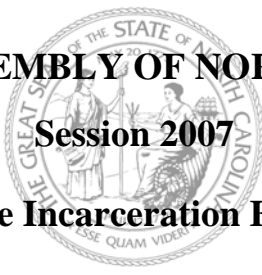


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 933 (First Edition)

SHORT TITLE: Jessica Lunsford Act for NC.

SPONSOR(S): Representatives Clary, Howard, Moore, and Thomas

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND	Costs are minimal fiscal impact for prison beds; will be long term prison bed costs (cannot be determined) and cost for GPS monitoring but costs outside 5 year Note period.				
Correction					
Recurring		\$957,164	\$3,505,565	\$4,153,814	\$5,886,068
Nonrecurring	\$15,811,200				
Judicial					
Recurring	\$334,620	\$576,825	\$605,666	\$635,949	\$656,369
Nonrecurring					
Justice					
Recurring	\$310,027	\$319,327	\$328,907	\$338,744	\$348,907
Nonrecurring	\$132,548				
Local Law Enforcement	Likely significant fiscal impact due to enforcing 30 year registration and operating community notification system but amount cannot be determined.				
Local Schools	Costs for background checks of contract personnel can't be determined but cost should not be significant				
TOTAL EXPENDITURES:	\$16,588,395	\$1,853,316	\$4,440,138	5,128,507	\$6,891,344
ADDITIONAL PRISON BEDS: (cumulative)*	NA	33	85	133	182
POSITIONS (cumulative)					
DOC	0	13	34	53	73
DOJ	4	4	4	4	4
--Judicial	5	5	5	5	5
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch, Department of Justice, Local Law Enforcement, Local School Districts.					
EFFECTIVE DATE: December 1, 2007; applies to offenses committed on or after that date.					
*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 (General Assembly Research Division):

***SUMMARY:** House Bill 933 provides that certain criminal offenses of first degree rape and sexual offense committed against a child are punishable by life imprisonment without parole or a mandatory active sentence of 25 years and lifetime satellite based monitoring. It creates the criminal offense of lewd or lascivious molestation of a child which would be punishable by life imprisonment without parole or a mandatory active sentence of 25 years and lifetime satellite based monitoring. The bill increases the penalties for various offenses; shortens the notification time period that offenders have to make changes to their registration; and requires community notification of the presence of sexually violent predators or repeat sex offenders. The bill also creates a new criminal offense to make it unlawful for sex offenders to be on certain premises including those where a reasonable person would know children regularly congregate. The bill amends the law regarding bail for violations of probation and post-release supervision by sex offenders and requires criminal background checks of contractual personnel before they can go on school grounds, have direct contact with students or have access to school funds.*

BILL ANALYSIS:

Section 1 amends the first degree rape statute to provide that a person is guilty of first degree rape if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is under the age of 13. This would be a Class B1 felony. In its discretion, the court must impose one of the following on a person convicted of this offense:

- Life imprisonment without parole
- 25 years mandatory active punishment to be followed by satellite based monitoring for life

Section 2 amends the first degree sexual offense statute to provide that a person is guilty of first degree sexual offense if the person is at least 18 years of age and engages in a sexual act with a victim who is under the age of 13. This would be a Class B1 felony. In its discretion, the court must impose one of the following on a person convicted of this offense:

- Life imprisonment without parole
- 25 years mandatory active punishment to be followed by satellite based monitoring for life

Section 3 changes first degree sexual exploitation of a minor from a Class D felony to a Class C felony.; **Section 4** changes second degree sexual exploitation of a minor from a Class F felony to a Class D felony; **Section 5** changes third degree sexual exploitation of a minor from a Class I felony to a Class E felony.

Section 6 changes promoting prostitution of a minor from a Class D felony to a Class C felony.

Section 7 creates the criminal offense of lewd or lascivious molestation of a child. Any person who is 18 or older who intentionally touches a person under 12 in a lewd or lascivious manner on the breasts, genitals, genital area, or buttocks or the clothing covering those areas or forces or entices a person under 12 to touch the perpetrator is guilty of a Class B1 felony. The court must impose one of the following on a person convicted of this offense:

- Life imprisonment without parole
- 25 years of active punishment followed by post-release supervision with a satellite-based monitoring for life

The requirement that the person be supervised with a satellite-based monitoring for life can be terminated as allowed by G.S. 14-208.43.

Section 8 makes conforming changes to G.S. 14-208.6(5) by adding the offense of lewd or lascivious molestation to the definition of sexually violent offense.

Section 9 amends G.S. 14-208.6A by establishing a 30 year registration requirement for person convicted of certain offense against minors or sexually violent offenses. The current statute prescribes a 10 year registration requirement.

Section 10 requires that a person with a reportable offense under the Sex Offender and Public Protection Registration Program who moves to the State from outside of the State must register within 48 hours of establishing residence. If the person is a current resident of the State, the person must register within 48 hours of release from a penal institution. The current requirement provides a person 10 days to register. The bill would require that the registration be maintained for 30 years rather than the current 10 years.

Section 11 requires that a person who is required to register with the Sex Offender and Public Protection Registration Program must provide notice of a change of address, change in academic status or change in employment status at institution of higher education within 48 hours of the changes.

Section 12 provides that a person return verification of registration information within 48 hours of the receipt of the form and must appear within 48 hours of a request from the sheriff to take another photograph.

Section 13 provides that a person required to register under the Sex Offender and Public Protection Registration Program may request to terminate the registration program 30 years from the date of initial registration rather than the current provision of being able to make a termination request after 10 years.

Section 14 creates a new offense which makes it unlawful for any person convicted of an offense that requires registration in the sex offender registration programs to be on the premises of any of the following: (1) school; (2) child care center; (3) park; (4) playground; (5) children's museum; (6) library; (7) business that a reasonable person knows is a place where children regularly congregate; or (8) any other facility that a reasonable person knows is a place where children regularly congregate. A violation of this section would be a Class F felony.

Section 15 creates a new section requiring community and public notification. Law enforcement agencies must inform members of the community and public of the presence of any person required register as a recidivist, a sexually violent predator or because the person has committed an aggravated offense. The sheriff must notify each licensed day care center, elementary school, middle school, and high school within a one-mile radius of the registrant's temporary or permanent residence of the registrant's presence. This must be done within 48 hours of receiving notification of the registrant's presence. The information to be provided must include the name, description and photograph, current address, circumstance of the offense and whether the victim was a minor or an adult. Statewide notification is authorized as well as Internet notification to the public.

Sections 16 and 17 require juveniles who are adjudicated delinquent and must register for certain offenses to provide change of address notification and verification of information within 48 hours of changes and receipt of verification forms rather than the current 10 days.

Section 18 amends the sex offender monitoring program to include monitoring of 3 categories of offenders. The new third category created is for offenders convicted of the offenses amended in Sections 1 and 2 of the bill and created in Section 7 of the bill: (i) G.S. 14-27.2(b1); (ii) G.S. 14-27.4(b1); (iii) G.S. 14-202.5.

Section 19 makes conforming changes in G.S. 14-208.41 to make enrollment in the satellite-based monitoring program mandatory for life for those guilty of violating G.S. 14-27.2(b1); G.S. 14-27.4(b1); and G.S. 14-202.5.

Sections 20 and 21 make conforming changes to other statutes.

Section 22 requires the court to make a finding that the probationer is not a danger to the public prior to release with or without bail for arrests for probation violations. This new requirement would apply to probationers convicted of offense that would require registration or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Programs.

Section 23 adds a new subsection that addresses bail following arrest for violation of post-release supervision if the released person is a sex offender. If the releasee is an offender who must register and is arrested for a violation of post-release supervision, the releasee must be detained without bond until the preliminary hearing is conducted.

Section 24 creates a new section that requires a local school board to require, as a term of any contract that it enters, that a person who is contractual personnel undergo a criminal history check that has been reviewed by the local school board or other party to the contract before the person can do any of the following:

- Be on school grounds when students are present
- Have direct contact with students
- Have access to or control school funds

EFFECTIVE DATE: The bill becomes effective December 1, 2007 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.

Fiscal Impact Summary

HB 933 creates potentially significant costs in four major areas: (1) the cost of new prison beds in the Department of Correction to house prisoners convicted of the new or revised felonies in this bill; (2) increased costs for law enforcement to enforce current and expanded registration and conduct requirements in this bill over a 30 year period (sex offender is now on registry for 10 years except for certain lifetime registrants); (3) increased costs to the Department of Justice for updating and maintaining the sex offender registry to comply with HB 933; and (4) increased court time and cost to Judicial due to more severe penalties .

The major cost is for increased prison beds for the new offense of lewd and lascivious behavior. Several current offenses, particularly Indecent Liberties with Children (Class F), meet the elements of the proposed new offense. The result could be that these Class F felonies could be charged as the new Class B1; a conviction requires a minimum of 25 years in prison. **The estimated cost and bed impact shown in**

Tables 1 AND 2 of this Note assume that only 10% of these Class F offenses would be charged and convicted of the new lewd and lascivious B1 offense; cost and bed impact are potentially much higher

Department of Correction – Division of Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 6, 2006. Official Department of Correction capacity projections also assume the General Assembly will fund 500 additional prison beds, generated by partial double-celling of the future Tabor City facility (inmate admission FY 2008-09). However, Fiscal Research does not include these 500 beds in capacity estimates (row two), since these beds have not been authorized for funding.

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 or beyond.* Therefore, the number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of H 933. As shown, the Sentencing Commission estimates that this specific legislation will add (total) inmates to the prison system by the end of FY 2011-12.

	<u>June 30 2008</u>	<u>June 30 2009</u>	<u>June 30 2010</u>	<u>June 30 2011</u>	<u>June 30 2012</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	39,621	40,236	41,021	41,848	42,718
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	38,505	39,353	39,353	39,353	39,353
3. Projected No. of Beds Over/Under Inmate Population	-1,116	-883	-1,668	-2,495	-3,365
4. Projected No. of Additional Inmates <u>Due to this Bill</u> ³	<i>N/A</i>	<i>33</i>	<i>85</i>	<i>133</i>	<i>182</i>
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	<i>N/A</i>	<i>33</i>	<i>85</i>	<i>133</i>	<i>182</i>

POSITIONS: It is anticipated that by FY 2011-12, approximately (73) positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately 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 examine a bill’s impact over a five-year horizon, through FY 2011-12. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the following chart illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to (bill number); and, the estimated number of new beds required each year through FY 2015-16.

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in December 2006.

³ Criminal penalty bills effective December 1, 2007 should not affect prison population and bed needs until FY 2008-09, due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

	June 30 <u>2013</u>	June 30 <u>2014</u>	June 30 <u>2015</u>	June 30 <u>2016</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,234	-5,117	-5,996	-6,866
2. <i>Projected No. of Additional Inmates Resulting From (Bill Number)</i>				
3. <i>Estimated No. of New Beds Required Under (Bill Number)</i>				<i>Cant be determined but could be significant</i>

DISTRIBUTION OF BEDS: After analyzing H 933, the Department of Correction estimates the following distribution of needed beds, by custody level:⁴

For Section 7: Close Custody: 50%/Medium Custody 50%
Other Sections – All Medium Custody

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;⁵ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”⁶ Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

Estimated Construction Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$56,000	\$63,000	\$109,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$71,000

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.⁷ As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

Accordingly, given an increase of (182) inmates, bed provision through construction of a “stand alone” facility could cost approximately (\$15,811,200) by FY 2011-12; provision through “add-on” could cost approximately \$10,010,000

OPERATING: Operating costs are based on actual FY 2005-06 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 three

⁴ Custody level is determined by a multi-factor assessment, including but not limited to: offense severity and history, institutional behavior (i.e. violence, rule disobedience), sentence length and portion served, job performance, and age. Infrastructure, personnel, and equipment needs are positively correlated with security levels and inmate risk assessments.

⁵ New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

⁶ Close and medium custody “add-on” facilities are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. Add-on facilities built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁷ Office of State Construction, March 24, 2006.

percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the "Fiscal Impact" table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2005-06

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$54.81	\$70.83	\$79.72	\$66.87

ASSUMPTIONS AND METHODOLOGY FOR PRISON BEDS

Tables 1 and 2 provide a preliminary estimate of the HB 933 on the prison system.

Table 1 Prison Beds

<u>Bill Section</u>	<u>07/08</u>	<u>08/09</u>	<u>09/10</u>	<u>10/11</u>	<u>11/12</u>
Sections 4,5,8,14,&19— Increase pool of offenders or add new felony		19	44	44	44
Sect. 7 –New Felony (B1) for Lewd & Lascivious)		14	41	89	138
TOTAL		33	85	133	182

Table 2 Fiscal Impact

<u>Bill Section</u>	<u>07/08</u>	<u>08/09</u>	<u>09/10</u>	<u>10/11</u>	<u>11/12</u>
Sections 4,5,8,14,&19— Increase pool of offenders or add new felonies	\$2,993,760 (One-time Capital-44 beds)	\$536,817 (Operating)	\$1,280,451	\$1,318,864	1,358,430
Sect. 7 –New Felony (B1) for Lewd & Lascivious)	12,817,440 (One time capital-138 beds)	\$420,347	\$1,267,950	\$2,834,950	\$4,527,638
TOTAL – CAPITAL	\$15,811,200 (182 beds)				
TOTAL OPERATING	NA	\$957,164	\$3,505,565	\$4,153,814	\$5,886,068

1. Criminal Penalty Changes in Sections 1, 2, 3 and 6 will increase prison population but increases will be outside the 5 year fiscal note window and are not included in this estimate. (Changes Class D felonies to C; Class D and C already get active sentence in every case so extended sentence will be outside 5 year window)

2. Criminal Penalty Changes in Sections 4, 5, 8, 14 and 19. Increase various penalties for sex exploitation of a minor, new felonies and expand pool of failure to register and failure to enroll in GPS. Bed numbers based on number of beds for every 1 or 2 convictions provided by Sentencing Commission; number likely to be higher but cannot be determined

Also assumes prison capital costs of \$63,000 per bed (medium custody) plus 8% inflation per State Construction and operating cost of \$24,408 (medium) plus 3% inflation)

3. Criminal Penalty Change Section 7 – New Offense for Lewd and Lascivious Behavior

This section creates a new felony offense, “Lewd or lascivious molestation.” (G.S. 14-202.5) This section makes it an offense for a person, 18 years of age or older, to intentionally touch in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 12 years of age, or force or entice a person under 12 years of age to so touch the perpetrator.

The offense would be classified as a Class B1 felony; however, offenders would not be punished under the Structured Sentencing Act. The court, in its discretion, has two punishment options:

- a. Life imprisonment without parole, or
- b. 25 years mandatory active punishment followed by satellite-based monitoring for life.

The conduct covered under this proposed offense may be currently covered under G.S. 14-202.1, Indecent Liberties with Children, which is a Class F felony, or under G.S. 14-202.4(a), Indecent Liberties with Student, which is a Class I felony. However, it is not known how many of the current convictions under G.S. 14-202.1 and G.S. 14-202.4(a) would meet the age restrictions and other elements of the proposed offense. In FY 2005/06, there were 583 convictions for Indecent Liberties with Children (G.S. 14-202.1) and 6 convictions for Indecent Liberties with Student (G.S. 14-202.4(a)) for offenders who were 18 or older at the time of the offense.⁸ The age of the victim is not known. (See the impact projection on the following page for percentage-based scenarios.)

In addition, the conduct covered under this proposed bill may be currently covered under G.S. 14-27.5A, Sexual Battery, and G.S. 14-33(c)(3), Assault on a Child Under 12, both of which are Class A1 misdemeanor offenses. In FY 2005/06, there were 162 convictions under G.S. 14-27.5A and 137 convictions under G.S. 14-33(c) (3) for offenders who were 18 or older at the time of the offense. It is not known how many of these convictions would meet the age restrictions and other elements of the proposed offense. Due to their short sentence lengths and low rate of active punishments imposed, convictions for misdemeanor offenses typically do not have a significant impact on the prison system. **However, if any of the convictions under G.S. 14-27.5A or G.S. 14-33(c)(3) would become Class B1 convictions under the proposed bill, it would result in both immediate and long-term impact on the prison system due to the required Active sentence and the minimum sentence length of 25 years. Each conviction would result in the need for one additional prison bed immediately and for a minimum of 25 years.** The build-up of these convictions over the years would result in substantial long-term impact.

Bed Impact Scenarios: FRD requested that the Sentencing Commission provide three bed impact scenarios for Section 7 of HB 933. **The following table provides three Scenarios. Fiscal Research used Scenario A to assess fiscal impact shown in Fiscal Impact Table on page 1 and in Tables 1 and 2 —Scenario A is the minimum expected fiscal impact on DOC.** *FRD also assumed that given the new felony is a B1, the type of beds would be a mix of close and medium custody beds rather than medium. Therefore, the FRD cost estimate was based on the midpoint between the cost of a close and medium custody bed for capital and operating.*

⁸ See Footnote 1.

These scenarios assume that a specified percentage of the 589 offenders age 18 or older who were convicted of Indecent Liberties with Children and Indecent Liberties with Student would meet the elements of the proposed offense. These offenders would then be convicted of a Class B1 felony and sentenced to a minimum of 25 years.

Table 3 Alternative Scenarios with Bed Impact of Section 7

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS		
	Scenario A: 10%	Scenario B: 25%	Scenario C: 50%
Year 1 (08/09)	14	38	77
Year 2	41	124	254
Year 3	89	246	509
Year 4	138	375	772
Year 5	186	512	1,048
Year 6	244	655	1,339
Year 7	303	801	1,638
Year 8	360	948	1,936
Year 9	418	1,104	2,241
Year 10	478	1,258	2,555

Department of Correction – Division of Community Corrections

General. 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.⁹

General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 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 \$7.71 to \$14.97, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.97 for the initial six-month intensive duration, and \$1.96 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.

Offenders supervised by DCC are required to pay a \$30 supervision fee monthly, while those serving community service pay a one-time fee of \$200. Offenders on house arrest with electronic monitoring must also pay a one-time \$90 fee. These fees are collected by the Court System and are credited to the General Fund. Conversely, sex offenders who must submit to GPS monitoring (S.L. 2006-247) pay a one-time fee of \$90, which is credited to the Department of Correction. Overall, the collection rate for FY 2005-06 was 66%.

⁹ 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.

GPS Provisions in HB 933—Division of Community Corrections

DCC is responsible for operation of a satellite based Global Positioning System that is used to monitor certain sex offenders as designated in ratified HB 1896 (2006 Session). Four sections of this bill enhance the use of GPS for sex offenders.

- Sections 1 and 2 require offender convicted of new B1 felony to receive either life imprisonment or 25 years un prison followed by GPS monitoring for life
- Section 18 amends the sex offender monitoring program to add a third category of offenders for offenders convicted in Sections 1 and 2 of the bill and Section 7 (lewd and lascivious)
- Section 19 makes GPS mandatory for life for certain offenders

According to DCC, these changes will have little short term fiscal impact on the GPS program. Most offenders that would be covered under lifetime GPS would not be required to be on GPS until after serving a long prison sentence. Therefore most costs are outside the 5 year fiscal window

For example Section 18 adds a “third tier” of offenders required to be on GPS but the statute reference is to offenders convicted of the new Class B1 felony for lewd and lascivious behavior. **The earliest any of these offenders would be put on GPS is after completion of a 25 year sentence.**

Department of Justice

The Department of Justice (DOJ) currently operates the sex offender registry database. HB 933 requires that the Department expand the database to collect additional information from convicted sex offenders. DOJ estimates that it will cost \$718,802 in 2007-08 and \$531,404 in 2008-09 to implement HB 933. The additional costs are associated with database development/maintenance, software/equipment purchases and additional staff positions to support the database’s expanded purpose. These estimates have been adjusted based on information received from the agency to more accurately reflect the anticipated cost of implementing this bill. More specifically, the following adjustments were made:

Position cost reductions. The agency estimate included funding for 8 staff positions to support the database’s expanded purpose: 2 Information Processing Technician positions, 2 Criminal Justice Specialist positions, 2 Processing Assistant V positions, a Criminal Information System Project Coordinator and a Business Tech Application Specialist (\$395,027 total for salary and benefits). The 2 Information Processing Technician positions and the 2 Processing Assistant V positions were taken out of the agency’s estimate. The agency already has staff doing information monitoring/database support functions for the sex offender registry. This bill does not create a new process. It adds additional functions to an information collection/monitoring process that is already in place. This bill will not increase agency’s workload enough to require 8 additional staff positions. -\$158,677 (R)

(NOTE: The agency’s justification for additional staff positions in the agency’s impact analysis states that these positions are requested to address recent increases in the registry’s workload and not just the database and staff resources needed to implement this bill).

Office rental charge elimination. The agency indicated that they will need additional work space (2,400 square feet) to accommodate the staff positions requested at a total cost of \$45,000. As part of their 2007-09 agency budget request, the agency requested over 40 staff positions to support the agency’s office and field operations with no request for additional office space to accommodate the new staff positions. It is very unlikely that the agency will be receiving 40 new staff positions in the budget. They should have space to accommodate the 4 staff positions needed to implement this bill. The agency estimate was reduced to eliminate the costs built in for anticipated office rental charges. -\$45,000 (R)

Furniture cost reduction. The agency requested \$22,800 for furniture costs. This amount was reduced to reflect the amount of furniture needed to accommodate the 4 staff positions recommended. -\$8,550 (NR)

Computer cost reduction. The agency estimate for computer costs (\$16,000) was reduced base on the number of units needed to accommodate the 4 staff positions. -\$4,000 (NR)

Auto cost elimination. The agency estimate includes funding for an auto to support field investigations. This item was removed because the positions requested would be working at the Raleigh SBI crime lab about most of the time. The amount of times that they would be working off site does not warrant adding an additional vehicle to the agency’s fleet. -\$60,000 (NR)

Table 4 Fiscal Research Division costs estimate for HB 933

Type of Cost	FY 07/08	FY 08/09	FY 09/10	FY 10/11	FY 11/12
Recurring	\$310,027	\$319,327	\$328,907	\$338,744	\$348,907
Nonrecurring	\$132,548				
TOTAL	\$426,575	\$319,327	\$328,907	\$338,744	\$348,907
Positions	4	4	4	4	4

Based on the adjustments made, the Fiscal Research Division estimates that it will cost \$442,575 in 2007-08 and \$310,327 in 2008-09 to implement this bill.

Specific sections or provisions of the HB 933 that will require programming and system changes include:

1. 48 Hour Timeframe Requirements

The 48 hour requirement in the bill has major impact on the system if the 48 hour clock starts with a date **and time** of release or conviction. The current system only deals with date and **not with time**. If this could be changed to 2 days (not down to the hour and minute level), the impact would be substantially lower. The way the bill reads is that the 48 hours would only be for offenders that committed an offense on or after December 1, 2007. This would have a much greater impact because we would then have a mixture of offenders with different registration requirements. This type change is very significant because it would require the establishment of separate databases, separate screens and system fields requiring extensive programming, system development and intensive detailed maintenance of two SOR offender population groups.

2. Lifetime registration

The 30 year registration provisions appear to apply to offenders who are required to register after December 2007. This has a significant impact because it creates a separate category of offenders that are managed differently then the pre December 2007 offenders. This would have a significant impact because we would then have a mixture of offenders with different registration requirements. This type change is very significant because it would require the establishment of separate databases, separate screens and system fields requiring extensive programming, system development and intensive detailed maintenance of two SOR offender population groups.

3. Community Notification

All of these Sections all reference the Division, and include language about potential statewide notification and community coordination efforts with the Division. In addition, the Division is required to develop a **protocol** to assist law enforcement agencies in their efforts. In order to develop such a protocol, extensive coordination will have to take place with all 100 sheriffs, who potentially may have significantly varying

perspectives on what state and local coordination will encompass. This variation will require system customization or extensive programming to capture the highly variable demands and needs of all county sheriff offices. The system impact could be significant. To most effectively implement these requirements, a separate SBI Criminal Identification team is needed and described below.

4. Creation of New Criminal Offenses

The draft bill creates four new criminal offenses that will require updates and new programming to the SOR.

Combined IT Scope of Work Detail for Implementing Above Workload

The current FY0708 House budget includes funding for a Business & technology application specialist that can provide some system development, project management and programming assistance related to the new requirements found in this bill. Assuming that programming and managerial resource is included in the final adopted budget, supplemental one time computer contracting resources will be needed. The above noted provisions will generate additional incremental workload that will require convenience contractor services valued at \$94,050 (990 hours X \$95.00 an hour). The legislative changes will be made to the sex offender law enforcement database and to the public sex offender registry. Below is a bulleted list outlining the scope of work for the paid contractor(s).

- Establish high level project plan and requirements – 200 Hours
- ITS Project management/UMT tool compliance & coordination – 90 Hours
- Technical design specification based on requirements– 200 Hours
- Review and revise technical design specification – 90 Hours
- Develop code using BizTalk and C#.NET - 220 Hours
- *Interface BizTalk and C#.NET with SOR Web Registry Website) using ASP.NET – 20 Hours
- *Modify SOR database – 10 Hours
- *Develop Separate Post Dec 2007 Database – 100 Hours
- *Modify existing screens -- 20 Hours
- *Update LEMS (Law Enforcement Message Switch) – 10 Hours
- *Testing and bug removal – 10 Hours
- *Evaluation – 10 Hours
- *On going maintenance - 10 Hours

*Items with asterisk above will require intensive in-house interaction with existing budgeted staff in addition to the contractor hours noted. However the salaries and costs of interaction with existing staff have not been calculated for this fiscal note.

TECHNOLOGY MAINTENANCE & SYSTEM STABILITY – Revising and modifying the SOR system is a constant process. An overarching concern from a technology management perspective is that continued changes to the SOR system can expose the system to external attack and undermines the core system architecture. Once an application is coded, the more complex changes that you make to it, the more vulnerable the application becomes to external threats or internal disruption. The 48 hour registration requirement and 30 year registration changes require us to develop two separate SOR databases for two different offender populations. It is critical that a Business and Technology Analyst be provided to maintain two separate systems, perform load testing, security and system maintenance functions. With continued system changes, full time maintenance resources are needed to ensure SOR system reliability, stability and security.

SBI CRIMINAL INFORMATION STAFF: As the requirements of the Sex Offender Registration Program have grown tremendously over the past year, SBI criminal information program staff in this area has not grown at all. In order to meet the needs of the community notification requirements and manage

two offender population groups, it will be necessary to form a new unit within CIIS specifically designed to handle Sex Offender Registration requirements. In order to aggressively handle the responsibilities outlined in this legislation, the SBI will need the following 4 positions:

Criminal Information Special Projects Coordinator (Pay-Grade 70) (one position)
Criminal Justice Specialist (Pay-Grade 66) (two positions)
Business Tech Application Specialist (Banded) (one position)

All positions assume July 1, 2007 effective date.

Local Law Enforcement

HB 933 generates a number of new duties and requirements for local law enforcement, particularly county sheriffs. Relevant sections of the bill include

Section 9 amends G.S. 14-208.6A by establishing a 30 year registration requirement for person convicted of certain offense against minors or sexually violent offenses. The current statute prescribes a 10 year registration requirement. *Thus the pool of offenders on the registry will grow, increasing the number of possible violations of the registration requirements that will have to be enforced*

Sections 10, 11 and 12—Current law requires a registrant to report various information within 10 days (e.g. verify registration, notify change of address law). These changes are reported to and recorded by the Sheriffs. *HB 933 changes these requirements to 48 hours increasing administrative and enforcement activity.*

Section 15 creates a new section requiring community and public notification.

- Law enforcement agencies must inform members of the community and public of the presence of any person required register as a recidivist, a sexually violent predator or because the person has committed an aggravated offense.
- The sheriff must notify each licensed day care center, elementary school, middle school, and high school within a one-mile radius of the registrant's temporary or permanent residence of the registrant's presence. This must be done within 48 hours of receiving notification of the registrant's presence.
- The information to be provided must include the name, description and photograph, current address, circumstance of the offense and whether the victim was a minor or an adult.
- Statewide notification is authorized as well as Internet notification to the public.

While this will be a collaborative effort with the Department of Justice, direct responsibility for the system is assigned to county sheriffs in HB 933

There are also multiple new restrictions on sex offenders which sheriffs and other local law enforcement will need to enforce. For example, Section 14 creates a new offense which makes it unlawful for any person convicted of an offense that requires registration in the sex offender registration programs to be on the premises of any of the following: (1) school; (2) child care center; (3) park; (4) playground; (5) children's museum; (6) library; (7) business that a reasonable person knows is a place where children regularly congregate; or (8) any other facility that a reasonable person knows is a place where children regularly congregate. A violation of this section would be a Class F felony.

At this time there is no way to determine the statewide fiscal impact on local law enforcement or the costs for each county. *However given the changes in various time frames, new or revised sex offender registration requirements, and community notification activities, there will be significant operational and enforcement cost for local government*

Judicial Branch

General. The Administrative Office of the Courts 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 HB 933, the AOC anticipates a significant impact on court resources. AOC notes that given the number of changes in 933 in the pool of offenders and increased criminal penalties, that it would not take many such cases for the impact on the courts to be substantial. AOC anticipates a substantial increase in workload of superior court judges, district attorneys, clerks, court reporters, and indigent defense counsel. There would be a likely increase in the number and complexity of appeals. However, with few exceptions, AOC has no data from which to estimate the number of charges that would be subject to the increased penalties under H933.

The exceptions are as follows

Sections 3 through 5: Increase penalties for sexual exploitation of a minor

- This bill increases the penalty for first degree sexual exploitation of a child by one class, second degree by two classes, and third degree by four classes, providing for an equal incremental increase in punishment level among the three offenses.
- Under current law, first degree sexual exploitation of a minor is a Class D felony, second degree sexual exploitation is a Class F felony, and third degree sexual exploitation is a Class I felony. This bill increases the penalties to Class C, D, and E, respectively.
- AOC data for calendar 2006 indicate that 26 defendants were charged with first degree, 68 with second degree, and 74 with third degree sexual exploitation of a minor. The additional cost of disposing these cases at the increased punishment level is approximately \$2,025 for first degree sexual exploitation, \$30,800 for second degree, and \$28,000 for third degree (first full year costs).

Sections 9, 10, and 13: Lengthen the registration requirement to 30 years

- Sections 9 and 10 modify current GS 14-208.6A and GS 14-208.7, respectively, by increasing the period of registration for certain sex offenders from 10 years to 30 years. Section 13 makes a conforming change to current GS 14-208.12A, providing that the defendant may petition the court to terminate the registration requirement 30 years from the date of initial registration.
- By lengthening the registration period, this provision would enlarge the pool of defendants who would be subject to a Class F felony for failing to update home address and other personal information as required under current GS 14-208.11. AOC data for calendar 2006 show approximately 720 defendants charged under current GS 14-208.11. We cannot determine how many of these charges involve the failure to update registration information. We cannot estimate the number of additional felony charges that would arise from this provision. For any new charges, there would be an increase in workload of superior court judges, district attorneys, clerks, court reporters, and indigent defense counsel. Considering the large increase in the number of years for which registration is required, a large number of additional charges can be expected.

- If the number of new charges were equal to the number of existing charges (720), the additional cost would be approximately \$516,000 in the first full year for one superior court judge, one deputy clerk, two assistant district attorneys, and one court reporter. *While Fiscal Research believes it is unlikely the number of new charges will equal 720 for this section of the bill only, the 30 year new requirement and other changes in this bill makes this number a reasonable estimate*

Costs are estimated in Table 5 below

Table 5

Section	07/08 (7 mos.),	08/09	09/10	10/11	11/12
Section 3-5	\$35,278	\$60,825	\$63,866	\$67,059	\$70,412
Sections 9,10,13	\$299,342	\$516,000	\$541,800	\$568,890	\$585,957
TOTAL	\$334,620	\$576,825	\$605,666	\$635,949	\$656,369
Positions	5	5	5	5	5

Section 7: New felony: lewd or lascivious molestation of a child

While AOC could not generate a cost estimate for Section 7, several points are raised regarding court time and fiscal impact. Section 7 creates a new Class B1 felony for the lewd and lascivious molestation of a person under age 12 by a person age 18 or older. This offense is punishable by a sentence of life imprisonment without parole or 25 years of mandatory active time followed by lifetime satellite-based monitoring.

To the extent that defendants who commit this offense are being charged with taking indecent liberties with a child under current GS 14-202.1 (a Class F felony) or taking indecent liberties with a student under current GS14-202.4(a) (a Class I felony), we would not expect many additional felony charges as a result of this bill. This bill, however, provides for a substantially higher level of punishment than the two current indecent liberties statutes-defendants would potentially face life imprisonment without parole.

AOC data for calendar year 2006 show approximately 1,480 defendants charged with taking indecent liberties with a child and 30 charged with the felony offense of taking indecent liberties with a student. We cannot determine how many of these cases involved a defendant aged 18 or older with a victim under age 12. AOC could not estimate the number of charges that would be subject to the increased penalty under this bill. The increase in punishment would be accompanied by more vigorous defense and prosecution, resulting in increased court time and costs to dispose of these cases. AOC expects a substantial increase in the workload of superior court judges, district attorneys, clerks, and court reporters, and an increase in expenditures for jury fees and indigent defense. There would be a likely increase in the number and complexity of appeals.

AOC has no data from which to estimate the number of new felony charges that would arise. For any new charges, there would be an increase in the workload of superior court judges, district attorneys, clerks, court reporters, and indigent defense counsel. There would be a likely increase in the number and complexity of appeals.

Local Schools

Section 24 creates a new section that requires a local school board to require, as a term of any contract that it enters, that a person who is contractual personnel undergo a criminal history check that has been reviewed by the local school board or other party to the contract before the person can do any of the following:

- Be on school grounds when students are present
- Have direct contact with students
- Have access to or control school funds

This provision is similar to a provision in HB 1921 in 2006. At that time, Fiscal Research determined that information on the total number of contractual personnel was not available, but that the cost is unlikely to be significant. Reasons given include;

- DPI officials noted many LEA’s are already conducting checks on contract personnel who come into close contact with students
- It is possible that companies that provide contract workers would have to conduct and pay for background checks rather than LEA’s

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Public Construction, and Office of State Construction.

TECHNICAL CONSIDERATIONS: Technical correction: Section 23 adds new subsection (b1) to current GS15A-1368.4 governing conditions of post-release supervision; this statute, however, already has a subsection (b1). It is likely that the new subsection was intended to be added to current GS 15A-1368.6 pertaining to arrest and hearing on post-release supervision violation.

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DATE: May 23, 2007



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