

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 1638 (4th Edition) Revised

**SHORT TITLE:** Criminal. History Check/Conform Sex Off. Reg.

**SPONSOR(S):** Representative Haire

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2002-03</u></b>	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>
<b>REVENUES</b>					
<b>Dept. of Justice</b>	<i>Exact amount cannot be determined.</i>				
<b>EXPENDITURES</b>					
<b>Dept. of Justice (R)</b>	<i>DOJ will be reimbursed for costs of background checks.</i>				
<b>(NR) \$45,556</b>	<i>DOJ will utilize federal Byrne funds.</i>				
<b>Judicial Branch</b>	slight impact possible; exact amount cannot be determined				
<b>Corrections</b>	slight impact possible; exact amount cannot be determined				
<b>*Note: This bill would bring North Carolina into compliance with new federal regulations. Failure to comply by October 27, 2002 will result in a 10% reduction in Byrne Formula Grant money. North Carolina's grant allocation in 2002 was \$13.0 million.</b>					
<b>POSITIONS:</b>	0	0	0	0	0
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Justice: State Bureau of Investigation; Private Protective Services Board; Alarm Systems Licensing Board; Dept. of Crime Control & Public Safety: Alcohol Law Enforcement Division; ABC Commission; Board of Law Examiners; NC Medical Board; Board of Dental Examiners; Board of Pharmacy; Board of Mortuary Science; Real Estate Commission; Commissioner of Labor; Department of Agriculture and Consumer Services: Structural Pest Control Division; Judicial Branch; Department of Correction.					
<b>EFFECTIVE DATE:</b> When it becomes law.					

**BILL SUMMARY: Part I** of this legislation amends various statutes regarding criminal history checks to ensure that national criminal history checks will be allowed pursuant to those statutes after December 31, 2002. It also allows the SBI to charge a fee to the applicant for conducting the checks.

The agencies and boards covered by these statutes include:

- Alcohol Law Enforcement Division, Dept. of Crime Control & Public Safety (ABC permits)
- Local law enforcement (precious metal dealers)
- Private Protective Services Board
- Alarm Systems Licensing Board
- Board of Law Examiners
- Medical Board
- Board of Dental Examiners (dentists, dental hygienists)
- Board of Pharmacy
- Board of Mortuary Science (funeral directors)
- Real Estate Commission
- Commissioner of Labor (private personnel services)
- Structural Pest Control Committee, Department of Agriculture and Consumer Services
- Local ordinances (taxis)

Any national criminal history checks conducted pursuant to these sections will be conducted through the State Bureau of Investigation (SBI), which is authorized to charge a fee to the applicant for conducting the check. The fingerprints and information will be submitted to the SBI by the licensing board or agency.

**Part II** amends G.S. 14-208 to make changes that conform state sex offender laws to federal requirements. Throughout the statute section changes are made to provide for registration of sex offenders who are students or employees (compensated or voluntary), or who anticipate becoming students or employees, of an institution of higher education. In accordance with the registration requirement, G.S. 14-208.11 is amended to add new Class F felonies for failure to inform the sheriff of enrollment or employment, or termination of enrollment or employment, at an institution of higher education.

Under current law (G.S. 14-208.11) it is a Class F felony for anyone who is required to register as a sex offender to either (1) fail to register; (2) fail to notify the last registering sheriff of a change of address; (3) fail to return a verification notice as required under G.S. 14-208.9A; or, (4) forge or submit under false pretenses the information or verification notices required under the Article. This proposed legislation adds two more subsections, as described above. (Analysis from AOC)

**BACKGROUND: Part I.** In April 2001, the FBI notified the SBI that many of the State statutes that authorized criminal background checks did not meet the federal guidelines for access to FBI records. The original notice informed the SBI that as of May 1, 2002, background requests submitted to the FBI pursuant to those statutes would not be honored unless the statutes were amended to conform to the guidelines. The SBI obtained an extension of that date to December 31, 2002. This bill will conform those statutes to meet the guidelines.

The criteria established by the FBI, pursuant to P.L. 92-544, are as follows. The statutes addressed by Part I of HB 1638 fail to meet criteria #2 and/or #3.

1. The statute must exist as a result of a legislative enactment;

2. It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
3. It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
4. It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding over breadth;
5. It must not be against public policy; and
6. It may not authorize receipt of the CHRI by a private entity.

Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a "national" criminal history check.

**Part II.** Federal law requires that registered sex offenders inform the proper authorities upon enrollment, employment, or termination of enrollment or employment at an institute of higher education. States must comply with this regulation by October 27, 2002. Noncompliance will result in a 10 percent reduction in Byrne formula grant money, of which North Carolina currently receives \$13 million.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Justice**

#### ***Part I: Criminal Background Histories***

No estimate is available for the total number of new background checks that would be requested as a result of this legislation. If all of the affected groups request background checks on all new applicants, there is the potential for more than 13,000 new background checks. However, Fiscal Research is unable to determine whether all groups would request background checks and whether checks would be requested on all applicants.

The March 2002 Office of State Budget and Management Report on DCI Fee Study indicated the Department of Justice's average cost to process a national background check is \$12.18. The current fee charged by the Department of Justice to conduct a national background check is \$38, of which \$22 is remitted to the Federal Bureau of Investigation. The report also indicated that the Department of Justice, as currently staffed, is able to accommodate an increase in background checks within its existing staffing level. Conversations with DOJ staff indicate that the DOJ can accommodate the additional workload generated by this bill with existing staff. The DOJ will also be able to charge fees to cover its expenses.

*ALE – ABC permits.* ALE currently conducts name checks of ABC permit applicants from its criminal information terminals. Under the proposed legislation, the ABC Commission may choose to request fingerprint background checks for some types of permit applications. In these cases, the ABC Commission would obtain the applicant's fingerprints and submit the fingerprint card along with the application to ALE. ALE would forward the fingerprint card to the DOJ, which would conduct a state background check and forward the fingerprints to the FBI for a national check. The ABC Commission has not yet determined the types or number of permit applications that it would like to submit for fingerprint checks.

*Local law enforcement – precious metal dealers.* Precious metal dealers are licensed through local law enforcement agencies, who are currently authorized to request background checks from DOJ for these licenses. There is no estimate available on the number of background checks currently conducted on these applicants or the projected number under this legislation.

*Private Protective Service and Alarm Systems Licensing Boards.* The Boards estimate that 575 applicants annually will submit fingerprints for a national criminal history background check.

*NC Board of Law Examiners.* The DOJ currently provides background checks on prospective lawyers. In 1999, 1,024 fingerprint checks were conducted for the Board.

*NC Medical Board.* The Medical Board licenses doctors, physician's assistants, nurse practitioners, and clinical pharmacists. The Medical Board is authorized to request background checks through the DOJ. However, according to staff at the Medical Board, background checks are currently conducted through a private vendor. Due to the costs involved, these checks are not performed on the majority of applicants. The Board's administrative rules do not permit it to pass the costs of the background checks on to the applicants. This legislation would allow the DOJ to charge each applicant a fee for conducting the background checks. The Board distributed approximately 2,000 new licenses last year (most completed applications are approved for licensure). Under this proposal, the DOJ could receive approximately 2,000 new requests for background checks each year from the NC Medical Board.

*NC Board of Dental Examiners – dentists, dental hygienists.* The number of applicants for these licenses varies by month and year. In FY 2001, the Board received a total of 584 dentist and dental hygienist applications. The Board recently began conducting background checks on all applicants through a private vendor. Under the proposed legislation, the DOJ could receive requests for checks on all dental and hygienist applicants.

*Board of Pharmacy.* The Board does not currently request or conduct criminal history checks on pharmacist applicants, but it has considered conducting background checks through a private vendor. Under the proposed legislation, the Board may request checks through the DOJ. In FY 2000-01, 422 new pharmacists were licensed; in FY 1999-2000 there were 524 new pharmacists licensed. The total number of applicants is unavailable. Background checks could be requested for each applicant.

*Board of Mortuary Sciences.* In 2001, approximately 76 applicants were newly licensed as funeral directors, embalmers, and funeral service practitioners. The DOJ does not currently perform background checks for the Board, but would be able to do so under this legislation.

*Real Estate Commission.* Approximately 8,000 individuals applied for real estate licenses last year. The Commission currently conducts background checks only on applicants who pass the licensing exam and mention a criminal history, pending charges, or licensing violation in the character section of their application. These checks are conducted by a private vendor and paid for by the Commission. However, the Commission is currently working on a new policy, which it plans to put into effect January 1, 2003. Under the new policy, all applicants would be required to submit criminal records with their applications. These records must cover the past seven years and include a statewide criminal history check and a countywide check for any county outside of North Carolina in which the applicant resided during those years. Applicants would obtain and pay for the criminal record checks through private vendors; the Commission estimates that applicants will pay from \$8 (state only) to \$15 (state and county outside NC) for the background checks.

Under the proposed legislation, the Real Estate Commission would be able to request state and national background checks from the DOJ for each applicant, and DOJ would charge the applicants for the cost of the checks. At this time, Fiscal Research is unable to determine whether the Commission would request checks from the DOJ.

*Commissioner of Labor – private personnel services.* The Wage and Hour Bureau processes an average of three new license applications each year. If the Bureau chooses to request background checks, the DOJ can absorb the workload.

*Dept. of Agriculture - Structural Pest Control Committee.* In FY 2000-01, the Committee approved applications for 240 Certified Applicators, 1,566 Registered Technicians, and 38 Structural Pest Control licenses. The Department of Agriculture is authorized to request background checks from the DOJ, but has not made significant use of this service in the past. In FY 2001, the Department requested only one name check, and no fingerprint checks. The impact of this legislation on Structural Pest Control application policies cannot be determined.

*Taxi Operators.* In 2000, there were 2,170 licensed taxi cab drivers and chauffeurs in North Carolina. In 1999, there were 2,300. It is not known how many new drivers are licensed each year. Current law permits localities to request taxi driver background checks from the DOJ. Some cities, such as Charlotte, already require background checks for taxi drivers, so the DOJ workload from those cities would not increase as a result of this legislation. Other cities, however, may begin or increase their use of DOJ background check services.

## ***Part II: Sex Offenders' Registration***

In order to implement the new registration requirements, the state Department of Justice (DOJ) will have to make programming changes to its mainframe computer and to the sex offender application in the DOJ computer environment currently being developed. The DOJ uses a mainframe computer environment to house the sex offender registration application, but it has contracted with a vendor to migrate the application to a new computer environment; migration will be completed in early 2003. Because the proposed legislation would go into effect on September 30, 2002, the DOJ must make programming changes to the existing mainframe system as well as to the system under development. The existing system will continue to house the sex offender registration application until the migration to the new system is completed in 2003. The department estimates that the changes to both systems will require a total of 544 hours of work, at \$80/hour, for a total cost of \$43,520.

In addition, there will be costs to the State Bureau of Investigation or Division of Criminal Information to train local sheriffs on the changes. The department estimates a nonrecurring cost of \$2,036 for travel expenses and training materials.

Conversations with Department of Crime Control & Public Safety staff indicate that the Department can transfer funds from the federal Byrne Formula Grant to the DOJ to cover the cost of implementing Part II of this legislation (\$45,556 in one-time costs). Therefore, no state funds will be required to implement the computer system modifications to the sex offenders' registry.

## **Judicial Branch and Corrections (Part II only)**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The incarceration fiscal notes are based on December 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

***No increase in registered offenders.*** The new requirements proposed in this bill would not result in an increase in the total number of persons required to register in the state. While there may be individuals from out of state who commute to work or school at a North Carolina institution of higher education, current law [G.S. 14-208.7(a1)] already requires that they register with the sheriff in the county where they attend school or are employed.

***Small potential increase in violations.*** According to the AOC, in 2001 there were 383 defendants charged under G.S. 14-208.11. There are four subsections of this statute; subsection (1) is the failure to register at all as a sex offender, and the AOC believes that the majority of charges involve violations of subsection (1). This is confirmed by data from the Department of Justice: of the 5,318 registered sex offenders in North Carolina, 58 were in violation of the registration requirements as of June 21, 2002. During FY 2000-01, there were 87 convictions under all four subsections of G.S. 14-208.11. The new requirements will affect only a subset of the sex offenders required to register – those enrolled or employed in institutions of higher education. Fiscal Research anticipates a slight increase in the number of registered sex offenders in violation of registration requirements due to the new requirements in this bill.

An increase in the number of violations would result in increased workload for the courts and an increase in the prison population. Neither the AOC nor the Sentencing Commission could provide an estimate of the expected impact on the court and prison systems. However, if this bill resulted in an additional two Class F felony convictions per year, it would require one additional prison bed the first year and two additional prison beds the second year due to active sentences and probation revocations. The average daily operating cost for a prison bed was \$65.29 in 2000-01. Fiscal Research anticipates only a small increase in offenders charged with Class F felonies, leading to an even smaller increase in prison beds.

**SOURCES OF DATA:** Estimates of the annual number of applicants who will submit fingerprints for background checks and the annual number of new licenses were provided by the boards responsible for licensing. The source of the cost data for the Department of Justice is the *Final Report on the Study of the Cost of Providing Criminal Record Checks* issued by the Office of State Budget and Management in March 2002. Data on licensed cab drivers was obtained from the U.S. Department of Labor, Bureau of Labor Statistics Web site ([www.bls.gov](http://www.bls.gov)).

Information for the analysis of Part II was obtained from the U.S. Department of Justice, Bureau of Justice Administration, the North Carolina Sentencing and Policy Advisory Commission, the state Judicial Branch, and the NC Department of Justice.

**TECHNICAL CONSIDERATIONS:** This bill would bring North Carolina into compliance with new federal regulations. Failure to comply by October 27, 2002 will result in a 10% reduction in Byrne Formula Grant money. North Carolina's formula grant allocation in 2002 was \$13.0 million.

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**DATE:** October 4, 2002



**Signed Copy Located in the NCGA Principal Clerk's Offices**