

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

## REPORT #2



MAY 2019

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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 April 25, 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 Legislative Review Subcommittee on April 26, 2019, and will be reviewed by the full Sentencing Commission on June 7, 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\*

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

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\* 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**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**  
**REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS**  
**April 26, 2019**

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 138	Damage Jail & Prison Fire Sprinkler/Penalty [Ed. 2]	G.S. 14-286(b)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">1</a>
HB 220	Insurance Technical Changes.-AB [Ed. 1]	G.S. 58-2-161(c)(2)	H	Consistent		<a href="#">2</a>
		G.S. 58-2-161(c)(3)	E	Inconsistent	Would be consistent with a Class F felony.	<a href="#">3</a>
		G.S. 58-2-161(c)(4)	C	Consistent		<a href="#">4</a>
		G.S. 58-2-164(b1)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">5</a>
		G.S. 58-3-150(h)	I	Consistent		<a href="#">7</a>
HB 222	Modify Crim Penalties/NAIC Fraud Act-AB [Ed. 1]	G.S. 58-2-161(c)(2)	H	Consistent		<a href="#">2</a>
		G.S. 58-2-161(c)(3)	E	Inconsistent	Would be consistent with a Class F felony.	<a href="#">3</a>
		G.S. 58-2-161(c)(4)	C	Consistent		<a href="#">4</a>
		G.S. 58-2-164(b1)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">5</a>
		G.S. 58-3-150(h)	I	Consistent		<a href="#">7</a>
HB 224	Assault w/ Firearm on LEO/Increase Punishment [Ed. 2]	G.S. 14-34.5(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	<a href="#">8</a>

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 228	Modernize Laws Pertaining to NC Medical Board-AB [Ed. 3]	G.S. 14-27.33A(b)	C	Consistent		<a href="#">10</a>
HB 283	Conner's Law [Ed. 3]	G.S. 14-34.5(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	<a href="#">11</a>
		G.S. 14-34.6(b)	G	Inconsistent	Would be consistent with a Class F felony.	<a href="#">13</a>
		G.S. 14-34.6(c)	E	Consistent		<a href="#">15</a>
HB 312	Hate Crimes Prevention Act [Ed. 1]	G.S. 14-34.11(b)	F	Consistent		<a href="#">16</a>
		G.S. 14-34.11(d)(1)	E	Inconsistent	Would be consistent with a Class B felony.	<a href="#">17</a>
		G.S. 14-34.11(d)(2)	E	Consistent		<a href="#">18</a>
HB 342	Strengthen Human Trafficking Laws [Ed. 1]	G.S. 14-43.13(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	<a href="#">19</a>
		G.S. 14-43.13(a)	C	Consistent		<a href="#">20</a>
		G.S. 14-190.16(a)	B2	Consistent		<a href="#">21</a>
		G.S. 14-190.17(a)	C	Consistent		<a href="#">22</a>
		G.S. 14-190.17A(a)	D	Inconsistent	Would be consistent with a Class F felony.	<a href="#">23</a>
		G.S. 14-43.11(a)	C	Consistent		<a href="#">24</a>
		G.S. 14-43.11(a)	B2	Consistent		<a href="#">25</a>

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Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 14-43.13(a)	D	Inconsistent	Would be consistent with a Class C or F felony.	<a href="#">26</a>
		G.S. 14-43.13(a)	C	Consistent		<a href="#">27</a>
		G.S. 14-208.1(b)	G	Inconsistent	Would be consistent with a Class F or H felony.	<a href="#">28</a>
HB 374	Sex Offender/Expand Residential Restriction [Ed. 1]	G.S. 14-208.16(a)	G	Consistent		<a href="#">29</a>
HB 380	Aerial Adventure Courses/Sanders' Law [Ed. 2]	G.S. 95-112.14(h)	E	Consistent		<a href="#">30</a>
		G.S. 95-112.14(h)	E	Consistent		<a href="#">31</a>
HB 425	Increase and Expand Assault on/Resist of LEO [Ed. 3]	G.S. 14-34.7(a)	E	Consistent		<a href="#">32</a>
		G.S. 14-223(a)(1)	E	Consistent		<a href="#">33</a>
HB 474	Death by Distribution [Ed. 1]	G.S. 14-18.4(b)	C	Inconsistent	Would be consistent with a Class E felony.	<a href="#">34</a>
		G.S. 14-18.4(c)	B2	Inconsistent	Would be consistent with a Class E felony.	<a href="#">35</a>
HB 498	NC Constitutional Carry Act [Ed. 1]	G.S. 14-415.35(d)	H	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	<a href="#">37</a>
HB 507	Animal Fights/Criminalize Attendance of Minor [Ed. 1]	G.S. 14-362	I	Consistent		<a href="#">38</a>
		G.S. 14-362.2	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">39</a>

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 540	Drug Trafficking/Judicial Discretion & Study [Ed. 1]	G.S. 90-95(h)(5a)	Departure	N/A	Drug trafficking offenses are not sentenced under Structured Sentencing.	<a href="#">40</a>
HB 546	Prohibit Counterfeit/Nonfunctional Airbags [Ed. 3]	G.S. 20-136.2(a)	H	Consistent		<a href="#">42</a>
HB 577	Limit Ownership of Certain Animals [Ed. 1]	G.S. 19A-77(b)	I	Consistent		<a href="#">44</a>
HB 596	Child Sex Abuse/Strengthen Laws [Ed. 1]	G.S. 14-202.5	G	Inconsistent	Would be consistent with a Class H or I felony.	<a href="#">45</a>
		G.S. 14-208.11(a)	F	Consistent		<a href="#">46</a>
HB 603	Pain Capable Unborn Child Protection Act [Ed. 1]	G.S. 90-21.133(a)	D	Inconsistent	Would be consistent with a Class H or I felony.	<a href="#">47</a>
HB 606	Arson Law Revisions [Ed. 1]	G.S. 14-62.3(b)	D	Consistent		<a href="#">49</a>
		G.S. 14-62.3(c)	E	Inconsistent	Would be consistent with a Class G felony.	<a href="#">50</a>
HB 633	Strengthen Criminal Gang Laws [Ed. 1]	G.S. 15A-1340.16E(b)(ii)	Enhancement	Inconsistent		<a href="#">51</a>
		G.S. 14-269.9(c)(1)	D	Inconsistent		<a href="#">53</a>
		G.S. 14-269.9(c)(2)	F	Inconsistent		<a href="#">54</a>
		G.S. 14-269.9(c)(3)	H	Inconsistent		<a href="#">55</a>
		G.S. 14-269.10(b)	G	Inconsistent	Would be consistent with a Class F or H felony.	<a href="#">56</a>

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Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 14-415.1(a)(1)	D	Consistent		<a href="#">58</a>
		G.S. 14-415.1(a)(2)	D	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	<a href="#">59</a>
		G.S. 14-415.1(a)(3)	F	Consistent		<a href="#">60</a>
HB 641	Modifications to Various DPS Provisions [Ed. 1]	G.S. 14-258.4(b)	I	Inconsistent	Structured Sentencing establishes minimum and maximum sentences based on the offense class and prior record level.	<a href="#">61</a>
		G.S. 14-258.4(c)	H	Inconsistent	Structured Sentencing establishes minimum and maximum sentences based on the offense class and prior record level.	<a href="#">62</a>
HB 688	ENOUGH/Gaming Machines [Ed. 1]	G.S. 14-309(b)	H	Consistent		<a href="#">63</a>
		G.S. 14-309(b)	G	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	<a href="#">64</a>
		G.S. 14-309(c)	H	Consistent		<a href="#">65</a>
		G.S. 14-309(c)	G	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	<a href="#">66</a>
		G.S. 14-309(c)	H	Consistent		<a href="#">67</a>
HB 740	Ending NC's Involvement in Torture [Ed. 1]	G.S. 14-34.11(b)	E	Consistent		<a href="#">68</a>
		G.S. 14-34.11(c)	F	Consistent		<a href="#">69</a>
HB 744		G.S. 18B-302.1(b1)	I	Inconsistent		<a href="#">70</a>

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
	Provide Minor Alcohol/Felony if Death Results [Ed. 1]	G.S. 18B-302.1(b1)	I	Inconsistent		<a href="#">71</a>
		G.S. 18B-302.1(b1)	I	Inconsistent		<a href="#">72</a>
HB 775	Juveniles/Eliminate LWOP/Parole Eligibility [Ed. 1]	G.S. 15A-1340.19B(a)	Parole Eligible	Consistent		<a href="#">73</a>
		G.S. 15A-1340.19B(b)	Parole Eligible	Inconsistent		<a href="#">74</a>
HB 778	Protect Public Dangerous Animals/End Animals Cruelty [Ed. 1]	G.S. 19A-77(b)	I	Consistent		<a href="#">75</a>
HB 842	Register Assault Weapon & Report Lost Firearm [Ed. 1]	G.S. 14-409.13	I	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	<a href="#">76</a>
HB 879	End of Life Option Act [Ed.1]	G.S. 90-326.15(a)	Unclassified	Inconsistent	Under Structured Sentencing, an offense is assigned to an offense class based on the harm that reasonably tends to result or does result from the conduct.	<a href="#">77</a>
		G.S. 90-326.15(b)	Unclassified	Inconsistent		<a href="#">78</a>
		G.S. 90-326.15(b)	Unclassified	Inconsistent		<a href="#">79</a>
HB 921	Provide Minor Alcohol/Felony if Death Results [Ed. 1]	G.S. 18B-302.1(b1)	I	Inconsistent		<a href="#">70</a>
		G.S. 18B-302.1(b1)	I	Inconsistent		<a href="#">71</a>
		G.S. 18B-302.1(b1)	I	Inconsistent		<a href="#">72</a>
SB 20	Emergency Worker Protection Act [Ed. 2]	G.S. 14-34.2(a)	E	Consistent		<a href="#">80</a>
		G.S. 14-34.2(b)	D	Inconsistent	Would be consistent with a Class E felony.	<a href="#">81</a>

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Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 14-34.5(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	<a href="#">82</a>
		G.S. 14-34.5(a1)	D	Inconsistent	Would be consistent with a Class C or E felony.	<a href="#">83</a>
		G.S. 14-34.5(b)	D	Inconsistent	Would be consistent with a Class C or E felony.	<a href="#">84</a>
		G.S. 14-34.6(b)	G	Inconsistent	Would be consistent with a Class F felony.	<a href="#">85</a>
		G.S. 14-34.6(c)	E	Consistent		<a href="#">86</a>
		G.S. 14-34.7(a)	E	Consistent		<a href="#">87</a>
		G.S. 14-34.7(a1)	E	Consistent		<a href="#">88</a>
		G.S. 14-34.7(b)	E	Consistent		<a href="#">89</a>
		G.S. 14-34.7(c)	H	Consistent		<a href="#">90</a>
		G.S. 14-288.9(c)	H	Consistent		<a href="#">91</a>
		G.S. 14-288.9(c)	E	Inconsistent	Would be consistent with a Class F felony.	<a href="#">92</a>
		G.S. 14-31(b)	D	Inconsistent		<a href="#">93</a>
SB 151	Break or Enter Pharmacy/Increase Penalty [Ed. 3]	G.S. 14-54.2(b)	E	Inconsistent	Would be consistent with a Class F or H felony.	<a href="#">94</a>

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
SB 178	Modernize Laws Pertaining to NC Medical Board-AB [Ed. 1]	G.S. 14-27.33A(b)	C	Consistent		<a href="#">10</a>
SB 199	Child Sex Abuse/Strengthen Laws [Ed. 3]	G.S. 14-202.5	H	Consistent		<a href="#">95</a>
		G.S. 14-208.11(a)	F	Consistent		<a href="#">96</a>
SB 209	Hate Crimes Prevention Act [Ed. 1]	G.S. 14-34.11(b)	F	Consistent		<a href="#">16</a>
		G.S. 14-34.11(d)(1)	E	Inconsistent	Would be consistent with a Class B felony.	<a href="#">17</a>
		G.S. 14-34.11(d)(2)	E	Consistent		<a href="#">18</a>
SB 211	Insurance Technical Changes [Ed. 1]	G.S. 58-2-161(c)(2)	H	Consistent		<a href="#">2</a>
		G.S. 58-2-161(c)(3)	E	Inconsistent	Would be consistent with a Class F felony.	<a href="#">3</a>
		G.S. 58-2-161(c)(4)	C	Consistent		<a href="#">4</a>
		G.S. 58-2-164(b1)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">5</a>
		G.S. 58-3-150(h)	I	Consistent		<a href="#">7</a>
SB 306	Conner's Law [Ed. 1]	G.S. 14-34.5(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	<a href="#">11</a>
SB 315	North Carolina Farm Act of 2019 [Ed. 1]	G.S. 106-568.66(a)	I	N/A	The Offense Classification Criteria were not used in the classification of the drug offenses.	<a href="#">97</a>
SB 322		G.S. 58-2-161(c)(2)	H	Consistent		<a href="#">2</a>

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	Insurance Fraud Prevention Amendments [Ed. 1]	G.S. 58-2-161(c)(3)	E	Inconsistent	Would be consistent with a Class F felony.	<a href="#">3</a>
		G.S. 58-2-161(c)(4)	C	Consistent		<a href="#">4</a>
		G.S. 58-2-164(b1)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">5</a>
		G.S. 58-3-150(h)	I	Consistent		<a href="#">7</a>
SB 327	Timber Larceny/Strengthen Laws [Ed. 1]	G.S. 14-135(a)(1)	E	Inconsistent	Would be consistent with a Class H felony.	<a href="#">98</a>
		G.S. 14-135(a)(2)	E	Inconsistent	Would be consistent with a Class H felony.	<a href="#">99</a>
SB 357	Limit Ownership of Certain Animals [Ed. 1]	G.S. 19A-77(b)	I	Consistent		<a href="#">100</a>
SB 359	Born-Alive Abortion Survivors Protection Act [Ed. 1]	G.S. 90-21.135(a)	D	Inconsistent	Would be consistent with a Class H or I felony.	<a href="#">101</a>
		G.S. 90-21.135(a)	D	Inconsistent	Would be consistent with a Class H felony.	<a href="#">102</a>
		G.S. 90-21.135(b)	Punished as G.S. 14-17(c)	Consistent		<a href="#">103</a>
SB 375	Death by Distribution [Ed. 2]	G.S. 14-18.4(b)	C	Inconsistent	Would be consistent with a Class E felony.	<a href="#">104</a>
		G.S. 14-18.4(c)	B2	Inconsistent	Would be consistent with a Class E felony.	<a href="#">105</a>
SB 404	North Carolina First Step Act [Ed. 1]	G.S. 90-95(h)(5a)	Departure	N/A	Drug trafficking offenses are not sentenced under Structured Sentencing.	<a href="#">107</a>

<b>Bill</b>	<b>Short Title</b>	<b>Provision</b>	<b>Proposal</b>	<b>Finding</b>	<b>Commentary</b>	<b>Page</b>
SB 442	Drug Trafficking/Judicial Discretion & Study [Ed. 1]	G.S. 90-95(h)(5a)	Departure	N/A	Drug trafficking offenses are not sentenced under Structured Sentencing.	<a href="#">40</a>
SB 482	The Haiden Prevatte Act [Ed. 1]	G.S. 67-4.3	I	Consistent		<a href="#">108</a>
SB 547	Pain Capable Unborn Child Protection Act [Ed. 1]	G.S. 90-21.133(a)	D	Inconsistent	Would be consistent with a Class H or I felony.	<a href="#">47</a>
SB 589	Prohibit Counterfeit/Nonfunctional Air Bags [Ed. 1]	G.S. 20-136.2	H	Consistent	Would also be consistent with a Class I felony.	<a href="#">109</a>
SB 631	Arson Law Revisions [Ed. 1]	G.S. 14-62.3(b)	D	Consistent		<a href="#">49</a>
		G.S. 14-62.3(c)	E	Inconsistent	Would be consistent with a Class G felony.	<a href="#">50</a>

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

<b>BILL NUMBER/SHORT TITLE:</b>	HB 138 – Damage Jail & Prison Fire Sprinkler/Penalty [Ed. 2]
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**STATUTE**

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

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**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.

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**PROPOSED OFFENSE CLASS**

Class H felony.

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**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.

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)).

Willfully interfering with, damaging, defacing, molesting, or injuring any part or portion of any fire-alarm, fire-detection, smoke-detection or fire-extinguishing system [not in a prison or local confinement facility] is a Class 2 misdemeanor (G.S. 14-286).

The Sentencing Commission reviewed an earlier version of this provision in March 2019 and found it to be consistent with the Offense Classification Criteria for a Class I felony.

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**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 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 220 – Insurance Technical Changes.-AB [Ed. 1]/ HB 222 – Modify Crim Penalties/NAIC Fraud Act-AB. [Ed. 2]/ SB 211 Insurance Technical Changes [Ed. 1]/ SB 322 Insurance Fraud Prevention Amendments [Ed. 1]
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**STATUTE**

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§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.

**DESCRIPTION**

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Subsection (c)(2):

A person who

1. with the intent to injure, defraud, or deceive an insurer or insurance claimant,
2. does any of the following
  - a. presents or causes to be presented a written or oral statement, including computer-generated documents as part of, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material for the claim or
  - b. assists or abets another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the claim
3. and the value of the claim for payment or other benefit sought is one thousand dollars (\$1,000) or more.

**PROPOSED OFFENSE CLASS**

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Class H felony.

**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.

This offense is currently a Class H felony regardless of the value of the claim (G.S. 58-2-161(b)).

**FINDINGS**

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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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 220 – Insurance Technical Changes.-AB [Ed. 1]/ HB 222 – Modify Crim Penalties/NAIC Fraud Act-AB. [Ed. 1]/ SB 211 Insurance Technical Changes [Ed. 1]/ SB 322 Insurance Fraud Prevention Amendments [Ed. 1] (cont'd)
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**STATUTE**

§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.

**DESCRIPTION**

Subsection (c)(3):

A person who

1. with the intent to injure, defraud, or deceive an insurer or insurance claimant,
2. does any of the following
  - a. presents or causes to be presented a written or oral statement, including computer-generated documents as part of, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material for the claim or
  - b. assists or abets another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the claim
3. and the value of the claim for payment or other benefit sought is fifty thousand dollars (\$50,000) or more.

**PROPOSED OFFENSE CLASS**

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.

This offense is currently a Class H felony regardless of the value of the claim (G.S. 58-2-161(b)).

**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 220 – Insurance Technical Changes.-AB [Ed. 1]/ HB 222 – Modify Crim Penalties/NAIC Fraud Act-AB. [Ed. 1]/ SB 211 Insurance Technical Changes [Ed. 1]/ SB 322 Insurance Fraud Prevention Amendments [Ed. 1] (cont'd)
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**STATUTE**

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§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.

**DESCRIPTION**

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Subsection (c)(4):

A person who

1. with the intent to injure, defraud, or deceive an insurer or insurance claimant,
2. does any of the following
  - a. presents or causes to be presented a written or oral statement, including computer-generated documents as part of, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material for the claim or
  - b. assists or abets another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the claim
3. and the value of the claim for payment or other benefit sought is one hundred thousand dollars (\$100,000) or more.

**PROPOSED OFFENSE CLASS**

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Class C felony.

**ANALYSIS**

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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.

This offense is currently a Class H felony regardless of the value of the claim (G.S. 58-2-161(b)).

**FINDINGS**

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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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 220 – Insurance Technical Changes.-AB [Ed. 1]/ HB 222 – Modify Crim Penalties/NAIC Fraud Act-AB. [Ed. 1]/ SB 211 Insurance Technical Changes [Ed. 1]/ SB 322 Insurance Fraud Prevention Amendments [Ed. 1] (cont'd)
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**STATUTE**

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§ 58-2-164. Rate evasion fraud; prevention programs.

**DESCRIPTION**

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Subsection (b1):

A person who

1. with the intent to deceive an insurer,
2. does any of the following
  - a. presents or causes to be presented a written or oral statement in support of an application for issuance of or amendment to a policy of auto insurance, knowing that the statement contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk or
  - b. assists or abets another person to prepare or make any written or oral statement that is intended to be presented to an insurer in connection with or in support of an application for issuance of or amendment to a policy of auto insurance, if the person knows that the statement contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk and
3. such violation is committed with respect to an application for insurance or amendment to a policy of auto insurance for more than one passenger vehicle.

**PROPOSED OFFENSE CLASS**

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Class H felony.

**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.

This offense is currently a Class 3 misdemeanor. This bill reclassifies the offense to a Class 1 misdemeanor if it is committed with respect to one passenger vehicle. It is a Class H felony for any person to commit such violation for the purpose of obtaining auto insurance covering one or more vehicles, the operation of which requires a Commercial Drivers License (G.S. 58-2-164(b1)).

The Sentencing Commission reviewed a substantially similar offense in May 2007 in HB 729/SB 795 and found it to be inconsistent with the Offense Classification Criteria for a Class H felony.

## **FINDINGS**

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- 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 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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 220 – Insurance Technical Changes.-AB [Ed. 1]/ HB 222 – Modify Crim Penalties/NAIC Fraud Act-AB. [Ed. 1]/ SB 211 Insurance Technical Changes [Ed. 1]/ SB 322 Insurance Fraud Prevention Amendments [Ed. 1] (cont'd)
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**STATUTE**

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§ 58-3-150. Forms to be approved by Commissioner.

**DESCRIPTION**

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Subsection (h):

A person who

1. with the intent to injure, defraud, or deceive,
2. prepares, issues, or requests
3. a certificate of insurance that
  - a. has not been filed with and approved by the Commissioner,
  - b. contains any false or misleading information concerning the policy of insurance to which the certificate of insurance makes reference, or
  - c. purports to alter, amend, or extend the coverage provided by the policy of insurance to which the certificate of insurance makes reference
4. where the value of the certificate of insurance is five thousand dollars (\$5,000) or more.

**PROPOSED OFFENSE CLASS**

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Class I felony.

**ANALYSIS**

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

Violation of this offense is a Class 1 misdemeanor if the value of the certificate of insurance is less than five thousand dollars (\$5,000).

**FINDINGS**

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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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 224 – Assault w/ Firearm on LEO/Increase Punishment [Ed. 2]
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**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 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 a law enforcement officer, probation officer, or parole office while the officer is in the performance of his or her duties is currently a Class E felony (G.S. 14-34.5(a)). In March 2019 the Sentencing Commission reviewed a provision of this bill which would change the class of that offense to a Class D felony. The Commission found that provision to be inconsistent with the Offense Classification Criteria for a Class D felony but found that it would be consistent with the Offense Classification Criteria for a Class C or E felony.

Assault with a firearm on a member of the North Carolina National Guard while the member is in the performance of his or her duties is a Class E felony (G.S. 14-34.5(a1)). This bill does not propose changing the class of that offense.

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The Sentencing Commission reviewed an identical provision in March 2019 in SB 20 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.

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## FINDINGS

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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 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 228/SB 178 – Modernize Laws Pertaining to NC Medical Board.-AB [Ed. 3/Ed. 1]
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**STATUTE**

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§ 14-27.33A. Sexual contact or penetration under pretext of medical treatment.

**DESCRIPTION**

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Subsection (b):

A person who

1. Undertakes medical treatment of a patient and
2. a. represents to the patient that sexual contact between the person and the patient is necessary or will be beneficial to the patient's health and induces the patient to engage in sexual contact with the person by means of the representation,  
b. represents to the patient that sexual penetration between the person and the patient is necessary or will be beneficial to the patient's health and induces the patient to engage in sexual penetration with the person by means of the representation,  
c. engages in sexual contact with the patient while the patient is incapacitated, or  
d. engages in sexual penetration with the patient while the patient is incapacitated.

**PROPOSED OFFENSE CLASS**

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Class C felony.

**ANALYSIS**

---

The Sentencing Commission has 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.

First-degree forcible rape/sexual offense are Class B1 felonies (G.S. 14-27.21, G.S. 14-27.26).

Second-degree forcible rape/sexual offense are Class C felonies (G.S. 14-27.22, G.S. 14-27.27).

Sexual battery is a Class A1 misdemeanor (G.S. 14-27.33).

**FINDINGS**

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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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 283 [Ed. 3] / SB 306 [Ed. 1] – Conner’s Law
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**STATUTE**

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§ 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**

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**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 a member of the North Carolina National Guard while the member is in the performance of his or her duties is a Class E felony (G.S. 14-34.5(a1)). This bill does not propose changing the class of that offense. Assault with a firearm on 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 the employee’s duties is a Class E felony (G.S. 14-34.5(b)). This bill does not propose changing the class of that offense. 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 March 2019 in HB 224 and SB 20 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

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- 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 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 283 – Conner’s Law [Ed. 3] (cont’d)
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**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. causing physical injury
3. on any of the following persons who are discharging or attempting to discharge their official duties:
  - a. an emergency medical technician or other emergency health care provider
  - b. a medical responder
  - c. hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient
  - d. a firefighter
  - e. hospital security personnel
4. and either
  - 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 (loss from the person or the person’s dwelling) as Class G felonies.

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.

Assault inflicting serious bodily injury is a Class F felony (G.S. 14-32.4(a)). Assault with a deadly weapon is a Class A1 misdemeanor (G.S. 14-33(c)(1)). Assault with a deadly weapon inflicting serious injury is a Class E felony (G.S. 14-32(b)). Certain assaults on a law enforcement, probation, or parole officer or on a member of the NC National Guard, or on a person employed at a State or local detention facility that inflict serious bodily injury are Class F felonies (G.S. 14-34.7(a), (a1), (b)).

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.

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Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers is a Class F felony (G.S. 14-34.2).

The Sentencing Commission reviewed a substantially similar provision in April 2017 in HB 492 and found it to be consistent with the Offense Classification Criteria for a Class F felony.

## **FINDINGS**

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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:** 04/26/19

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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:** HB 283 – Conner’s Law [Ed. 3] (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. causing physical injury
3. on any of the following persons who are discharging or attempting to discharge their official duties:
  - a. an emergency medical technician or other emergency health care provider
  - b. a medical responder
  - c. hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient
  - d. a firefighter
  - e. hospital security personnel
4. and uses a firearm.

**OFFENSE CLASS**

**CURRENT:** Class F felony.

**PROPOSED:** Class E felony.

**ANALYSIS**

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

Assault inflicting serious bodily injury is a Class F felony (G.S. 14-32.4(a)). Assault with a deadly weapon is a Class A1 misdemeanor (G.S. 14-33(c)(1)). Assault with a deadly weapon inflicting serious injury is a Class E felony (G.S. 14-32(b)). Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers is a Class F felony (G.S. 14-34.2). Assault with a firearm on a law enforcement officer, 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 is a Class E felony (G.S. 14-34.5).

The Sentencing Commission reviewed a substantially similar provision in April 2017 in HB 492 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 312/SB 209 – Hate Crimes Prevention Act [Ed. 1]
---------------------------------	--

**STATUTE**

---

§ 14-34.11. Felonious assault as a hate crime.

**DESCRIPTION**

---

Subsection (b):

A person who

1. (a) assaults another person and inflicts serious bodily injury to the person or  
(b) attempts to assault a person and inflict serious bodily injury to the person
2. because of the actual or perceived race, ethnicity, color, religion, nationality, country of origin, gender, gender identity, gender expression, disability, or sexual orientation of that person.

**PROPOSED OFFENSE CLASS**

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Class F felony.

**ANALYSIS**

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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 inflicting serious bodily injury is a Class F felony (G.S. 14-32.4). Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death, or that causes 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.

It is currently an aggravating factor if the offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin (G.S. 15A-1340.16(d)(17)).

Unless another classification is explicitly stated by statute, a felony attempt is punished at one class lower than the offense the offender attempted to commit (G.S. 14-2.5). In *State v. Floyd*, the NC Supreme Court held that attempted assault is a crime. See 2016 N.C. LEXIS 1130.

The Sentencing Commission reviewed an identical provision in June 2018 in SB 794 and found it to be consistent with the Offense Classification Criteria for a Class F felony.

**FINDINGS**

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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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 312/SB 209 – Hate Crimes Prevention Act [Ed. 1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 14-34.11. Felonious assault as a hate crime.

**DESCRIPTION**

---

Subsection (d)(1):

A person who

1. (a) assaults another person and inflicts serious bodily injury to the person or  
(b) attempts to assault a person and inflict serious bodily injury to the person
2. because of the actual or perceived race, ethnicity, color, religion, nationality, country of origin, gender, gender identity, gender expression, disability, or sexual orientation of that person and
3. death results from the offense.

**PROPOSED OFFENSE CLASS**

---

Class E felony.

**ANALYSIS**

---

The Sentencing Commission classified offenses which result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

Voluntary manslaughter is a Class D felony (G.S. 14-18).

Involuntary manslaughter is a Class F felony (G.S. 14-18).

The Sentencing Commission reviewed an identical provision in June 2018 in SB 794 and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class E felony. The Commission noted that the provision would be consistent with the Homicide Offense Classification Criteria for a Class B felony. The Sentencing Commission recommends classifying offenses which result in an intentional killing with malice as Class B felonies.

**FINDINGS**

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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 B felony. The Sentencing Commission recommends classifying offenses which result in an intentional killing with malice as Class B felonies.

**DATE OF REVIEW:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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 312/SB 209 – Hate Crimes Prevention Act [Ed. 1] (cont'd)

**STATUTE**

§ 14-34.11. Felonious assault as a hate crime.

**DESCRIPTION**

Subsection (d)(2):

A person who

1. (a) assaults another person and inflicts serious bodily injury to the person or  
(b) attempts to assault a person and inflict serious bodily injury to the person
2. because of the actual or perceived race, ethnicity, color, religion, nationality, country of origin, gender, gender identity, gender expression, disability, or sexual orientation of that person and
3. the offense includes a violation or attempted violation of any of the following:
  - a. G.S. 14-39 (kidnapping).
  - b. G.S. 14-27.21 (first degree forcible rape).
  - c. G.S. 14-27.22 (second degree forcible rape).
  - d. G.S. 14-27.26 (first degree forcible sexual offense).
  - e. G.S. 14-27.27 (second degree forcible sexual offense).

**PROPOSED OFFENSE CLASS**

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.

Assault inflicting serious bodily injury is a Class F felony (G.S. 14-32.4). Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death, or that causes 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. It is currently an aggravating factor if the offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin (G.S. 15A-1340.16(d)(17)).

Unless another classification is explicitly stated by statute, a felony attempt is punished at one class lower than the offense the offender attempted to commit (G.S. 14-2.5). In State v. Floyd, the NC Supreme Court held that attempted assault is a crime. See 2016 N.C. LEXIS 1130.

The Sentencing Commission reviewed an identical provision in June 2018 in SB 794 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws. [Ed. 1]
---------------------------------	---

**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 purpose 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. The Sentencing Commission reviewed an identical provision in March 2019 in HB 198 and found it to be inconsistent with the Offense Classification Criteria for a Class D felony. The Commission found that it 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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws. [Ed. 1] (cont'd)
---------------------------------	--

**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 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 an identical provision in March 2019 in HB 198 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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws. [Ed. 1] (cont'd)
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**STATUTE**

§ 14-190.16. First degree sexual exploitation of a minor.

**DESCRIPTION**

Subsection (a):

A person who

1. uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
2. permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
3. transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
4. records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

**OFFENSE CLASS**

**CURRENT:** Class C felony.

**PROPOSED:** Class B2 felony.

**ANALYSIS**

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

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.

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

Note: Offenses are classified based on the harm that results from the conduct. The harm addressed in the fourth element of this offense—records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity—is substantially similar to the harm in the first element of Second degree sexual exploitation of a minor.

**DATE OF REVIEW:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws. [Ed. 1] (cont'd)
---------------------------------	--

**STATUTE**

---

§ 14-190.17. Second degree sexual exploitation of a minor.

**DESCRIPTION**

---

Subsection (a):

A person who

1. records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or
2. distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

**OFFENSE CLASS**

---

**CURRENT:** Class E felony.

**PROPOSED:** 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.

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

**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws. [Ed. 1] (cont'd)
---------------------------------	--

**STATUTE**

---

§ 14-190.17A. Third degree sexual exploitation of a minor.

**DESCRIPTION**

---

Subsection (a):

A person who

1. knowing the character or content of the material
2. possesses material that contains a visual representation of a minor engaging in sexual activity.

**OFFENSE CLASS**

---

**CURRENT:** Class H 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 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.

**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws [Ed. 1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 14-43.11. Human trafficking.

**DESCRIPTION**

---

Subsection (a):

A person who

1. knowingly or in reckless disregard of the consequences of the action recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude
2. knowingly or in reckless disregard of the consequences of the action benefits financially or by receiving anything of value from the services of another person the person knows is being held in involuntary servitude or sexual servitude, and
3. the victim is an adult.

**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 currently a Class C felony to knowingly or in reckless disregard of the consequences of the action to recruit, entice, harbor, transport, provide, or obtain by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude when the victim is an adult.

**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws [Ed. 1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 14-43.11. Human trafficking.

**DESCRIPTION**

---

Subsection (a):

A person who

1. knowingly or in reckless disregard of the consequences of the action recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude,
2. willfully or in reckless disregard of the consequences of the action causes a minor to be held in involuntary servitude or sexual servitude, or
3. knowingly or in reckless disregard of the consequences of the action benefits financially or by receiving anything of value from the services of another person the person knows is being held in involuntary servitude or sexual servitude, and
4. the victim is a minor or the person believed the victim of the offense was a minor.

**PROPOSED OFFENSE CLASS**

---

Class B2 felony.

**ANALYSIS**

---

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

It is currently a Class B2 felony to knowingly or in reckless disregard of the consequences of the action to recruit, entice, harbor, transport, provide, or obtain by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude when the victim is a minor or to willfully or in reckless disregard of the consequences of the action cause a minor to be held in involuntary servitude or sexual servitude.

**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws [Ed. 1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 14-43.13. Sexual servitude.

**DESCRIPTION**

---

Subsection (a):

A person who

1. knowingly or in reckless disregard of the consequences of the action subjects, maintains, or obtains another for the purpose of sexual servitude or
2. knowingly or in reckless disregard of the consequences of the action benefits financially or by receiving anything of value from the services of another person the person knows is being subjected to or maintained in sexual servitude and
3. 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(a)).

**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 F felony. 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. 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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws [Ed. 1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 14-43.13. Sexual servitude.

**DESCRIPTION**

---

Subsection (a):

A person who

1. knowingly or in reckless disregard of the consequences of the action subjects, maintains, or obtains another for the purpose of sexual servitude or
2. knowingly or in reckless disregard of the consequences of the action benefits financially or by receiving anything of value from the services of another person the person knows is being subjected to or maintained in sexual servitude and
3. the victim is a minor or the person believed the victim of the offense was 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(a)).

**FINDINGS**

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- 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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

<b>BILL NUMBER/SHORT TITLE:</b>	HB 342 – Strengthen Human Trafficking Laws [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.

The Sentencing Commission reviewed an identical provision in March 2019 in HB 198 and found it to be inconsistent with the Offense Classification Criteria for a Class G felony. This provision would be consistent with the Offense Classification Criteria for a Class F felony or 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 personal injury or significant societal injury as Class H felonies.

**DATE OF REVIEW:** 04/26/19

**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 28 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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 374 – Sex Offender/Expand Residential Restriction. [Ed. 1]
---------------------------------	---

**STATUTE**

§ 14-208.16. Residential restrictions.

**DESCRIPTION**

Subsection (a):

A person who

1. is a registrant under Article 27A of Chapter 14 of the General Statutes and
2. knowingly resides within 1,000 feet of the property on which any public or nonpublic school, child care center, or organized residential youth camp is located.

**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.

It is a Class G felony for any registered sex offender to knowingly reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located.

The Sentencing Commission reviewed an earlier version of the current offense in June 2006 in HB 1896 and found it to be consistent with the Offense Classification Criteria for a Class F felony. The offense was not reviewed as ratified; it was amended after the review date and classified as a Class G 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 380 – Aerial Adventure Courses/Sanders’ Law [Ed. 2]
---------------------------------	--

**STATUTE**

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§ 95-112.14. Violations; civil penalties; appeal; criminal penalties.

**DESCRIPTION**

---

Subsection (h):

A person who

1. willfully violates any provision of Article 14C of Chapter 95 of the General Statutes, Aerial Adventure Course Safety, and
2. that violation causes the serious injury of any person.

**PROPOSED OFFENSE CLASS**

---

Class E felony.

**ANALYSIS**

---

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

A willful violation of Article 14B of Chapter 9, the Amusement Device Safety Act of North Carolina, causing serious injury to any person is a Class E felony (G.S. 95-111.13(j)).

The Sentencing Commission reviewed a substantially similar provision in April 2017 in HB 196 and found it to be consistent with the Offense Classification Criteria for a Class E felony.

**FINDINGS**

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- 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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 380 – Aerial Adventure Courses/Sanders’ Law [Ed. 2]
---------------------------------	--

**STATUTE**

---

§ 95-112.14. Violations; civil penalties; appeal; criminal penalties.

**DESCRIPTION**

---

Subsection (h):

A person who

1. willfully violates any provision of Article 14C of Chapter 95 of the General Statutes, Aerial Adventure Course Safety, and
2. that violation causes the death of any person.

**PROPOSED OFFENSE CLASS**

---

Class E felony.

**ANALYSIS**

---

The Commission classified offenses which result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

A willful violation of Article 14B of Chapter 9, the Amusement Device Safety Act of North Carolina, causing death to any person is a Class E felony (G.S. 95-111.13(j)).

Second-degree murder is a Class B1 or B2 felony (G.S. 14-17(b)). Voluntary manslaughter is a Class D felony (G.S. 14-18). Involuntary manslaughter is a Class F felony (G.S. 14-18). Assault inflicting serious injury is a Class A1 misdemeanor (G.S. 14-33(c)(1)). Assault inflicting serious bodily injury is a Class F felony (G.S. 14-32.4).

Nothing in this section would prevent a prosecutor from proceeding against a person who violates this Article on a prosecution charging any degree of willful or culpable homicide (G.S. 95-112.14(i)).

The Sentencing Commission reviewed a substantially similar provision in April 2017 in HB 196 and found it to be consistent with the Homicide Offense Classification Criteria for a Class E felony.

**FINDINGS**

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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.

**DATE OF REVIEW:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 425 – Increase and Expand Assault on/Resist of LEO [Ed. 3]
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**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 an identical provision in March 2019 in SB 20 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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 425 – Increase and Expand Assault on/Resist of LEO [Ed. 3] (cont'd)
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**STATUTE**

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§ 14-223. Resisting officers.

**DESCRIPTION**

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Subdivision (a)(1):

A person who

1. willfully and unlawfully
2. resists, delays, or obstructs
3. a public officer
4. in discharging or attempting to discharge a duty of his or her office and
5. inflicts serious bodily injury on the officer.

**PROPOSED OFFENSE CLASS**

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Class E felony.

**ANALYSIS**

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

It is currently a Class 2 misdemeanor to resist, obstruct, or delay a public officer in discharging or attempting to discharge a duty of his or her office (G.S. 14-223).

It is a Class F felony to assault a law enforcement officer while the officer is discharging or attempting to discharge his or her official duties and inflict serious bodily injury on the officer (G.S. 14-34.7(a)).

**FINDINGS**

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



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



Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 474 – Death by Distribution. [Ed. 1]
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**STATUTE**

§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

**DESCRIPTION**

Subsection (b):

A person who

1. unlawfully distributed at least one certain controlled substance to the victim,
2. the ingestion of the certain controlled substance or substances caused the death of the user,
3. the person's unlawful distribution of the certain controlled substance or substances was a proximate cause of the victim's death, and
4. the person did not act with malice.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

The Sentencing Commission did not recommend classifying homicide offenses as Class C felonies.

For the purposes of this section, the term "certain controlled substance" includes any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, or opioid; cocaine or any other substance described in G.S. 90-90(1)(d); methamphetamine; a depressant described in G.S. 90-92(a)(1); or a mixture of one or more of these substances.

Currently, it is second degree murder if a death was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user. It is a Class B2 felony (G.S. 14-17(b)(2)). In State v. Liner, the Court of Appeals held that the State was required to prove the element of malice in order to support a charge of second degree murder in the context of a death resulting from the delivery of controlled substances. See 98 N.C. App. 600 (1990).

The Sentencing Commission reviewed a substantially similar provision in draft form in June 2018 and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class C felony. It would be consistent with the Homicide 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.

This offense would be consistent with the Homicide Offense Classification Criteria for a Class E felony. The Sentencing Commission classified offenses which result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

**DATE OF REVIEW: 04/26/19**

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 474 – Death by Distribution. [Ed. 1] (cont'd)
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**STATUTE**

§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

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**DESCRIPTION**

Subsection (c):

A person who

1. unlawfully distributed at least one certain controlled substance to the victim,
2. the ingestion of the certain controlled substance or substances caused the death of the user,
3. the person's unlawful distribution of the certain controlled substance or substances was a proximate cause of the victim's death,
4. the person did not act with malice, and
5. the person has a previous conviction under this section, G.S. 91-95(a)(1), 90-95(e)(5), 90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95, or a prior conviction in any federal or state court in the United States that is substantially similar to an offense listed, within seven years of the date of the offense (excluding any period of time during which the person was incarcerated in a local, state, or federal detention center, jail, or prison).

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**PROPOSED OFFENSE CLASS**

Class B2 felony.

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**ANALYSIS**

The Sentencing Commission recommends classifying offenses which proscribe an intentional killing with malice as Class B felonies. The Structured Sentencing punishment scheme takes a defendant's prior record into account through the Prior Record Level determination. Increasing the offense class of an offense based on prior convictions is inconsistent with Structured Sentencing.

G.S. 90-95(a)(1). Manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance.

G.S. 90-95(e)(5). Person 18 or older violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 or a pregnant female.

G.S. 90-95.1. Continuing criminal enterprise.

G.S. 90-95.4. Employing or intentionally using a minor to commit a drug law violation.

G.S. 90-95.6. Promoting drug sales by a minor.

For the purposes of this section, the term "certain controlled substance" includes any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, or opioid; cocaine or any other substance described in G.S. 90-90(1)(d); methamphetamine; a depressant described in G.S. 90-92(a)(1); or a mixture of one or more of these substances.

Currently, it is second degree murder if a death was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.;

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.

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methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user. It is a Class B2 felony (G.S. 14-17(b)(2)). In *State v. Liner*, the Court of Appeals held that the State was required to prove the element of malice in order to support a charge of second degree murder in the context of a death resulting from the delivery of controlled substances. See 98 N.C. App. 600 (1990).

The Sentencing Commission reviewed a substantially similar provision in draft form in June 2018 and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class B felony. It would be consistent with the Homicide Offense Classification Criteria for a Class E felony.

#### **FINDINGS**

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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 Homicide Offense Classification Criteria for a Class E felony. The Sentencing Commission classified offenses which result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

**DATE OF REVIEW:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 498 – NC Constitutional Carry Act. [Ed. 1]
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**STATUTE**

§ 14-415.35. Carrying concealed 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(b).

**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.

The Sentencing Commission reviewed a substantially similar provision in March 2019 in HB 61 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 507 – Animal Fights/Criminalize Attendance of Minor [Ed. 1]
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**STATUTE**

§ 14-362. Cockfighting.

**DESCRIPTION**

A person who

1. instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, causes a person under 16 years of age to be present at, or profits from
2. an exhibition featuring the fighting of a cock.

**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.

Participating as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a cock or a dog, is a Class 2 misdemeanor (G.S. 14-362.1).

Participating as a spectator at an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is a Class H felony (G.S. 14-362.2).

The Sentencing Commission reviewed a similar provision in April 2011 in HB 395 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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not

38 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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 507 – Animal Fights/Criminalize Attendance of Minor [Ed. 1] (cont'd)
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**STATUTE**

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§ 14-362.2. Dog fighting and baiting.

**DESCRIPTION**

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A person who

1. participates as a spectator at, or causes a person under 16 years of age to be present at
2. an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal.

**PROPOSED OFFENSE CLASS**

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Class H felony.

**ANALYSIS**

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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.

Any person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock is guilty of a Class I felony (G.S. 14-362).

Participating as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a cock or a dog, is a Class 2 misdemeanor (G.S. 14-362.1).

**FINDINGS**

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- 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 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:** 04/26/19

**IMPACT ANALYSIS NOT REQUESTED YET**

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 540/SB 442 – Drug Trafficking/Judicial Discretion & Study [Ed. 1]
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**STATUTE**

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§ 90-95. Violations; penalties.

**DESCRIPTION**

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Subsection (h)(5a):

A person who

1. violates a provision under G.S. 90-95(h) or
2. conspires to commit an offense under G.S. 90-95(i).

**PUNISHMENT RANGE**

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**CURRENT (if applicable):** Mandatory active sentence with a single minimum term of months and a maximum term of months; specified fine amount.

**PROPOSED:** The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided, or suspend the prison term imposed and place a person on probation.

**ANALYSIS**

Drug trafficking offenses are not sentenced under Structured Sentencing.

Under G.S. 90-95(h)(5a), the sentencing judge would have to find and enter in the record all of the following findings: (a) the defendant was suffering from an addiction to a controlled substance that was insufficient to constitute a defense but significantly reduced the defendant's culpability; (b) the defendant has accepted responsibility for the defendant's criminal conduct; (c) the defendant has completed a substance abuse assessment as provided in G.S. 122C-142.1; and (d) the defendant has a good treatment prognosis, and a workable treatment plan is available. The defendant bears the burden of proving by a preponderance of the evidence that the required factors exist.

Under the proposed subsection, the judge may order that a term of imprisonment imposed as a condition of special probation be served at an inpatient facility operated or licensed by the State for treatment of substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The judge may impose any restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. If the defendant is placed on probation, the judge

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not

shall impose a requirement that the defendant abstain from the use of any controlled substance without a valid prescription and obtain the education or treatment recommended by the substance abuse assessment. The judge may impose any other lawful condition of probation.

Currently, the judge sentencing a defendant for drug trafficking may reduce the fine, impose a prison term less than the applicable minimum, or suspend the prison term and place the defendant on probation when the judge finds and enters in the record that the defendant has provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals (G.S. 90-95(h)(5)).

#### **FINDINGS**

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- 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:** 04/26/2019

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 546 – Prohibit Counterfeit/Nonfunctional Airbags [Ed. 3]
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**STATUTE**

§ 20-136.2. Counterfeit supplemental restraint system components and nonfunctional airbags.

**DESCRIPTION**

Subsection (a):

A person, firm, or corporation who

1. knowingly
2. imports, manufactures, sells, offers for sale, distributes, installs or reinstalls
3.
  - a. a counterfeit supplemental restraint system or nonfunctional airbag in any motor vehicle or
  - b. other component device that causes a motor vehicle to fail to meet federal motor vehicle safety standards as provided in 49 C.F.R. § 571.208,
4. and such violation contributes to a person's physical injury or death.

**PROPOSED OFFENSE CLASS**

Class H felony.

**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.

The Sentencing Commission recommends classifying offenses which proscribe an unintentional killing by motor vehicle involving a serious traffic violation as Class H felonies.

Violation of the proposed provision that does not contribute to a person's physical injury or death would be a Class 1 misdemeanor. Violation would also constitute an unfair and deceptive trade practice under G.S. 75-1.1.

Currently, G.S. 20-136.2, Air bag installation, provides that it is a Class 1 misdemeanor for any person, firm, or corporation to knowingly install or reinstall any object in lieu of an air bag, other than an air bag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle, as part of a vehicle inflation restraint system.

A supplemental restraint system is defined as a passive inflatable motor vehicle occupant crash protection system designed for use in conjunction with a seat belt assembly as defined in 49 C.F.R. § 571.209, and includes one or more airbags and all components required to ensure that an airbag works as designed by the vehicle manufacturer, including both of the following: the airbag operates as designed in the event of

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a crash, and the airbag is designed in accordance with federal motor vehicle safety standards for the specific make, model, and year of the motor vehicle in which it will be installed (G.S. 20-4.01(46a)).

A counterfeit supplemental restraint system component is defined as a replacement supplemental restraint system component, including an airbag, that displays a mark identical to, or substantially similar to, the genuine mark of a motor vehicle manufacturer or a supplier of parts to the manufacturer of a motor vehicle, without authorization from the manufacturer or supplier (G.S. 20-4.01(4b)).

A nonfunctional airbag is defined as a replacement airbag that meets any of the following criteria: the airbag was previously deployed or damaged, the airbag has an electric fault that is detected by the vehicle's airbag diagnostic systems when the installation procedure is completed and the vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred, the airbag includes a part or object, including a supplemental restraint system component that is installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed, or the airbag is subject to the prohibitions of 49 U.S.C. 30120(j) (G.S. 20-4.01(23a)).

The Sentencing Commission reviewed a similar provision in April 2015 in HB 711/HB 753 and found it to be consistent with the Offense Classification Criteria for a Class H felony.

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#### FINDINGS

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- 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 577 – Limit Ownership of Certain Animals [Ed. 1]
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**STATUTE**

§ 19A-77. Penalties.

**DESCRIPTION**

Section (b):

A person who

1. is the owner or custodian of any big cat, bear, hyena, or great ape
2. whose act or omission in the care control or containment of that animal
3. results in the animal running loose
4. and causes serious bodily injury to any person.

**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.

G.S. 19A-72 would make it unlawful for any person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State, by any means, a big cat, bear, hyena, or great ape, including transactions conducted via the Internet. G.S. 19A-77(a) would make it a class 2 misdemeanor and impose a civil penalty of not more than \$5,000 for a violation of the Article. Section (b) makes it a Class A1 misdemeanor when any big cat, bear, hyena, or great ape owner or custodian whose act or omission in the care, control, or containment of that animal results in the animal running loose or causing property damage.

G.S. 113-294 makes certain possessions of wild animals unlawful. Section (a) makes it unlawful to sell, possess for sale, or buy any wildlife and makes it a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars (\$250.00), unless a greater penalty is prescribed for the offense in question. G.S. 67-4.3 provides that the owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars (\$100.00) shall be guilty of a Class 1 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 596 – Child Sex Abuse/Strengthen Laws [Ed. 1]
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**STATUTE**

§ 14-202.5. Ban use of commercial social networking Web sites by high-risk sex offenders.

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**DESCRIPTION**

A person who

1. is a high-risk sex offender
2. intentionally or knowingly accesses a Web site with terms of use prohibiting sex offender from the site, or
3. intentionally or knowingly uses a commercial social networking Web site for any of the following purposes:
  - a. To access a personal Web page or profile of a person that the offender knows or should have known is under 16 years of age.
  - b. To contact a person that the offender knows or should have known is under 16 years of age.
  - c. To pose falsely as a person under 16 years of age.
  - d. To join or view online groups that the offender knows or should have known contains at least one person under 16 years of age.

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**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class G felony.

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**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 serious property loss from the person or the person's dwelling as Class G felonies.

G.S. 14-202.5(b) defines commercial social networking web site and G.S. 14-202.5(c1) defines high risk sex offender.

Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act is a Class H felony. (G.S. 14-202.3(c)(1)) The same conduct is a Class G felony when either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location. (G.S. 14-202.3(c)(2))

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**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 reasonable 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:** 04/26/2019

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 596 – Child Sex Abuse/Strengthen Laws [Ed. 1]
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**STATUTE**

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§ 14-208.11(a). Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

**DESCRIPTION**

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A person who

1. is required to register as a sex offender (Article 27A, Chapter 14)
2. willfully
3. fails to provide the registering sheriff with the information, or any changes to the information, required under G.S. 14-208.7(b)(8).

**PROPOSED OFFENSE CLASS**

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Class F felony.

**ANALYSIS**

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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.

HB 596 would add G.S. 14-208.7(b)(8) to the existing statute, requiring that a high-risk sex offender, as defined in G.S. 14-202.5, provide all Internet protocol (IP) addresses in the person's residence, registered in the person's name, accessible at the person's place of employment, or otherwise under the person's control or custody to the Sheriff.

Currently, G.S. 14-208.11(a) contains ten Class F felonies relating to failure to register, including failure to register (G.S. 14-208.11(a)(1)), failure to notify change of address (G.S. 14-208.11(a)(2)), failure to return verification form (G.S. 14-208.11(a)(3)), and falsification of verification notice (G.S. 14-208.11(a)(4)).

**FINDINGS**

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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:** 04/26/2019

**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 603/SB 547 – Pain Capable Unborn Child Protection Act [Ed. 1]

**STATUTE**

§ 90-21.133. Criminal penalties.

**DESCRIPTION**

Subsection (a), a violation of G.S. 90-21.131(a):

A person who

1. intentionally or recklessly
2. performs or induces, or attempts to perform or induce
3. an abortion of an unborn child capable of feeling pain
4. unless it is necessary to prevent a serious health risk to the unborn child's mother.

**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 G.S. 90-21.131(b) provides that an unborn child shall be deemed capable of feeling pain if it has been determined by the physician performing or inducing, or attempting to perform or induce, an abortion of the unborn child, or by another physician upon whose determination such physician relies, that the probable postfertilization age of the unborn child is 20 or more weeks. This section specifies that a dead unborn child is not capable of feeling pain.

Proposed G.S. 90-21.131(c) establishes requirements and procedures with which physicians must comply in determining postfertilization age of an unborn child. In the event it is necessary to prevent a serious health risk to the unborn child's mother, proposed G.S. 90-21.131(d) establishes requirements as to method of termination with which physicians must comply when performing or inducing, or attempting to perform or induce, an abortion of an unborn child capable of feeling pain.

Depending on the circumstances, it is currently a Class H or Class I felony to perform an abortion after the twentieth week of a woman's pregnancy, unless there is a medical emergency (G.S. 14-44, 14-45, 14-45.1). However, in March 2019 a federal judge for the Middle District of North Carolina struck down North Carolina's ban on abortions after the twentieth week of gestation, holding that any "week- or event-specific" abortion ban is unconstitutional. The court's order, dated March 25, 2019, was stayed for 60 days to "permit full consideration of legislative alternatives or an appeal of [the] judgment." See *Bryant v. Woodall*, 2019 U.S. Dist. LEXIS 49101.

## **FINDINGS**

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

**DATE OF REVIEW:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 606/SB 631 – Arson Law Revisions [Ed. 1]
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**STATUTE**

§ 14-62.3. Burning of commercial structure.

**DESCRIPTION**

Subsection (b):

A person who

1. wantonly and willfully
2. sets fire to or burns or cause to be burned, or aids, counsels, or procures the burning of
3. any commercial structure
4. that is occupied at the time of the burning.

**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. 14-62.3 defines the term "commercial structure" to mean any building or structure that is not designed principally for residential purposes.

Arson in the first degree is a Class D felony. (G.S. 14-58)

Burning of churches and certain other religious buildings is a Class E felony. (G.S. 14-62.2)

Burning of buildings is a Class F felony. (G.S. 14-62)

Arson in the second degree is a Class G felony. (G.S. 14-58)

Burning of boats and barges is a Class H felony. (G.S. 14-65)

**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 606/SB 631 – Arson Law Revisions [Ed. 1]
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**STATUTE**

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§ 14-62.3. Burning of commercial structure.

**DESCRIPTION**

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Subsection (c):

A person who

1. wantonly and willfully
2. sets fire to or burn or causes to be burned, or aids, counsels, or procures the burning of
3. any commercial structure
4. that is unoccupied at the time of the burning.

**PROPOSED OFFENSE CLASS**

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Class E felony.

**ANALYSIS**

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

G.S. 14-62.3 defines the term "commercial structure" to mean any building or structure that is not designed principally for residential purposes.

Arson in the first degree is a Class D felony. (G.S. 14-58)

Burning of churches and certain other religious buildings is a Class E felony. (G.S. 14-62.2)

Burning of buildings is a Class F felony. (G.S. 14-62)

Arson in the second degree is a Class G felony. (G.S. 14-58)

Burning of boats and barges is a Class H felony. (G.S. 14-65)

**FINDINGS**

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

**DATE OF REVIEW:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 633 – Strengthen Criminal Gang Laws [Ed. 1]
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**STATUTE**

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§ 15A-1340.16E. Enhanced sentence for offenses committed as a part of criminal gang activity.

**DESCRIPTION**

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Subsection (b)(ii):

A person who

1. is convicted of any felony other than a Class A, B1, or B2 felony,
2. committed the offense as part of criminal gang activity, and
3. possessed or used a firearm during the commission of the offense.

**PUNISHMENT RANGE**

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**CURRENT (if applicable):** Sentenced one class higher than the principal felony for which the person was convicted (but no higher than a Class C felony).

**PROPOSED:** Sentenced two classes higher than the principal felony for which the person was convicted (but no higher than a Class C felony).

**ANALYSIS**

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There is an aggravating factor that applies when an offense was committed for the benefit of, or at the direction of, any criminal gang as defined by G.S. 14-50.16A(1), with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy (G.S. 15A-1340.16(d)(2a)). There is an aggravating factor that applies when the defendant was armed with or used a deadly weapon at the time of the crime (G.S. 15A-1340.16(d)(10)).

There is a sentencing enhancement that applies if a person is convicted of a felony and it is found that the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the person actually possessed the firearm or deadly weapon about his or her person. (G.S. 15A-1340.16A)

- If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment shall be increased by 72 months.
- If the felony is a Class F or G felony, the minimum term of imprisonment shall be increased by 36 months
- If the felony is a Class H or I felony, the minimum term of imprisonment shall be increased by 12 months.

There is currently a sentencing enhancement that applies when a person is convicted of any felony other than a Class A, B1, or B2 felony, committed the offense as part of criminal gang activity. Such person is sentenced at a felony class level one class higher than the principal felony for which the person was

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.

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convicted. If the person is also found to be a criminal gang leader or organizer, he is sentenced at a felony class level two classes higher than the principal felony for which he was convicted (G.S. 15A-1340.16E).

The Sentencing Commission reviewed that provision in February 2017 in HB 138 and found it to be inconsistent with G.S. 164-41.

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#### FINDINGS

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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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 633 – Strengthen Criminal Gang Laws [Ed. 1] (cont'd)
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**STATUTE**

§ 14-269.9. Possession of certain weapons during the commission or attempted commission of a felony.

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**DESCRIPTION**

Subsection(c)(1):

A person who

1. possesses
2. a firearm or weapon of mass death and destruction
3. during the commission or attempted commission of a felony under Chapter 14 or Article 5 of Chapter 90 of the General Statutes and
4. discharges the firearm or weapon of mass death and destruction during the commission or attempted commission of the felony.

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**PROPOSED OFFENSE CLASS**

Class D felony.

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**ANALYSIS**

The Sentencing Commission classified offenses which 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.

There is an aggravating factor that applies when the defendant was armed with or used a deadly weapon at the time of the crime (G.S. 15A-1340.16(d)(10)).

There is a sentencing enhancement that applies if a person is convicted of a felony and it is found that the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the person actually possessed the firearm or deadly weapon about his or her person. (G.S. 15A-1340.16A)

- If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment shall be increased by 72 months.
- If the felony is a Class F or G felony, the minimum term of imprisonment shall be increased by 36 months
- If the felony is a Class H or I felony, the minimum term of imprisonment shall be increased by 12 months.

Robbery with firearms or dangerous weapons is a Class D felony (G.S. 14-87).

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**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 633 – Strengthen Criminal Gang Laws [Ed. 1] (cont'd)
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**STATUTE**

§ 14-269.9. Possession of certain weapons during the commission or attempted commission of a felony.

**DESCRIPTION**

Subsection(c)(2):

A person who

1. possesses
2. a firearm or weapon of mass death and destruction
3. during the commission or attempted commission of a felony under Chapter 14 or Article 5 of Chapter 90 of the General Statutes and
4. brandishes the firearm or weapon of mass death and destruction during the commission or attempted commission of the felony.

**PROPOSED OFFENSE CLASS**

Class F felony.

**ANALYSIS**

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

There is an aggravating factor that applies when the defendant was armed with or used a deadly weapon at the time of the crime (G.S. 15A-1340.16(d)(10)).

There is a sentencing enhancement that applies if a person is convicted of a felony and it is found that the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the person actually possessed the firearm or deadly weapon about his or her person. (G.S. 15A-1340.16A)

- If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment shall be increased by 72 months.
- If the felony is a Class F or G felony, the minimum term of imprisonment shall be increased by 36 months
- If the felony is a Class H or I felony, the minimum term of imprisonment shall be increased by 12 months.

**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 633 – Strengthen Criminal Gang Laws [Ed. 1] (cont'd)
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**STATUTE**

§ 14-269.9. Possession of certain weapons during the commission or attempted commission of a felony.

**DESCRIPTION**

Subsection(c)(3):

A person who

1. possesses
2. a firearm or weapon of mass death and destruction
3. during the commission or attempted commission of a felony under Chapter 14 or Article 5 of Chapter 90 of the General Statutes.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

The Sentencing Commission classified offenses which 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.

There is an aggravating factor that applies when the defendant was armed with or used a deadly weapon at the time of the crime (G.S. 15A-1340.16(d)(10)).

There is a sentencing enhancement that applies if a person is convicted of a felony and it is found that the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the person actually possessed the firearm or deadly weapon about his or her person. (G.S. 15A-1340.16A)

- If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment shall be increased by 72 months.
- If the felony is a Class F or G felony, the minimum term of imprisonment shall be increased by 36 months
- If the felony is a Class H or I felony, the minimum term of imprisonment shall be increased by 12 months.

Carrying a concealed gun is a Class 2 misdemeanor (first offense) or a Class H felony (second and subsequent offenses) (G.S. 14-269(a1)).

**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 633 – Strengthen Criminal Gang Laws [Ed. 1] (cont'd)
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**STATUTE**

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§ 14-269.10. Sell, deliver, transfer, or give certain weapons for use in criminal gang activity.

**DESCRIPTION**

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Subsection(b):

A person who

1. sells, delivers, transfers, or gives
2. a firearm or weapon of mass death and destruction
3. to a person the transferor knows or reasonably should know is participating in criminal gang activity.

**PROPOSED OFFENSE CLASS**

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Class G felony.

**ANALYSIS**

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

There is an aggravating factor that applies when an offense was committed for the benefit of, or at the direction of, any criminal gang as defined by G.S. 14-50.16A(1), with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy (G.S. 15A-1340.16(d)(2a)).

There is currently a sentencing enhancement that applies when a person is convicted of any felony other than a Class A, B1, or B2 felony, committed the offense as part of criminal gang activity. Such person is sentenced at a felony class level one class higher than the principal felony for which the person was convicted. If the person is also found to be a criminal gang leader or organizer, he is sentenced at a felony class level two classes higher than the principal felony for which he was convicted (G.S. 15A-1340.16E).

There is a one class enhancement for misdemeanor criminal gang activity (G.S. 14-50.22).

With some enumerated exceptions, it is a Class F felony for any person to manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire any weapon of mass death and destruction (G.S. 14-288.8).

It is a Class 2 misdemeanor for any person, firm, or corporation to sell, give away, or transfer, or to purchase or receive a pistol without the proper license or permit (G.S. 14-402).

## **FINDINGS**

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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 (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.

**DATE OF REVIEW:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 633 – Strengthen Criminal Gang Laws [Ed. 1] (cont'd)
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**STATUTE**

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

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**DESCRIPTION**

Subsection (a)(1):

A person who

1. has been convicted of a felony and
2. purchases, owns, possesses, or has in his custody, care, or control
3. any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c) and
4. the person was participating in criminal gang activity, as that term is defined in G.S. 14-50.16A, at the time of the violation.

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**PROPOSED OFFENSE CLASS**

Class D felony.

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**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.

Possession of a firearm by a felon is currently a Class G felony (G.S. 14-415.1(a)). This bill would make a first offense of possession of a firearm by felon a Class F felony and a second or subsequent offense a Class D felony.

There is an aggravating factor that applies when an offense was committed for the benefit of, or at the direction of, any criminal gang as defined by G.S. 14-50.16A(1), with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy (G.S. 15A-1340.16(d)(2a)).

There is currently a sentencing enhancement that applies when a person is convicted of any felony other than a Class A, B1, or B2 felony, committed the offense as part of criminal gang activity. Such person is sentenced at a felony class level one class higher than the principal felony for which the person was convicted. If the person is also found to be a criminal gang leader or organizer, he is sentenced at a felony class level two classes higher than the principal felony for which he was convicted (G.S. 15A-1340.16E).

There is a one class enhancement for misdemeanor criminal gang activity (G.S. 14-50.22).

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**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 633 – Strengthen Criminal Gang Laws [Ed. 1] (cont'd)
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---

**STATUTE**

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

---

**DESCRIPTION**

Subsection (a)(2):

A person who

1. has been convicted of a felony and
2. purchases, owns, possesses, or has in his custody, care, or control
3. any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c).

---

**OFFENSE CLASS**

**CURRENT:** Class G felony.

**PROPOSED:** Class D felony, second and subsequent violations.

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**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 property loss (loss from the person or the person's dwelling) as Class G felonies.

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**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 633 – Strengthen Criminal Gang Laws [Ed. 1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

**DESCRIPTION**

---

Subsection (a)(3):

A person who

1. has been convicted of a felony and
2. purchases, owns, possesses, or has in his custody, care, or control
3. any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c).

**OFFENSE CLASS**

---

**CURRENT:** Class G 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 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.

**FINDINGS**

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- 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:** 04/26/19

**IMPACT ANALYSIS NOT REQUESTED YET**

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 641 – Modifications to Various DPS Provisions. [Ed. 1]
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**STATUTE**

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§ 14-258.4. Malicious conduct by prisoner.

**DESCRIPTION**

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Subsection (b):

A person who

1. is a prisoner and
2. knowingly and willfully
3. exposes genitalia
4. to an employee
5. while the employee is in the performance of the employee's duties.

**PUNISHMENT RANGE**

---

**CURRENT (if applicable):** Class I felony.

**PROPOSED:** Class I felony with a minimum term of six months and a maximum term of 12 months in the State's prison to run consecutively to and commence at the expiration of any sentence being served, for any offense, by the person sentenced.

**ANALYSIS**

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"Prisoner" is defined as any person in the custody of (i) the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, (ii) any law enforcement officer, or (iii) any local confinement facility as defined in G.S. 153A-217 or G.S. 153A-230.1, including persons pending trial, appellate review, or presentence diagnostic evaluation (G.S. 14-254.5(2)).

Indecent exposure is a Class 2 misdemeanor (G.S. 14-190.9).

Certain assaults on a person employed at a State or local detention facility inflicting physical injury are Class I felonies (G.S. 14-34.7(c)).

**FINDINGS**

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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 establishes minimum and maximum sentences based on the offense class and prior record level.

**DATE OF REVIEW:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 641 – Modifications to Various DPS Provisions. [Ed. 1] (cont'd)
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**STATUTE**

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§ 14-258. Providing forbidden articles or tools for escape; possessing tools for escape.

**DESCRIPTION**

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Subsection (c):

A person who

1. is a prisoner and
2. possesses a letter, weapon, tool, good, article of clothing, device, or instrument to effect an escape or aid in an assault or insurrection.

**PUNISHMENT RANGE**

---

**CURRENT (if applicable):** Class H felony.

**PROPOSED:** Class H felony with a minimum term of 12 months and a maximum term of 24 months in the State's prison to run consecutively to and commence at the expiration of any sentence being served, for any offense, by the person sentenced.

**ANALYSIS**

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Providing forbidden articles or tools for escape is a Class H felony, a Class F felony if the tool does effect an escape, assault, or insurrection. (G.S. 14-258(a) and (b))

**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 establishes minimum and maximum sentences based on the offense class and prior record level.

**DATE OF REVIEW:** 04/26/19

**IMPACT ANALYSIS NOT REQUESTED YET**

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does

62 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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 688 – ENOUGH/Gaming Machines [Ed. 1]
---------------------------------	---

**STATUTE**

§ 14-309. Violation made criminal.

**DESCRIPTION**

Subsection (b):

A person who

1. violates the provisions of G.S. 14-306.1A
2. involving the operation, or the possession for the purpose of operation
3. of five or more machines prohibited by that section.

**PROPOSED OFFENSE CLASS**

Class H felony, first or second offense.

**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.

G.S. 14-306.1A prohibits video gaming machines including slot machines as defined in G.S 14-306(a) and other forms of electrical, mechanical, or computer games.

**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

<b>BILL NUMBER/SHORT TITLE:</b>	HB 688 – ENOUGH/Gaming Machines [Ed. 1] (cont'd)
---------------------------------	--

**STATUTE**

---

§ 14-309. Violation made criminal.

**DESCRIPTION**

---

Subsection (b):

A person who

1. violates the provisions of G.S. 14-306.1A
2. involving the operation, or the possession for the purpose of operation
3. of five or more machines prohibited by that section.

**PROPOSED OFFENSE CLASS**

---

Class G felony, third or subsequent offense.

**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.

G.S. 14-306.1A prohibits video gaming machines including slot machines as defined in G.S 14-306(a) and other forms of electrical, mechanical, or computer games.

**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 688 – ENOUGH/Gaming Machines [Ed. 1] (cont'd)
---------------------------------	--

**STATUTE**

---

§ 14-309. Violation made criminal.

**DESCRIPTION**

---

Subsection (c):

A person who

1. violates the provisions of G.S. 14-306.3(b)
2. involving the possession
3. of five or more machines prohibited by those subsections.

**OFFENSE CLASS**

---

**CURRENT:** Class G felony.

**PROPOSED:** Class H felony for a first or second offense.

**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 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.

G.S. 14-306.3(b) prohibits game terminals with a display that simulates a game ordinarily played on a slot machine regulated under G.S. 14-306 or a video gaming machine regulated under G.S. 14-306.1A for the purpose of promoting, operating, or conducting a server-based electronic game promotion.

**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 688 – ENOUGH/Gaming Machines [Ed. 1] (cont'd)
---------------------------------	--

**STATUTE**

---

§ 14-309. Violation made criminal.

**DESCRIPTION**

---

Subsection (c):

A person who

1. violates the provisions of G.S. 14-306.3(b)
2. involving the possession
3. of five or more machines prohibited by those subsections.

**OFFENSE CLASS**

---

**CURRENT:** Class G felony.

**PROPOSED:** Class G felony for a third or subsequent offense.

**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.

G.S. 14-306.3(b) prohibits game terminals with a display that simulates a game ordinarily played on a slot machine regulated under G.S. 14-306 or a video gaming machine regulated under G.S. 14-306.1A for the purpose of promoting, operating, or conducting a server-based electronic game promotion.

**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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 688 – ENOUGH/Gaming Machines [Ed. 1] (cont'd)
---------------------------------	--

**STATUTE**

---

§ 14-309. Violation made criminal.

**DESCRIPTION**

---

Subsection (c):

A person who

1. violates the provisions of G.S. 14-306.4(b)
2. involving the possession
3. of five or more machines prohibited by those subsections.

**OFFENSE CLASS**

---

**CURRENT:** Class 1 misdemeanor for the first offense, Class H felony for the second offense.

**PROPOSED:** Class H felony, first or second offense.

**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.

G.S. 14-306.4(b) prohibits electronic machines or devices to do either of the following: (1) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize, or (2) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

It is currently a Class G felony for the third and subsequent offense and this bill retains that classification.

**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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 740 – Ending NC's Involvement in Torture [Ed. 1]
---------------------------------	---

**STATUTE**

---

§ 14-34.11. Torture; enforced disappearance.

**DESCRIPTION**

---

Subsection (b):

A person who

1. commits the offense of torture.

**PROPOSED OFFENSE CLASS**

---

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.

“Torture” is defined as any act by which serious pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining from the person or from a third person information or a confession, punishing the person for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing the person or a third person, or for any reason based on discrimination of any kind, when the pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Sentencing Commission reviewed a substantially similar provision in June 2008 in HB 2417 and found it to be consistent with the Offense Classification Criteria for a Class E felony.

**FINDINGS**

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- 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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 740 – Ending NC’s Involvement in Torture [Ed. 1] (cont’d)
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**STATUTE**

---

§ 14-34.11. Torture; enforced disappearance.

**DESCRIPTION**

---

Subsection (c):

A person who

1. commits the offense of enforced disappearance.

**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.

“Enforced disappearance” is defined as the arrest, detention, or abduction of a person by, or with the authorization, support, or acquiescence of, a governmental body or a political organization, followed by a refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts of the person.

First degree kidnapping is a Class C felony (G.S. 14-39). Second degree kidnapping is a Class E felony (G.S. 14-39).

Felonious restraint is a Class F felony (G.S. 14-43.3).

The Sentencing Commission reviewed a substantially similar provision in June 2008 in HB 2417 and found it to 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.

**DATE OF REVIEW:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 744/HB 921 – Provide Minor Alcohol/Felony if Death Results [Ed. 1]
---------------------------------	--

**STATUTE**

---

§ 18B-302.1. Penalties for certain offenses related to underage persons.

**DESCRIPTION**

---

Subsection (b1):

A person who

1. violated G.S. 18B-302(a) by
  - a. selling malt beverages or unfortified wine to anyone less than 21 years old or
  - b. selling fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old and
2. knew or should have known, at the time of the sale, that the person sold the alcoholic beverage was less than 21 years old, and
3. the commission of such violation is the proximate cause of the death of a person.

**PROPOSED OFFENSE CLASS**

---

Class I felony.

**ANALYSIS**

---

The Sentencing Commission did not recommend classifying homicide offenses as Class I felonies.

Violation of G.S. 18B-302(a) is a Class 1 misdemeanor.

Involuntary manslaughter is a Class F felony.

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 736 and found it to be inconsistent with the Homicide Offense Classification Criteria.

**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.

**DATE OF REVIEW:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 744/HB 921 – Provide Minor Alcohol/Felony if Death Results [Ed. 1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 18B-302.1. Penalties for certain offenses related to underage persons.

**DESCRIPTION**

---

Subsection (b1):

A person who

1. violated G.S. 18B-302(a1) by
  - a. giving malt beverages or unfortified wine to anyone less than 21 years old or
  - b. giving fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old and
2. knew or should have known, at the time the alcoholic beverage was given, that the person given the alcoholic beverage was less than 21 years old, and
3. the commission of such violation is the proximate cause of the death of a person.

**PROPOSED OFFENSE CLASS**

---

Class I felony.

**ANALYSIS**

---

The Sentencing Commission did not recommend classifying homicide offenses as Class I felonies.

Violation of G.S. 18B-302(a1) is a Class 1 misdemeanor.

Involuntary manslaughter is a Class F felony.

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 736 and found it to be inconsistent with the Homicide Offense Classification Criteria.

**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 744/HB 921 – Provide Minor Alcohol/Felony if Death Results [Ed. 1]
---------------------------------	--

**STATUTE**

---

§ 18B-302.1. Penalties for certain offenses related to underage persons.

**DESCRIPTION**

---

Subsection (b1):

A person who

1. is over the lawful age to purchase alcohol,
2. violated G.S. 18B-302(c)(2) by
  - a. aiding or abetting another in violation of subsection (a), (a1), or (b) of G.S. 18B-302,
3. knew or should have known, at the time the alcoholic beverage was purchased, possessed, consumed, or otherwise provided, that the person who purchased, possessed, consumed, or was otherwise provided the alcoholic beverage was less than 21 years old, and
4. the commission of such violation is the proximate cause of the death of a person.

**PROPOSED OFFENSE CLASS**

---

Class I felony.

**ANALYSIS**

---

The Sentencing Commission did not recommend classifying homicide offenses as Class I felonies.

Violation of G.S. 18B-302(c)(2) is a Class 1 misdemeanor.

Involuntary manslaughter is a Class F felony.

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 736 and found it to be inconsistent with the Homicide Offense Classification Criteria.

**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:** 04/26/19

**IMPACT ANALYSIS NOT REQUESTED YET**

**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 775 – Juveniles/Eliminate LWOP/Parole Eligibility [Ed. 1]

**STATUTE**

---

§ 15A-1340.19B. Penalty and parole eligibility determination.

**DESCRIPTION**

---

Subsection (a):

A person who

1. is convicted of first degree murder and
2. who was under the age of 18 at the time of the offense.

**PUNISHMENT RANGE**

---

**CURRENT:** Life imprisonment with parole or life imprisonment without parole.

**PROPOSED:** Life imprisonment with parole. Shall be eligible for parole consideration after serving 25 years of imprisonment.

**ANALYSIS**

---

Currently, the court determines whether, based upon all the circumstances of the offense and the particular circumstances of the defendant, the defendant should be sentenced to life imprisonment with parole instead of life imprisonment without parole. (G.S. 15A-1340.19C)

**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 775 – Juveniles/Eliminate LWOP/Parole Eligibility [Ed. 1] (cont'd)
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**STATUTE**

---

§ 15A-1340.19B. Penalty and parole eligibility determination.

**DESCRIPTION**

---

Subsection (b):

A person who

1. is convicted of a crime other than first degree murder,
2. who was under the age of 18 at the time of the offense, and
3. is sentenced to more than 15 years imprisonment.

**PUNISHMENT RANGE**

---

**CURRENT:** Must serve the minimum term imposed, the maximum term imposed may be reduced to, but not below, the minimum term by earned time credits and post-release supervision.

**PROPOSED:** Shall be eligible for parole consideration after serving 15 years imprisonment.

**ANALYSIS**

---

The enactment of Structured Sentencing eliminated early parole release.

**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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 778 – Prot. Public Dangrs. Animls/End Animl Cruelty [Ed. 1]
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**STATUTE**

§ 19A-77. Penalties.

**DESCRIPTION**

Section (b):

A person who

1. is the owner or custodian of any dangerous wild animal
2. whose act or omission in the care control or containment of that animal
3. results in the animal running loose
4. and causes serious bodily injury to any person.

**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.

G.S. 19A-72 would make it unlawful for any person to possess, sell, transfer, or breed a dangerous wild animal. G.S. 19A-77(a) would make it a class 2 misdemeanor and impose a civil penalty of not more than \$5,000 for a violation of the Article. Section (b) makes it a Class A1 misdemeanor when any dangerous wild animal owner or custodian whose act or omission in the care, control, or containment of that animal results in the animal running loose or causing property damage.

G.S. 113-294 makes certain possessions of wild animals unlawful. Section (a) makes it unlawful to sell, possess for sale, or buy any wildlife and makes it a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars (\$250.00), unless a greater penalty is prescribed for the offense in question. G.S. 67-4.3 provides that the owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars (\$100.00) shall be guilty of a Class 1 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:** 04/26/19

**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 842 – Register Assault Weapon & Report Lost Firearm [Ed. 1]

**STATUTE**

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

**DESCRIPTION**

A person who

1. is an owner of a firearm as defined in G.S. 14-408.1(a)
2. who fails to report the loss or theft of the firearm
  - a. within 48 hours after the discovery of the loss or theft
  - b. to either (1) local law enforcement or (2) the State Bureau of Investigation.

**PROPOSED OFFENSE CLASS**

Class I felony, second or subsequent offense.

**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 is a Class 3 misdemeanor.

G.S. 14-409(c) provides that it is a Class I felony for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons as defined by subsection (a).

The Commission reviewed a substantial similar provision to this section in March 2019 in HB 86 and found it to be inconsistent with the Offense Classification 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 879 – End of Life Option Act [Ed.1]
---------------------------------	--

**STATUTE**

§ 90-326.15. Felonious activities.

**DESCRIPTION**

Subsection (a):

A person who

1. with the intent or effect of causing, interfering with, or preventing an individual's death against his or her wishes,
2. does any of the following:
  - a. knowingly alters or forges a request for a terminal comfort care drug [in order] to hasten an individual's death without that individual's authorization,
  - b. conceals or destroys a withdrawal or rescission of a request for a terminal comfort care drug,
  - c. destroys or conceals an individual's written request for a terminal comfort care drug, or
  - d. conceals or destroys an individual's prescribed terminal comfort care drug.

**PROPOSED OFFENSE CLASS**

No proposed class.

**ANALYSIS**

G.S. 90-326.16(a) provides that these actions are punishable as a felony.

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 789 and found it to be inconsistent with the Offense Classification Criteria.

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, an offense is assigned to an offense class based on the harm that reasonably tends to result or does result from the conduct.

**DATE OF REVIEW:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 879 – End of Life Option Act [Ed.1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 90-326.15. Felonious activities.

**DESCRIPTION**

---

Subsection (b):

A person who

1. knowingly coerces or exerts undue influence on an individual to request or self-administer a terminal comfort care drug for the purpose of ending his or her life, or
2. knowingly destroys a withdrawal or rescission of a request, or
3. administers a terminal comfort care drug to an individual without his or her knowledge or consent.

**PROPOSED OFFENSE CLASS**

---

No proposed class.

**ANALYSIS**

---

G.S. 90-326.16(b) provides that these actions are punishable as a felony.

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 789 and found it to be inconsistent with the Offense Classification Criteria.

**FINDINGS**

---



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



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



Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, an offense is assigned to an offense class based on the harm that reasonably tends to result or does result from the conduct.

**DATE OF REVIEW:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 879 – End of Life Option Act [Ed.1] (cont'd)
---------------------------------	---

**STATUTE**

---

§ 90-326.15. Felonious activities.

**DESCRIPTION**

---

Subsection (c):

A person who

1. knowingly
2. coerces or exerts undue influence
3. to interfere with an individual's expressed desire to hasten his or her own death by self-administration of a prescribed terminal comfort care drug.

**PROPOSED OFFENSE CLASS**

---

No proposed class.

**ANALYSIS**

---

G.S. 90-326.16(c) provides that these actions are punishable as a felony.

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 789 and found it to be inconsistent with the Offense Classification Criteria.

**FINDINGS**

---



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



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



Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, an offense is assigned to an offense class based on the harm that reasonably tends to result or does result from the conduct.

**DATE OF REVIEW:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2]
---------------------------------	---

**STATUTE**

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§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.

**DESCRIPTION**

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Subsection (a):

A person who

1. commits an assault
2. with a deadly weapon
3. upon an officer or employee of the State or of any political subdivision of the State, a company police officer (pursuant to Chapter 74E), or a campus police officer (pursuant to Chapter 74G, Article 1 of Chapter 17C, or Chapter 116)
4. while in the performance of an official duty.

**OFFENSE CLASS**

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**CURRENT:** Class F felony.

**PROPOSED:** Class E felony.

**ANALYSIS**

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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 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 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))

**FINDINGS**

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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:** 04/26/19

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**STATUTE**

§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.

**DESCRIPTION**

Subsection (b):

A person who

1. commits an assault
2. with a firearm
3. upon an officer or employee of the State or of any political subdivision of the State, a company police officer (pursuant to Chapter 74E), or a campus police officer (pursuant to Chapter 74G, Article 1 of Chapter 17C, or Chapter 116)
4. while in the performance of an official duty.

**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.

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 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)) 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))

**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 which reasonably tend to result or do result in serious personal injury as Class E felonies.

**DATE OF REVIEW: 04/26/19**

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**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

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**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

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**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.

**DATE OF REVIEW:** 03/01/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**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.

**DATE OF REVIEW:** 03/01/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**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.

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
---------------------------------	--

**STATUTE**

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§ 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**

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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**

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**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**

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

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**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.

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**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.

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**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.

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**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

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**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.

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**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.

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**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.

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**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

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**STATUTE**

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

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**DESCRIPTION**

Subsection (c):

A person who

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

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**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class H felony.

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**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.

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**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

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
---------------------------------	--

**STATUTE**

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

**DESCRIPTION**

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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**

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**CURRENT:** Class F felony.

**PROPOSED:** Class E felony.

**ANALYSIS**

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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**

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 20 – Emergency Worker Protection Act [Ed. 2] (cont'd)
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**STATUTE**

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

**DESCRIPTION**

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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**

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Class D felony.

**ANALYSIS**

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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**

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

<b>BILL NUMBER/SHORT TITLE:</b>	SB 151 – Break or Enter Pharmacy/Increase Penalty [Ed. 3]
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**STATUTE**

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§ 14-54.2. Breaking or entering a pharmacy.

**DESCRIPTION**

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Subsection (b):

A person who

1. breaks or enters
2. a pharmacy
3. with the intent to commit a larceny of a controlled substance.

**PROPOSED OFFENSE CLASS**

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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.

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.

The Sentencing Commission reviewed this provision on March 1, 2019 finding the original proposed classification of a Class D felony inconsistent and recommended that the offense would be consistent with the Offense Classification Criteria for a Class F or H felony.

**FINDINGS**

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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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 199 – Child Sex Abuse/Strengthen Laws [Ed. 3]
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**STATUTE**

§ 14-202.5. Ban online conduct by high-risk sex offenders that endangers children.

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**DESCRIPTION**

A person who

1. is a high-risk sex offender
2. who does any of the following online:
  - a. communicates with a person that the offender believes is under 16 years of age.
  - b. contacts a person that the offender believes is under 16 years of age.
  - c. poses falsely as a person under 16 years of age.
  - d. uses a Web site to gather information about a person that the offender believes is under 16 years of age.
  - e. uses a commercial social networking Web site in violation of a policy posted in a manner reasonably likely to come to the attention of users, prohibiting convicted sex offenders from using the site.

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**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class H felony.

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**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 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.

G.S. 14-202.5(b) defines commercial social networking web site and G.S. 14-202.5(c1) defines high risk sex offender.

Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act is a Class H felony. (G.S. 14-202.3(c)(1)) The same conduct is a Class G felony when either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location. (G.S. 14-202.3(c)(2))

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**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:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 199 – Child Sex Abuse/Strengthen Laws [Ed. 3]
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**STATUTE**

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§ 14-208.11(a). Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

**DESCRIPTION**

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A person who

1. is required to register as a sex offender (Article 27A, Chapter 14)
2. willfully
3. fails to provide the registering sheriff with the information, or any changes to the information, required under G.S. 14-208.7(b)(8).

**PROPOSED OFFENSE CLASS**

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Class F felony.

**ANALYSIS**

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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.

SB 199 would add G.S. 14-208.7(b)(8) to the existing statute, requiring that a high-risk sex offender, as defined in G.S. 14-202.5, provide all Internet protocol (IP) addresses in the person's residence, registered in the person's name, accessible at the person's place of employment, or otherwise under the person's control or custody to the Sheriff.

Currently, G.S. 14-208.11(a) has ten existing Class F felonies relating to registered sex offenders. For example, failure to register (G.S. 14-208.11(a)(1)), failure to notify change of address (G.S. 14-208.11(a)(2)), failure to return verification form (G.S. 14-208.11(a)(3)), or falsification of verification notice (G.S. 14-208.11(a)(4)).

**FINDINGS**

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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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 315 – North Carolina Farm Act of 2019 [Ed. 1]
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**STATUTE**

§ 106-568.66. Criminal Penalties.

**DESCRIPTION**

Subsection (a):

A person who

1. willfully, knowingly, or intentionally
2. a. manufactures, distributes, dispenses, delivers, purchases,
  - b. aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, purchase, or
  - c. possesses with the intent to manufacture, distribute, dispense, deliver, or purchase
3. marijuana on property used for hemp production, or in a manner intended to disguise the marijuana due to its proximity to hemp.

**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 criteria were not used in the classification of the drug offenses.

Any person that manufactures, distributes, dispenses, delivers, purchases, aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, purchase, or possesses with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana on property used for industrial hemp production, or in a manner intended to disguise the marijuana due to its proximity to industrial hemp, is guilty of a Class I felony. (G.S. 106-568.57)

**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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 327 – Timber Larceny/Strengthen Laws [Ed. 1]
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**STATUTE**

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§ 14-135. Larceny of timber.

**DESCRIPTION**

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Subsection (a)(1):

A person who

1. knowingly and willfully
2. cuts down, injures, or removes any timber
3. owned by another person.

**OFFENSE CLASS**

---

**CURRENT:** Class H felony (if the timber is valued at >\$1000) or Class 1 misdemeanor (if the timber is valued at ≤\$1,000) pursuant to G.S. 14-72.

**PROPOSED:** Class E felony.

**ANALYSIS**

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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 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.

Larceny of property worth more than \$1,000 is a Class H felony or larceny of property worth \$1,000 or less is a Class 1 misdemeanor. (G.S. 14-72)

Larceny of pine straw is a Class H felony. (G.S. 14-79.1)

Felony taking of Venus flytrap is a Class H felony. (G.S. 14-129.3)

**FINDINGS**

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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 felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss occasioned by the taking or removing of property as Class H felonies.

**DATE OF REVIEW:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

<b>BILL NUMBER/SHORT TITLE:</b>	SB 327 – Timber Larceny/Strengthen Laws [Ed. 1] (cont'd)
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**STATUTE**

---

§ 14-135. Larceny of timber.

**DESCRIPTION**

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Subsection (a)(2):

A person who

1. buys timber directly from the owner of the land on which the timber is grown
2. and fails to make payment in full to the owner by
  - a. the date specified in the written timber sales agreement or
  - b. if there is no agreement, 60 days from the date that the buyer removes the timber from the property.

**PROPOSED OFFENSE CLASS**

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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.

Larceny of property worth more than \$1,000 is a Class H felony or larceny of property worth less than \$1,000 is a Class 1 misdemeanor. (G.S. 14-72)

Larceny of pine straw is a Class H felony. (G.S. 14-79.1)

Felony taking of Venus flytrap is a Class H felony. (G.S. 14-129.3)

**FINDINGS**

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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 felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss occasioned by the breach of trust, formal or informal, as Class H felonies.

**DATE OF REVIEW:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 357 – Limit Ownership of Certain Animals [Ed. 1]
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**STATUTE**

§ 19A-77. Penalties.

**DESCRIPTION**

Section (b):

A person who

1. is the owner or custodian of any big cat, bear, or great ape
2. whose act or omission in the care control or containment of that animal
3. results in the animal running loose
4. and causes serious bodily injury to any person.

**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.

G.S. 19A-72 would make it unlawful for any person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State, by any means, a big cat, bear, or great ape, including transactions conducted via the Internet. G.S. 19A-77(a) would make it a class 2 misdemeanor and impose a civil penalty of not more than \$5,000 for a violation of the Article. Section (b) makes it a Class A1 misdemeanor when any big cat, bear, or great ape owner or custodian whose act or omission in the care, control, or containment of that animal results in the animal running loose or causing property damage.

G.S. 113-294 makes certain possessions of wild animals unlawful. Section (a) makes it unlawful to sell, possess for sale, or buy any wildlife and makes it a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars (\$250.00), unless a greater penalty is prescribed for the offense in question. G.S. 67-4.3 provides that the owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars (\$100.00) shall be guilty of a Class 1 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 359 – Born-Alive Abortion Survivors Protection Act [Ed. 1]
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**STATUTE**

§ 90-21.135. Penalties.

**DESCRIPTION**

Subsection (a) (a violation of G.S. 90-21.132):

A person who

1. during an abortion or an attempt to perform an abortion,
2. is a health care practitioner,
3. present at the time the child is born alive, fails to
  - a. exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age; or
  - b. following the exercise of skill, care, and diligence required above, ensure that the child born alive is immediately transported and admitted to a hospital.

**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.

Voluntary manslaughter is a class D felony. (G.S. 14-18)

Voluntary manslaughter of an unborn child is a class D felony. (G.S. 14-23.3)

**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 in or do result in societal injury as Class I felonies.

Note: Under Structured Sentencing, offenses are classified based on the harm that reasonably tends to result from them. This offense does not specify the harm it is designed to prohibit.

**DATE OF REVIEW:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 359 – Born-Alive Abortion Survivors Protection Act [Ed. 1] (cont'd)
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**STATUTE**

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§ 90-21.135. Penalties.

**DESCRIPTION**

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Subsection (a) (a violation of G.S. 90-21.133):

A person who

1. is a health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic
2. who has knowledge of a failure to comply with the requirements of G.S. 90-21.132
3. fails to immediately report the failure to comply to an appropriate State or federal law enforcement agency, or both.

**PROPOSED OFFENSE CLASS**

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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.

Failure to report noncompliance of a sex offender is a Class H felony. (G.S. 14-208.11A)

Concealment of death by failure to notify law enforcement is a Class H felony. (G.S. 14-401.22(a1))

**FINDINGS**

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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 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.

**DATE OF REVIEW:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

<b>BILL NUMBER/SHORT TITLE:</b>	SB 359 – Born-Alive Abortion Survivors Protection Act [Ed. 1] (cont'd)
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**STATUTE**

---

§ 90-21.135. Penalties.

**DESCRIPTION**

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Subsection (b):

A person who

1. intentionally performs or attempts to perform an overt act
2. that kills a child born alive.

**PROPOSED OFFENSE CLASS**

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Punished as under G.S. 14-17(c) for murder.

**ANALYSIS**

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G.S. 14-17(c) provides that it shall constitute murder where a child is born alive but dies as a result of injuries inflicted prior to the child being born alive. The degree of murder shall be determined as described in subsections (a) (i.e., first degree murder, Class A felony) and (b) (i.e., second degree murder, Class B1 or B2 felony) of this section.

**FINDINGS**

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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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 375 – Death by Distribution. [Ed. 2]
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**STATUTE**

§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

**DESCRIPTION**

Subsection (b):

A person who

1. unlawfully sells and delivers at least one certain controlled substance to the victim,
2. the ingestion of the certain controlled substance or substances causes the death of the user,
3. the person's unlawful distribution of the certain controlled substance or substances was a proximate cause of the victim's death, and
4. the person did not act with malice.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

The Sentencing Commission did not recommend classifying homicide offenses as Class C felonies.

For the purposes of this section, the term "certain controlled substance" includes any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, or opioid; cocaine or any other substance described in G.S. 90-90(1)(d); methamphetamine; a depressant described in G.S. 90-92(a)(1); or a mixture of one or more of these substances.

Currently, it is second degree murder if a death was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user. It is a Class B2 felony (G.S. 14-17(b)(2)). In State v. Liner, the Court of Appeals held that the State was required to prove the element of malice in order to support a charge of second degree murder in the context of a death resulting from the delivery of controlled substances. See 98 N.C. App. 600 (1990).

The Sentencing Commission reviewed a substantially similar provision in draft form in June 2018 and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class C felony. It would be consistent with the Homicide 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.

This offense would be consistent with the Homicide Offense Classification Criteria for a Class E felony. The Sentencing Commission classified offenses which result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

**DATE OF REVIEW:** 04/26/19

**BILL CONTINUED ON NEXT PAGE**

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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 375 – Death by Distribution. [Ed. 2] (cont'd)
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**STATUTE**

§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

**DESCRIPTION**

Subsection (c):

A person who

1. unlawfully sells and delivers at least one certain controlled substance to the victim,
2. the ingestion of the certain controlled substance or substances causes the death of the user,
3. the person's unlawful distribution of the certain controlled substance or substances was a proximate cause of the victim's death,
4. the person did not act with malice, and
5. the person has a previous conviction under this section, G.S. 91-95(a)(1), 90-95(e)(5), 90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95, or a prior conviction in any federal or state court in the United States that is substantially similar to an offense listed, within seven years of the date of the offense (excluding any period of time during which the person was incarcerated in a local, state, or federal detention center, jail, or prison).

**PROPOSED OFFENSE CLASS**

Class B2 felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses which proscribe an intentional killing with malice as Class B felonies. The Structured Sentencing punishment scheme takes a defendant's prior record into account through the Prior Record Level determination. Increasing the offense class of an offense based on prior convictions is inconsistent with Structured Sentencing.

G.S. 90-95(a)(1). Manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance.

G.S. 90-95(e)(5). Person 18 or older violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 or a pregnant female.

G.S. 90-95.1. Continuing criminal enterprise.

G.S. 90-95.4. Employing or intentionally using a minor to commit a drug law violation.

G.S. 90-95.6. Promoting drug sales by a minor.

For the purposes of this section, the term "certain controlled substance" includes any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, or opioid; cocaine or any other substance described in G.S. 90-90(1)(d); methamphetamine; a depressant described in G.S. 90-92(a)(1); or a mixture of one or more of these substances.

Currently, it is second degree murder if a death was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, 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.

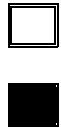
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or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user. It is a Class B2 felony (G.S. 14-17(b)(2)). In *State v. Liner*, the Court of Appeals held that the State was required to prove the element of malice in order to support a charge of second degree murder in the context of a death resulting from the delivery of controlled substances. See 98 N.C. App. 600 (1990).

The Sentencing Commission reviewed a substantially similar provision in draft form in June 2018 and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class B felony. It would be consistent with the Homicide Offense Classification Criteria for a Class E felony.

## **FINDINGS**

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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 Homicide Offense Classification Criteria for a Class E felony. The Sentencing Commission classified offenses which result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

**DATE OF REVIEW:** 04/26/19

**IMPACT ANALYSIS NOT REQUESTED YET**

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 404 – North Carolina First Step Act [Ed. 1]
---------------------------------	--

**STATUTE**

§ 90-95. Violations; penalties.

**DESCRIPTION**

Subdivision (h)(5a):

A person who

1. violates a provision under G.S. 90-95(h) or
2. conspires to commit an offense under G.S. 90-95(i).

**PUNISHMENT RANGE**

**CURRENT (if applicable):** Mandatory active sentence with a single minimum term of months and a maximum term of months; specified fine amount.

**PROPOSED:** The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided, or suspend the prison term imposed and place a person on probation.

**ANALYSIS**

Drug trafficking offenses are not sentenced under Structured Sentencing.

Under G.S. 90-95(h)(5a), the sentencing judge would have to find and enter in the record substantial and compelling reasons based on the nature of the crime, the history and character of the defendant, and the defendant's chances of rehabilitation, that imposition of the applicable minimum prison term would result in substantial injustice to the defendant and is not necessary for the protection of the public. However, the sentence modification authorized under this subdivision does not apply to a person the judge determines occupies a position of organizer, a supervisory position, or any other position of management in a continuing criminal enterprise, as that term is defined in G.S. 90-95.1.

**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:** 04/26/2019

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 482 – The Haiden Prevatte Act [Ed. 1]
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**STATUTE**

§ 67-4.3. Penalty for attacks by dangerous dogs.

**DESCRIPTION**

A person who

1. owns a dangerous dog
2. that attacks a person
3. resulting in the death of the victim.

**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.

G.S. 67-4.3 currently punishes the owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars (\$100.00) as a Class 1 misdemeanor. This bill would amend this provision requiring that there be injury to the person, injury to the person's personal property, or both physical injury to the person and injury to the person's personal property for a Class 1 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:** 04/26/19

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 589 – Prohibit Counterfeit/Nonfunctional Air Bags [Ed. 1]
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**STATUTE**

§ 20-136.2. Counterfeit supplemental restraint system components and nonfunctional air bags.

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**DESCRIPTION**

A person, firm, or corporation who

1. knowingly
2. imports, manufactures, sells, offers for sale, distribution, installation or reinstallation
3. any device intended to replace a supplemental restraint system component in any motor vehicle if the device is a
  - a. counterfeit supplemental restraint system component or
  - b. nonfunctional air bag
4. that causes a vehicle to fail to meet federal motor vehicle safety standards as provided in 49 C.F.R. § 571.208.

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**PROPOSED OFFENSE CLASS**

Class H felony

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**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.

It is currently a Class 1 misdemeanor to install or reinstall any object in lieu of an air bag. (G.S. 20-136.2)

G.S. 20-183.8(c)(1) makes it a Class I felony to forge an inspection sticker or inspection receipt.

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**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 societal injury as Class I felonies.

**DATE OF REVIEW:** 04/26/19

**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.