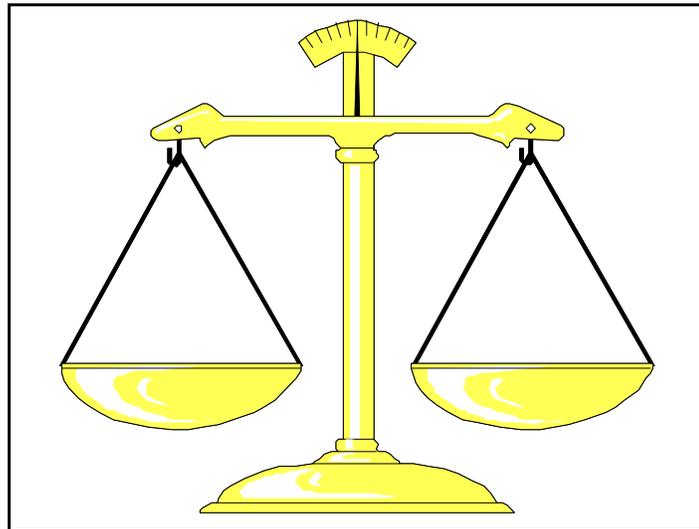


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT #1 ON PROPOSED LEGISLATION
PURSUANT TO N.C.G.S. 164-43***

***SUBMITTED TO THE 2016 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
UPDATED JUNE 2016***

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION**

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

This report by the Sentencing Commission includes all bills introduced or amended through June 17, 2016. 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, 2016.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on June 3, 2016 and June 17, 2016.

The fact that the Commission found a bill to be either consistent or inconsistent with the structured sentencing offense classification criteria does not imply either support for or opposition to the bill.

In this report, the Commission has taken no position on the merits of any bill other than those specifically proposed by the Commission.

THE OFFENSE CLASSIFICATION CRITERIA

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

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

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

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

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

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

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • Reserved for First Degree Murder

[Reasonably tends to result or does result in:]

- B** • Serious debilitating long-term personal injury

- C** • Serious long-term personal injury
• Serious long-term or widespread societal injury

- D** • Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling

- E** • Serious personal injury

- F** • Significant personal injury
• Serious societal injury

- G** • Serious property loss
Loss from the person or the person's dwelling

- H** • Serious property loss:
Loss from any structure designed to house or secure any activity or property
Loss occasioned by the taking or removing of property
Loss occasioned by breach of trust, formal or informal
- Personal injury
 - Significant societal injury

- I** • Serious property loss:
All other felonious property loss
- Societal injury

- M** • All other misdemeanors

* Personal injury includes both physical and mental injury.

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

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

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

CLASS CRITERIA

(FELONY)

- A** • Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation.
- B** • Intentional killing with malice.
- D** • Intentional killing with a partial legal excuse.
- E** • Unintentional killing by criminal or culpable negligence with aggravating circumstances.
- F** • Unintentional killing by criminal or culpable negligence.
- H** • Unintentional killing by motor vehicle involving a serious traffic violation.

(MISDEMEANOR)

- A1** • Unintentional killing by motor vehicle involving a traffic violation.

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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 287 – Amend Insurance Laws -AB [Ed. 4]

STATUTE

§ 58-50-40. Willful failure to pay group insurance premiums; willful termination of a group health plan; notice to persons insured; penalty; restitution; examination of insurance transactions.

DESCRIPTION

A person who

1. is an insurance fiduciary, and
2. causes the cancellation or nonrenewal of group health or life insurances and the consequential loss of coverages of the persons insured through
 - a. the willful failure to pay such premiums, or
 - b. the willful failure to fund the plan; and
3. willfully fails to deliver
 - a. at least 45 days before the termination of the group health or life insurance/plan,
 - b. to all persons covered by the policy or plan,
 - c. a written notice of his intention to stop payment or cease funding.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class F felony, if losses suffered are \$100,000 or more; Class H felony if losses suffered are less than \$100,000.

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 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.

Exploitation of an older adult or disabled adult (position of trust/funds, assets, or property involved valued at \$100,000 or more) is a Class F felony. G.S. 14-112.2(d)(1)

The Sentencing Commission reviewed this offense as a Class C felony in April 2015; it was found to be inconsistent with the Offense Classification Criteria for a Class C felony, but the Commission advised that it would be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

Bill is **inconsistent** with 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 or by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

DATE OF REVIEW: 6/17/16

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 287 – Amend Insurance Laws -AB [Ed. 4] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (b1):

A person who

1. with the intent to deceive an insurer,
2. knowingly
3. violates G.S. 58-2-164(b)
4. for the purpose of obtaining auto insurance
5. covering one or more vehicles, the operation of which requires a Commercial Driver’s License.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

G.S. 58-2-164(b) makes it a Class 3 misdemeanor for any person to, with intent to deceive an insurer, present a written or oral statement in support of an application for auto insurance or for vehicle registration, knowing that the application contains false or misleading information that states the applicant is an eligible risk, when he is not an eligible; or to assist, abet, solicit, or conspire with another 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 auto insurance or for vehicle registration, if the person knows the statement contains false or misleading information that states the applicant is an eligible risk when he is not an eligible risk.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/17/16

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 958 – Felony Death Imp. Boating/Sheyenne’s Law [Ed.1]

STATUTE

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

DESCRIPTION

Subsection (a), Death by Impaired Boating:

A person who

1. unintentionally
2. causes the death of another person,
3. while he was engaged in the offense of impaired boating (G.S. 75A-10(b1)),
4. the commission of which offense is the proximate cause of death.

PROPOSED OFFENSE CLASS

Class D felony, intermediate punishment is authorized for a defendant who is a Prior Record Level I offender. (Subdivision (f)(2))

ANALYSIS

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

Felony Death by Vehicle is a Class D felony, intermediate punishment is authorized for a defendant who is a Prior Record Level I offender. (G.S. 20-141.4(a1) and (b)(2))

- This provision was reclassified in SB 105 from the 2012 Session; the Sentencing Commission did not review the final version.

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

Impaired boating is a Class 2 misdemeanor, punishable by a fine of not less than \$250. (G.S. 75A0-10(b1))

FINDINGS

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

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

Homicide Offense Classification Criteria are not applicable.

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

Note: Under Structured Sentencing, an Active punishment is required for offenders convicted of a Class D offense. Authorizing an Intermediate punishment for a Prior Record Level I offender convicted of this offense is inconsistent with Structured Sentencing.

DATE OF REVIEW: 06/03/16

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 958 – Felony Death Imp. Boating/Sheyenne’s Law [Ed.1]
(cont’d)

STATUTE

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

DESCRIPTION

Subsection (b), Serious Injury by Impaired Boating:

A person who

1. unintentionally
2. causes serious injury to another person,
3. while he is engaged in the offense of impaired boating (G.S. 75A-10(b1)),
4. the commission of which offense is the proximate cause of the serious injury.

PROPOSED OFFENSE CLASS

Class F felony. (Subdivision (f)(4))

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.

Felony Serious Injury by Vehicle is a Class F felony. (G.S. 20-141.4(a3) and (b)(4))

- This provision was enacted in HB 1048 from the 2006 Session; the Sentencing Commission did not review the final version.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 958 – Felony Death Imp. Boating/Sheyenne’s Law [Ed.1]
(cont’d)

STATUTE

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

DESCRIPTION

Subsection (c), Aggravated Serious Injury by Impaired Boating:

A person who

1. has a previous conviction for impaired boating (G.S. 75A-10(b1)) within seven years, and
2. unintentionally
3. causes serious injury to another person,
4. while he is engaged in the offense of impaired boating (G.S. 75A-10(b1)),
5. the commission of which offense is the proximate cause of the serious injury.

PROPOSED OFFENSE CLASS

Class E felony. (Subdivision (f)(3))

ANALYSIS

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

Aggravated Felony Serious Injury by Vehicle is a Class E felony. (G.S. 20-141.4(a4) and (b)(3))

- This provision was enacted in HB 1048 from the 2006 Session; the Sentencing Commission did not review the final version.

FINDINGS

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

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

G.S. 164-41 is 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: 06/03/16

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 958 – Felony Death Imp. Boating/Sheyenne’s Law [Ed.1]
(cont’d)

STATUTE

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

DESCRIPTION

Subsection (d), Aggravated Death by Impaired Boating:

A person who

1. has a previous conviction for impaired boating (G.S. 75A-10(b1)) within seven years, and
2. unintentionally
3. causes the death of another person,
4. while he is engaged in the offense of impaired boating (G.S. 75A-10(b1)),
5. the commission of which offense is the proximate cause of the death.

PROPOSED OFFENSE CLASS

Class D felony, the court shall sentence the defendant in the aggravated range of the appropriate Prior Record Level. (Subdivision (f)(1a))

ANALYSIS

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

Aggravated Felony Death by Vehicle is a Class D felony, the court shall sentence the defendant in the aggravated range of the appropriate Prior Record Level. (G.S. 20-141.4(a1) and (b)(2))

- This provision was enacted in HB 1048 from the 2006 Session; the Sentencing Commission did not review the final version.

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

FINDINGS

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

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

G.S. 164-41 is 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.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 958 – Felony Death Imp. Boating/Sheyenne’s Law [Ed.1]
(cont’d)

STATUTE

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

DESCRIPTION

Subsection (e), Repeat Death by Impaired Boating:

A person who

1. commits the offense of
 - a. Death by Impaired Boating (G.S. 75A-10.3(a)), or
 - b. Aggravated Death by Impaired Boating (G.S. 75A-10.3(d)), and
2. has a previous conviction under at least one of the following:
 - a. Death by Impaired Boating (G.S. 75A-10.3(a)),
 - b. Aggravated Death by Impaired Boating (G.S. 75A-10.3(d)), or
 - c. Murder (G.S. 14-17) or Manslaughter (G.S. 14-18), the basis of which conviction was the unintentional death of another while engaged in the offense of impaired boating (G.S. 75A-10(b1)).

PROPOSED OFFENSE CLASS

Class B2 felony. (G.S. 75A-10.3(f)(1))

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies.

Repeat Felony Death by Vehicle is a Class B2 felony. (G.S. 20-141.4(a6) and (b)(1))

- This provision was enacted in SB 105 from the 2012 Session; the Sentencing Commission did not review the final version.

Second degree murder is a Class B2 felony. (G.S. 14-17)

FINDINGS

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

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

G.S. 164-41 is 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: 06/03/16

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 958: FELONY DEATH IMP. BOATING/SHEYENNE'S LAW

PREPARED: FEBRUARY 24, 2016

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 2. This section amends Article 1 of Chapter 75A, the Boating Safety Act, by adding a new statutory section, G.S. 75A-10.3, Death or serious injury by impaired boating; repeat offenses.

G.S. 75A-10.3(a)

New G.S. 75A-10.3(a), Death by Impaired Boating, provides that a person commits this offense when he unintentionally causes the death of another person while engaged in the offense of impaired boating (pursuant to G.S. 75A-10(b1)), the commission of which offense is the proximate cause of the death. Violation of this subsection is a Class D felony pursuant to G.S. 75A-10.3(f)(2). Notwithstanding, G.S. 15A-1340.17, intermediate punishment is authorized for a defendant who is a Prior Record Level I offender. Further, new G.S. 75A-10.3(g) provides that no person who has been placed in jeopardy upon a charge of death by impaired boating may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by impaired boating arising out of the same death.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. It is also not known how many convictions in Prior Record Level I would receive an intermediate punishment under proposed G.S. 75A-10.3(a). An intermediate punishment is not expected to have any initial impact on the prison population. For offenders receiving an active sentence in FY 2013/14, the average estimated time served for an offender convicted of a Class D offense was 66 months. If, for example, there was one conviction with an active sentence imposed for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison for an active sentence.

Under G.S. 75A-10(b1), there were 78 convictions for the class 2 misdemeanor offense of impaired boating in FY 2013/14. However, it is not known how many of these offenses may be covered under the proposed offense. It is likely that any violations resulting in death would have a conviction for a more serious offense.

This conduct may already be covered under G.S. 14-17(b), second-degree murder and G.S. 14-18, manslaughter. G.S. 14-17(b) provides that second-degree murder is any murder which does not rise to the level of first-degree murder and shall be punished as a Class B1 felony, unless the malice necessary to prove second degree murder is based on an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief, in which case it shall be punished as a Class B2 felony. G.S. 14-18 provides that involuntary manslaughter shall be punished as a Class F felony.

Under G.S. 14-17(b), there were 192 convictions for the class B1 felony offense of second-degree murder and under G.S. 14-18 there were 52 convictions for the Class F felony offense of manslaughter in FY 2013/14. It is not known how many of these convictions were for conduct covered under the proposed offense and would be prosecuted under it instead.

G.S. 75A-10.3(b)

New G.S. 75A-10.3(b), Serious Injury by Impaired Boating, provides that a person commits this offense when he unintentionally causes serious injury to another person while engaged in the offense of impaired boating (pursuant to G.S. 75A-10(b1)), the commission of which offense is the proximate cause of the serious injury. Violation of this section is a Class F felony pursuant to G.S. 75A-10.3(f)(4).

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Under G.S. 75A-10(b1), there were 78 convictions for the class 2 misdemeanor offense of impaired boating in FY 2013/14. It is not known how many of these offenses may be covered under the proposed offense. However, it is likely that any violations resulting in serious injury would have a conviction for a more serious offense.

G.S. 75A-10.3(c)

New G.S. 75A-10.3(c), Aggravated Serious Injury by Impaired Boating, provides that a person commits this offense when he unintentionally causes the serious injury of another person while engaged in the offense of impaired boating (pursuant to G.S. 75A-10(b1)), the commission of which offense is the proximate cause of the serious injury, and the person has a previous conviction of impaired boating within seven years of the date of the offense. Violation of this subsection is a Class E felony pursuant to G.S. 75A-10.3(f)(3).

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 64% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two Class E convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Under G.S. 75A-10(b1), there were 78 convictions for the class 2 misdemeanor offense of impaired boating in FY 2013/14. It is not known how many of these offenses may be covered under the proposed offense.

However, it is likely that any violations resulting in serious injury would have a conviction for a more serious offense.

G.S. 75A-10.3(d)

New G.S. 75A-10.3(d), Aggravated Death by Impaired Boating, provides that a person commits this offense when he unintentionally causes the death of another person while engaged in the offense of impaired boating (pursuant to G.S. 75A-10(b1)), the commission of which offense is the proximate cause of the serious injury, and the person has a previous conviction of impaired boating within seven years of the date of the offense. Violation of this subsection is a Class D felony pursuant to G.S. 75A-10.3(f)(1a). Notwithstanding G.S. 15A-1340.17, the court shall sentence the defendant in the aggravated range of the appropriate Prior Record Level.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. Under Structured Sentencing, all Class D offenders are required to receive an active sentence.¹ In FY 2013/14 the average estimated time served for an offender convicted of a Class D offense was 66 months. Aggravated sentences are up to 25% longer than the longest sentence in the presumptive range. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison for an active sentence.

Under G.S. 75A-10(b1), there were 78 convictions for the class 2 misdemeanor offense of impaired boating in FY 2013/14. It is not known how many of these offenses may be covered under the proposed offense. However, it is likely that any violations resulting in death would have a conviction for a more serious offense.

This conduct may already be covered under G.S. 14-17(b), second-degree murder and G.S. 14-18, manslaughter. G.S. 14-17(b) provides that second-degree murder is any murder which does not rise to the level of first-degree murder and shall be punished as a Class B1 felony, unless the malice necessary to prove second degree murder is based on an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief, in which case it shall be punished as a Class B2 felony. G.S. 14-18 provides that involuntary manslaughter shall be punished as a Class F felony.

Under G.S. 14-17(b), there were 192 convictions for the class B1 felony offense of second-degree murder and under G.S. 14-18 there were 52 convictions for the Class F felony offense of manslaughter in FY 2013/14. It is not known how many of these convictions were for conduct covered under the proposed offense and would be prosecuted under it instead.

G.S. 75A-10.3(e)

New G.S. 75A-10.3(e), Repeat Death by Impaired Boating, provides that a person commits this offense when he commits the offense of death by impaired boating (G.S. 75A-10.3(a)) or aggravated death by impaired boating (G.S. 75A-10.3(d)), and the person has a previous conviction for death by impaired

¹ If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

boating, aggravated death by impaired boating, or G.S. 14-17, Homicide, or G.S. 14-18, Manslaughter, and the basis of the conviction was the unintentional death of another while engaged in impaired boating under G.S. 75A-10(b1). The pleading and proof of the previous convictions shall be in accordance with the provisions of G.S. 15A-928, Allegation and proof of previous convictions in superior court. Violation of this subsection is a Class B2 felony pursuant to G.S. 75A-10.3(f)(1).

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. Under Structured Sentencing, all Class B2 offenders are required to receive an active sentence.² In FY 2013/14 the average estimated time served for an offender convicted of a Class B2 offense was 180 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison for an active sentence.

Under G.S. 75A-10(b1), there were 78 convictions for the class 2 misdemeanor offense of impaired boating in FY 2013/14. It is not known how many of these offenses may be covered under the proposed offense. However, it is likely that any violations resulting in death would have a conviction for a more serious offense.

Under G.S. 14-17(b), there were 192 convictions for the class B1 felony offense of second-degree murder and under G.S. 14-18 there were 52 convictions for the Class F felony offense of manslaughter in FY 2013/14. It is not known how many of these convictions were for conduct covered under the proposed offense and would be prosecuted under it instead.

Additional Information

In calendar year (CY) 2015, the North Carolina Wildlife Resources Commission reports there were 165 total boating accidents, 20 of which were fatal. The Commission further reports that alcohol use was a factor in five (5) fatal accidents and 14 non-fatal accidents.

G.S. 75A-10.3(a)

It is not known how many of the five (5) fatal boating accidents occurring in CY 2015 were for conduct that would be covered by proposed G.S. 75A-10.3(a) and punished as a Class D felony. It is also not known how many convictions in Prior Record Level I would receive an intermediate punishment under proposed G.S. 75A-10.3(a). An intermediate punishment is not expected to have any initial impact on the prison population. For offenders receiving an active sentence in FY 2013/14, the average estimated time served for an offender convicted of a Class D offense was 66 months. If, for example, there were five (5) convictions with active sentences imposed for this offense per year, this proposed change would result in the need for five (5) additional prison beds the first year and 11 additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison for an active sentence.

² If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

G.S. 75A-10.3(b)

It is not known how many of the 14 non-fatal boating accidents occurring in CY 2015 were for conduct that would be covered by proposed G.S. 75A-10.3(b) and punished as a Class F felony. In FY 2013/14, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 17 months. If, for example, there were 14 Class F convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for seven (7) additional prison beds the first year and 12 additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

G.S. 75A-10.3(c)

It is not known how many of the 14 non-fatal boating accidents occurring in CY 2015 were for conduct that would be covered by proposed G.S. 75A-10.3(c) and punished as a Class E felony. In FY 2013/14, 64% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were 14 Class E convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for nine (9) additional prison beds the first year and 20 additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

G.S. 75A-10.3(d)

It is not known how many of the five (5) fatal boating accidents occurring in CY 2015 were for conduct that would be covered by proposed G.S. 75A-10.3(c) and punished as a Class D felony. Under Structured Sentencing, all Class D offenders are required to receive an active sentence.³ In FY 2013/14 the average estimated time served for an offender convicted of a Class D offense was 66 months. Aggravated sentences are up to 25% longer than the longest sentence in the presumptive range and have a long term impact on the prison population. If, for example, there were five (5) convictions for this offense per year, this proposed change would result in the need for five (5) additional prison beds the first year and 11 additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison for an active sentence.

G.S. 75A-10.3(e)

It is not known how many of the five (5) fatal boating accidents occurring in CY 2015 were for conduct that would be covered by proposed G.S. 75A-10.3(a) and punished as a Class B2 felony. Under Structured Sentencing, all Class B2 offenders are required to receive an active sentence.⁴ In FY 2013/14 the average estimated time served for an offender convicted of a Class B2 offense was 180 months. If, for example, there were five (5) convictions for this proposed offense per year, this proposed change would result in the need for five (5) additional prison beds the first year and 11 additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison for an active sentence.

³ If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

⁴ If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

SECTION 3. This section amends G.S. 75A-10, Operating vessel or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc., to expand the sentencing options available for a violation of G.S. 75A-10(b1) which is a Class 2 misdemeanor.

Currently, G.S. 75A-10(b4) provides that a person who violates G.S. 75A-10(b1), impaired boating, is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars (\$250.00). Amended G.S. 75A-10(b4) states that a person who violates G.S. 75A-10(b1), impaired boating, is guilty of a Class 2 misdemeanor, and upon conviction, in addition to any other penalty imposed, shall be fined not less than two hundred fifty dollars (\$250.00), thusly expanding the sentencing options available for a conviction for impaired boating.

There were 78 convictions for the Class 2 misdemeanor offense under G.S. 75A-10(b1) in FY 2013/14. It is not known how many active sentences may result from expanding the sentencing options available for a conviction for impaired boating. In FY 2013/14, 33% of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, active sentences that result from the proposed broadening of the current statute would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

Effective December 1, 2016, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

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 1043 – Zip Line and Challenge Course Safety Act [Ed.1]

STATUTE

§ 95-295. Violations; civil penalties; appeal; criminal penalties.

DESCRIPTION

Subsection (h):

A person who

1. willfully
2. violates any provision of Article 24 of Chapter 95, Zip Line and Challenge Course Safety, and in so doing
3. causes the serious injury
4. of any person.

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.

A willful violation of Article 14B of Chapter 95, 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 this provision in April 2015 in HB 39/SB 75, Labor/Up Amusement Device Penalties. The Commission 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: 06/03/16

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)**

BILL NUMBER/SHORT TITLE: HB 1043 – Zip Line and Challenge Course Safety Act [Ed.1]
(cont'd)

STATUTE

§ 95-295. Violations; civil penalties; appeal; criminal penalties.

DESCRIPTION

Subsection (h):

A person who

1. willfully
2. violates any provision of Article 24 of Chapter 95, Zip Line and Challenge Course Safety, and in so doing
3. causes the death
4. of any person.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

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

- The Sentencing Commission reviewed this provision in April 2015 in HB 39/SB 75, Labor/Up Amusement Device Penalties. The Commission found it to be consistent with the Homicide Offense Classification Criteria for a Class E felony, with a note stating that it would also be consistent with the Homicide Offense Classification Criteria for a Class F felony.

Patient abuse and neglect, culpably negligent conduct proximately causes death is a Class E felony. (G.S. 14-32.2(b)(2))

FINDINGS

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

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

Homicide Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 06/03/16

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1043: ZIP LINE AND CHALLENGE COURSE SAFETY ACT

PREPARED: MAY 11, 2016

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill enacts Article 24, Zip Line and Challenge Course Safety, of Chapter 95 of the General Statutes to regulate zip lines and challenge courses. G.S. 95-295, Violations; civil penalties; appeal; criminal penalties; creates one new misdemeanor offense and one new felony offense.

Subsection (g) makes it a Class 2 misdemeanor for any person to willfully violate any provision of Article 24. It is a Class 1 misdemeanor if the conviction is for a second or subsequent violation.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. It is also not known how many offenders may be repeat offenders under the proposed statute. In FY 2015, 32% of Class 1 misdemeanor convictions and 33% of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 38 days, and the average sentence imposed for Class 2 convictions was 21 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, Class 2 (first offense) or Class 1 (second or subsequent) convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

Subsection (h) makes it a Class E felony for any person to willfully violate any provision of Article 24 and that violation causes the serious injury or death of another person.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2015, 61% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two Class E convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Effective December 1, 2017.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2015 Structured Sentencing Simulation Data

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 754 – Prevent Squatting in Foreclosed Real Property [Ed. 2]

STATUTE

§ 14-159.12. First degree trespass.

DESCRIPTION

Subsection (f):

A person who

1. without authorization,
2. enters or remains
3. (a) on premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or
(b) in a building of another, and
4. (a) the offense occurs on real property where the person has reentered after having previously been removed pursuant to the execution of a valid order or writ for possession; or
(b) the offense occurs under color of title where the person has knowingly created or provided materially false evidence of an ownership or possessory interest.

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.

First degree trespass is a Class 2 misdemeanor. (G.S. 14-159.12(a))

First degree trespass of a facility used for utility or agricultural activities is a Class A1 misdemeanor. (G.S. 14-159.12(c))

First degree trespass of a facility used for utility or agricultural activities with the intent to disrupt operations or placing persons at risk of serious bodily injury is a Class H felony. (G.S. 14-159.12(d))

Domestic criminal trespass is a Class 1 misdemeanor. (G.S. 14-134.3)

Forcible trespass is a Class 1 misdemeanor. (Common Law)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/2016

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 754: PREVENT SQUATTING IN FORECLOSED REAL PROPERTY

PREPARED: MAY 13, 2016

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill expands one existing felony offense and creates one new felony offense.

Section 1. This Section amends G.S. 14-118.6, Filing false lien or encumbrance, to expand the scope of the offense. G.S. 14-118.6(a) makes it a Class I felony for any person to present for filing or recording in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public officer, a public employee, or an immediate family member of the public officer or public employee on account of the performance of the public officer or public employee's official duties. This bill expands the offense to apply to the real or personal property of any person.

There were no Class I convictions under G.S. 14-118.6 in FY 2015. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2015, 14% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten additional Class I convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Section 2. This Section adds new subsection (f) to existing G.S. 14-159.12, First degree trespass. Under this provision, it is a Class I felony when a person commits the offense of first degree trespass and either the offense occurs on real property where the person has reentered after having previously been removed pursuant to the execution of a valid order or writ for possession or the offense occurs under color of title where the person has knowingly created or provided materially false evidence of an ownership or possessory interest.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2015, 14% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Some persons in violation of G.S.14-159.12 (a), First degree trespass, and G.S.14-159.13, Second degree trespass, may be convicted under this new offense. In FY 2015, there were 371 convictions for first degree trespass and 5,113 convictions for second degree trespass. It is not known how many of these existing

offenses were for conduct covered under the proposed bill. Impact on the prison population would occur if any misdemeanor convictions become felony convictions under the proposed bill.

While persons convicted of other trespass provisions may be convicted under this new offense, the other trespass offenses have such specific conditions in addition to the prohibited conduct under 14-159.12(a) that any overlap of convictions would be minimal, and is therefore not included in this analysis.

Effective for offenses committed on or after December 1, 2016.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2015 Structured Sentencing Simulation Data