

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 31 (Second Edition)

SHORT TITLE: Clarify Penalty Unauth. Practice of Medicine.

SPONSOR(S): Senator Mansfield

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
GENERAL FUND					
Correction		Yes; no substantial impact anticipated*			
Probation		Yes; no substantial impact anticipated*			
Judicial		Yes; no substantial impact anticipated*			
<i>*See Assumptions and Methodology</i>					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.					
EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<i>*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.</i>					

BILL SUMMARY:

The proposed legislation amends G.S. 90-18(a) to make the unauthorized practice of medicine a Class I felony in all cases, except that it makes the unauthorized practice of medicine a Class 1 misdemeanor if (1) the person has an inactive license due to failure to complete the annual registration in a timely manner or (2) the person is licensed, registered, and practicing under any other Article in G.S. Chapter 90.

Source: Bill Digest S.B. 31 (03/3/2011).

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.

Department of Correction – Division of Prisons

The bill retains the current offense classifications for two subsets of offenders: offenders with an out-of-state medical license and no North Carolina license under G.S. Chapter 90 in a discipline other than medicine (e.g., dentistry, midwifery) remain Class I felons; and offenders who have no out-of-state medical license but have a license under G.S. Chapter 90 in a discipline other than medicine remain Class 1 misdemeanants.

Likewise, the bill reclassifies two subsets of offenders as follows: (I) an offender without an out-of-state medical license or any license in North Carolina under G.S. Chapter 90 is reclassified from a Class 1 misdemeanor to a Class I felon; and (II) an offender with an out-of-state medical license and a license in North Carolina under G.S. Chapter 90 in a discipline other than medicine (e.g., dentistry, midwifery) is reclassified from a Class I felon to a Class 1 misdemeanor.

Reclassification of Class 1 misdemeanors to Class I felonies:

In reviewing the past five fiscal years of AOC data, there was one Class 1 misdemeanor conviction of an offender without an out-of-state medical license or any license in North Carolina under G.S. Chapter 90 in FY 2006-07. It is unknown whether this conviction would be subject to reclassification under the bill. Given the lack of convictions for this offense, it is unlikely that the proposed reclassification of certain Class 1 misdemeanor offenders to Class I felony offenders would result in substantial impact to the prison population.

The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009-10, 17% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. Using threshold data, if 10 Class 1 misdemeanor convictions were reclassified to Class I felony, this would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Reclassification of Class I felonies to Class 1 misdemeanors:

There have been no Class I felony convictions under G.S. 90-18(a) in the past five fiscal years of AOC data. Therefore, it is unlikely that the proposed reclassification of certain Class I felony offenders to Class 1 misdemeanor offenders would result in any prison bed savings.

Judicial Branch

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.

In the last five years, AOC data show that 11 defendants have been charged with a total of 78 charges of misdemeanor unauthorized practice of medicine.

Charges Under Current G.S. 90-18(a)				
	Class 1 Misdemeanor		Class I Felony	
Calendar Year	Charges	Defendants Charged	Charges	Defendants Charged
2006	1	1	-	-
2007	1	1	1	1
2008	66	3	2	1
2009	1	1	-	-
2010	9	5	-	-
5-Year Total	78	11	3	2

The elevation of the offense from a Class 1 misdemeanor to a Class I felony would result in a more vigorous defense and prosecution and more in-court and preparation time for trials and pleas. While some judicial districts handle pleas for Class H and I felonies in district court, all trials and many pleas would be shifted from district court to superior court under this bill. Thus, even one new offense under this legislation will result in a cost to the court system. However, the small number of cases indicates that, unless charges for this offense increase dramatically, it is unlikely that the proposed reclassification would substantially impact the court system.

Overall, the monetary value of the average workload of a Class I felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$862. As the Class I felonies in this bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources, the average fiscal impact of each case would be the full \$862. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class I felony case was \$480 per indigent defendant, as compared to an average of \$225 for indigent misdemeanants.

In FY 2009-10, a typical felony case took approximately 206 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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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