

REVIEW OF PROPOSED LEGISLATION PURSUANT TO N.C.G.S. 164-43

REPORT #1

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

REPORT ON PROPOSED LEGISLATION PURSUANT TO G.S. 164-43

This report by the Sentencing Commission includes all bills introduced or amended through February 28, 2019. The report is submitted in conformance with the following requirements of G.S. 164-43:

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f) and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model to the provisions of the bill.

A one page summary is included for each bill (or each relevant section of a bill) which either creates a new crime, changes the classification of an existing crime, or prescribes a new range of punishments. The summary provides the bill number, the short title, and a brief description. At the bottom of the summary is an analysis and a finding of whether the bill appears consistent with the Commission's classification criteria as specified in G.S. 164-41 (*see following page for a description of the criteria*). Following the summary is an analysis of the projected impact of the bill (a more detailed impact analysis is provided to the Fiscal Research Division). The impact estimates assume an effective date of December 1, 2019.

These summaries may not reflect the most recent bill amendments or committee substitutes. The date on which each individual summary was reviewed is shown on the bottom left hand corner of each summary page. Changes made after this date are not reflected in this report.

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on March 1, 2019.

The fact that the Commission found a bill to be either consistent or inconsistent with the structured sentencing offense classification criteria does not imply either support for or opposition to the bill. In this report, the Commission has taken no position on the merits of any bill other than those specifically proposed by the Commission.

THE OFFENSE CLASSIFICATION CRITERIA

The Sentencing Commission was required by G.S. 164-41 to "... classify criminal offenses into felony and misdemeanor categories on the basis of their severity." The Commission developed classification criteria to guide the classification process and to ensure that there was a systematic and rational basis for the classifications. The Commission decided that the severity of an offense should be directly related to the harm to the victim that normally results or tends to result from the criminal conduct.

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria. The Commission did not apply the classification criteria to homicide and controlled substances offenses.

The purpose of establishing the classification criteria was to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.

Under the classification criteria, the most serious offense classes (A through F) primarily involve personal injury, the risk of personal injury, serious societal injury or widespread societal injury. The lower offense levels (G through I) primarily involve property loss or less serious societal injury. The degree of harm is divided into three levels; injury to person, property or society; significant injury to person, property or society; and serious injury to person, property or society.

The Commission also assigned misdemeanor offenses to four classes: class A1, class 1, class 2 or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

In 2012 the Commission adopted a separate set of classification criteria to be used for reviewing the proposed classification of homicide offenses. These criteria resemble the Commission's harm-based offense classification criteria but rely upon factors other than harm to evaluate the severity of a homicide offense.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	<ul style="list-style-type: none">• Reserved for First Degree Murder <p><i>[Reasonably tends to result or does result in:]</i></p>
B	<ul style="list-style-type: none">• Serious debilitating long-term personal injury
C	<ul style="list-style-type: none">• Serious long-term personal injury• Serious long-term or widespread societal injury
D	<ul style="list-style-type: none">• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	<ul style="list-style-type: none">• Serious personal injury
F	<ul style="list-style-type: none">• Significant personal injury• Serious societal injury
G	<ul style="list-style-type: none">• Serious property loss Loss from the person or the person's dwelling
H	<ul style="list-style-type: none">• Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal• Personal injury• Significant societal injury
I	<ul style="list-style-type: none">• Serious property loss: All other felonious property loss• Societal injury
M	<ul style="list-style-type: none">• All other misdemeanors

* Personal injury includes both physical and mental injury.

Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

CLASS	CRITERIA
	(FELONY)
A	<ul style="list-style-type: none">• Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation.
B	<ul style="list-style-type: none">• Intentional killing with malice.
D	<ul style="list-style-type: none">• Intentional killing with a partial legal excuse.
E	<ul style="list-style-type: none">• Unintentional killing by criminal or culpable negligence with aggravating circumstances.
F	<ul style="list-style-type: none">• Unintentional killing by criminal or culpable negligence.
H	<ul style="list-style-type: none">• Unintentional killing by motor vehicle involving a serious traffic violation.
	(MISDEMEANOR)
A1	<ul style="list-style-type: none">• Unintentional killing by motor vehicle involving a traffic violation.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
March 1, 2019

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 61	Omnibus Gun Changes	G.S. 14-415.35	H	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	1
HB 66	Req Active Time Felony Death MV/Boat	G.S. 20-141.4(a1)	D	Inconsistent		2
		G.S. 20-141.4(a)	D	Inconsistent		3
HB 86	Gun Violence Prevention Act	G.S. 14-409A(b)	I	Consistent		4
		G.S. 14.409.13(a)	I	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	5
		G.S. 14.409.61(b)	I	Consistent		6
HB 125	GSC Revised Uniform Athlete Agents Act	G.S. 78C-124(a)	H	Consistent		7
		G.S. 78C-124(b)	H	Consistent		8
HB 138	Damage Jail & Prison Fire Sprinkler/Penalty	G.S. 14-286(b)	I	Consistent		9
HB 198	Human Trafficking Commission Recommendations. -AB	G.S. 14-43.13(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	10
		G.S. 14-43.13(b)	C	Consistent		11
		G.S. 14-208.1(b)	G	Inconsistent	Would be consistent with a Class F or H felony.	12
HB 224	Assault w/ Firearm on LEO/Increase Punishment	G.S. 14-34.5(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	13

HB 231	The Harrison Kowiak Act	G.S. 14-35(b)(2)	H	Consistent	Would also be consistent with a Class I felony.	14
		G.S. 14-35(b)(1)	D	Inconsistent	(Results in serious bodily injury) Would be consistent with a Class E felony.	15
		G.S. 14-35(b)(1)	D	Inconsistent	(Results in death) Would be consistent with a Class E felony.	16
		G.S. 14-35(b)(1)	D	Inconsistent	(Involves forced or coerced alcohol consumption) Would be consistent with a Class H or I felony.	17
		G.S. 14-35(b)(1)	D	Inconsistent	North Carolina does not have statutory maximum sentences for individual offenses, Structured Sentencing establishes maximum sentences based on offense class and prior record level.	18
SB 9	Female Genital Mutilation/Clarify Prohibition	G.S. 14-28.1(a)(1)	C	Consistent		19
		G.S. 14-28.1(a)(2)	C	Consistent	Would also be consistent with a Class B felony.	20
		G.S. 14-28.1(a)(3)	C	Consistent		21
SB 20	Emergency Worker Protection Act	G.S. 14-34.5(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	22
		G.S. 14-34.5(a1)	D	Inconsistent	Would be consistent with a Class C or E felony.	23
		G.S. 14-34.5(b)	D	Inconsistent	Would be consistent with a Class C or E felony.	24
		G.S. 14-34.6(b)	G	Inconsistent	Would be consistent with a Class F felony.	25
		G.S. 14-34.6(c)	E	Consistent		26
		G.S. 14-34.7(a)	E	Consistent		27
		G.S. 14-34.7(a1)	E	Consistent		28

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
March 1, 2019

		G.S. 14-34.7(b)	E	Consistent		29
		G.S. 14-34.7(c)	H	Consistent		30
		G.S. 14-288.9(c)	H	Consistent		31
		G.S. 14-288.9(c)	E	Inconsistent	Would be consistent with a Class F felony.	32
		G.S. 14-31(b)	D	Inconsistent		33
SB 29	Move Over Law/Increase Penalties	G.S. 20-157(i)	F	Consistent		34
SB 151	Break or Enter Pharmacy/Increase Penalty	G.S. 14-54.2(b)	D	Inconsistent	Would be consistent with a Class F or H felony.	35
		G.S. 14-54.2(c)	F	Consistent	Would also be consistent with a Class H felony.	36

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 61 – Omnibus Gun Changes. [Ed. 1]

STATUTE

§ 14-415.35. Carrying handguns.

DESCRIPTION

Subsection (d)

A person who

1. carries a concealed handgun and
2. meets any of the criteria listed in G.S. 14-415.35(d).

PROPOSED OFFENSE CLASS

Class H felony, second and subsequent offenses.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss (loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property, or loss occasioned by breach of trust, formal or informal), personal injury, or significant societal injury as Class H felonies.

Proposed G.S. 14-415.35(d) provides that it shall be unlawful for a person to carry a concealed handgun when he meets any one of a list of certain criteria. That list includes but is not limited to: persons under indictment for a felony; persons adjudicated guilty of a felony unless that offense pertains to antitrust violations, unfair trade practices, or restraints of trade, or his firearms rights have been restored; fugitives from justice; drug addicts; persons dishonorably discharged from the military; and persons convicted of impaired driving offenses within last three years.

A first violation of this provision is a Class 2 misdemeanor.

The Sentencing Commission reviewed a substantially similar provision in April 2017 in HB 201 and found it to be inconsistent with the Offense Classification Criteria for a Class H felony because the Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 66 – Req Active Time Felony Death MV/Boat [Ed. 1]

STATUTE

§ 20-141.4. Felony and misdemeanor death by vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.

DESCRIPTION

Subsection (a1)

A person who

1. unintentionally causes the death of another person,
2. while engaged in the offense of impaired driving, and
3. the commission of that offense is the proximate cause of the death.

PUNISHMENT RANGE

CURRENT: Class D felony. Notwithstanding the felony punishment chart, which requires an active sentence, an intermediate punishment is authorized for a defendant who is in Prior Record Level I.

PROPOSED: If an intermediate punishment is imposed, it shall include special probation (split sentence) with a continuous period of confinement of one-fourth the maximum sentence imposed (up to 27 months).

ANALYSIS

Intermediate punishment requires an offender be placed on supervised probation. It may include special probation. G.S. 15A-1340.11(6).

Special probation may be a continuous period or more than one noncontinuous period of confinement and it may be up to one-fourth of the maximum sentence imposed. G.S. 15A-1351(a).

SB 105 of the 2012 Session reclassified felony death by vehicle from a Class E felony to a Class D felony and authorized the intermediate punishment for offenders in Prior Record Level I. The Sentencing Commission did not review the final version of that bill.

The Sentencing Commission reviewed a substantially similar provision in February 2017 in HB 65 and found it to be inconsistent with G.S. 164-41.

FINDINGS



Bill is **consistent** with G.S. 164-41.



Bill is **inconsistent** with G.S. 164-41.



G.S. 164-41 is not applicable.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 66 – Req Active Time Felony Death MV/Boat [Ed. 1] (cont'd)

STATUTE

§ 75A-10.3. Death or serious injury by impaired boating; repeat offenses.

DESCRIPTION

Subsection (a)

A person who

1. unintentionally causes the death of another person,
2. while engaged in the offense of impaired boating, and
3. the commission of that offense is the proximate cause of the death.

PUNISHMENT RANGE

CURRENT: Class D felony. Notwithstanding the felony punishment chart, which requires an active sentence, an intermediate punishment is authorized for a defendant who is in Prior Record Level I.

PROPOSED: If an intermediate punishment is imposed, it shall include special probation (split sentence) with a continuous period of confinement of one-fourth of the maximum sentence imposed (up to 27 months).

ANALYSIS

Intermediate punishment requires an offender be placed on supervised probation. It may include special probation. G.S. 15A-1340.11(6).

Special probation may be a continuous period or more than one noncontinuous period of confinement and it may be up to one-fourth of the maximum sentence imposed. G.S. 15A-1351(a).

HB 958 of the 2016 Session created the offense of death by impaired boating, classified it as a Class D felony, and authorized the intermediate punishment for offenders in Prior Record Level I. The Sentencing Commission reviewed that provision in June 2016 and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class D felony. The Commission noted that the provision could be consistent with the Homicide Offense Classification Criteria for a Class E felony and that, under Structured Sentencing, an active punishment is required for offenders convicted of a Class D felony. Authorizing an intermediate punishment for a Prior Record Level I offender convicted of this offense is inconsistent with Structured Sentencing.

The Sentencing Commission reviewed a substantially similar provision to this one in February 2017 in HB 65 and found it to be inconsistent with G.S. 164-41.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 86 – Gun Violence Prevention Act [Ed. 1]

STATUTE

§ 14-409A. Bump stocks and trigger cranks prohibited.

DESCRIPTION

Subsection (b)

A person, firm, or corporation who

1. manufactures, sells, gives away, transfers, uses, or possesses
2. bump stocks, trigger cranks, or any other similar device or instrument added to a firearm by a person other than the manufacturer that is designed to increase the rate of fire achievable by the firearm.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a weapon of mass death and destruction is a Class F felony (G.S. 14-288.8).

The term “weapon of mass death and destruction” includes [in part]:

1. any firearm capable of fully automatic fire, any shotgun with a barrel or barrels of less than 18 inches in length or an overall length of less than 26 inches, any rifle with a barrel or barrels of less than 16 inches in length or an overall length of less than 26 inches, any muffler or silencer for any firearm, whether or not such firearm is included within this definition. For the purposes of this section, rifle is defined as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; or
2. any combination of parts either designed or intended for use in converting any device into any weapon described above and from which a weapon of mass death and destruction may readily be assembled.

The Sentencing Commission reviewed a substantially similar provision in June 2018 in HB 1070/SB 737 and found it to be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 86 – Gun Violence Prevention Act. [Ed. 1] (cont'd)

STATUTE

§ 14-409.13. Report of loss or theft of firearm.

DESCRIPTION

Subsection (a)

A person who

1. is an owner of a firearm, as defined in G.S. 14-408.1(a) and
2. fails to report the loss or theft of the firearm within 48 hours after the discovery of the loss or theft to either
 - a. the local law enforcement agency having jurisdiction over the location where the loss or theft of the firearm occurred or
 - b. the State Bureau of Investigation.

PROPOSED OFFENSE CLASS

Class I felony, second and subsequent offenses.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

A first violation of this provision is a Class 3 misdemeanor.

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 723 and found it to be inconsistent with the Offense Criteria for a Class I felony because the Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 86 – Gun Violence Prevention Act [Ed. 1] (cont'd)

STATUTE

§ 14-409.61. Large-capacity magazines prohibited; penalties; exceptions.

DESCRIPTION

Subsection (b)

A person who

1. possesses
2. a large-capacity magazine
3. during the commission of a felony.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

A large-capacity magazine includes all of the following:

1. a fixed or detachable magazine box, drum, feed strip, or similar device capable of accepting, or that is designed to be readily converted to accept, more than 15 rounds of ammunition
2. a fixed or detachable magazine that is capable of accepting more than eight shotgun shells
3. a detachable magazine, tube, box, drum, feed strip, or similar device that is capable of accepting more than eight shotgun shells when combined with a fixed magazine.

It is a Class 2 misdemeanor for a person to sell, transfer, or possess a large-capacity magazine; it is a Class 1 misdemeanor upon the second or subsequent offense (G.S. 14-409.61(a))

It is an aggravating factor to be armed with or use a deadly weapon at the time of the commission of a crime (G.S. 15A-1340.16(d)(10)).

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 723 and found it to be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 125 – GSC Revised Uniform Athlete Agents Act [Ed. 1]

STATUTE

§ 78C-124. Prohibited conduct.

DESCRIPTION

Subsection (a)

A person who

1. is an athlete agent and
2. intends to influence a covered athlete, or, if the covered athlete is a minor, a parent or guardian of the covered athlete
3. to enter into an agency contract and
4. takes any of the following actions or encourages any other individual to take or assist any other individual in taking any of the following actions on behalf of the athlete agent:
 - a. give materially false or misleading information or make a materially false promise or representation.
 - b. furnish anything of value to the covered athlete.
 - c. furnish anything of value to an individual other than the covered athlete or another registered athlete agent.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Currently, this conduct is punished under G.S. 78C-98 as a Class I felony. This provision expands the elements of the existing offense to include the parent or guardian of the covered athlete if the covered athlete is a minor and to include encouraging others to take the enumerated actions on behalf of the athlete agent.

The Sentencing Commission reviewed a substantially similar provision in April 2017 in HB 230 and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 125 – GSC Revised Uniform Athlete Agents Act [Ed. 1] (cont'd)

STATUTE

§ 78C-124. Prohibited conduct.

DESCRIPTION

Subsection (b)

A person who

1. is an athlete agent
2. who is not registered under Article 10 of Chapter 78C of the General Statutes and
3. intentionally either
 - a. initiates contact, directly or indirectly, with a covered athlete or, if the covered athlete is a minor, a parent or guardian of the covered athlete to recruit or solicit the covered athlete, parent, or guardian to enter into an agency contract in the present or future or
 - b. encourages any other individual to do so on behalf of the athlete agent.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

The Sentencing Commission reviewed a substantially similar provision in April 2017 in HB 230 and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 138 – Damage Jail & Prison Fire Sprinkler/Penalty [Ed. 1]

STATUTE

§ 14-286. Giving false fire alarms; molesting fire-alarm, fire-detection or fire-extinguishing system.

DESCRIPTION

Subsection (b)

A person who

1. willfully
2. interferes with, damages, defaces, molests, or injures
3. any part or portion of a fire-alarm, fire-detection, smoke-detection, or fire-extinguishing system
4. in a prison or local confinement facility.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

The term “local confinement facility” means a county or city jail, a local lockup, or a detention facility for adults operated by a local government (G.S. 14-286(b)).

G.S. 14-286 currently provides that willfully interfering with, damaging, defacing, molesting, or injuring any part or portion of any fire-alarm, fire-detection, smoke-detection or fire-extinguishing system [regardless of location] is a Class 2 misdemeanor.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 198 – Human Trafficking Commission Recommendations.-AB [Ed. 1]
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STATUTE

§ 14-43.13. Sexual servitude.

DESCRIPTION

Subsection (a)

A person who

1. a. knowingly or
b. in reckless disregard of the consequences of the action
2. a. subjects,
b. maintains,
c. or obtains
3. another
4. for the purposes of sexual servitude,
5. and the victim is an adult.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

It is a Class D felony for a person to knowingly or in reckless disregard of the consequences of the action subject or maintain another for the purpose of sexual servitude when the victim is an adult (G.S. 14-43.13(b)).

The Sentencing Commission reviewed the current offense in June 2013 in SB 683 and found it to be consistent with the Offense Classification Criteria for a Class E felony. The offense was not reviewed as ratified; it was amended after the review date and classified as a Class D felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C or E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE:	HB 198 – Human Trafficking Commission Recommendations.-AB [Ed. 1] (cont'd)
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STATUTE

§ 14-43.13. Sexual servitude.

DESCRIPTION

Subsection (b)

A person who

1. a. knowingly or
b. in reckless disregard of the consequences of the action
2. a. subjects,
b. maintains,
c. or obtains
3. another
4. for the purposes of sexual servitude,
5. and the victim is a minor.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or serious long-term or widespread societal injury as Class C felonies.

It is a Class C felony for a person to knowingly or in reckless disregard of the consequences of the action subject or maintain another for the purpose of sexual servitude when the victim is a minor (G.S. 14-43.13(b)).

The Sentencing Commission reviewed the current offense in June 2006 in HB 2809/SB 1223 and found it to be consistent with the Offense Classification Criteria for a Class C felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 198 – Human Trafficking Commission Recommendations.-AB [Ed. 1] (cont'd)

STATUTE

§ 14-208.1. Promoting travel for unlawful sexual conduct.

DESCRIPTION

Subsection (b)

A person who

1. sells or offers to sell
2. travel services that
3. the person knows to include
4. travel for the purpose of engaging in conduct that would constitute any of the offenses listed in G.S. 14-208.1(b).

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss (loss from the person or the person's dwelling) as Class G felonies.

The list of offenses enumerated in G.S. 14-208.1(b) includes rape and other sex offenses, certain offenses involving the sexual exploitation of a minor, certain offenses involving indecent liberties with a minor, and certain prostitution offenses.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F or H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 224 – Assault w/ Firearm on LEO/Increase Punishment [Ed. 1]

STATUTE

§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (a)

A person who

1. commits an assault
2. with a firearm
3. upon a law enforcement officer, probation officer, or parole officer
4. while the officer is in the performance of his or her duties.

OFFENSE CLASS

CURRENT: Class E felony.

PROPOSED: Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony (G.S. 14-32). Assault with a firearm on an officer or employee of the State or any political subdivision of the State, while he is in the performance of his official duties is a Class F felony (G.S. 14-34.2). Assault with a firearm on an EMT, a medical responder, or a firefighter, while he is in the performance of his duties is a Class F felony. (G.S. 14-34.6(c)).

The Sentencing Commission reviewed an identical provision in April 2017 in SB 520 and found it to be inconsistent with the Offense Classification Criteria for a Class D felony. The Commission noted that it would be consistent with the Offense Classification Criteria for a Class C or Class E felony. The Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or serious long-term or widespread societal injury as Class C felonies.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C or E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 231 – The Harrison Kowiak Act [Ed. 1]

STATUTE

§ 14-35. Hazing; definition and punishment.

DESCRIPTION

Subsection(b)(2)

A person who

1. a. engages in hazing (as defined by statute), or
- b. aids or abet any other person in hazing.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Proposed Section 115C-407.16A(a)(1) defines hazing as any intentional, knowing, or reckless act by a person acting alone or acting with other people that is directed against another person when (i) the person knew or should have known that the act endangered the physical health or safety of the other person or causes severe emotional distress and (ii) the act was associated with pledging, being initiated into, affiliating with, participating in, holding office in, or maintaining membership in any organization.

Presently, G.S. 14-35 punishes hazing as a Class 2 misdemeanor and defines hazing as "to subject another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group."

G.S. 14-32.4(a), assault inflicting serious bodily injury, is a Class F felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 3/1/2019

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 231 – The Harrison Kowiak Act [Ed. 1] (cont'd)

STATUTE

§ 14-35. Hazing; definition and punishment.

DESCRIPTION

Subsection(b)(1)

A person who

1. engages in hazing (as defined by statute), or
2. aids or abet any other person in hazing, and
3. hazing results in serious bodily injury.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies. The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with a partial legal excuse as Class D felonies.

Proposed Section 115C-407.16A(a)(1) defines hazing as any intentional, knowing, or reckless act by a person acting alone or acting with other people that is directed against another person when (i) the person knew or should have known that the act endangered the physical health or safety of the other person or causes severe emotional distress and (ii) the act was associated with pledging, being initiated into, affiliating with, participating in, holding office in, or maintaining membership in any organization.

Presently, G.S. 14-35 punishes hazing as a Class 2 misdemeanor and defines hazing as "to subject another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group."

G.S. 14-32.4(a), assault inflicting serious bodily injury, is a Class F felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE OF REVIEW: 3/1/2019

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 231 – The Harrison Kowiak Act [Ed. 1] (cont'd)

STATUTE

§ 14-35. Hazing; definition and punishment.

DESCRIPTION

Subsection(b)(1)

A person who

1. engages in hazing (as defined by statute), or
2. aids or abet any other person in hazing, and
3. hazing results in death of the victim.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with a partial legal excuse as Class D felonies.

Proposed Section 115C-407.16A(a)(1) defines hazing as any intentional, knowing, or reckless act by a person acting alone or acting with other people that is directed against another person when (i) the person knew or should have known that the act endangered the physical health or safety of the other person or causes severe emotional distress and (ii) the act was associated with pledging, being initiated into, affiliating with, participating in, holding office in, or maintaining membership in any organization.

Presently, G.S. 14-35 punishes hazing as a Class 2 misdemeanor and defines hazing as "to subject another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group."

G.S. 14-18, voluntary manslaughter, is a Class D felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class E felony. The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

DATE OF REVIEW: 3/1/2019

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 231 – The Harrison Kowiak Act [Ed. 1] (cont'd)

STATUTE

§ 14-35. Hazing; definition and punishment.

DESCRIPTION

Subsection(b)(1)

A person who

1. engages in hazing (as defined by statute), or
2. aids or abet any other person in hazing, and
3. hazing involves forced or coerced alcohol consumption that results in the victim having a blood alcohol concentration of .30 or higher within a relevant time 21 after the drinking.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

Proposed Section 115C-407.16A(a)(1) defines hazing as any intentional, knowing, or reckless act by a person acting alone or acting with other people that is directed against another person when (i) the person knew or should have known that the act endangered the physical health or safety of the other person or causes severe emotional distress and (ii) the act was associated with pledging, being initiated into, affiliating with, participating in, holding office in, or maintaining membership in any organization.

Presently, G.S. 14-35 punishes hazing as a Class 2 misdemeanor and defines hazing as "to subject another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group."

G.S. 14-32.4(a), assault inflicting serious bodily injury, is a Class F felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H or I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 3/1/2019

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 231 – The Harrison Kowiak Act [Ed. 1] (cont'd)

STATUTE

§ 14-35. Hazing; definition and punishment.

DESCRIPTION

Subsection(b)(1)

A person who

1. a. engages in hazing (as defined by statute), or
b. aids or abet any other person in hazing, and
2. a. hazing results in serious bodily injury or death of the victim, or
b. hazing involves forced or coerced alcohol consumption that results in the victim having a blood alcohol concentration of .30 or higher within a relevant time 21 after the drinking.

PUNISHMENT RANGE

CURRENT (if applicable): Class D felony, sentenced to an active sentence from the presumptive range (unless there are aggravating or mitigating factors) in the applicable prior record level.

PROPOSED: An active sentence of no more than 60 months for a first offense under this subsection.

ANALYSIS

Structured sentencing provides a range of possible minimum sentences and corresponding maximum sentences based on the offender's prior record level.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

North Carolina does not have statutory maximum sentences for individual offenses, Structured Sentencing establishes maximum sentences based on offense class and prior record level.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 9 – Female Genital Mutilation/Clarify Prohibition [Ed.1]

STATUTE

§ 14-28.1. Female genital mutilation.

DESCRIPTION

Subsection (a)(1):

A person who

1. knowingly
2. circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris
3. of another person who has not attained the age of 18 years.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or serious long-term or widespread societal injury as Class C felonies.

Under G.S. 14-28.1 subsection (b) provides two exceptions: (1) The operation is necessary to the health of the person on whom it is performed and is performed by a person licensed in the State as a medical practitioner; or (2) The operation is performed on a person in labor who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in this State as a medical practitioner or certified nurse midwife, or a person in training to become licensed as a medical practitioner or certified nurse midwife.

G.S. 14-28, Malicious castration, is a Class C felony.

G.S. 14-29, Castration or other maiming without malice aforethought, is a Class E felony.

G.S. 14-32.4(a), assault inflicting serious bodily injury, is a Class F felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 9 – Female Genital Mutilation/Clarify Prohibition [Ed.1] (cont'd)

STATUTE

§ 14-28.1. Female genital mutilation.

DESCRIPTION

Subsection (a)(2):

A person who

1. is a parent, guardian, or other person responsible for the care of a minor
2. that consents
3. to the circumcision, excision, or infibulation, in whole or in any part, of the labia majora, labia minora, or clitoris of the minor.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or serious long-term or widespread societal injury as Class C felonies.

Under G.S. 14-28.1 subsection (b) provides two exceptions: (1) The operation is necessary to the health of the person on whom it is performed and is performed by a person licensed in the State as a medical practitioner; or (2) The operation is performed on a person in labor who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in this State as a medical practitioner or certified nurse midwife, or a person in training to become licensed as a medical practitioner or certified nurse midwife.

G.S. 14-28, Malicious castration, is a Class C felony.

G.S. 14-29, Castration or other maiming without malice aforethought, is a Class E felony.

G.S. 14-318.4(a), child abuse resulting in any serious physical injury to the child is a Class D felony.

G.S. 14-318.4(a3), child abuse resulting any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is a Class B2 felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class B felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 9 – Female Genital Mutilation/Clarify Prohibition [Ed.1] (cont'd)

STATUTE

§ 14-28.1. Female genital mutilation.

DESCRIPTION

Subsection (a)(3):

A person who

1. is a parent, guardian, or other person responsible for the care of a minor
2. knowingly removes or causes or permits the removal of the minor from the State
3. for the purpose of having the minor's labia majora, labia minora, or clitoris circumcised, excised, or infibulated.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or serious long-term or widespread societal injury as Class C felonies.

Under G.S. 14-28.1 subsection (b) provides two exceptions: (1) The operation is necessary to the health of the person on whom it is performed and is performed by a person licensed in the State as a medical practitioner; or (2) The operation is performed on a person in labor who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in this State as a medical practitioner or certified nurse midwife, or a person in training to become licensed as a medical practitioner or certified nurse midwife.

G.S. 14-28, Malicious castration, is a Class C felony.

G.S. 14-29, Castration or other maiming without malice aforethought, is a Class E felony.

G.S. 14-318.4, child abuse resulting in any serious physical injury to the child is a Class D felony.

G.S. 14-318.4(a3), child abuse resulting any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is a Class B2 felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1]

STATUTE

§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (a):

A person who

1. commits an assault
2. with a firearm
3. upon a law enforcement officer, probation officer, or parole officer,
4. while the officer is in the performance of his or her duties.

OFFENSE CLASS

CURRENT: Class E felony.

PROPOSED: Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32) Assault with a firearm on an officer or employee of the State or any political subdivision of the State, while he is in the performance of his official duties is a Class F felony. (G.S. 14-34.2) Assault with a firearm on an EMT, a medical responder, or a firefighter, while he is in the performance of his duties is a Class F felony. (G.S. 14-34.6(c))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be inconsistent with the Offense Classification Criteria for a Class D felony. This offense would be consistent with the Offense Classification Criteria for a Class C or E felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C or E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (a1):

A person who

1. commits an assault
2. with a firearm
3. upon a member of the North Carolina National Guard
4. while the member is in the performance of his or her duties.

OFFENSE CLASS

CURRENT: Class E felony.

PROPOSED: Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32)

Assault with a firearm on an officer or employee of the State or any political subdivision of the State, while he is in the performance of his official duties is a Class F felony. (G.S. 14-34.2)

Assault with a firearm on an EMT, a medical responder, or a firefighter, while he is in the performance of his duties is a Class F felony. (G.S. 14-34.6(c))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be inconsistent with the Offense Classification Criteria for a Class D felony. This offense would be consistent with the Offense Classification Criteria for a Class C or E felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C or E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE OF REVIEW: 03/01/19

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (b):

A person who

1. commits an assault
2. with a firearm
3. upon a person who is employed at a detention facility operated under the jurisdiction of the State or a local government
4. while the employee is in the performance of the employee's duties.

OFFENSE CLASS

CURRENT: Class E felony.

PROPOSED: Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32) Assault with a firearm on an officer or employee of the State or any political subdivision of the State, while he is in the performance of his official duties is a Class F felony. (G.S. 14-34.2) Assault with a firearm on an EMT, a medical responder, or a firefighter, while he is in the performance of his duties is a Class F felony. (G.S. 14-34.6(c))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be inconsistent with the Offense Classification Criteria for a Class D felony. This offense would be consistent with the Offense Classification Criteria for a Class C or E felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C or E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.

DESCRIPTION

Subsection (b):

A person who

1. commits an assault or affray
2. upon an emergency medical technician or other emergency health care provider, a medical responder, hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital, or a firefighter
3. while that person is discharging or attempting to discharge his official duties, and in so doing
4. a. inflicts serious bodily injury, or
b. uses a deadly weapon other than a firearm.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person’s dwelling as Class G felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies.

G.S. 14-32.4(a), assault inflicting serious bodily injury, is a Class F felony. G.S. 14-32, assault with a deadly weapon that inflicts serious injury, is a Class E felony.

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be inconsistent with the Offense Classification Criteria for a Class G felony. This offense would be consistent with the Offense Classification Criteria for a Class F felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.

DESCRIPTION

Subsection (c):

A person who

1. commits an assault or affray
2. upon an emergency medical technician or other emergency health care provider, a medical responder, hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital, or a firefighter
3. while that person is discharging or attempting to discharge his official duties, and in so doing
4. uses a firearm.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32) Assault with a firearm on an officer or employee of the State or any political subdivision of the State, while he is in the performance of his official duties is a Class F felony. (G.S. 14-34.2) Assault with a firearm on a law enforcement officer, probation officer, or parole officer while he is in the performance of his duties is a Class E felony. (G.S. 14-34.5(a))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be consistent with the Offense Classification Criteria for a Class E felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

DESCRIPTION

Subsection (a):

A person who

1. assaults
2. a law enforcement officer, probation officer, or parole officer
3. while the officer is discharging or attempting to discharge his or her official duties
4. and inflicts serious bodily injury on the officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

“Serious bodily injury” is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. (G.S. 14-32.4(a))

Assault on another person that inflicts serious bodily injury is a Class F felony. (G.S. 14-32.4(a)) Assault on a firefighter, emergency medical technician, medical responder, or hospital personnel in the performance of his duties and inflict serious bodily injury is a Class H felony. (G.S. 14-34.6(b))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be consistent with the Offense Classification Criteria for a Class E felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

DESCRIPTION

Subsection (a1):

A person who

1. assaults
2. a member of the North Carolina National Guard
3. while that person is discharging or attempting to discharge his official duties, and in so doing
4. inflicts serious bodily injury on the officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

“Serious bodily injury” is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. (G.S. 14-32.4(a))

Assault on another person that inflicts serious bodily injury is a Class F felony (G.S. 14-32.4(a))

Assault on a firefighter, emergency medical technician, medical responder, or hospital personnel in the performance of his duties and inflict serious bodily injury is a Class H felony. (G.S. 14-34.6(b))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be consistent with the Offense Classification Criteria for a Class E felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

DESCRIPTION

Subsection (b):

A person who

1. assaults
2. a person who is employed at a detention facility operated under the jurisdiction of the State or a local government
3. while the employee is in the performance of his duties, and in so doing
4. inflicts serious bodily injury on the officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

“Serious bodily injury” is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. (G.S. 14-32.4(a))

Assault on another person that inflicts serious bodily injury is a Class F felony (G.S. 14-32.4(a)).

Assault on a firefighter, emergency medical technician, medical responder, or hospital personnel in the performance of his duties and inflict serious bodily injury is a Class H felony. (G.S. 14-34.6(b))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be consistent with the Offense Classification Criteria for a Class E felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

DESCRIPTION

Subsection (c):

A person who

1. assaults a law enforcement officer, probation officer, or parole officer while the officer is discharging or attempting to discharge his official duties and inflicts physical injury on the officer,
2. assaults a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of his duties and inflicts physical injury on the employee, or
3. assaults a member of the North Carolina National Guard while he is discharging or attempting to discharge his official duties and inflicts physical injury on the member.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies.

For purposes of G.S. 14-34.7(c) “physical injury” includes cuts, scrapes, bruises, or other physical injury which does not constitute serious injury.

Assault, assault and battery, or affray on an officer or employee of the State or any political subdivision thereof, in the discharge or attempted discharge of official duties is a Class A1 misdemeanor. (G.S. 14-33(c)(4)) Assault on a firefighter, emergency medical technician, medical responder or hospital personnel in the performance of his duties is a Class I felony. (G.S. 14-34.6(a))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-288.9. Assault on emergency personnel; punishments.

DESCRIPTION

Subsection (c):

A person who

1. commits an assault
2. causing physical injury
3. upon emergency personnel.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies.

The term “emergency personnel” includes law-enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, and other persons lawfully engaged in providing essential services during an emergency. (G.S. 14-288.9(b))

Assault, assault and battery, or affray on an officer or employee of the State or any political subdivision thereof, in the discharge or attempted discharge of official duties is a Class A1 misdemeanor. (G.S. 14-33(c)(4))

Assault on a firefighter, emergency medical technician, medical responder or hospital personnel in the performance of his duties is a Class I felony. (G.S. 14-34.6(a))

Assault on a law enforcement officer in the discharge or attempted discharge of official duties that inflicts physical injury is a Class I felony. (G.S. 14-34.7(c))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-288.9. Assault on emergency personnel; punishments.

DESCRIPTION

Subsection (c):

A person who

1. commits an assault
2. upon emergency personnel
3. with or through the use of any dangerous weapon or substance.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

The term “emergency personnel” includes law-enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, and other persons lawfully engaged in providing essential services during an emergency. (G.S. 14-288.9(b))

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32)

Assault with a firearm on an officer or employee of the State or any political subdivision of the State, while he is in the performance of his official duties is a Class F felony. (G.S. 14-34.2)

Assault with a firearm on a law enforcement officer, probation officer, or parole officer while he is in the performance of his duties is a Class E felony. (G.S. 14-34.5(a))

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be inconsistent with the Offense Classification Criteria for a Class E felony. This offense would be consistent with the Offense Classification Criteria for a Class F felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 20 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-31. Maliciously assaulting in a secret manner.

DESCRIPTION

Subsection (b):

A person who

1. commits a violation of G.S. 14-31(a)
2. against an emergency worker
3. while the emergency worker is discharging or attempting to discharge his official duties.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

G.S. 14-31(a) provides that it shall be unlawful for any person, in a secret manner, to maliciously commit an assault and battery with any deadly weapon upon another by waylaying or otherwise, with intent to kill such other person, notwithstanding the person so assaulted may have been conscious of the presence of his adversary. Violation is a Class E felony.

For purposes of G.S. 14-31(b) “emergency worker” is a law enforcement officer, firefighter, emergency medical technician, or medical responder.

The Sentencing Commission reviewed a substantially similar provision in April 2017 in SB 520 and found it to be inconsistent with the Offense Classification Criteria for a Class D felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 29 – Move Over Law/Increase Penalties [Ed. 2]

STATUTE

§ 20-157. Approach of law enforcement, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire fighting equipment; parking, etc., near law enforcement, fire department, or rescue squad vehicle or ambulance.

DESCRIPTION

Subsection (i):

A person who

1. Violates this section and
2. causes serious injury or death
3. to law enforcement officer, a firefighter, an emergency vehicle operator, an Incident Management Assistance Patrol member, a public service vehicle operator, or any other emergency response person in the immediate area of the authorized emergency vehicle or public service vehicle.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by criminal or culpable negligence as Class F felonies.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

This section requires that upon the approach of any emergency vehicle (see G.S 20-157 for list of vehicle types) when traveling in response to a fire alarm or other emergency response purpose, giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by an emergency official or the emergency vehicle shall have passed.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 151 – Break or Enter Pharmacy/Increase Penalty

STATUTE

§ 14-54.2. Breaking or entering a pharmacy.

DESCRIPTION

Subsection (b):

A person who

1. breaks or enters
2. a pharmacy
3. with the intent to commit the theft of opioids.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

A pharmacy is defined in subsection (a) as business that has a pharmacy permit under G.S. 90-85.21.

G.S. 14-54(a), breaking or entering a building with the intent to commit a felony or larceny therein, is punished as a Class H felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F or H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

DATE OF REVIEW: 03/01/19

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 151 – Break or Enter Pharmacy/Increase Penalty (cont'd)

STATUTE

§ 14-54.2. Breaking or entering a pharmacy.

DESCRIPTION

Subsection (c):

A person who

1. receives or possesses property
2. stolen during the commission of a violation of subsection (b)
3. with knowledge or reasonable grounds to believe the property is stolen.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

G.S. 14-72(c) receiving or possessing stolen goods with knowledge or having reasonable grounds to believe the goods were stolen pursuant to the offenses of burglary, breaking or entering, or burglary with explosives is punished as a Class H felony.

G.S. 14-71 provides that receiving stolen goods with knowledge or having reasonable grounds to believe the goods were stolen is punished as a Class H felony.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

DATE OF REVIEW: 03/01/19

IMPACT ANALYSIS NOT REQUESTED YET