

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2005**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** House Bill 1194 (Second Edition)<sup>1</sup>

**SHORT TITLE:** Physical Therapists/Professional Corporations.

**SPONSOR(S):** Representatives Insko and Weiss

		<b>FISCAL IMPACT</b>				
		<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
		<u><b>FY 2005-06</b></u>	<u><b>FY 2006-07</b></u>	<u><b>FY 2007-08</b></u>	<u><b>FY 2008-09</b></u>	<u><b>FY 2009-10</b></u>
<b>GENERAL FUND</b>						
<b>Correction</b>	Exact amount cannot be determined; no substantial impact anticipated.					
<b>Judicial</b>	Exact amount cannot be determined; no substantial impact anticipated.					
<b>LOCAL GOVERNMENTS</b>						
	Exact amount cannot be determined; no substantial impact anticipated.					
<b>ADDITIONAL PRISON BEDS*</b>	It is likely that most offenders receiving active sentences under this bill would be housed in local jails at a cost to the State of \$18/day. The exception would be Class 1 misdemeanants falling in Prior Record Level III, who are eligible for active sentences long enough to be served in state prison.					
<b>POSITIONS: (cumulative)</b>	Exact number cannot be determined; no additional positions anticipated.					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Local Governments						
<b>EFFECTIVE DATE:</b> January 1, 2006						
*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.						

<sup>1</sup> The second edition of the bill makes a technical change that does not alter the fiscal impact assessment.

**BILL SUMMARY:** This bill would amend Chapters 55B and 90 of the General Statutes to expand provisions related to the practice of physical therapy. Section 1 of the bill would amend the definition of “professional service” under G.S. 55B-2(6) to include physical therapy as a professional service under the Professional Corporation Act. Sections 2 through 4 of the bill would additionally enact:

- 1) G.S. 90-270.26(7a) to authorize the North Carolina Board of Physical Therapy Examiners to regulate physical therapy professional corporations;
- 2) G.S. 90-270.31A to prohibit the Board from issuing a certification for the transfer of stock to an individual that is not licensed in North Carolina unless it is established that the individual is licensed in a jurisdiction where the laws regulating physical therapy are equivalent to or impose a higher standard than North Carolina law;
- 3) G.S. 90-270.35(4a) to make it a Class 1 misdemeanor for physical therapists to base patient treatment decisions on corporate or business standards, and not the best interests of the patient and the physical therapist’s professional judgment; and,
- 4) G.S. 90-270.36(6a) to authorize the Board to take disciplinary action against persons who pay for physical therapy referrals. *Source: Adapted from Bill Digest H.B. 1194 (04/12/2005).*

#### **ASSUMPTIONS AND METHODOLOGY:**

##### **General**

Current G.S. 90-270.35 proscribes certain activities related to the practice of physical therapy and provides that any violation is punishable as a Class 1 misdemeanor. This bill would add a new subsection (4a) to the list of prohibited actions to forbid basing treatment decisions on corporate standards rather than the best interest of the patient. Presently, the Administrative Office of the Courts does not maintain an offense code for violations of G.S. 90-270.35, which is some indication that these offenses are infrequently charged and rarely result in convictions. As such, the number of additional Class 1 misdemeanor charges and convictions for violations of the new subsection (4a) of G.S. 90-270.35 enacted by this bill are not expected to be significant, and the cost associated with this legislation is not expected to be substantial.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

##### **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Because this bill would create a new criminal offense (adding subsection (4a) to the list of Class 1 misdemeanors under G.S. 90-270.35), the Sentencing Commission has no historical data from which to project the impact that this legislation would have on prison population. Due to the lack of an offense code for present violations of G.S. 90-270.35, some indication that convictions may presently be infrequent, the addition of subsection (4a) is not expected to result in a substantial number of new Class 1 misdemeanor convictions.

- In FY 2003-04, 19 percent of Class 1 misdemeanors resulted in active sentences and the average active sentence length was 43 days.
- Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders between thirty and ninety days at a rate of \$18 per offender per day.
- The remaining 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

As noted in the “General” section, because AOC does not maintain an offense code for present violations of G.S. 90-270.35, there is no historical data regarding Class 1 misdemeanor charges for these offenses. However, the lack of an offense code may be some indication that there are few charges for these offenses. As such, the number of charges resulting from adding subsection (4a) to the list of Class 1 misdemeanor offenses under G.S. 90-270.35 is not expected to be substantial.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process a single Class 1 misdemeanor charge via trial is \$3,212. This cost includes an estimated \$1,880 in jury fees, costs of time in court, and attorney costs and an additional \$1,333 in indigent defense. However, based on prior-year data, the majority of any new Class 1 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$284 per plea.

Section 5 of this bill provides that a physical therapist that financially compensates another person for referrals would be subject to disciplinary action by the N.C. Board of Physical Therapy Examiners. Current G.S. 90-270.37 provides that the Board may seek a restraining order or injunction in superior court against persons engaged in unlawful actions pertaining to the practice of physical therapy. Section 5 would potentially expand the pool of defendants who would be

subject to disciplinary action by the Board and increase the number of civil actions that may be instituted in superior court. AOC has no data from which to estimate the number of new civil actions that would arise from this provision but expects additional workload in superior court to result from this provision.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

**TECHNICAL CONSIDERATIONS:** None

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