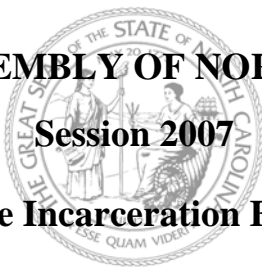


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

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

**BILL NUMBER:** House Bill 933 (Third Edition)  
**SHORT TITLE:** Jessica Lunsford Act for NC.  
**SPONSOR(S):** Representatives Clary, Howard, Moore, and Thomas

	<b>FISCAL IMPACT</b>				
	<b>Yes ( X )</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>
<b>GENERAL FUND</b>	<b>NOTE:</b> Costs shown are the <u>minimum fiscal impact for prison beds due to limited data</u> ; also there will be long term costs for prison beds and GPS monitoring but costs are beyond 5 year Fiscal Note period				
<b>Correction</b>					
<b>Recurring</b>		\$238,382	\$460,375	\$474,186	\$488,411
<b>Nonrecurring</b>	\$1,102,248				
<b>Judicial</b>					
<b>Recurring</b>	\$175,921	\$304,681	\$319,915	\$335,911	\$346,733
<b>Justice</b>					
<b>Recurring</b>	\$310,027	\$319,327	\$328,907	\$338,744	\$348,907
<b>Nonrecurring</b>	\$85,523				
<b>Local Law Enforcement</b>	<u>Significant fiscal impact likely</u> due to enforcing <u>new 30 year sex offender registration requirements</u> , and <u>new mandates for offenders to register, make status changes, etc. within 3 business days</u> . Impact of <u>new</u> community notification system; in 2 <sup>nd</sup> edition, not significant. Regardless, an estimate of the fiscal impact cannot be determined.				
<b>Local Schools</b>	<b>Little or no fiscal impact.</b>				
<b>TOTAL EXPENDITURES:</b>	\$1,673,719	\$862,390	\$1,109,197	\$1,148,841	\$1,184,051
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>		8	15	15	15
<b>POSITIONS: (cumulative)</b>					
DOJ	0	3	6	6	6
DOC	4	4	4	4	4
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch, Department of Justice, Local Schools				
<b>EFFECTIVE DATE:</b>	December 1, 2008				
*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:**

*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. 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 checks of school contractual personnel.*

*The 2<sup>nd</sup> edition changes penalties in Sections 4 and 5; removes the proposed new crime of lewd or lascivious molestation of a child (which was in the first edition of the bill); changes the notification time period that offenders have to make changes to their registration from 48 hours to 3 business days; provides for a 30 year registration period for sex offenders with an opportunity to petition for removal after 10 years; amends the language in Section 12 concerning certain premises on which sex offenders may not be and creates an exception for parents accompanying their children; provides immunity to law enforcement agencies from civil liability regarding notification issues; and amends screening requirements for certain school contractual personnel.*

*The 3<sup>rd</sup> edition redrafts Section 12 which deals with places at which known sexual offenders are allowed to be. It also makes technical changes to Sections 1 and 2.*

**BILL ANALYSIS:**

**Section 1** creates a new criminal offense that provides that a person is guilty of rape of a child 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** creates a new criminal offense that provides that a person is guilty of first degree sexual offense with a child 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 E felony.

**Section 5** changes third degree sexual exploitation of a minor from a Class I felony to a Class H felony.

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

**Section 7** 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. However, offenders would have an opportunity to petition for a shorter registration period after 10 years.

**Section 8** 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 3 business days of establishing residence. If the person is a current resident of the State, the person must register within 3 business days 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 but gives offenders the opportunity to petition for a shorter registration period after 10 years.

**Section 9** 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 3 business days of the changes.

**Section 10** provides that a person return verification of registration information within 3 business days of the receipt of the form and must appear within 3 business days of a request from the sheriff to take another photograph.

**Section 11** provides that a person who is required to register under the Sex Offender and Public Protection Registration Program may request to terminate the registration 10 years from the date of initial registration although the registry would be for 30 years.

**Section 12** The bill 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 a premise that a reasonable person knows is a place where children regularly congregate without adult supervision.

A violation of this section would be a Class H felony.

**Current Law:** In *Standley v. Town of Woodfin*, a registered sex offender challenged a town ordinance which prohibited registrants from knowingly entering any public park. The North Carolina Court of Appeals held that the ordinance promoted the general welfare and safety of Woodfin's citizens; thus, the prohibition was within the Town's delegated police power. The court (over a dissent) held that *the right to enter parks* is not encompassed by either a fundamental right to travel, or the fundamental right to intrastate travel. Consequently, instead of applying strict scrutiny, which requires the government to prove that a law is narrowly tailored to achieve a compelling State interest, it applied a lower standard. It found that the ordinance was rationally related to a legitimate governmental purpose. Based upon the split decision, the case is pending before the North Carolina Supreme Court.

The proposed law does present issues that were not applicable in the *Woodfin* case. In *Woodfin*, prior to the ordinance's enactment, there had been two incidents of sexual offenses occurring in or near two of the three public parks. A federal circuit court of appeals had held that the right to enter public parks for "innocent, recreational purposes," is not a fundamental right. The ordinance, by its terms, was not directed solely to protecting children—which allowed a general public safety analysis and negated the registrant's argument that his registration related to an offense that did not involve a minor.

There are several jurisdictions which do have statutory provisions that provide that sex offenders may not be at a place where children regularly congregate (e.g., Florida, Georgia, Utah, Illinois, Oregon and New York). In Oregon, the statute uses an "under 18 years of age" standard, and specifically defines the terms so as to (potentially) avoid a ruling that the statute is unconstitutionally vague, overbroad, or both. The statute narrowly applies "places" where minors congregate as: "schools, child care centers, playgrounds, other places *intended for use primarily by persons under 18 years of age* and places where persons under 18 years of age *gather for regularly scheduled educational and recreational programs.*" (emphasis added)

The federal courts have upheld these state provisions against claims of being vague or overbroad; however, the jurisdictions utilize these provisions as part of the offender's probation, or conditions of release, and generally apply only when the victim of the offense was a minor. Consequently, there is an absence of federal law on whether the application of these types of conditions, applied retroactively, may violate the U.S. Constitution's protections against the ex post facto application of laws, or whether (as applied to all registrants) the provision is narrowly tailored to meet a compelling State interest.

**Section 13** creates a new section requiring community and public notification. The licensee of licensed day care centers and principals of elementary, middle, and high schools must register with the North Carolina Sex Offender and Public Protection Registry to receive email notification when a registered sex offender moves within a one mile radius of the day care center or school.

**Sections 14 and 15** require juveniles who are adjudicated delinquent and must register for certain offenses to provide change of address notification and verification of information within 3 business days of changes and receipt of verification forms rather than the current 10 days.

**Section 16** 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: G.S. 14-27.2A and G.S. 14-27.4A.

**Sections 16.1 and 16.2** make conforming changes to procedures relating to satellite-based monitoring.

**Section 17** 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. 14-27.2A and G.S. 14-27.4A.

**Sections 18 and 19** make conforming changes to satellite-based monitoring and bail statutes.

**Section 20** 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 21** 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 22** of the bill creates a new section that requires a local school board to require, as a term of any contract that it enters, that the employer of a person who is contractual personnel conduct an annual check of the State and National Sex Offender Registries of that person. The term "contractual personnel" is defined as any individual or entity whose contractual job involves direct interaction with students. The school board must require as a term of the contract that any contractual personnel on a sex offender registry is prohibited from having direct interaction with students.

**EFFECTIVE DATE:** The bill becomes effective December 1, 2008, and applies to offenses committed on or after that date. The 30 year registration requirement applies to registrations made on or after December 1, 2008.

## 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

**The 2<sup>nd</sup> edition of HB 933 creates potentially significant costs in four major areas but the costs are significantly less than the cost estimates for the 1<sup>st</sup> edition. The four areas are:** (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 the PCS for HB 933; and (4) increased court time and cost to Judicial due to more severe penalties .

However, the primary cost driver from the 1<sup>st</sup> edition of the bill, the new Class B1 offense of lewd and lascivious behavior, is not included in the second or third editions. This change saves a minimum of 138 prison beds, \$12.8 million in construction costs and over \$4 million a year in prison operating costs by 2012/13. Other changes in the bill reduce the original cost estimate. The estimated cost to the Department of Justice for making computer programming changes was reduced and the changes in criminal penalties reduced the fiscal estimate for the Judicial Department.

**The most problematic cost issue with both the first, second, and third editions is the effect of the bill on local law enforcement.** Extending the sex offender registry period from 10 to 30 years and mandating that various registration requirements by offenders occur within 3 days instead of 10 will significantly increase administrative and enforcement workload for local law enforcement. Costs are likely to be significant but no data is available to assess cost impact for 100 counties. **Further these changes are likely to lead to an increase in Class F failure to register criminal penalties and create new prison beds above the minimum estimates in this Note**

### 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,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of January 2008.

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 HB 933. As shown, the Sentencing Commission estimates that this specific legislation will add 15 inmates to the prison system by the end of FY 2010-11. ***Sentencing Commission Scenarios can only predict 2 years of impact, so those numbers are carried forward through FY 2012/13.***

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<sup>1</sup> 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.

	<u>June 30 2009</u>	<u>June 30 2010</u>	<u>June 30 2011</u>	<u>June 30 2012</u>	<u>June 30 2013</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act <sup>2</sup>	40,402	41,073	41,698	42,698	42,518
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	39,908	39,908	40,664	40,664	40,664
3. Projected No. of Beds Over/Under Inmate Population	-494	-1,165	-1,034	-1,854	-2,759
<b>4. Projected No. of Additional Inmates Due to this Bill <sup>3</sup></b>	<i>N/A</i>	<i>8</i>	<i>15</i>	<i>15</i>	<i>15</i>
<b>5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill</b>	<i>N/A</i>	<i>8</i>	<i>15</i>	<i>15</i>	<i>15</i>

**POSITIONS:** It is anticipated that by FY 2010-11, approximately 8 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 2012-13. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to HB 933, and the estimated number of new beds required each year through FY 2016-17.

	<u>June 30 2014</u>	<u>June 30 2015</u>	<u>June 30 2016</u>	<u>June 30 2017</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-3,593	-4,423	-5,261	-6,137
2. <b>Projected No. of Additional Inmates Resulting From (Bill Number)</b>				
3. <b>Estimated No. of New Beds Required Under (Bill Number)</b>				<i>Can’t be determined but could be significant</i>

**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;<sup>4</sup> or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-

<sup>2</sup> 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 February 2008.

<sup>3</sup> Criminal penalty bills effective December 1, 2008, should not affect prison population and bed needs until FY 2009-10 due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

on.”<sup>5</sup> 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”	\$55,000	\$63,000	\$114,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$73,500

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.<sup>6</sup> 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 15 inmates, bed provision through construction of a “stand alone” facility could cost approximately \$1,102,248 by FY 2012-13; provision through “add-on” could cost approximately \$682,344.**

**OPERATING:** Operating costs are based on actual FY 2006-07 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 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 2006-07**

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$57.48	\$74.71	\$88.93	\$71.52

**ASSUMPTIONS AND METHODOLOGY FOR PRISON BEDS**

Tables 1 and 2 provide estimates of the cost of the PCS for HB 933 on the prison system.

**Table 1 Prison Beds**

<u>Bill Section</u>	<u>08/09</u>	<u>09/10</u>	<u>10/11</u>	<u>11/12</u>	<u>12/13</u>
Sections 4 & 5; 8-10, & 12--Increase pool of offenders or add new felony	NA	8	15	15	15

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> Office of State Construction, March 24, 2006.

**Table 2 Fiscal Impact**

<b>Bill Section</b>	<b>08/09</b>	<b>09/010</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>
Sections 4 & 5; ,8-10, &12--Increase pool of offenders or add new felony	\$1,102,248 (One-time Capital-16 beds)	\$238,382 (Operating)	\$460,375	\$474,186	\$488,411

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, 8-10, and 12

The PCS for HB 933 increases various penalties for sexual exploitation of a minor, creates new felonies and expand pool of offenders and offenses for failure to register. Bed numbers are 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 \$27,269 (medium) plus 3% inflation)*

**Department of Correction – Division of Community Corrections**

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.<sup>7</sup>

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.09 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 \$7.52 to \$16.53, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.53 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

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%.

<sup>7</sup> DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.



### GPS Provisions in HB 933, 2<sup>nd</sup> edition -- 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 of 25 years un prison followed by GPS monitoring for life
- Section 16 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 17 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 16 adds a “third tier” of offenders required to be on GPS but the statute reference is to offenders convicted of the new Class B 1. **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 200-09 and \$531,404 in 2009-10 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 requests, 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 receive 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 time that the staff will be working off site does not warrant adding an additional vehicle to the agency's fleet. -\$60,000 (NR)

**Table 3 Fiscal Research Division DOJ costs estimate for HB 933**

<b>Type of Cost</b>	<b>FY 08/09</b>	<b>FY 09/10</b>	<b>FY 10/11</b>	<b>FY 11/12</b>	<b>FY 12/13</b>
Recurring	\$310,027	\$319,327	\$328,907	\$338,744	\$348,907
Nonrecurring	\$85,523				
<b>TOTAL</b>	<b>\$395,550</b>	<b>\$319,327</b>	<b>\$328,907</b>	<b>\$338,744</b>	<b>\$348,907</b>
<b>Positions</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>

**Based on the adjustments made, the Fiscal Research Division estimates that it will cost DOJ \$395,550 in 2007-08 and \$319,327 in 2008-09 to implement HB 933.**

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

1. Database upgrades for registration change requirements

*The 2<sup>nd</sup> edition changed and the 3<sup>rd</sup> edition maintains the time period that offenders have to make changes to their registration from 48 hours to 3 business days.* The 48 hour requirement in prior version of the bill would have yielded a higher IT contractor cost for database upgrades. The prior version would require that the database be upgraded to capture information on a 24 hour clock instead of a pre-set business day program. This system upgrade will not be necessary with the changes proposed in the PCS. The agency IT cost estimate has been reduced by \$47,025 to reflect the reduction in cost.

2. Lifetime registration

The bill includes language that outlines the registration terms for sex offenders who are register prior to and after December 2008. This would create a significant impact because the Department will have a new pool of sex offenders with different registration requirements to monitor. The PCS keeps the 30 year registration requirement for sex offenders that were registered prior to December 2008 and adds language to allow sex offenders that register after December 2008 to petition for removal after 10 years. This provision would require the establishment of separate databases, separate screens and system fields requiring additional programming, system development and database maintenance.

3. Community Notification

**The 2<sup>nd</sup> and third editions limit DOJ workload due to revising the nature of the notification, further justifying FRD's reduction in the DOJ cost estimate.**

4. Creation of New Criminal Offenses

The 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**

Assuming that programming and managerial resources are currently in place for this type of provision, 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 \$47,025 (495 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 – 100 Hours
- ITS Project management/UMT tool compliance & coordination – 40 Hours
- Technical design specification based on requirements– 100 Hours
- Review and revise technical design specification – 40 Hours
- Develop code using BizTalk and C#.NET - 100 Hours
- \*Interface BizTalk and C#.NET with SOR Web Registry Website) using ASP.NET – 10 Hours
- \*Modify SOR database – 10 Hours
- \*Develop Separate Post Dec 2007 Database – 50 Hours
- \*Modify existing screens -- 10 Hours
- \*Update LEMS (Law Enforcement Message Switch) – 10 Hours
- \*Testing and bug removal – 5 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. It is critical that a Business and Technology Analyst be provided to maintain the database 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)

## **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 \$2,126 for first degree sexual exploitation, \$20,857 for second degree, and \$9,189 for third degree (first full year costs 09/10). Costs were reduced from first edition due to less significant changes in criminal penalties.

Sections 7, 8, and 10: Lengthen the registration requirement to 30 years and require initial and subsequent registration and status changes within three business days

- Sections 7 and 8 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 11 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 and reducing the time for registration and status changes to three days, the pool of defendants who would be subject to a Class F felony under current GS 14-208.11. AOC data for calendar 2006 show approximately 720 defendants charged under current GS 14-208.11. AOC could not 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.

- For the 1<sup>st</sup> edition, it was assumed the number of new charges would equal to the number of existing charges (720) and that 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. For the second and third editions, *Fiscal Research believes it is unlikely the number of new charges will equal 720. However, charges are likely to increase due to the new 30 year requirement and the requirement to make various registration changes within three business days instead of 10 days. FRD has assumed approximately 50% of the costs estimated for the 1<sup>st</sup> edition and has not included any positions.*

Costs are estimated in Table 4 below

**Table 4**

<b>Section</b>	<b>08/09 (7 mos.)</b>	<b>FY 08/09</b>	<b>FY 09/10</b>	<b>FY 10/11</b>	<b>FY 11/12</b>
PCS Section 3-5 Increase criminal penalties --sexual exploitation	\$18,767	\$33,781	\$35,470	\$37,456	\$39,105
Sections 7, 8, and 10	\$157,155	\$270,900	\$284,445	\$298,667	\$307,628
<b>TOTAL</b>	<b>\$175,921</b>	<b>\$304,681</b>	<b>\$319,915</b>	<b>\$335,911</b>	<b>\$346,733</b>

**Local Schools**

**Section 22** The 2<sup>nd</sup> edition of HB 933 drops the 1<sup>st</sup> edition requirement for criminal background checks for contractual personnel employed by local schools so fiscal impact should be minimal.

The 2<sup>nd</sup> edition creates a new section that requires a local school board to require, as a term of any contract that it enters, that the employer of a person who is contractual personnel conduct an annual check of the State and National Sex Offender Registries of that person. The term "contractual personnel" is defined as any individual or entity whose contractual job involves direct interaction with students. The school board must require as a term of the contract that any contractual personnel on a sex offender registry is prohibited from having direct interaction with students.

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

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** June 9, 2008

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