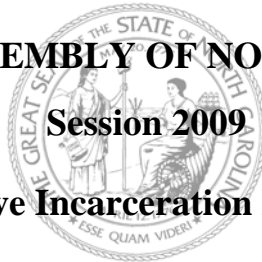


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 721 (Second Edition)

SHORT TITLE: Unauthorized Practice of Medicine/Felony.

SPONSOR(S): Senators Hoyle, Queen, and Goss

FISCAL IMPACT

Yes (X) No ( ) No Estimate Available ( )

FY 2010-11 FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15

EXPENDITURES

GENERAL FUND

Correction Exact amount cannot be determined; minimal impact anticipated\*
Probation Exact amount cannot be determined \*
Judicial Exact amount cannot be determined; minimal impact anticipated\*

\*See Assumptions and Methodology

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 2010

\*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:

Amends GS 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, 2010, and applies to offenses committed on or after that date. Source: Bill Digest S.B. 164 (02/12/0200).

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The offense of unauthorized practice of medicine is currently classified as a Class 1 misdemeanor, unless 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, in which case the offense is a Class I felony. This bill proposes to amend the statute by deleting the language making the unauthorized practice of medicine a Class 1 misdemeanor and the language making out-of-state practitioners who have not been licensed and registered in this State practicing without a license guilty of a Class I felony, and changing the statute to read that any person practicing medicine without a license shall be guilty of a Class I felony.

In FY 2008-09, 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 I misdemeanor offense would result in substantial impact to the prison population.*

In FY 2008-09, 17% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven (7) months. If, for example, there were eleven (11) Class 1 misdemeanor convictions that would become Class I felony convictions per year under the proposed bill, the combination of active sentences and probation revocations would result in the need for one (1) additional prison bed the first year and for four (4) additional prison beds the second year.

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**

Because there were no Class 1 misdemeanor convictions under the existing charge for a similar offense during FY 2008-09, *it is unlikely that the proposed reclassification of the Class I misdemeanor offense would result in substantial impact to the prison population.* However, it is important to note that 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, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

### **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>1</sup>

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 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 \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 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.

Because there were no convictions for the unauthorized practice of medicine under N.C.G.S. 90-18(a) during FY 2008-09, *the potential costs to DCC can not be determined.*

### **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 Calendar Year 2008, approximately 3 defendants were charged under a total of 38 cases under misdemeanor unauthorized practice of medicine. 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. 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.*

For every Class I felony charge, costs range from \$447 to \$6,809 for court personnel, depending on mode of disposition of the case (plea, trial, etc.). Costs for indigent defense services average \$480 per indigent defendant. In FY 2008-09, a typical felony case took approximately 203 days to dispose in Superior Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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<sup>1</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.

**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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Fiscal Research Division

**DATE:** June 30, 2010



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