

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 204 (First Edition)

SHORT TITLE: Update/Modernize/Midwifery Practice Act.

SPONSOR(S): Representatives Glazier, Burr, Stevens, and Hamilton

FISCAL IMPACT					
(\$ in millions)					
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> No Estimate Available		
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
 Administrative Office of the Courts, Department of Public Safety, Indigent Defense Services

EFFECTIVE DATE When it Becomes Law

TECHNICAL CONSIDERATIONS:
 None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address the new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: \$165-\$365 per disposition
- Indigent Defense Services: \$166-\$221 in district court
 \$321-\$396 in superior court without a trial
 \$847-\$1,046 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of \$0 - \$2,831

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Under existing law, any person who violates G.S. 90-178.3, Regulation of midwifery, is guilty of a Class 3 misdemeanor. H.B. 204 would amend G.S. 90-178.3(a) to provide that, in addition to the Class 3 misdemeanor, a person who engages in the practice of midwifery who is not approved to do so shall also be in violation of G.S. 90.18. In addition, H.B. 204 would create a new G.S. 90-18.7 to provide that a person who uses the title “certified nurse-midwife” or who holds him or herself out to be a nurse-midwife shall also be deemed in violation of G.S. 90.18.

There are two different penalties contained in G.S. 90-18(a), a Class 1 misdemeanor and a Class I felony. A person can receive a Class 1 misdemeanor for practicing medicine without being duly licensed or registered in North Carolina or for practicing medicine while having a license or approval that is inactive due solely to failure to complete timely annual registration. A person can receive a Class I felony for practicing medicine without being duly licensed and registered in North Carolina and falsely representing that he or she is licensed or registered or for practicing medicine while not being licensed and registered in North Carolina and being an out-of-state practitioner.

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.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina’s court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

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.

Under this bill, a violation of G.S. 90-178.3(a), Regulation of midwifery is still a Class 3 misdemeanor. AOC currently does not have a specific offense code for violations of G.S. 90-178.3(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in conviction. This bill also makes the practice of midwifery without a license a violation of practicing medicine without a license pursuant to G.S. 90-18. Violation is either a Class 1 misdemeanor or a Class I felony.

In FY 2011-12, two defendants were charged with the Class 1 misdemeanor of practicing medicine without a license or with the Class 1 misdemeanor of practicing medicine with an inactive license. Of these, two (100%) were convicted. For every additional person charged with a Class 1 misdemeanor offense, AOC

estimates the average cost to the court would be \$165. It is not known how many additional charges may result from the proposed broadening of the current statute to include practicing medicine without a “certified nurse-midwife” license or with an inactive license.

In FY 2011-12, no defendants were charged or convicted of the Class I felony of practicing medicine with a non-North Carolina license or with the Class I felony of falsely representing himself or herself as being licensed. For every additional person charged with a Class I felony offense, AOC estimates the average cost to the court would be \$365. It is not known how many additional charges may result from the proposed broadening of the current statute to include practicing medicine without a North Carolina “certified nurse-midwife” license.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a private appointed counsel (PAC) attorney per case for a Class 1 misdemeanor would be \$166 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class 1 misdemeanor would be \$321 if the case does not go to trial and \$847 if it does.

IDS estimates that the cost of a PAC attorney per case for a Class I felony would be \$221 for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class I felony would be \$396 if the case does not go to trial and \$1,046 if it does.

Department of Public Safety –Prison Section

Since the bill creates several new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. <i>Additional Inmates Due to this Bill</i> ³	No estimate available				
5. <i>Additional Beds Required</i>					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, 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). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is \$1,960 (540 days times \$3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is \$1,634 (450 days times \$3.63 per day).

In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average lengths of intermediate and community punishment imposed for this offense class were 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is \$2,831 (780 days times \$3.63 per day). Of those convicted to a community sentence, almost all received supervised sentences. The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is \$2,396 (660 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced to intermediate or supervised community sentences under the proposed bill.

³ Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

⁴ CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

⁵ Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA

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