For every new Class I (affidavit) or F (driving without endorsement) charge, costs would be as follows:

	Range of Costs (per charge)		
Class I	\$444 plea	\$6,615 trial	\$480 indigent defense
Class F	\$1,135 plea	\$10,995 trial	\$480 indigent defense

AOC also cannot project the number of persons who will be denied a CDL with a P or S endorsement under this bill and will petition the court for a hearing in the matter. Any resulting hearings would also impact court resources.

In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Division of Motor Vehicles, Department of Transportation Information Technology

TECHNICAL CONSIDERATIONS: The certification subsystem will require a low complexity change to prevent sex offenders from driving a bus with children, a modification to stop issuance of any driver license or identification card when "P" (Commercial Passenger Vehicle) or "S" (School Bus Endorsement) is requested and the applicant is a registered sex offender.

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