

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: HB 257 2nd Edition
SHORT TITLE: Unauthorized Use of CB Equipment
SPONSOR(S): Representative Baker

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
GENERAL FUND					
Correction					
Recurring	Unable to determine exact amount; no substantial impact anticipated.				
Nonrecurring					
Judicial					
Recurring	Unable to determine exact amount; no substantial impact anticipated.				
Nonrecurring					
TOTAL EXPENDITURES:	Unable to determine exact amount; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Unable to determine exact number of beds; limited impact on local jails and no impact on prison beds.				
POSITIONS: (cumulative)	Unable to determine exact amount; additional positions not anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch; Local Jails					
EFFECTIVE DATE: December 1, 2003					
<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: HB 257 adds new G.S. 62-322.1 to prohibit the use of citizens band (CB) radio equipment in a manner that is not authorized by the Federal Communications Commission, including the use of power amplifiers or any other devices that are capable of amplifying the signal. A violation of this provision is punishable as a Class 3 misdemeanor. The second edition uses language that is broader than the first edition and mirrors the language in the Communications Act of 1934. The second edition also exempts certain types of radio stations. Stations that are licensed by the FCC for the transmission of energy, communications, or signals by radio pursuant to section 301 are not subject to State or local government enforcement of FCC regulations.

ASSUMPTIONS AND METHODOLOGY: According to the Administrative Office of the Courts (AOC) Research and Planning Division, there are no licensing requirements to operate a CB unit. Subpart D of Part 95, Title 47 of the Code of Federal Regulations prescribes all operating requirements that apply to a CB radio. Subsection 95.409 provides that a CB radio station operator must use an FCC-certified CB transmitter, as identified by the certification label placed on the transmitter by the manufacturer. Use of a transmitter which is not FCC certificated will void the operator's authority to operate the station. An operator may not make, or have made, any internal modification to an FCC-certificated CB transmitter. Any internal modification to the transmitter cancels its certification and use of such transmitter will void the operator's authority to operate the station.

Subsection 95.411 of the Code of Federal Regulations also provides that an operator may not attach to their CB transmitter an external radio frequency amplifier or any other device which, when used with a radio transmitter as a signal source, is capable of amplifying the signal. Increasing the power of the output of a CB unit would increase the level of radio noise experienced by other users sharing the same channel. *Since there are no FCC licensing requirements to operate a CB unit, we have no data on the number of CB radio users in North Carolina. Because we have no data on the number of CB users, we cannot project the prevalence of the conduct proscribed by the bill.*

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, 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.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill. Class 3 misdemeanants generally receive community or intermediate punishment. In 2001-2002, 81 percent of Class 3 misdemeanants received community punishment. Costs for community punishment range from \$0 to \$1.83 a day (the lower cost is for unsupervised probation and the higher cost is for supervised

community punishment). In 2001-2002, one percent of Class 3 misdemeanants received an intermediate punishment. Costs for intermediate punishment range from \$7.92 to \$11.47 a day (the lower cost is for electronic house arrest and the higher cost is for intensive supervision). Only Class 3 misdemeanants falling in prior conviction level III (five or more prior convictions) are eligible for active sentences under North Carolina's structured sentencing guidelines. In FY 2001-2002, 18 percent of Class 3 misdemeanor convictions resulted in active sentences. The average estimated time served was 3.9 days. Because Class 3 misdemeanants serving active sentences are housed in local jails, this bill is not expected to have a significant impact on the prison population. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days.)

Judicial Branch

For most criminal penalty bills, the 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.

Because the bill creates a new offense, AOC is unable to estimate the number of new Class 3 misdemeanor charges that could arise from this bill. For offenses that are brought to trial as Class 3 misdemeanors, the estimated court cost per trial is \$1,344. For Class 3 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$199.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Nicole Kreiser and Denise Thomas

APPROVED BY: James D. Johnson, Director Fiscal Research Division

DATE: April 28, 2003



Signed Copy Located in the NCGA Principal Clerk's Offices