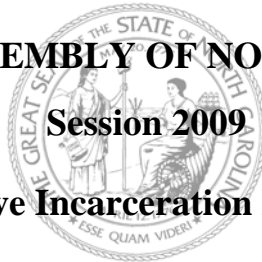


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2009**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** House Bill 1255 (Third Edition)

**SHORT TITLE:** Sex Offenders/Permanent No Contact Order.

**SPONSOR(S):** Representatives Holloway, Wiley, Underhill, and Parmon

<b>FISCAL IMPACT</b>					
	Yes (X)	No ( )	No Estimate Available (X)		
	<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>
<b>EXPENDITURES</b>					
<b>GENERAL FUND</b>					
Correction			<b>Indeterminate fiscal impact</b>		
Probation			<b>Indeterminate fiscal impact</b>		
Judicial			<b>Indeterminate fiscal impact</b>		
<b>ADDITIONAL PRISON BEDS:</b>					
(cumulative)*			<b>Indeterminate prison bed impact</b>		
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch.					
<b>EFFECTIVE DATE:</b>					
<p><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></p>					

**BILL SUMMARY:**

This bill would authorize the court, at the time of sentencing a defendant for an offense requiring sex offender registration, to issue an order permanently prohibiting the defendant from contacting the victim. The order must be enforced by all law enforcement agencies without further order of the court. Intentional violation of the no contact order is a Class A1 misdemeanor. Effective date is December 1, 2009.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

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.

### **Department of Correction – Division of Prisons**

This bill creates Article 81D, Permanent No Contact Order Against Convicted Sex Offender, of Chapter 15A of the General Statutes and enacts new G.S. 15A-1340.50, Permanent no contact order prohibiting future contact by convicted sex offender with crime victim. G.S. 15A-1340.50 makes it a Class A1 misdemeanor for a person to knowingly violate a permanent no contact order entered pursuant to the statute. A permanent no contact order is a permanent injunction that prohibits any contact by a defendant with the victim of a sex offense for which the defendant is convicted. The duration of the no contact order is the lifetime of the defendant, and once issued, the order is to be enforced by all North Carolina law enforcement agencies without further order of the court.

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, 28% of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class A1 convictions was 48 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.* The impact on the local jail populations is not known.

Currently, there exists a remedy in a civil no contact order, issued pursuant to Chapter 50C of the General Statutes. The civil no contact order is renewable annually and a knowing violation of such an order is punishable as contempt of court, which carries a punishment of a fine or a term of imprisonment up to 30 days. The Sentencing Commission does not maintain data on findings of criminal contempt.

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.<sup>1</sup>

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<sup>1</sup> 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 \$2.37 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.

For sex offender cases, this bill would create additional actions for a judge at the time of sentencing. Upon request of the district attorney, the judge would hold a show cause hearing as part of sentencing to determine whether to issue a permanent no contact order.

In 2008, AOC data show 2,265 defendants convicted of offenses requiring registration as a sex offender. It is probable that the district attorney would request a permanent no contact order in the majority of these cases.

If, for example, the district attorney requests a permanent no-contact order in 95% of cases, and if a show cause hearing required 10 minutes of court time, the annual cost increase would be approximately \$115,000 for in-court personnel time, excluding indigent defense. If AOC assumes a 60% indigency rate (based on the most frequent sex offender crimes), indigent defense costs under the above scenario would be approximately \$16,000. If a show cause hearing were to require 5 minutes of court time, cost would be approximately \$57,000 for court personnel and \$8,000 for indigent defense (under the same 95% scenario).

The bill also establishes a Class A1 misdemeanor offense for violating the no contact order. If a law enforcement officer has probable cause to believe that a person has knowingly violated a permanent no contact order, the officer shall arrest and take a person into custody without a warrant or other process. For every new Class A1 misdemeanor charge, there would also be an impact on court resources. AOC cannot project the number of new charges. The cost to dispose of a Class A1 misdemeanor case ranges from \$141 (plea disposition) to \$334 (trial). Indigent defense costs average \$225 per indigent defendant for misdemeanor cases.

In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. A typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

**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:** July 14, 2009



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