

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

**BILL NUMBER:** HB 42 3rd Edition  
**SHORT TITLE:** Criminal Unauthorized Recordings  
**SPONSOR(S):** Representatives Goodwin, Hall, Moore, & Stiller

<b>FISCAL IMPACT</b>	
	<b>Yes (X)                      No ( )                      No Estimate Available ( )</b>
	<u><b>FY 2003-04</b></u> <u><b>FY 2004-05</b></u> <u><b>FY 2005-06</b></u> <u><b>FY 2006-07</b></u> <u><b>FY 2007-08</b></u>
<b>GENERAL FUND</b>	
<b>Correction</b>	
<b>Recurring</b>	Unable to determine exact amount; no substantial impact anticipated.
<b>Nonrecurring</b>	
<b>Judicial</b>	
<b>Recurring</b>	Unable to determine exact amount; no substantial impact anticipated.
<b>Nonrecurring</b>	
<b>TOTAL EXPENDITURES:</b>	Unable to determine exact amount; no substantial impact anticipated.
<b>ADDITIONAL PRISON BEDS*</b>	Unable to determine exact number of beds; no substantial impact anticipated
<b>POSITIONS: (cumulative)</b>	Unable to determine exact amount; additional positions not anticipated.
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch	
<b>EFFECTIVE DATE:</b> 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 42 clarifies the statutory provisions that prohibit the transfer of a copyrighted work to another medium, the recording of a live performance, and the manufacture and distribution of unlawfully transferred recordings. The bill amends current G.S. 14-137 (a) to reduce the number of “articles” involved to qualify the offense as a Class I felony and to reduce the number of articles to qualify the offense as a Class 1 misdemeanor. Violations of Article 58 (Records, Tapes, and Other Recorded Devices) are a Class 1 misdemeanor except in cases where (1) the offense involves at least 100 unauthorized articles during any 180-day period, or (2) a third or subsequent conviction for an offense that involves at least 26 unauthorized articles during any 180-day period. These exceptions are punishable as a Class I felony. The third edition of the bill adds an exemption for any person engaged in webcasting who transfers, or causes to be transferred, any such sounds other than from the soundtrack of a motion picture for purposes of such transmission or related uses, or for archival purposes. It also amends current G.S. 14-433 (c) to provide that an Internet service provider who is solely providing a conduit for access to the Internet, is not deemed to be using, or causing to be used, recordings that may be transferred over the Internet by third parties in violation of Article 58.

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

##### **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.

Data on the number of offenders convicted during FY 2001-2002 under G.S. 14-137(a) are not available because the Administrative Office of the Courts (AOC) does not have a specific offense code for these offenses. The lack of an AOC offense code is some indication that these offenses are infrequently charged and/or infrequently result in convictions. Therefore, it is not known how many offenders the bill might affect.

In regards to Section 2 of the bill, it is not known how many additional convictions may result from the proposed expansion of the statute to cover “live performances” which is subject to a Class 1 misdemeanor under the bill. In addition, because Section 3 of the 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 for this proposed offense. In FY 2001-2002, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences of which the average estimated time served was 35.2 days. While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails but paid for by the State at a cost of \$18/day. Because offenders serving active sentences of 90 days or less are housed in county jails, additional Class 1 misdemeanors are not expected to have a significant impact on the prison population.

Section 5 of the bill rewrites G.S. 14-337(a) to reduce the number of articles involved to qualify the offense as a Class I felony and to reduce the number of articles involved to qualify the offense as a Class 1 misdemeanor. The North Carolina Sentencing Commission does not expect a significant impact on the prison population from the reclassification of a Class 2 misdemeanor offense to a Class 1 misdemeanor offense. However, it does anticipate a slight impact on prison beds as a result of the reclassification of a Class 1 misdemeanor to a Class I felony. If, for example, there were 10 convictions that moved from a Class 1 misdemeanor to a Class 1 felony, 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**

For most criminal penalty bills, the Administrative Office of the Courts 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.

HB 42 enhances punishment under G.S. 14-137(a) by reducing the number of offense categories to two—Class I felony and Class 1 misdemeanor—and by reducing the numeric threshold for the numbers of recordings that trigger more serious punishment. Thus, some cases that are now Class 1 misdemeanors would become Class I felonies and some Class 2 misdemeanors would become Class 1 misdemeanors under the bill. AOC is currently unable to estimate the number of defendants currently charged with offenses under the bill, as it does not have offense codes for most of the offenses in Article 58. For the one offense for which there is presently an offense code, data reveal that no defendants were charged during calendar year 2002. Because the bill reduces the numeric threshold for the number of recordings that trigger more serious punishment, court costs may slightly increase. For offenses that are brought to trial as Class I felonies, the estimated court cost per trial is \$4,602. For Class I felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$220. For offenses that are brought to trial as a Level 1 misdemeanor, the estimated court cost per trial is \$2,248. For Level 1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at \$177.

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

**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:** Nicole Kreiser and Douglas Holbrook, Jr.

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

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