



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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**Bill Number:** H. 5064 Introduced on March 2, 2022  
**Author:** J.E. Johnson  
**Subject:** Sex Offender Registry  
**Requestor:** House Judiciary  
**RFA Analyst(s):** Tipton  
**Impact Date:** March 22, 2022

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### **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 Commission on Indigent Defense (Commission) indicates a need for an estimated \$6,100 per indigent offender represented, which will total \$3,203,000 in FY 2026-27 to assist 525 Tier III offenders in their petitions for registry removal in general sessions court. The agency's General Fund expenditure impact each fiscal year thereafter will depend upon the number Tier I, II, or adjudicated delinquent offenders whose requests were denied by the State Law Enforcement Division (SLED) that petition for registry removal through the court and the number of Tier III offenders who petition the court for 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 the Commission in FY 2022-23.

SLED indicates a need for approximately \$267,600 in General Funds in FY 2022-23 and \$258,600 in each year thereafter for 3.0 FTEs in the agency's Office of General Counsel to facilitate the administrative collection of documents, the required review, and the completion of the required notice to the offender filing for registry removal. These expenditures may be partially offset by an increase in the Other Funds revenue generated by the filing fee established by this bill.

The Commission on Prosecution Coordination (CPC) indicates a need for additional General Funds of \$2,944,000 in FY 2023-24, and \$2,848,000 in each year thereafter for the initial set up and salary, fringe, and operating expenses for 32.0 FTEs in the Offices of Circuit Solicitor. This results in one attorney and one paralegal for each of the sixteen Solicitors offices in the state to manage the increase caseload.

This bill will have no expenditure impact for Judicial, as any increase in the caseloads in general sessions and family court will have a minimal fiscal impact and can be managed within existing appropriations.

This bill will have no expenditure impact on the Department of Mental Health (DMH) or the Department of Juvenile Justice (DJJ), as both agencies anticipate that the number of evaluations required under the provisions of this bill will be minimal and absorbed within existing appropriations.

This bill will increase Other Funds fee revenue for SLED by approximately \$22,500 in FY 2022-23 and up to \$45,000 beginning in FY 2023-24, dependent upon the number of offenders that submit applications for registry removal and pay a fee of \$150. The Revenue and Fiscal Affairs Office (RFA) anticipates this revenue will be used to offset the expenditure of the administrative review process for registry removal.

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.

## **Explanation of Fiscal Impact**

### **Introduced on March 2, 2022**

#### **State Expenditure**

Based on the 2021 South Carolina Supreme Court opinion in *Powell v. Keel*, the lifetime registration 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 request with SLED or a motion in general sessions court or family court for the release from perpetual registration based on these tiers. A Tier I offender or an offender required to register based on an adjudication of delinquency as a juvenile may file a request for release from registration to SLED after having been registered for at least fifteen years. A Tier II offender convicted as an adult may file a request for release from registration to SLED after having been registered for at least twenty-five years. A Tier I or Tier II offender or an offender required to register based on an adjudication of delinquency may file a motion in general sessions to request removal from registration if their request was denied by SLED. Additionally, an individual placed on the registry as a juvenile should petition the family court that adjudicated them delinquent if his initial petition to SLED is denied. A Tier III offender convicted as an

adult may file a motion in general sessions for release from registration 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 file a motion 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 filed in court must be filed 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.

**Commission on Indigent Defense.** This bill enables registered sex offenders to file a request with SLED or a motion in court to be released from lifetime registration requirements, after certain timing criteria is met. The Commission will represent indigent Tier I or Tier II offenders whose requests for registry removal were denied by SLED as well as any indigent Tier III offenders. 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.

Absent legislation, 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 offenders petition the court immediately; the Commission anticipates 70 percent of the total sex offenders will be indigent. This will result in an increase of General Fund expenditures for the Commission totaling \$74,584,700 in FY 2022-23. The following table displays the breakdown of these expenditures.

<b>TOTAL FY 2022-23 COST TO COMMISSION ON INDIGENT DEFENSE WITH ADOPTION OF NO BILL</b>	
<i>Current number of active and inactive SC sex offenders = 17,467 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
<b>TOTAL</b>	<b>\$74,584,700</b>

Based on information provided by SLED, under the tier system established by this bill there are approximately 500 Tier I, Tier II, and adjudicated delinquent offenders that will be eligible for immediate removal from the sex offender registry. If SLED denies any of these requests, the eligible offenders may file a motion in court, and the Commission will be responsible for the defense of any indigent persons. The Commission indicates that such cases in FY 2022-23 will be minimal and managed within existing appropriations.

However, the Commission reports that the first Tier III offenders will become eligible to petition the court for termination from registration beginning in FY 2026-27. Approximately 750 Tier III offenders will be eligible for removal that year. Assuming that 70 percent of petitioners are deemed indigent, the Commission indicates a need for additional General Funds of approximately \$3,203,000 beginning in FY 2026-27.

**State Law Enforcement Division.** This bill allows Tier I, II, or adjudicated delinquent sex offenders to file a request for termination of the registration requirement with SLED after meeting the criteria specified in the bill. This bill requires SLED to review the offender’s file to ensure that they meet these criteria, and if met, to remove the offender’s name from the registry and provide notice within ninety days of their request for removal. If SLED determines that the offender has not met the qualifications, the agency must provide notice of this decision to the offender and may not remove their name from the registry.

This bill establishes a timeline for when a sex offender may file for removal from the lifetime registration requirements. The following table displays in which Tier each of the current sex offenders would be classified, according to data provided by SLED.

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

SLED reports that based on these tiers and the timing requirement per tier, approximately 500 registered Tier I, Tier II, or adjudicated delinquent offenders will become immediately eligible for registry removal, and between 500 and 1,000 in each year thereafter. As a result, SLED anticipates the need for three additional personnel in the agency’s Office of General Counsel,

including one attorney, one senior paralegal, and one paralegal, to facilitate the administrative collection of documents, the required review, and the completion of the required notice to the applicant. SLED reports that recurring salary and fringe for the 3.0 FTEs will total \$255,600 annually in addition to \$3,000 in recurring operating expenses including travel, training, and software costs. SLED indicates that the additional personnel will also require \$9,000 in non-recurring office and equipment setup. In total, this bill's requirement of SLED to review applications for registry removal will increase the agency's need for General Funds by approximately \$267,600 in FY 2022-23, and \$258,600 in each year thereafter. This bill further authorizes SLED to charge sex offenders a filing fee of no more than \$150 for the request for registry removal. The impact of this fee is detailed in the State Revenue section of this fiscal impact statement. RFA anticipates the revenue generated from this fee may be used to partially offset the expenditures of administering the petitions for removal.

Additionally, 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 this section of the bill will have no expenditure impact.

**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.

CPC reports that this bill will not increase caseloads in the first year of its enactment, but will increase caseloads in the years following, requiring additional FTEs. The agency estimates the increased caseload for the Circuit Solicitor and Attorney General will be approximately 200 cases each year between years two through five after this bill's enactment and approximately 650 each year after the fifth year. The agency reports that the increased caseloads resulting from this bill will require one additional attorney and paralegal for each of the sixteen Offices of Circuit Solicitor. The 32.0 FTEs will require \$2,848,000 in recurring salary, fringe, and operating expenses and \$96,000 in non-recurring expenses for office and equipment setup. Therefore, this bill will increase the need for General Funds for CPC by \$2,944,000 in FY 2023-24, and \$2,848,000 in each year thereafter.

**Judicial.** The bill enables sex offenders residing in South Carolina to file a motion with the general sessions or family court, dependent upon the court of original jurisdiction, for release from lifetime registration requirements. This may increase the number of cases heard in court and may increase backlogs. However, Judicial anticipates being able to manage this increased caseload within existing appropriations. Therefore, this bill will have no expenditure impact for Judicial.

**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. The agency indicates that the number of

evaluations required under the provisions of this bill will be minimal and absorbed within existing appropriations. Therefore, this bill will have no expenditure impact on DMH.

**Department of Juvenile Justice.** This bill allows the family court to take into consideration a juvenile's psychosexual risk assessment and evaluation performed by a licensed clinical psychologist or psychiatrist employed by DJJ, when considering whether to require a juvenile to register based on certain offenses. DJJ anticipates that the number of evaluations required under the provisions of this bill will be minimal and can be absorbed within existing appropriations.

### **State Revenue**

This bill allows SLED to charge a filing fee of up to \$150 for each offender's request for termination of registration requirements. According to the agency, there are approximately 500 Tier I, Tier II, or adjudicated delinquent offenders that will be immediately eligible for termination of their registration requirements in FY 2022-23. Assuming only those who are eligible will apply for registration removal and SLED charges the maximum fee of \$150, this bill could increase fee revenue for SLED by up to \$75,000 beginning in FY 2022-23. SLED reports that between 500 and 1,000 offenders will be eligible each year thereafter, which could increase this fee revenue to \$150,000 beginning in FY 2023-24. However, SLED anticipates a number of applicants will be indigent and therefore exempt from this fee requirement. The Commission on Indigent Defense estimates that 70 percent of offenders who apply for registry removal will be indigent, and applying this to SLED fee revenue results in this bill increasing Other Funds revenue for SLED by approximately \$22,500 in FY 2022-23 and up to \$45,000 in each year thereafter.

Additionally, 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 section of the bill is pending, contingent upon further review by the agency.

Further, 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, 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.

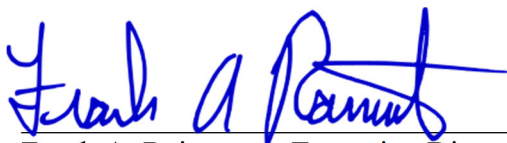
### **Local Expenditure**

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.

### **Local Revenue**

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