

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 684 (First Edition)
SHORT TITLE: Post-Release Supervision/Sex Offenders.
SPONSOR(S): Senator Apodaca

FISCAL IMPACT table with columns for Yes (X), No ( ), and No Estimate Available ( ) across fiscal years FY 2011-12 to FY 2015-16. Rows include GENERAL FUND (Correction, Probation, Judicial) and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch. Includes an EFFECTIVE DATE section and a disclaimer: \*This fiscal analysis is independent of the impact of other criminal penalty bills...

BILL SUMMARY:

The proposed legislation amends G.S. 15A-1340.17 to provide that sentences for Class B1 through E felony offenses that are subject to sex offender registration are increased by 51 months over the existing sentences. The act amends G.S. 15A-1368.2 to specify that prisoners subject to the new sentence are to be released 60 months before the end of their sentence (after service of the minimum and receiving credit for any earned time) and placed on post-release supervision. Also, the act amends G.S. 15A-1368.2 to specify that a person may not refuse post-release supervision and that refusal is punishable by contempt of court. Time spent in incarceration for contempt is not credited against the original sentence. The act specifies that willful violation of post-release supervision conditions to cause revocation is refusal to accept post-release supervision.

Sections 5 and 6 of the proposed legislation are effective when they become law. The remainder of the act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

*SOURCE: BILL DIGEST S.B. 684 (04/19/0201)*

**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:**

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. The proposed 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**

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

\* 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.

<b>Example</b>	<b>Minimum Sentence</b>	<b>Maximum Sentence</b>	<b><i>Proposed</i> Maximum Sentence</b>
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),<sup>1</sup> 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.

Increasing the revocation period from nine months to 60 months could result in significant impact on the prison population, depending on the numbers involved, the policies and practices regarding the PRS revocations for this group, and the decision made by the Parole Commission. Any period of imprisonment greater than nine months will result in the need for additional prison beds.

### **Additional Background Information**

Based on data from 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.<sup>2</sup> 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.

<sup>1</sup> 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.

<sup>2</sup> 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
<b>Registered Sex Offender</b>	<b>203</b>	<b>11%</b>	<b>18%</b>	<b>25%</b>
<b>Non-Sex Offender</b>	1,806	7%	12%	15%
<b>Total</b>	2,009	8%	12%	16%
Type of Prison Releases on PRS	Number	Re-arrest Rates		
		Year 1	Year 2	Year 3
<b>Registered Sex Offender</b>	<b>203</b>	<b>8%</b>	<b>18%</b>	<b>26%</b>
<b>Non-Sex Offender</b>	1,806	22%	38%	47%
<b>Total</b>	2,009	21%	36%	45%

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

**Sections 5 & 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 shall be criminal contempt, and shall be 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 is punishable as contempt of court, and that 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 they are willing to comply with PRS.

## **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 & 2: Offenders whose current crime is an offense requiring registration**

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 Reporters, and Victim Witness Legal Assistant). The exact fiscal impact for this potential increase in workload cannot be estimated.

### **Sections 1 & 2: Offenders whose current crime is not an offense requiring registration, but who are subject to registration as a sex offender**

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 Judges, Assistant District Attorneys, Deputy Clerks of Superior Court, Court Reporters, and Victim Witness Legal Assistants). The exact fiscal impact for this potential increase in workload cannot be estimated.

### **Sections 5 and 6:**

Any new contempt of court charges and hearings arising from these sections will require at least 30 minutes each of court time, impacting Superior Court Judges, Court Reporters, Deputy Clerks, Assistant District Attorneys and Victim Witness Legal Assistants. The monetary value of the positions and associated costs required for each hearing is \$183.

Because post-release supervision is under the authority of the Post-Release Supervision and Parole Commission, AOC has no data on the frequency of willful refusals of post-release supervision by sex offenders. In addition, AOC cannot project the impact of increasing the remaining active time on compliance with the terms of post-release supervision. Therefore, the exact fiscal impact for this potential increase in workload cannot be estimated.

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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