

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 31 (First Edition)
SHORT TITLE: Conform Penalty Unauth. Practice of Medicine.
SPONSOR(S): Senator Mansfield

Table with FISCAL IMPACT header, columns for Yes (X), No ( ), and No Estimate Available ( ), and rows for GENERAL FUND (Correction, Probation, Judicial) and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

The proposed legislation amends G.S. 90-18(a) to increase the penalty for practicing medicine or surgery without a license from a Class 1 misdemeanor to a Class I felony (was, a Class I felony only if the person practicing without a license is an out-of-state practitioner who has not been licensed and registered to practice medicine or surgery in this state). Effective December 1, 2011, and applies to offenses committed on or after that date. Source: Bill Digest S.B. 31 (02/02/2011).

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**

### **Section 1:**

G.S. 90-18(a), Unauthorized practice of medicine, punishment; currently classifies the unauthorized practice of medicine as a Class 1 misdemeanor, except that if the person practicing without a license is an out of state practitioner who has not been licensed and registered to practice medicine in North Carolina, that person is guilty of a Class I felony. This Section would amend the statute by deleting the language making the distinction between in state and out of state practitioners thereby making any person practicing medicine without a license guilty of a Class I felony.

**Impact:** In FY 2009-10, there were no Class 1 misdemeanor convictions and no Class I felony convictions under G.S. 90-18(a). Given the small number of convictions for these offenses, it is unlikely that the proposed reclassification of the Class 1 misdemeanor offense would result in substantial impact to the prison population.

In FY 2009-10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, ten Class 1 misdemeanor convictions per year were reclassified as Class I felonies, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

### **Judicial Branch**

The Administrative Office of the Courts (AOC) 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

**Impact:** 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:** Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

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