

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

REPORT #1

**NC SENTENCING AND POLICY ADVISORY COMMISSION
MEMBERSHIP**

Hon. Charlie Brown, Chairman
Chief District Court Judge

Frances Battle
Victim Assistance Network

Hon. Tammy Lee
Association of County Commissioners

Art Beeler, Jr.
Lieutenant Governor's Appointee

Dr. Harvey McMurray
Academic Member

Sheriff James Clemmons, Jr.
Sheriffs' Association

Hon. Allen McNeill
State Representative

Hon. Warren Daniel
State Senator

Hon. James Mixson, III
Association of Clerks of Superior Court

Louise Davis
Community Sentencing Association

Luther Moore
Retail Merchants' Association

Danielle Marquis Elder
Attorney General's Office

Timothy Moose
Department of Public Safety

Hon. Sherri Elliott
District Court Judges' Association

Hon. Fred Morrison, Jr.
Justice Fellowship

Hon. John Faircloth
State Representative

Hon. William Richardson
State Representative

Hon. Milton "Toby" Fitch, Jr.
State Senator

Hon. Bob Steinburg, Sr.
State Senator

Willis Fowler
Post-Release Supervision & Parole Commission

Calvin Suber
Commission Chairman's Appointee

Lindsey Granados
Advocates for Justice

Hon. Michael Waters
Conference of District Attorneys

Hon. R. Gregory Horne
Conference of Superior Court Judges

Patrick Weede
Bar Association

Susan Katzenelson
Private Citizen, Governor's Appointee

Hon. Valerie Zachary
Court of Appeals

Chief Henry King, Jr.
Association of Chiefs of Police

**NC SENTENCING AND POLICY ADVISORY COMMISSION
STAFF**

Michelle Hall

Executive Director

John Madler

Associate Director for Policy, Staff Attorney

Ginny Hevener

Associate Director for Research

Tamara Flinchum

Senior Research & Policy Associate

John King

Senior Research & Policy Associate

Jennifer Lutz

Research & Policy Associate

Meghan Boyd Ward

Research & Policy Associate

Becky Whitaker

Research & Policy Associate

Shelley Kirk

Administrative Secretary

**P.O. Box 2448
Raleigh, NC 27602
(919) 890-1470
www.NCSPAC.org**

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 March 19, 2021. 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, 2021.

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

The bills included in this report were reviewed by the Sentencing Commission on March 19, 2021.

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 were established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria. The Commission did not apply the classification criteria to homicide and controlled substances offenses.

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

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

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

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

FELONY OFFENSE CLASSIFICATION CRITERIA*

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

* Personal injury includes both physical and mental injury.

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

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

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
March 19, 2021

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 36	Protect Those Who Serve and Protect Act [Ed. 2]	G.S. 14-34.1A	Class H	Consistent		1
		G.S. 14-34.8	Class I	Consistent		2
HB 40	Kimberly's Law/Death by Vehicle/DWLR [Ed. 1]	G.S. 20-141.4(a7)	Class F	Inconsistent	Would be consistent with a Class H felony.	3
		G.S. 20-141.4(a7)	Mandatory Sentence	Inconsistent		4
HB 151	Req Active Time Felony Death MV/Boat [Ed. 1]	20-141.4(a1)	Mandatory Sentence	Inconsistent		5
		75A-10.3(a)	Mandatory Sentence	Inconsistent		6
HB 195	Criminal Falsification of Medical Records [Ed. 1]	G.S. 90-413(a)(1)	Class H	Consistent		8
		G.S. 90-413(a)(2)	Class I	Consistent	Would also be consistent with a Class H felony.	9
HB 197	NC Constitutional Carry Act. [Ed. 1]	G.S. 14-415.35(d)	Class H	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	10
HB 238	Prohibit Possession of Skimming Device [Ed. 1]	G.S. 14-113.9, 14-113.17(b)	Class I	Consistent		11
HB 315	Arson Law Revisions [Ed. 1]	G.S. 14-62.3(b)	Class D	Consistent		12
		G.S. 14-62.3(c)	Class E	Inconsistent	Would be consistent with a Class F felony.	13

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 14-69.3(c)	Class F	Consistent		14
HB 326	ENOUGH/Gaming Machines [Ed. 1]	G.S. 14-309(b)	H	Consistent		15
		G.S. 14-309(b)	G	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	16
		G.S. 14-309(c)	H	Consistent		17
		G.S. 14-309(c)	G	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	18
		G.S. 14-309(c)	H	Consistent		19
SB 99	Clarify Law on Theft of Catalytic Converters [Ed. 1]	G.S. 14-72.8	Class I	Consistent		20
SB 186	Strengthening DWI Laws [Ed. 1]	G.S. 20-141.4(a7)	Class F	Inconsistent	Would be consistent with a Class H felony.	3
		G.S. 20-141.4(a7)	Mandatory Sentence	Inconsistent		4
SB 213	Req Active Time Felony Death MV/Boat [Ed. 1]	G.S. 20-141.4(a1)	Mandatory Sentence	Inconsistent		5
		G.S. 75A-10.3(a)	Mandatory Sentence	Inconsistent		6
SB 300	Criminal Justice Reform [Ed. 1]	G.S. 14-288.2(b)	Class H	Consistent		21
		G.S. 14-288.2(c)	Class G	Inconsistent	Would be consistent with a Class H felony.	22

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 36 – Protect Those Who Serve and Protect Act [Ed. 1]

STATUTE

§ 14-34.1A. Discharging certain barreled weapons or a firearm at or into certain unoccupied emergency vehicles.

DESCRIPTION

A person who

1. willfully or wantonly discharges or attempts to discharge
2. a firearm or barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second,
3. at or into any unoccupied emergency vehicle as defined by statute.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

It is a Class E felony for a person to willfully or wantonly discharge or attempt to discharge any firearm or barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure while it is occupied (G.S. 14-34.1(a)).

Discharging a barreled weapon or firearm into an occupied dwelling or occupied conveyance in operation, is a Class D felony (G.S. 14-34.1(b)).

Discharging a barreled weapon or firearm into occupied property, resulting in a serious bodily injury, is a Class C felony (G.S. 14-34.1(c)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Note: The title of the proposed statute seems to be inconsistent with the elements of the offense. It may help to remove the word “certain” from the title.

DATE OF REVIEW: 03/19/2021

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 36 – Protect Those Who Serve and Protect Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.8. Criminal use of laser device

DESCRIPTION

A person who

1. intentionally points a laser device,
2. while the device is emitting a laser beam,
3. at any of the following while the person is in the performance of their duties:
 - a. a law enforcement officer; probation officer; parole officer; person employed at a state or local detention facility; firefighter; emergency medical technician or other emergency health care provider; member of the North Carolina National Guard; and member of any branch of the Armed Forces of the United States.

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.

Currently, it is an infraction to intentionally point a laser device at a law enforcement officer, or at the head or face of another person, while the device is emitting a laser beam (G.S. 14-34.8). The use of a laser device towards an aircraft is a Class H felony (G.S. 14-280.2).

It is a Class I felony to assault and cause physical injury to a law enforcement officer, probation officer, parole officer, member of the North Carolina National Guard, and person employed at a State or local detention facility (G.S. 14-34.7(c)). It is a Class I felony to assault and cause physical injury to a firefighter, emergency medical technician, medical responder, and hospital personnel (G.S. 14-34.6(a)).

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: 03/19/2021

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 40 – Kimberly’s Law/Death by Vehicle/DWLR [Ed. 1] SB 186 – Strengthening DWI Laws [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (a7):

A person who

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

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This conduct is currently covered under G.S. 20-141.4(a2), misdemeanor death by vehicle, which is a Class A1 misdemeanor. Felony death by vehicle is a Class D felony. G.S.20-141.4(a1) Aggravated felony death by vehicle is a Class D felony. G.S. 20-141.4(a5) Repeat felony death by vehicle is a Class B2 felony. G.S. 20-141.4(a6)

The Sentencing Commission reviewed an identical provision in June 2020 in SB 710 and found it to be inconsistent with the Homicide Classification Criteria for a Class F felony. The Commission noted it would be consistent with the Homicide Classification Criteria for a Class H felony.

FINDINGS

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

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

Homicide Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/19/2021

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)**

BILL NUMBER/SHORT TITLE: HB 40 – Kimberly’s Law/Death by Vehicle/DWLR [Ed. 1] (cont’d) SB 186 – Strengthening DWI Laws [Ed. 1] (cont’d)

STATUTE

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

DESCRIPTION

Subsection (a7):

A person who

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

PUNISHMENT RANGE

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

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

ANALYSIS

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

The Sentencing Commission reviewed an identical provision in June 2020 in SB 710 and found it to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

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

DATE OF REVIEW: 03/19/2021

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 151/SB 213 – Req Active Time Felony Death MV/Boat [Ed. 1]
--

STATUTE

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

DESCRIPTION

Subsection (a1):

A person who

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

PUNISHMENT RANGE

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

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

ANALYSIS

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

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

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

The Sentencing Commission reviewed an identical provision in February 2017 in HB 65 and in March 2019 in HB 66 and found it to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Structured Sentencing provides a range of possible minimum sentences and types of punishment based on the offender's prior record level. Requiring a period of confinement while on probation and setting a minimum number of months is inconsistent with the principles of Structured Sentencing.

DATE OF REVIEW: 03/19/2021

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)**

BILL NUMBER/SHORT TITLE: HB 151/SB 213 – Req Active Time Felony Death MV/Boat [Ed. 1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (a):

A person who

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

PUNISHMENT RANGE

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

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

ANALYSIS

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

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

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

The Sentencing Commission reviewed an identical provision in February 2017 in HB 65 and in March 2019 in HB 66 and found it to be inconsistent with the G.S. 164-41.

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.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Structured Sentencing provides a range of possible minimum sentences and types of punishment based on the offender's prior record level. Requiring a period of confinement while on probation and setting a minimum number of months is inconsistent with the principles of Structured Sentencing.

DATE OF REVIEW: 03/19/2021

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 195 – Criminal Falsification of Medical Records [Ed. 1]

STATUTE

§ 90-413. Willful destruction, alteration, or falsification of medical records.

DESCRIPTION

Subdivision (a)(1):

A health care provider who

1. knowingly and willfully destroys, alters, or falsifies a medical record,
2. to conceal the commission of an error by the health care provider in providing medical services,
3. that caused injury to or the death of a patient.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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.

It is a Class I felony for a medical assistance provider to knowingly and willfully fail to disclose or make a false statement in connection with application for payment or conditions of operations (G.S. 108A-63(a) and (b)).

It is a Class I felony if a person alters, destroys, or steals any evidence relevant to any criminal offense or court proceeding (G.S. 14-221.1).

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: 03/19/2021

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 195 – Criminal Falsification of Medical Records [Ed. 1] (cont'd)
--

STATUTE

§ 90-413(a)(2). Willful destruction, alteration, or falsification of medical records.

DESCRIPTION

A health care provider who

1. knowingly and willfully destroys, alters, or falsifies a medical record,
2. to unlawfully obtain money or any other thing of value.

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.

It is a Class I felony for a medical assistance provider to knowingly and willfully fail to disclose or make a false statement in connection with application for payment or conditions of operations (G.S. 108A-63(a) and (b)).

It is a Class H felony for a medical assistance provider to willfully embezzle, convert, or appropriate recipient personal funds or property (G.S. 108A-60(a)(2)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/19/2021

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 197 – NC Constitutional Carry Act. [Ed. 1]

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 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, March 2019 in HB 61, and April 2019 in HB 498 and found each inconsistent with the Offense Classification Criteria for a Class H felony because the Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/19/2021

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 238 – Prohibit Possession of Skimming Device [Ed. 1]

STATUTE

§ 14-113.9. Financial transaction card theft.

DESCRIPTION

Subdivision (a)(6):

A person who

1. knowingly
2. possesses, sells, or delivers
3. a skimming device.

PROPOSED OFFENSE CLASS

Class I felony pursuant to G.S. 14-113.17(b).

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 following offenses are Class I felonies under G.S. 14-113.17(b):

Forgery of financial transaction card. (G.S. 14-113.11, -113.17(b))

Financial transaction card fraud (value over \$500.00). (G.S. 14-113.13(a), (b), -113.17(b))

Criminal possession of financial transaction card forgery devices. (G.S. 14-113.14, -113.17(b))

Criminal receipt of goods and services fraudulently obtained (worth more than \$500.00). (G.S. 14-113.15, -113.17(b))

Criminal factoring of financial transaction card records. (G.S. 14-113.15A, -113.17(b))

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: 03/19/2021

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 315 – Arson Law Revisions [Ed. 1]

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: 03/19/2021

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 315 – Arson Law Revisions [Ed. 1] (cont'd)

STATUTE

§ 14-62.3. Burning of commercial structure.

DESCRIPTION

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

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.

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.

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: 03/19/2021

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 315 – Arson Law Revisions [Ed. 1] (cont'd)

STATUTE

§ 14-69.3. Arson or other unlawful burning that results in serious bodily injury or physical injury to a firefighter, law enforcement officer, fire investigator, or emergency medical technician.

DESCRIPTION

Subsection (c):

A person who

1. commits a felony under Article 15 of Chapter 14 of the General Statutes (Arson and Other Burnings) and
2. a firefighter, law enforcement officer, fire investigator, or emergency medical technician suffers physical injury while discharging or attempting to discharge official duties
3. on the property, or proximate to the property, that is the subject of the firefighter's, law enforcement officer's, fire investigator's, or emergency medical technician's discharge or attempt to discharge his or her respective duties.

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.

Under G.S. 14-69.3(b), it is a Class E felony if a person commits a felony under Article 15 of Chapter 14 of the General Statutes and a firefighter, law enforcement officer, fire investigator, or emergency medical technician suffers *serious injury* while discharging or attempting to discharge official duties on the property, or proximate to the property, that is the subject of the firefighter's, law enforcement officer's, fire investigator's, or emergency medical technician's discharge or attempt to discharge his or her respective duties.

Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel, causing physical injury, is a Class I felony (G.S. 14-34.6(a)).

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: 03/19/2021

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 326 – 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.

The Sentencing Commission reviewed an identical provision in April 2019 in HB 688 and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/19/2021

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 326 – 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.

The Sentencing Commission reviewed an identical provision in April 2019 in HB 688 and found it inconsistent with the Offense Classification Criteria for a Class G felony because the Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/19/2021

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)**

BILL NUMBER/SHORT TITLE: HB 326 – 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.

The Sentencing Commission reviewed an identical provision in April 2019 in HB 688 and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/19/2021

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)**

BILL NUMBER/SHORT TITLE: HB 326 – 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.

The Sentencing Commission reviewed an identical provision in April 2019 in HB 688 and found it inconsistent with the Offense Classification Criteria for a Class G felony because the Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/19/2021

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)**

BILL NUMBER/SHORT TITLE: HB 326 – ENOUGH/Gaming Machines [Ed. 1] (cont'd)

STATUTE

§ 14-309. Violation made criminal.

DESCRIPTION

Subsection (c):

A person who

4. violates the provisions of G.S. 14-306.4(b)
5. involving the possession
6. 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.

The Sentencing Commission reviewed an identical provision in April 2019 in HB 688 and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/19/2021

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 99 – Clarify Law on Theft of Catalytic Converters [Ed. 1]

STATUTE

§ 14-72.8. Felony larceny of motor vehicle parts.

DESCRIPTION

Subsection (a)(ii):

A person who

1. commits larceny
2. of a motor vehicle part and
3. the motor vehicle part is a catalytic converter.

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.

This conduct is currently covered under G.S. 14-72.8, felony larceny of motor vehicle parts, which is a Class I felony if the cost of repairing the motor vehicle is one thousand dollars (\$1,000) or more.

This bill creates a presumption that the cost of repairing a motor vehicle is \$1,000 or more if the part stolen is a catalytic converter.

Misdemeanor larceny (value of goods is less than \$1,000) is Class 1 misdemeanor. (G.S. 14-72(a))

Felony larceny (value of goods is \$1,000 or more) is a Class H felony. (G.S. 14-72(a))

Chop shop activity (altering, destroying, etc. any stolen motor vehicle or part) is a Class H felony. (G.S. 14-72.7(a))

Larceny of a dog is a Class I felony. G.S. 14-81(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: 03/19/2021

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 300 – Criminal Justice Reform [Ed. 1]

STATUTE

§ 14-288.2. Riot; inciting to riot; punishments.

DESCRIPTION

Subsection (b):

A person who

1. willfully
2. engages in a riot (as defined in subsection (a))

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class H felony.

ANALYSIS

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

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

G.S. 14-288.2(a) defines a riot as “a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.”

Engaging in a riot resulting in property damage in excess of \$1,500 or serious bodily injury or while in possession of any dangerous weapon or substance is a Class H felony. G.S. 14-288.2(c) (See next page)

Injury to personal property is a Class 1 or Class 2 misdemeanor, depending on the cost of the damage incurred. G.S. 14-160

Injury to real property is a Class 1 misdemeanor. G.S. 14-127

Failure to disperse is a Class 2 misdemeanor. G.S. 14-288.5

Disorderly conduct is a Class 2 misdemeanor. G.S. 14-288.4(b)

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: 03/19/2021

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)**

BILL NUMBER/SHORT TITLE: SB 300 – Criminal Justice Reform [Ed. 1] (cont'd)

STATUTE

§ 14-288.2. Riot; inciting to riot; punishments.

DESCRIPTION

Subsection (c):

A person who

1. willfully
2. engages in a riot (as defined in subsection (a)) and
3. a. in the course and as a result of the riot there is property damage in excess of fifteen hundred dollars (\$1,500) or serious bodily injury or
b. such participant in the riot has in his possession any dangerous weapon or substance.

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 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. 14-288.2(a) defines a riot as "a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property."

Assault inflicting serious bodily injury is a Class F felony. G.S. 14-32.4

Injury to personal property is a Class 1 or Class 2 misdemeanor, depending on the cost of the damage incurred. G.S. 14-160

Injury to real property is a Class 1 misdemeanor. G.S. 14-127

Failure to disperse is a Class 2 misdemeanor. G.S. 14-288.5

Disorderly conduct is a Class 2 misdemeanor. G.S. 14-288.4(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 H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

DATE OF REVIEW: 03/19/2021

IMPACT ANALYSIS NOT REQUESTED YET