



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: S. 1073 Introduced on February 16, 2022
Author: Hembree
Subject: Sex Offender Registry
Requestor: Senate Judiciary
RFA Analyst(s): Gardner
Impact Date: March 22, 2022 Updated for Additional Agency Response

Fiscal Impact Summary

Based on the 2021 South Carolina Supreme Court opinion in *Powell v. Keel*, the lifetime registration under the South Carolina Sex Offender Registry Act (SORA) is unconstitutional unless there is any opportunity for judicial review to assess the risk of re-offending. Therefore, absent a bill, all offenders are eligible to file a petition for registry removal in FY 2022-23. This bill creates a three-tiered classification system for convicted sex offenders living in South Carolina and enables them to apply for release from lifetime registration on the sex offender registry on a staggered basis.

The Indigent Defense Commission indicates that this bill will result in a cost of an estimated \$6,100 per indigent offender represented. Indigent Defense anticipates an increase in General Fund expenditures by \$805,200 in FY 2022-23 to assist 132 Tier I offenders in their petitions for registry removal. The agency's General Fund expenditure impact for future fiscal years will depend upon the number of offenders that become eligible and choose to file for registry removal. Currently, all 17,467 offenders will be eligible to petition for registry removal immediately, resulting in a General Fund expenditure impact of \$74,584,700 for Indigent Defense in FY 2022-23.

The Attorney General's Office indicates it will need \$201,250 in General Fund expenditure beginning in FY 2022-23 to hire 2.0 FTEs, one additional attorney and one additional support staff person, to handle petitions that would be filed because of the bill

The Commission on Prosecution Coordination (PCC) reports that they will experience an expenditure impact of \$10,040,000 in FY 2022-23 and \$8,744,000 in subsequent fiscal years due to the implementation of the bill. This expenditure impact consists of the hiring of 64.0 FTEs and office equipment for each of the sixteen Offices of Circuit Solicitor.

This bill will have no expenditure impact for Judicial, the State Law Enforcement Division (SLED), and the Department of Mental Health (DMH), as the activities required by this bill fall within the scope of normal agency business and can be managed within existing appropriations.

This bill may result in an undetermined increase in General Fund and Other Funds revenue due to a potential increase in court fines and fees because of the increased caseload.

In addition, the bill may have an undermined local expenditure savings impact for sheriffs' departments due to the elimination of the requirement that they publish sex offender registry information in local newspapers.

This bill may result in an undetermined increase in local revenue due to a potential increase in court fines and fees because of the increased caseload.

This fiscal impact statement has been updated to include a response from the Office of the Attorney General, PCC, and DMH.

Explanation of Fiscal Impact

**Updated for Additional Agency Response on March 22, 2022
Introduced on February 16, 2022**

State Expenditure

Based on the 2021 South Carolina Supreme Court opinion in *Powell v. Keel*, the lifetime registration under the South Carolina Sex Offender Registry Act (SORA) is unconstitutional unless there is any opportunity for judicial review to assess the risk of re-offending. Therefore, absent a bill, all offenders are eligible to file a petition for registry removal in FY 2022-23.

This bill creates a three-tiered reference system for sex offenders and establishes when an offender may file a motion with the court for release from perpetual registration, based on these tiers. A Tier I offender may apply for release from registration no earlier than fifteen years after discharge from incarceration without supervision or from termination of active supervision of probation, parole, or other active alternative to incarceration. Tier II or Tier III offenders may apply for release from registration no earlier than thirty years after discharge from incarceration without supervision or from termination of active supervision of probation, parole, or other active alternative to incarceration. A sex offender required to register due to an out-of-state or federal conviction may apply for release from registration in accordance with the timeframe for the equivalent tier under the federal Adam Walsh Child Protection and Safety Act of 2006.

Motions for release must be filed in the circuit court in the county where the conviction occurred or, if the offender was convicted outside of the state, in the county in which the offender resides. The court may require a qualified evaluator designated by DMH to determine whether the offender poses a foreseeable risk to re-offend. If the offender or prosecutor also requests an independent evaluation by a qualified evaluator, that evaluation must be made within 90 days after receipt of the report from the DMH evaluator. Any qualified evaluator must submit to both parties a written evaluation report at least ten days prior to the hearing. If the court denies a motion by an offender, he may not file for removal again until five years after the date of the final order.

The bill also authorizes SLED to release information related to persons required to register as sex offenders and to make that information available via electronic means. In addition, the bill removes the requirement that a sheriff provide a local newspaper with a listing of the registry for

publication. Further, the bill removes the requirement that an individual requesting information about a specific person on the registry provide the name and address of that person.

Judicial. The bill enables sex offenders residing in South Carolina to file a motion with the circuit court for release from lifetime registration requirements. This may increase the number of cases heard in circuit courts. However, Judicial anticipates being able to manage this increased caseload within existing appropriations. Therefore, this bill will have no expenditure impact for Judicial.

Office of the Attorney General. This bill requires the Attorney General to handle motions filed by Tier I, II, and III offenders requesting release from lifetime sex offender registration. This will add 250 to 300 cases to the annual caseloads of circuit court solicitors and the Attorney General in the each of the first five years after the bill's implementation. In subsequent years, the caseloads for circuit court solicitors and the Attorney General will increase by approximately 1,000.

The Attorney General's Office will be responsible for handling registry removal petitions for all sex offenders prosecuted by the office as well as offenders having out-of-state convictions. Using data provided by SLED, the Attorney General's Office estimates it will handle ninety-four petitions in FY 2022-23; it is expected that the number of individuals who petition for removal will increase each year thereafter. The Attorney General's Office indicates it will need to hire one additional attorney and one additional support staff person to handle these cases. As such, the Attorney General's Office will experience a recurring General Fund expenditure impact of \$201,250 in FY 2022-23 and in each fiscal year thereafter.

This fiscal impact statement has been updated to include a response from the Attorney General's Office.

Commission on Prosecution Coordination. This bill requires circuit court solicitors to handle motions filed by Tier I, II, and III offenders to request release from lifetime registration on the state sex offender registry. The commission indicates that it will need to hire, at least one attorney and one paralegal for each of the sixteen circuits, which will result in a recurring General Fund expenditure impact of \$2,848,000 for personnel costs and a non-recurring General Fund expenditure impact of \$96,000 for computer and office equipment. The commission reports that the bill will add 250 to 300 cases to the annual caseloads of circuit court solicitors and the Attorney General in the each of the first five years after the bill's implementation. In subsequent years, the caseloads for circuit court solicitors and the Attorney General will increase by approximately 1,000.

The bill will also require the establishment of a new program in each of the circuit court solicitors' offices. This program will be staffed by one attorney, one paralegal, one victim advocate, and one investigator for each office. The addition of this program will result in a recurring General Fund expenditure impact of \$5,896,000 for personnel costs and a non-recurring General Fund expenditure impact of \$1,200,000 for computer and office equipment.

Therefore, the commission will experience an expenditure impact of \$10,040,000 in FY 2022-23 and \$8,744,000 in subsequent fiscal years due to implementation of the bill.

This fiscal impact statement has been updated to include a response from PCC.

Commission on Indigent Defense. This bill enables registered sex offenders to file a motion with the circuit court to be released from lifetime registration requirements, after certain timing criteria is met. The commission anticipates that each indigent sex offender represented by the agency will cost \$6,100, of which \$1,000 will be for attorney fees, \$3,500 for DMH evaluations, and \$1,600 for expert testimony.

The commission provided the expenditure impact of this bill as well as the potential expenditure impact if no legislation is passed. Cost estimates are based on figures for the current fiscal year and presume that counsel and access to experts will be available to indigent offenders.

The 2021 South Carolina Supreme Court decision in Powell v. Keel enables all convicted sex offenders residing in South Carolina to immediately petition for release from lifetime registration requirements. The commission reports that the total number of offenders is 17,467, based on data provided by SLED. Assuming all these offenders petition the court immediately, Indigent Defense anticipates 70 percent of the total sex offenders will be indigent. This will result in an increase of General Fund expenditures for Indigent Defense totaling \$74,584,700 in FY 2022-23. The following table displays the breakdown of these expenditures.

TOTAL FY 2022-23 COST TO COMMISSION ON INDIGENT DEFENSE WITH ADOPTION OF NO BILL	
<i>Current number of active and inactive SC sex offenders = 17,467</i> <i>17,467 x 70% = 12,227</i>	
Appointed Attorney Fees (\$1,000/case) x 12,227 offenders	\$12,227,000
DMH Evaluations (\$3,500/case) x 12,227 offenders	\$42,794,500
In-Court Testimony of Evaluation Experts (\$1,600/case) x 12,227 offenders	\$19,563,200
TOTAL	\$74,584,700

This bill establishes a timeline for when a sexual offender may petition to be released from lifetime registration requirements. The following table displays in which Tier each of the current sex offender would be classified.

CURRENT SC SEX OFFENDERS (INCLUDES BOTH ACTIVE AND INACTIVE OFFENDERS)	
Tier I	10,955
Tier II	5,804
Tier III	708
TOTAL	17,467

Based on information provided by SLED, the Commission anticipates that 188 of the Tier I offenders have been registered for fifteen years or more and therefore would be eligible to

petition the court under this bill in FY 2022-23. No Tier II or Tier III offender will have been registered for at least 30 years in FY 2022-23 and therefore will not yet be eligible to petition the court.

The commission anticipates up to 70% of the eligible Tier I offenders may be deemed indigent and apply for release from lifetime registration. The following table displays the General Fund impact, based on this assumption.

TOTAL FY 2022-23 COST TO COMMISSION ON INDIGENT DEFENSE WITH ADOPTION OF S. 1073	
<i>Current number of Tier I offenders = 188 188 x 70% = 132</i>	
Appointed Attorney Fees (\$1,000/case) x 132 Tier I offenders	\$132,000
DMH Evaluations (\$3,500/case) x 132 Tier I offenders	\$462,000
In-Court Testimony of Evaluation Experts (\$1,600/case) x 132 Tier I offenders	\$211,200
TOTAL	\$805,200

Further, the commission indicates that an additional 108 Tier I, 272 Tier II, and 750 Tier III offenders will be eligible to apply for release from registration within the next five years. The annual General Fund expenditure beginning in FY 2023-24 for the commission will depend upon the number of indigent offenders who are eligible for and choose to petition the court to be removed from the lifetime registration requirement.

State Law Enforcement Division. The bill authorizes SLED to release information related to persons required to register as sex offenders and to make that information available via electronic means. As these activities fall within the scope of normal agency business, the bill will have no expenditure impact on the agency.

Department of Mental Health. This bill allows the court to direct a qualified evaluator designated by DMH to conduct an evaluation of the petitioning offender to determine whether the offender poses a foreseeable risk to re-offend. The Commission on Indigent Defense estimated the cost of a DMH evaluation will be \$3,500. As these activities fall within the scope of normal agency business, the bill will have no expenditure impact on the department.

This fiscal impact statement has been updated to include a response from DMH.

State Revenue

This bill allows the court to direct a qualified evaluator designated by DMH to conduct an evaluation of the petitioning offender to determine whether the offender poses a foreseeable risk to re-offend. Based on the response from Indigent Defense, this bill may result in Other Funds revenue for DMH to offset DMH’s expenses associated with performing this evaluation. The revenue impact of this bill is pending, contingent upon a response from DMH.

Additionally, this bill may result in a change in the fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Local Expenditure

The bill enables registered sex offenders to file a motion with the circuit court for release from lifetime registration requirements. In addition, the bill eliminates the requirement that sheriffs provide local newspapers with registry listings for publication. Therefore, RFA anticipates this bill may result in local expenditure savings.

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Motions for release must be filed in the circuit court in the county where the conviction occurred or, if the offender was convicted outside of the state, in the county in which the offender resides. The court may require a qualified evaluator designated by the Department of Mental Health (DMH) to determine whether the offender poses a foreseeable risk to re-offend. If the offender or prosecutor also requests an independent evaluation by a qualified evaluator, that evaluation must be made within 90 days after receipt of the report from the DMH evaluator. Any qualified evaluator must submit to both parties a written evaluation report at least ten days prior to the hearing. If the court denies a motion by an offender, he may not file for removal again until five years after the date of the final order.

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Commission on Indigent Defense. This bill enables registered sex offenders to file a motion with the circuit court to be released from lifetime registration requirements, after certain timing criteria is met. The commission anticipates that each indigent sex offender represented by the agency will cost \$6,100, of which \$1,000 will be for attorney fees, \$3,500 for DMH evaluations, and \$1,600 for expert testimony.

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The 2021 South Carolina Supreme Court decision in Powell v. Keel enables all convicted sex offenders residing in South Carolina to immediately petition for release from lifetime registration requirements. The commission reports that the total number of offenders is 17,467, based on data provided by SLED. Assuming all these offenders petition the court immediately, Indigent Defense anticipates 70 percent of the total sex offenders will be indigent. This will result in an increase of General Fund expenditures for Indigent Defense totaling \$74,584,700 in FY 2022-23. The following table displays the breakdown of these expenditures.

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State Law Enforcement Division. The bill authorizes SLED to release information related to persons required to register as sex offenders and to make that information available via electronic means. As these activities fall within the scope of normal agency business, the bill will have no expenditure impact on the agency.

Commission on Prosecution Coordination. This bill requires the prosecution office that obtained the initial conviction of an offender to represent the state in the offender's petition for removal from the sex offender registry. The expenditure impact of this bill is pending, contingent upon a response from the commission.

Department of Mental Health. This bill allows the court to direct a qualified evaluator designated by DMH to conduct an evaluation of the petitioning offender to determine whether the offender poses a foreseeable risk to re-offend. The Indigent Defense Commission estimated

the cost of a DMH evaluation will be \$3,500. However, the expenditure impact of this bill is pending, contingent upon a response from DMH.

State Revenue

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Local Expenditure

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Frank A. Rainwater, Executive Director