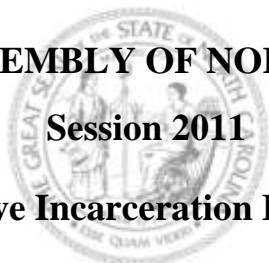


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 684 (Second Edition)

SHORT TITLE: Post-Release Supervision/Sex Offenders.

SPONSOR(S): Senator Apodaca

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
GENERAL FUND					
Correction	Exact amount cannot be determined; Impact could be significant				
Probation	Exact amount cannot be determined; Impact could be significant				
Judicial	Exact amount cannot be determined				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: Sections 5, 6, and 7 of the proposed legislation are effective when they become law and apply to willful refusals to accept post-release supervision or to comply with the terms of post-release supervision that occur on or after that date. The remainder of the act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:

The proposed legislation amends G.S. 15A-1340.17, Punishment limits for each class of offense and prior record level, by extending the post-release supervision (PRS) revocation period for certain sex offenders, and expands the scope of the existing offense in G.S. 5A-11, Criminal contempt.

Sections 5, 6, and 7 of the proposed legislation are effective when they become law and apply to willful refusals to accept post-release supervision or to comply with the terms of post-release supervision that occur on or after that date. The remainder of the act becomes effective December 1, 2011, and applies to offenses committed 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

Section 1:

This section amends G.S. 15A-1340.17, Punishment limits for each class of offense and prior record level, by adding subsection. The act provides that offenders sentenced for a Class B1 through E felony that is a reportable conviction subject to the registration requirements of Article 27A of G. S. Chapter 14, the maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent of the minimum term of imprisonment, rounded to the next highest month, plus 60 additional months. Currently, persons subject to the registration requirements of Article 27A of Chapter 14 are subject to five years (60 months) of post-release supervision (PRS) and a nine month revocation period. This bill would subject those persons to five years (60 months) of PRS and a five year (60 months) revocation period.

In FY 2009-10, there were 436 Class B1-E convictions requiring sex offender registration (see Table 1). Of these, 352 received an active sentence. One of the 352 offenders had a life without parole sentence imposed -- leaving 351 offenders eligible for PRS. In addition, there were 84 felons required to register as a sex offender who received a non-active sentence. Some portion of this group of 84 would be revoked to prison and would receive PRS upon release from prison.

Table 1: Class B1-E Convictions Requiring Registration as a Sex Offender

Offense Class	Non-Active Sentence	Active Sentence	Estimated Time to be Served (in months)*	Total
Class B1	0	118	254.6	118
Class B2	0	14	189.5	14
Class C	0	84	82.2	84
Class D	1	17	61.6	18
Class E	83	119	29.2	202
Total	84	352	125.7	436

* Excludes one offender who had a life without parole sentence imposed.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2009-10 Structured Sentencing Simulation Data

For offenders under PRS required to register as a sex offender under this proposal, their maximum sentence would increase by an additional 51 months (60 months less the nine months of revocation period currently added to the maximum sentence for those offenders sentenced as a Class B1-E felon under Structured Sentencing), as shown in the examples provided.

Example	Minimum Sentence	Maximum Sentence	<i>Proposed</i> Maximum Sentence
Class B1	238 months	295 months	346 months
Class E	29 months	44 months	95 months

Under the proposed changes to PRS, it is not known how many offenders will be revoked from PRS, how many periods of imprisonment may be served (a single period or multiple periods for revocation),¹ the length of imprisonment that will be served, or the lag-time from placement on PRS to revocation to prison.

The computerized simulation model currently used for the prison population projections does not have the capability to model different PRS revocation periods for subgroups of offenders. Therefore, the model could not be run to project the impact of this bill. However, additional prison beds will be needed if this bill is enacted.

Increasing the revocation period from nine months to 60 months could result in significant impact on the prison population, depending on the numbers involved and the policies and practices regarding the PRS revocations for this group. Based on the current revocation rate and the current PRS policies and practices, any period of imprisonment greater than nine months will result in the need for additional prison beds.

Additional Background Information

Based on data from the Department of Correction (DOC), there were 150 offenders who were convicted of a sexual assault or other sexual offense and exited from the Division of Community Corrections' PRS supervision in FY 2009-10.² Seventy-one of the 150 offenders were either revoked due to violations of their PRS or elected to serve their sentence.

Table 2 is based on data from the Sentencing Commission's 2010 biennial recidivism study and provides information on the technical revocation rates and re-arrest rates for Class B1-E prison releases in FY 2005-06 under PRS. Table 2 compares prison releases under PRS that are required to register as a sex offender with all other prison releases under PRS. The technical revocation rates are higher for PRS offenders registered as sex offenders than those that are not registered as sex offenders for each year of the three-year follow-up. However, the re-arrest rates are higher for non-sex offenders on PRS for each year of the three-year follow-up.

¹ Under current practice by the Post-Release Supervision and Parole Commission, offenders on PRS serve one period of revocation in prison for the entire 9 months if revoked for a violation of their conditions of PRS. Statutory language indicates shorter (and possibly multiple) periods of imprisonment are allowed. It is not known if the Commission will change its practice for these offenders.

² The DOC's ASQ query did not specify whether the offenders convicted of these sexual offenses were required to register as a sexual offender or not. However, since the offense class for these sexual offenses would be Class B1-E in order to be eligible for PRS, these offenders are probably required to register as sex offenders.

Table 2: Technical Revocation Rates and Re-arrest Rates for Prison Releases Under Post-Release Supervision by Registered Sex Offender or Non-Sex Offender

Type of Prison Releases on PRS	Number	Technical Revocation Rates		
		Year 1	Year 2	Year 3
Registered Sex Offender	203	11%	18%	25%
Non-Sex Offender	1,806	7%	12%	15%
Total	2,009	8%	12%	16%

Type of Prison Releases on PRS	Number	Re-arrest Rates		
		Year 1	Year 2	Year 3
Registered Sex Offender	203	8%	18%	26%
Non-Sex Offender	1,806	22%	38%	47%
Total	2,009	21%	36%	45%

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2005/06 Correctional Program Evaluation Data

Sections 5 and 6:

These sections expand the scope of G.S. 5A-11, Criminal Contempt, by amending G.S. 15A-1368.2(b) and by adding a new subsection to G.S. 5A-11(a).

G.S. 5A-11(a)(9b) provides that willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction shall be criminal contempt. Criminal contempt is subject to censure, imprisonment up to 30 days, and a fine of not more than \$500, or any combination of the three.

Working in conjunction with new G.S. 5A-11(a)(9b), G.S. 15A-1368.2(b) is amended to provide that willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction is punishable as contempt of court. In addition, any period of time during which a sex offender is not actually released on post-release supervision due to the offender’s resistance of that release shall toll the running of the additional period of supervised release. Further, the amendment to G.S. 15A-1368.2(b) provides that a prisoner punished for the offense of contempt of court under subsection (b) is not eligible for time served against the sentence for which the prisoner is subject to post-release supervision.

The Sentencing Commission does not maintain information on criminal contempt convictions. Criminal contempt may result in up to 30 days of incarceration pursuant to G.S. 5A-12(a). Offenders serving a sentence for criminal contempt are housed in county jails. Therefore, criminal contempt violations as a result of this proposed change would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known, but could be substantial. It appears to be the intent of the bill that the offender stays in jail for an unlimited period of time until he/she is willing to comply with PRS.

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.³

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 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 \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 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.

Sections 1 and 2:

AOC anticipates that with a longer potential sentence many cases will pursue a more vigorous defense, thus requiring more in-court resources (*i.e.* Superior Court Judge, Assistant District Attorney, Deputy Clerk of Superior Court, Court Reporter, and Victim Witness Legal Assistant). The exact fiscal impact for this potential increase in workload cannot be estimated.

Sections 5 and 6:

The proposed legislation requires a punishment of contempt of court for the willful refusal of post-release supervision for those defendants who are required to register as a sex offender.

³ 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.

Section 7:

Section 7 authorizes the post-release supervision and Parole Commission to conduct the contempt proceedings arising from Sections 5 and 6. Because these hearings will not take place in Superior Court, there will be no fiscal impact on the Judicial Branch from Sections 5 through 7 of this bill.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 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; and North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

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