

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 June 5, 2020. 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, 2020.

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 Sentencing Commission on June 5, 2020.

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
June 6, 2020

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 1169	Elections 2020 [Ed. 1]	G.S. 163-237(d7)	I	Consistent		1
SB 710	Strengthening DWI Laws [Ed. 1]	G.S. 20-141.4(a7)	F	Inconsistent	Would be consistent with a Class H felony.	2
		G.S. 20-141.4(a7)	Mandatory Sentence	Inconsistent		3

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 1169 – Elections 2020 [Ed. 1]

STATUTE

§ 163-237. Certain violations of absentee ballot law made criminal offenses.

DESCRIPTION

Subsection (d7)

A person who

1. knowingly
2. sends or delivers an absentee ballot
3. to any person who has not requested an absentee ballot in accordance with the requirements of Chapter 163 and
4. either
 - a. serves on the State Board of Elections or on any county board of elections, or
 - b. is an employee of the State Board of Elections or a county board of elections.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Attempting to aid and abet fraud in connection with any absentee vote cast or to be cast is a misdemeanor. G.S. 163-237(d)

Selling or attempting to sell, or purchasing or agreeing to purchase, a completed written request, a completed application for absentee ballots, or voted absentee ballots is a Class I felony. G.S. 163-237(d1)

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: 06/05/2020

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: SB 710 – Strengthening DWI Laws [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (a7)

A person who

1. unintentionally causes the death of another person,
2. while engaged in the violation of any State law or local ordinance applying to the operation or use of a motor vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1,
3. where the commission of the offense in subdivision (2) is the proximate cause of the death, and
4. at the time of the commission of the offense in subdivision (2), the person's drivers license was revoked for an impaired driving license revocation as defined in G.S. 20-28.2(a).

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by criminal or culpable negligence as Class F felonies.

This conduct is currently covered under G.S. 20-141.4(a2), misdemeanor death by vehicle, which is a Class A1 misdemeanor.

Felony death by vehicle is a Class D felony. G.S.20-141.4(a1)

Aggravated felony death by vehicle is a Class D felony. G.S. 20-141.4(a5)

Repeat felony death by vehicle is a Class B2 felony. G.S. 20-141.4(a6)

FINDINGS

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

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

Homicide Offense Classification Criteria are not applicable.

This offense would be consistent with the Homicide Offense Classification Criteria for a Class H felony. The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by motor vehicle involving a serious traffic violation as Class H felonies.

DATE OF REVIEW: 06/05/2020

BILL CONTINUED ON NEXT PAGE

- 2 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: SB 710 – Strengthening DWI Laws [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (a7)

A person who

1. unintentionally causes the death of another person,
2. while engaged in the violation of any State law or local ordinance applying to the operation or use of a motor vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1,
3. where the commission of the offense in subdivision (2) is the proximate cause of the death, and
4. at the time of the commission of the offense in subdivision (2), the person's drivers license was revoked for an impaired driving license revocation as defined in G.S. 20-28.2(a).

PUNISHMENT RANGE

CURRENT: New offense; this conduct is currently covered under G.S. 20-141.4(a2), misdemeanor death by vehicle, which is a Class A1 misdemeanor with a sentence range of 1 to 150 days.

PROPOSED: A minimum active term of not less than 12 months of imprisonment, which shall not be suspended.

ANALYSIS

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

The Sentencing Commission has reviewed similar punishment provisions in the past and found that to require an active sentence and set a minimum number of months is inconsistent with the principles of structured sentencing.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Structured sentencing provides a range of possible minimum sentences and types of punishment based on the offender's prior record level. Requiring an active sentence and setting a minimum number of months is inconsistent with the principles of structured sentencing.

DATE OF REVIEW: 06/05/2020

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.