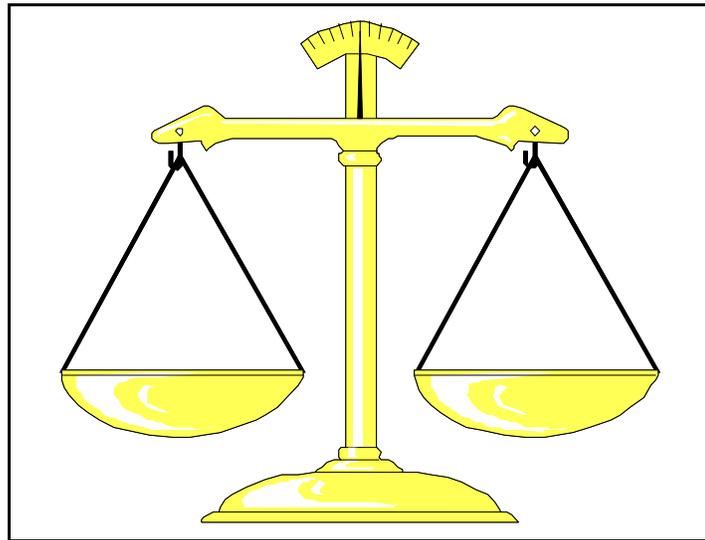


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT #2 ON PROPOSED LEGISLATION
PURSUANT TO N.C.G.S. 164-43***

***SUBMITTED TO THE 2007 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 2007***

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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 May 30, 2007. 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, 2007.

These summaries may not reflect the most recent bill amendments or committee substitutes. The date on which each individual summary was prepared 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 May 4 and June 1, 2007.

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 a 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 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 2004, the General Assembly noted that there were criteria for the classification of felony offenses but not for misdemeanor offenses. It asked the Commission to study the classification of misdemeanor offenses and to develop a system for classifying them on the basis of their severity.

The Commission developed a misdemeanor offense classification system based on the type and degree of harm that results or tends to result from an offense (refer to the classification criteria on the following pages). This is similar to the felony offense classification system. It uses the same types of harm (person, property, and society) and degrees of harm (serious, significant, and minor). The Commission divided the criteria into four groups to conform to the four misdemeanor offense classes. The misdemeanor criteria are separate from the felony criteria because the harms that result from the misdemeanor offenses are viewed as being separate from the harms that result from the felony offenses.

The Commission then reviewed the most frequently convicted misdemeanor offenses and recommended reclassifying some of them based on a comparison of the elements of the crimes to the criteria. The Commission also decided that it would use the misdemeanor offense classification criteria for the

classification of all new misdemeanor offenses and the reclassification of existing misdemeanor offenses proposed in the future. This report includes a comparison of offenses proposed in this session to the misdemeanor offense classification criteria.

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.

MISDEMEANOR OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

[A misdemeanor offense that reasonably tends to result or does result in]:

- | | | |
|-----------|-----|--|
| A1 | (a) | Serious injury to person |
| | (b) | Battery of a person who is a vulnerable victim or a member of a protected class |
| 1 | (a) | Significant injury to person |
| | (b) | Serious injury to property |
| | (c) | Serious injury to society |
| 2 | (a) | Significant injury to property |
| | (b) | Significant injury to society |
| | (c) | Assault or affray against a person who is a vulnerable victim or a member of a protected class |
| 3 | (a) | Minor injury to person |
| | (b) | Minor injury to property |
| | (c) | Minor injury to society |

* 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 drug offenses, impaired driving offenses, or homicide offenses.

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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 29 - SEX OFFENDER GPS/DOC REQUESTS [V.2]

STATUTE

§ 14-208.44. Failure to enroll; tampering with device.

DESCRIPTION

A person who is required to enroll in a satellite-based monitoring program who

1. fails to provide necessary information to the DOC, or
2. fails to cooperate with the DOC's guidelines and regulations for the program.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 14-208.44, Failure to enroll, is a Class F felony.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 105 - MODIFY LAWS FOR DESECRATING GRAVES
[V.2]

STATUTE

§ 14-148. Defacing or desecrating grave sites.

DESCRIPTION

A person who

1. willfully
2. throws, places or puts any refuse, garbage or trash in or on any cemetery.
3. takes away, disturbs, vandalizes, destroys or changes the location of any stone brick, iron or other material or fence enclosing a cemetery without authorization of law or consent of the surviving spouse or next of kin of the deceased.
4. takes away, disturbs, vandalizes, destroys, or tampers with any shrubbery, flowers, plants or other articles planted or placed within any cemetery to designate where human remains are interred or to preserve and perpetuate the memory and name of any person, without authorization of law or the consent of the surviving spouse or next of kin.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: 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.

FINDINGS

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

DATE PREPARED: 4/30/07

BILL CONTINUED ON NEXT PAGE

- 2 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 105 - MODIFY LAWS FOR DESECRATING GRAVES
[V.2]

STATUTE

§ 14-149. Desecrating plowing over or covering up graves.

DESCRIPTION

Subsection (a)(2):

A person who

1. without authorization of law or the consent of the surviving spouse or next of kin of the deceased,
2. knowingly and willfully
3. takes away, disturbs, vandalizes, destroys, tampers with, or defaces
4. any tombstone, headstone, monument, grave marker, grave ornamentation, or grave artifacts
5. within any cemetery
6. erected or placed to designate the place where human remains are interred or to preserve and perpetuate the memory and the name of any person.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

This offense is currently covered in part by G.S. 14-149(a)(3), a Class I felony.

Other than the numbering, this provision has not changed from the provision in Version 1 which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

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 or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 105 - MODIFY LAWS FOR DESECRATING GRAVES
[V.2]

STATUTE

§ 14-149. Desecrating plowing over or covering up graves.

DESCRIPTION

Subsection (1a):

A person who

1. without authorization of law or the consent of the surviving spouse or next of kin of the deceased,
2. knowingly and willfully
3. disturbs, destroys, removes, vandalizes, or desecrates
4. any human remains that have been interred in a cemetery.

OFFENSE CLASS

CURRENT: Class I felony (G.S. 14-149(a)(1)).

PROPOSED: Class H felony.

ANALYSIS

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

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

This provision has not changed from the provision in Version 1 which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

- 4 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 183 - BAN CELL PHONE USE BY SCHOOL BUS DRIVERS [V.3]

STATUTE

§ 20-140.6. Unlawful use of a mobile phone.

DESCRIPTION

A person who

1. uses additional technology or a mobile telephone
2. to engage in a call
3. while operating a public or private school bus or a school activity bus or while providing contracted transportation services for a public or private school in any vehicle.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor punishable by a fine of not less than \$100.00.

ANALYSIS

Additional technology. – Any technology that provides access to digital media such as a handheld camera, electronic mail, music, the Internet, or games.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

This provision is similar to the provision in Version 1 of HB 183 except that that provision was classified as a Class 1 misdemeanor. The Commission reviewed HB 183 in March, 2007, and found the provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/30/07

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 267– ALCOHOL INHALERS ILLEGAL [V.2]

STATUTE

§ 90-113.10. Inhaling fumes for purpose of causing intoxication.

§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

Any person who

1. knowingly
2. breathes or inhales
3. any compound, liquid or chemical
4. containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance
5. for the purpose of inducing a condition of intoxication.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed bill adds ethyl alcohol to the list of prohibited inhalants.

This provision is identical to a provision in HB 267 [v.1] which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/1/2007

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 267 – ALCOHOL INHALERS ILLEGAL [v.2]

STATUTE

§ 90-113.10A. Alcohol vaporizing devices prohibited.
§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

Any person who

1. sells, gives, delivers, possesses, or uses
2. any instrument or implement
3. to atomize or in any other way prepare a substance for inhalation
4. for the purpose of inducing a condition of intoxication.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed offense does not apply to devices used for medically prescribed or over-the-counter medications.

This provision is identical to a provision in HB 267 [v.1] which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/1/2007

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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 267– ALCOHOL INHALERS ILLEGAL [v.2]

STATUTE

§ 90-113.11. Possession of substances.
§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

Any person who

1. possesses
2. any compound, liquid, or chemical
3. containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance which will induce intoxication
4. for the purpose of violating G.S. 90-113.10.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 5/1/2007

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 267– ALCOHOL INHALERS ILLEGAL [v. 2]

STATUTE

§ 90-113.12. Sale of substance.
§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

Any person who

1. sells, offers to sell, delivers, gives, or possesses with the intent to sell, deliver or give
2. any compound, liquid, or chemical
3. containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance which will induce intoxication
4. if he has reasonable cause to suspect that the product will be used for the purpose of violating G.S. 90-113.10.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 367 - INCREASE CRIMINAL PENALTY/THEFT OF METALS [V.2]

STATUTE

§ 14-154. Injuring wires and other fixtures of telephone, telegraph, cable, and electric-power companies.

DESCRIPTION

A person who

1. willfully
2. injures, destroys, or pulls down
3. any telegraph, telephone, cable telecommunications, or electric-power-transmission pedestal or pole, or any telegraph, telephone, cable telecommunications, or electric power line, wire or fiber insulator, power supply, transformer, transmission or other apparatus, equipment or fixture used in the transmission of telegraph, telephone, cable telecommunications, or electrical power service or any equipment related to wireless communications regulated by the Federal Communications Commission.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

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

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

FINDINGS

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

Note: This offense would be consistent with a Class I felony if it were committed for pecuniary gain.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

- 10 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 441 - FELONY/STEAL OR CUT ANOTHER'S TIMBER
[V.2]

STATUTE

§ 14-135. Cutting, injuring, or removing another's timber.

DESCRIPTION

A person who is not the bona fide owner

1. knowingly and willfully
2. cuts down, injures, or removes
3. any standing, growing, or fallen tree or log, which is the property of another,
4. the value of the timber is \$2,500 or more, and
5. the person has violated the statute at least once before.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The first offense is a Class 1 misdemeanor.

FINDINGS

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

Bill is **inconsistent** with 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 Conviction Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing.

DATE PREPARED: 4/30/07

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 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 553/SB 1075 - PROHIBIT EXECUTION/SEVERE MENTAL DISABILITY

STATUTE

§ 15A-2007. Defendant with severe mental disability; death sentence prohibited.

DESCRIPTION

A person who

1. commits first degree murder and
2. has a severe mental disability at the time of the commission of the criminal offense.

PUNISHMENT RANGE

CURRENT: Death or life without parole.

PROPOSED: Life without parole.

ANALYSIS

Structured sentencing does not apply to sentencing for a capital felony.

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 does not apply to sentencing for a capital felony.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

12 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 598 - TAX ON ILLEGAL IMMIGRANT WIRE TRANSFERS

STATUTE

§ 105-187.62. Penalties.

DESCRIPTION

A person who

1. transfers money by wire
2. on behalf of another person
3. in order to avoid the tax levied under Article 5G (Illegal Immigrant Wire Transfer Tax) of Chapter 105 of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 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 599 – REGULATE LEGAL ASSISTANCE FUNDS

STATUTE

§ 163-278.301. Creation of legal assistance funds.

DESCRIPTION

A person who violates Article 22M (Legal Assistance Funds) of Chapter 163 of the General Statutes.

(G.S. 163-278.302. Appointment of treasurer.)

(G.S. 163-278.303. Detailed accounts to be kept by political treasurers.)

(G.S. 163-278.304. Statements filed with Board.)

(G.S. 163-278.310. Limitation on Contributions.)

(G.S. 163-278.316. Permitted uses of legal assistance funds.)

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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 650 - AMEND CERTAIN LAWS/LANDSCAPE CONTRACTORS

STATUTE

§ 89D-10. Injunctions for violation of Chapter.

DESCRIPTION

A person who violates any provision of Chapter 89D (Landscape Contractors) of the General Statutes.
(89D-1. Certificate required.)

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS

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

A Class 2 misdemeanor tends to result in significant injury to property or significant injury to society. This offense does not result in significant injury. This offense would be consistent with a Class 3 misdemeanor. The Sentencing Commission classified offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

DATE PREPARED: 4/30/07

IMPACT OF BILL 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 or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 650: AMEND CERTAIN LAWS/LANDSCAPE CONTRACTORS

PREPARED: April 25, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S.89-D-10 to make it unlawful for any person to violate any of the provisions of Chapter 89D of the General Statutes. Any violation will be a Class 2 misdemeanor, where currently violations are not criminal offenses.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 17% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 12 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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 688 – UP CRIM. PENALTY/SOLICIT CHILD BY
COMPUTER

STATUTE

§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.

DESCRIPTION

A person who

1. is 16 years of age or older and
2. knowingly,
3. with the intent to commit an unlawful sex act,
4. entices, advises, coerces, orders, or commands,
5. by means of a computer,
 - a. a child who is less than 16 years of age and at least 3 years younger than the defendant, or
 - b. a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant,
6. to meet with the defendant or any other person
7. for the purpose of committing an unlawful sex act.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class E 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.

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

This provision is similar to a provision in HB 614 which the Sentencing Commission reviewed in March 2005. The proposal was to move the offense from a Class I felony to a Class E felony. The Commission found the provision inconsistent with the Offense Classification Criteria. The offense was subsequently moved to Class H. This provision is identical to a provision in HB 28, SB 17, SB 68, and SB 132 which the Sentencing Commission reviewed in March 2007. The Commission found the provision inconsistent with the Offense Classification Criteria and pointed out that it would be consistent with a Class C felony.

FINDINGS

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

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

Class E felonies tend to result in serious personal injury. This offense does not result in serious personal injury. This offense would be consistent with a Class C felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

DATE PREPARED: 4/30/07

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 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 784 – EXECUTION/CHANGE AGE

STATUTE

§ 14-17. Murder in the first and second degree defined; punishment.

DESCRIPTION

A person who

1. commits first degree murder and
2. is 17 years of age at the time of the murder.

PUNISHMENT RANGE

CURRENT: Death or life without parole.

PROPOSED: Life without parole.

ANALYSIS

Structured sentencing does not apply to sentencing for a capital felony.

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 does not apply to sentencing for a capital felony.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

18 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 787 - FELONY MURDER

STATUTE

§ 14-17. Murder in the first and second degree defined; felony murder; punishment.

DESCRIPTION

(Felony Murder)

A person who

1. commits murder
2. in the perpetration or attempted perpetration of
3. any arson, rape or sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon.

PROPOSED OFFENSE CLASS

No class assigned, punishment is life without parole.

ANALYSIS

The Sentencing Commission did not use the criteria in the classification of homicide offenses.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of homicide offenses.

DATE PREPARED: 4/30/07

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 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 789 - CAPITAL MURDER STATUTE

STATUTE

§ 14-17.2. Capital murder; punishment.

DESCRIPTION

A person who

1. Willfully, deliberately, and with premeditation kills any person for pecuniary benefit, or in the commission of a kidnapping, when the kidnapping was committed with the intent to extort money for a pecuniary benefit.
 2. Willfully, deliberately, and with premeditation kills any person for hire.
 3. Willfully, deliberately, and with premeditation kills any person while in the custody of a law enforcement officer, the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, or any local confinement facility as defined in G.S. 153A-217 or G.S. 153A-230.1, or while in the custody of an employee thereof.
 4. Willfully, deliberately, and with premeditation kills any person while in the commission of robbery or attempted robbery.
 5. Willfully, deliberately, and with premeditation kills any person while in the commission of, or subsequent to, an offense in violation of Article 7A of Chapter 14 of the General Statutes, or in attempting to commit such offense.
 6. Willfully, deliberately, and with premeditation kills a State or local law enforcement officer, or any law enforcement officer of another state or the United States, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his or her official duties or because of the exercise of his or her official duties.
 7. Willfully, deliberately, and with premeditation kills more than one person as a part of the same act or transaction or more than one person within a three-year period.
 8. Willfully, deliberately, and with premeditation kills any person while in the commission of, or attempted commission of, the trafficking of a controlled substance, in violation of Chapter 90 of the General Statutes, when such killing is for the purpose of furthering the commission, or attempted commission, of such offense.
 9. Willfully, deliberately, and with premeditation kills any person pursuant to the direction or order of one who is engaged in a continuing criminal enterprise, as defined in G.S. 90-95.1.
 10. Willfully, deliberately, and with premeditation kills a pregnant woman knowing that the woman is pregnant and with the intent to cause the involuntary termination of the woman's pregnancy without a live birth.
 11. Willfully, deliberately, and with premeditation kills a person under the age of 14 while being age 21 or older.
 12. Willfully, deliberately, and with premeditation kills any person while in the commission of, or attempted commission of, an act of terrorism as defined in 18 U.S.C. § 2331(5).
 13. Willfully, deliberately, and with premeditation kills any person having been previously convicted of another capital felony or having been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.
- 20 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support or opposition to the bill itself.

-
14. Willfully, deliberately, and with premeditation kills any person having been previously convicted of a felony involving the use or threat of violence to the person or having been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult.
 15. Willfully, deliberately, and with premeditation kills any person where the murder is especially heinous, atrocious, or cruel.
 16. Willfully, deliberately, and with premeditation kills any person where the defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
 17. Willfully, deliberately, and with premeditation kills any person where the murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which included the commission by the defendant of other crimes of violence against another person or persons.

PROPOSED OFFENSE CLASS

Class A felony, punishable by death or life without parole.

ANALYSIS

The Sentencing Commission did not use the criteria in the classification of homicide offenses.

FINDINGS

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

The Offense Classification Criteria were not used in the classification of homicide offenses.

DATE PREPARED: 4/30/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 789 – CAPITAL MURDER STATUTE

STATUTE

§ 14-17.3. First degree murder; punishment.

DESCRIPTION

A person who

1. commits murder,
2. other than capital murder as provided in G.S. 14-17.2,
3. (a) by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or
(b) in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon.

PUNISHMENT RANGE

CURRENT: Class A felony, punishable by death or life without parole.

PROPOSED: Class A felony, punishable by life without parole.

ANALYSIS

Structured sentencing does not apply to sentencing for a capital felony.

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 does not apply to sentencing for a capital felony.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

22 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 805/SB 933 – ADJUST B1-E FELONY PUNISHMENTS

STATUTE

§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

DESCRIPTION

Reallocates three months from the minimum sentences in Classes B1 through E to the corresponding maximum sentences and increases the period of post-release supervision from nine months to twelve months.

PUNISHMENT RANGE

CURRENT: An offender is on post-release supervision for nine months.

PROPOSED: The minimum sentence range would decrease by three months and the corresponding maximum would increase by three months. An offender would be on post-release supervision for twelve months.

ANALYSIS

This bill is identical to House Bill 246/Senate Bill 209 which the Sentencing Commission reviewed in April, 2003, and House Bill 1215 which the Sentencing Commission reviewed in May, 2005. The Commission found the provision to be consistent with G.S. 164-41.

FINDINGS

- Bill is **consistent** with G.S. 164-41.
- Bill is **inconsistent** with G.S. 164-41.
- G.S. 164-41 is not applicable.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 806/SB 823 – SENTENCE LENGTHS

STATUTE

§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

DESCRIPTION

Makes the increase in sentence lengths between prior record levels on the felony punishment chart proportionate.

PUNISHMENT RANGE

CURRENT: The increase in sentence lengths between prior record levels varies between cells.

PROPOSED: The increase in sentence lengths between prior record levels is based on a 15% increment increase starting with Prior Record Level II, except in Classes H and I.

ANALYSIS

A change in the increase in sentence lengths between prior record levels would change the minimum sentence ranges in the majority of cells in Prior Record Levels II through VI, Offense Classes B1 through G.

This bill is identical to House Bill 264/Senate Bill 208 which the Sentencing Commission reviewed in April, 2003, and House Bill 1186 which the Sentencing Commission reviewed in May, 2005. The Commission found the provision to be consistent with G.S. 164-41.

FINDINGS

- Bill is **consistent** with G.S. 164-41.
- Bill is **inconsistent** with G.S. 164-41.
- G.S. 164-41 is not applicable.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 807/SB 935 – RESTRUCTURE PRIOR CRIMINAL RECORD POINTS

STATUTE

§ 15A-1340.14. Prior record level for felony sentencing.

DESCRIPTION

Subsection (c):

Restructure the prior record level point ranges to expand Level I and even out the remaining ranges.

PUNISHMENT RANGE

CURRENT: Prior Record Levels

- Level I - 0 points.
- Level II - At least 1, but not more than 4 points.
- Level III - At least 5, but not more than 8 points.
- Level IV - At least 9, but not more than 14 points.
- Level V - At least 15, but not more than 18 points.
- Level VI - At least 19 points.

PROPOSED: Prior Record Levels

- Level I - Not more than 1 point.
- Level II - At least 2, but not more than 5 points.
- Level III - At least 6, but not more than 9 points.
- Level IV - At least 10, but not more than 13 points.
- Level V - At least 13, but not more than 18 points.
- Level VI - At least 19 points.

ANALYSIS

A change in the increase in sentence lengths between prior record levels would change the minimum sentence ranges in the majority of cells in Prior Record Levels II through VI, Offense Classes B1 through G.

This bill is identical to House Bill 264/Senate Bill 208 which the Sentencing Commission reviewed in April, 2003, and House Bill 1186 which the Sentencing Commission reviewed in May, 2005. The Commission found the provision to be consistent with G.S. 164-41.

FINDINGS

- Bill is **consistent** with G.S. 164-41.
- Bill is **inconsistent** with G.S. 164-41.
- G.S. 164-41 is not applicable.

DATE PREPARED: 4/30/07

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 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 817 – RESIDENTIAL MORTGAGE FRAUD ACT [V.3]

STATUTE

§ 14-118.12. Residential mortgage fraud.
§ 14-118.15. Penalty for violation of Article.

DESCRIPTION

Subdivision (a)(1):

A person who, for financial gain and with the intent to defraud:

1. knowingly
2. makes or attempts to make
3. any misstatement, misrepresentation, or omission
4. within the mortgage lending process
5. with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity that is involved in the mortgage lending process relies on it.

PROPOSED OFFENSE CLASS

Class H felony for a violation involving a single mortgage loan.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

FINDINGS

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

Note: It may be more appropriate to prohibited making any “material” misstatement, misrepresentation, or omission.

DATE PREPARED: 4/30/07

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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 817 – RESIDENTIAL MORTGAGE FRAUD ACT [V.3]

STATUTE

§ 14-118.12. Residential mortgage fraud.
§ 14-118.15. Penalty for violation of Article.

DESCRIPTION

Subdivision (a)(2):

A person who, for financial gain and with the intent to defraud:

1. knowingly
2. uses or facilitates or attempts to use or facilitate the use of
3. any misstatement, misrepresentation, or omission
4. within the mortgage lending process
5. with the intention that a mortgage lender, borrower, or any other person or entity that is involved in the mortgage lending process relies on it.

PROPOSED OFFENSE CLASS

Class H felony for a violation involving a single mortgage loan.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

FINDINGS

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

DATE PREPARED: 4/30/07

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 817 – RESIDENTIAL MORTGAGE FRAUD ACT [V.3]

STATUTE

§ 14-118.12. Residential mortgage fraud.
§ 14-118.15. Penalty for violation of Article.

DESCRIPTION

Subdivision (a)(3):

A person who, for financial gain and with the intent to defraud:

1. receives or attempts to receive
2. proceeds or any other funds
3. in connection with a residential mortgage closing
4. that the person knew resulted from a violation of subdivision (1) or (2) of this subsection.

PROPOSED OFFENSE CLASS

Class H felony for a violation involving a single mortgage loan.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

FINDINGS

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

Note: It may be more appropriate to prohibit receiving proceeds or any other funds in connection with a residential mortgage closing that the person knew “or should have known” resulted from a violation of subdivision (1) or (2) of this section.

DATE PREPARED: 4/30/07

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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 817 – RESIDENTIAL MORTGAGE FRAUD ACT [V.3]

STATUTE

§ 14-118.12. Residential mortgage fraud.
§ 14-118.15. Penalty for violation of Article.

DESCRIPTION

Subdivision (a)(4):
A person who, for financial gain and with the intent to defraud:
1. conspires or solicits
2. another
3. to violate any of the provisions of subdivision (1), (2), or (3) of this subsection.

PROPOSED OFFENSE CLASS

Class H felony for a violation involving a single mortgage loan.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

Under G.S. 14-2.4, conspiracy to commit an offense is punishable one class lower than the underlying offense.

Under G.S. 14-2.6, solicitation to commit an offense is punishable two classes lower than the underlying offense.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 817 – RESIDENTIAL MORTGAGE FRAUD ACT [V.3]

STATUTE

§ 14-118.15. Penalty for violation of Article.

DESCRIPTION

Subsection (a):

A person who, for financial gain and with the intent to defraud, does any of the following:

1. Knowingly makes or attempts to make any misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity that is involved in the mortgage lending process relies on it.
2. Knowingly uses or facilitates or attempts to use or facilitate the use of any misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, borrower, or any other person or entity that is involved in the mortgage lending process relies on it.
3. Receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew resulted from a violation of subdivision (1) or (2) of this subsection.
4. Conspires or solicits another to violate any of the provisions of subdivision (1), (2), or (3) of this subsection.

PROPOSED OFFENSE CLASS

Class F felony for a violation involving a pattern of residential mortgage fraud.

ANALYSIS

Pattern of residential mortgage fraud. – Residential mortgage fraud that involves two or more mortgage loans, which have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

- 30 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 871 – NONRESIDENTIAL BUILDING/STRUCTURE
CODE

STATUTE

§ 160A-439. Ordinance authorized as to repair, closing, and demolition of nonresidential buildings or structures; order of public officer.

DESCRIPTION

Any person who:

1. occupies a nonresidential building
2. posted with a notice by the authorized public officer that the building is unfit for use and occupation is prohibited.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

This bill is identical to SB 556 which the Sentencing Commission reviewed on March 16, 2007. The Commission found the bill to be inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 887 - AMEND CRIMINAL OFFENSE OF STALKING [V.2]

STATUTE

§ 14-277.3. Stalking.

DESCRIPTION

A person who

1. either
 - (a) (1) harasses
 - (2) another person
 - (3) without legal purpose, or
 - (b) (1) willfully (
 - (2) engages in a course of conduct
 - (3) directed at a specific person, and
2. knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:
 - (a) fear for the person's safety or the safety of the person's immediate family or close personal associates; or
 - (b) suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

PROPOSED OFFENSE CLASS

Class A1 misdemeanor. If the defendant is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court.

ANALYSIS

Course of conduct. – Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Harasses or harassment. – Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions, directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to person or battery of a person who is a vulnerable victim or a member of a protected class as Class A1 misdemeanors.

The current offense of stalking is a Class A1 misdemeanor.

FINDINGS

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

DATE PREPARED: 5/30/07

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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 887 - AMEND CRIMINAL OFFENSE OF STALKING [V.2]

STATUTE

§ 14-277.3. Stalking.

DESCRIPTION

A person who

1. either
 - (a) (1) harasses
 - (2) another person
 - (3) without legal purpose, or
 - (b) (1) willfully
 - (2) engages in a course of conduct
 - (3) directed at a specific person, and
2. knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:
 - (a) fear for the person's safety or the safety of the person's immediate family or close personal associates; or
 - (b) suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

PROPOSED OFFENSE CLASS

Class G felony if the defendant commits the offense of stalking when there is a court order in effect prohibiting similar behavior by that defendant.

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 current offense of stalking when there is a court order in effect is a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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. This offense does not result in serious property loss from the person or from the person's dwelling. This offense would be consistent with 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 PREPARED: 5/30/07

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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 887 - AMEND CRIMINAL OFFENSE OF STALKING [V.2]

STATUTE

§ 14-277.3. Stalking.

DESCRIPTION

A person who

1. either
 - (a) (1) harasses
 - (2) another person
 - (3) without legal purpose, or
 - (b) (1) willfully
 - (2) engages in a course of conduct
 - (3) directed at a specific person, and
2. knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:
 - (a) Fear for the person's safety or the safety of the person's immediate family or close personal associates; or
 - (b) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

PROPOSED OFFENSE CLASS

Class F felony if the defendant commits the offense of stalking after having been previously convicted of a stalking offense.

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 current offense of stalking when the defendant has been previously convicted of stalking is a Class F felony.

FINDINGS

- Bill is **consistent** with Offense Classification Criteria.
- Bill is **inconsistent** with 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 PREPARED: 5/30/07

IMPACT ANALYSIS NOT REQUESTED YET

34 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-27.2. First-degree rape.

DESCRIPTION

A person who

1. is at least 18 years of age and
2. engages in vaginal intercourse
3. with a victim who is a child under the age of 13 years.

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

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

A person who engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim is guilty of first-degree rape, a Class B1 felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-27.2. First-degree rape.

DESCRIPTION

A person who

1. is at least 18 years of age and
2. engages in vaginal intercourse
3. with a victim who is a child under the age of 13 years.

PUNISHMENT RANGE

CURRENT: Punished according to the class of the offense and the offender's prior record level.

PROPOSED: The court, in its discretion, shall impose one of the following sentences:

- (1) Life imprisonment without parole; or
- (2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

ANALYSIS

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 4/30/07

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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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-27.4. First-degree sexual offense.

DESCRIPTION

A person who

1. is at least 18 years of age and
2. engages in a sexual act
3. with a victim who is a child under the age of 13 years.

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

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

A person who engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim is guilty of first-degree sexual offense, a Class B1 felony.

FINDINGS

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

DATE PREPARED: 4/30/07

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-27.4. First-degree sexual offense.

DESCRIPTION

A person who

1. is at least 18 years of age and
2. engages in a sexual act
3. with a victim who is a child under the age of 13 years.

PUNISHMENT RANGE

CURRENT: Punished according to the class of the offense and the offender’s prior record level.

PROPOSED: The court, in its discretion, shall impose one of the following sentences:

- (1) Life imprisonment without parole; or
- (2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

ANALYSIS

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 4/30/07

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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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

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

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class D felony.

PROPOSED: Class C felony.

ANALYSIS

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

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

This provision is identical to a provision in HB 28, SB 17, SB 68, and SB 132, which the Sentencing Commission reviewed on March 16, 2007. The Commission found the provision consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

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

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class D felony.

ANALYSIS

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

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious 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.

This provision is identical to a provision in HB 28, SB 17, SB 68, and SB 132, which the Sentencing Commission reviewed on March 16, 2007. The Commission found the provision inconsistent with the Offense Classification Criteria but pointed out that it would be consistent with a Class E felony.

FINDINGS

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

A Class D felony tends to 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. This offense does not result in a serious infringement on property interests. This offense would be consistent with a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE PREPARED: 4/30/07

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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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

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

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

This provision is identical to a provision in HB 28, SB 17, SB 68, and SB 132, which the Sentencing Commission reviewed on March 16, 2007. The Commission found the provision inconsistent with the Offense Classification Criteria but pointed out that it would be consistent with a Class F felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class E felonies tend to result in serious personal injury. This offense does not result in serious personal injury. This offense would be consistent with 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 PREPARED: 4/30/07

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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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-190.18. Promoting prostitution of a minor.

DESCRIPTION

A person who

1. knowingly
2. (a) entices, forces encourages, or otherwise facilitates a minor to participate in prostitution; or
(b) supervises, supports, advises, or protects the prostitution of or by a minor.

OFFENSE CLASS

CURRENT: Class D felony.

PROPOSED: Class C felony.

ANALYSIS

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

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

FINDINGS

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

DATE PREPARED: 4/30/07

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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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-202.5. Lewd or lascivious molestation of a child.

DESCRIPTION

A person who

1. is 18 years of age or older
2. (a) (1) intentionally touches
 - (2) in a lewd or lascivious manner
 - (3) the breasts, genitals, genital area, or buttocks, or the clothing covering them,
 - (4) of a person less than 12 years of age, or
- (b) (1) forces or entices
 - (2) a person under 12 years of age
 - (3) to so touch the perpetrator.

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

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

- G.S. 14-27.2, First-degree rape, is a Class B1 felony.
G.S. 14-27.4, First-degree sexual offense, is a Class B1 felony.
G.S. 14-202.1, Taking indecent liberties with children, is a Class F felony.
G.S. 14-27.5A, Sexual battery, is a Class A1 misdemeanor.

This provision is identical to a provision in HB 1921 which the Sentencing Commission reviewed in June, 2006. The Commission found the provision inconsistent with the Offense Classification Criteria but pointed out that it would be consistent with a Class F felony.

FINDINGS

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

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies. This offense does not result in serious debilitating long-term personal injury. This offense would be consistent with 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 PREPARED: 4/30/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-202.5. Lewd or lascivious molestation.

DESCRIPTION

A person who

1. is 18 years of age or older
2. (a) (1) intentionally touches
 - (2) in a lewd or lascivious manner
 - (3) the breasts, genitals, genital area, or buttocks, or the clothing covering them,
 - (4) of a person less than 12 years of age, or
- (b) (1) forces or entices
 - (2) a person under 12 years of age
 - (3) to so touch the perpetrator.

PUNISHMENT RANGE

CURRENT: Punished according to the class of the offense and the offender's prior record level.

PROPOSED: The court shall impose one of the following sentences:

- (1) Life imprisonment without parole; or
- (2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

ANALYSIS

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 4/30/07

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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 933 – JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-208.18. Unlawful for sex offender to be on certain premises where children are or where a reasonable person knows that children regularly congregate.

DESCRIPTION

A person who

1. has been convicted of an offense that requires registration under Article 27A (Sex Offender and Public Protection Registration Programs) of Chapter 14 of the General Statutes
2. is on the premises of a school, child care center, park, playground, children’s museum, library, business that a reasonable person knows is a place where children regularly congregate, or any other facility that a reasonable person knows is a place where children regularly congregate.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

G.S. 14-208.16, Residential restrictions, is a Class G felony.

G.S. 14-208.17, Sexual predator prohibited from working or volunteering for child-involved activities; limitation on residential use, is a Class F felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

IMPACT OF BILL 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 or opposition to the bill itself.

HB 933: JESSICA LUNSFORD ACT FOR NC

PREPARED: MAY 17, 2007

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED
UNDER STRUCTURED SENTENCING**

SECTION 1.

This section amends G.S. 14-27.2, First-degree rape, to add a new offense if a person, 18 years of age or older, engages in vaginal intercourse with a victim who is a child under the age of 13 years. Since this section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. Elements of the proposed offense are contained in current law in G.S. 14-27.2(a)(1), First degree rape of child. However, the proposed offense is limited to offenders 18 years or older at the time of the offense.¹

In FY 2005/06, there were 19 convictions under G.S. 14-27.2(a)(1), First degree rape of child, for offenders who were 18 or older at the time of the offense. All of these convictions would meet the elements of the proposed offense. The average minimum sentence imposed for 18 of these convictions was 232 months (or 19.3 years).² Under current law, offenders convicted of Class B1 felonies in Prior Record Levels V and VI may receive a life sentence if they are sentenced in the aggravated range. In FY 2005/06, one conviction under G.S. 14-27.2(a)(1) resulted in the imposition of a life sentence.

In addition, the proposed offense could also be covered under G.S. 14-27.2(a), First degree rape, if the offender was 18 or older at the time of the offense and the victim was under the age of 13. In FY 2005/06, there were 15 convictions under G.S. 14-27.2(a), First degree rape, for offenders who were 18 or older at the time of the offense. It is not known whether any of these convictions were for victims under the age of 13 years. The average minimum sentence imposed for these convictions was 294 months (or 24.5 years). It is not known how many of these 15 convictions would meet the elements of the proposed offense.

The proposed offense would be classified as a Class B1 felony; however, offenders would not be punished under the Structured Sentencing Act. The court, in its discretion, has two punishment options:

- a. Life imprisonment without parole, or
- b. 25 years mandatory active punishment followed by satellite-based monitoring for life.

There is no short-term impact (*i.e.*, within the ten-year projection period) for this proposed change. Additional long-term impact would occur if additional offenders receive life imprisonment without parole or if the 25 year mandatory active sentence exceeds the minimum sentence an offender would receive under current law. For example, each offender convicted of First degree rape of child who received either the 25 year sentence or life without parole under this proposal would result in the need for an additional prison bed beginning in year 19 of the projection period based on the current average minimum sentence imposed. Additional convictions would continue to stack up over the 10-year projection period.

¹ In North Carolina, a person may be convicted of a criminal offense beginning at age 16.

² This average excludes the one conviction that received a life sentence.

Under the proposed change, it is also possible that an offender could receive a shorter sentence than under current law. Under Structured Sentencing, sentence lengths for Class B1 felons range from 144 months (or 12 years) (lowest mitigated sentence in Prior Record Level I) to 480 months (or 40 years) (highest presumptive sentence in Prior Record Level VI) to life without parole (highest aggravated sentence in Prior Record Levels V and VI). The proposed amendment would limit the punishment options to either life imprisonment without parole or 25 years mandatory active punishment.

Offenders convicted under G.S. 14-27.2 are currently subject to satellite-based monitoring for life only if they are classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense;³ otherwise, it is for a definite period. Under the proposed amendment, offenders who receive the 25 years mandatory active punishment would be required to submit to satellite-based monitoring for life. The proposed amendment may have an impact on resources needed for satellite-based monitoring that would be dependent upon the number of additional offenders assigned to this sanction.

SECTION 2.

This section amends G.S. 14-27.4, First-degree sexual offense, to add a new offense if a person, 18 years of age or older, engages in a sexual act with a victim who is a child under the age of 13 years. Elements of the proposed offense are contained in current law in G.S. 14-27.4(a)(1), First degree sexual offense of child. However, the proposed offense is limited to offenders 18 years or older at the time of the offense.⁴

In FY 2005/06, there were 41 convictions under G.S. 14-27.4(a)(1), First degree sexual offense of child, for offenders who were 18 or older at the time of the offense. All of these convictions would meet the elements of the proposed offense. The average minimum sentence imposed for these convictions was 240 months (or 20 years).

In addition, the proposed offense could also be covered under G.S. 14-27.4(a), First degree sexual offense, if the offender was 18 or older at the time of the offense and the victim was under the age of 13. In FY 2005/06, there were 16 convictions under G.S. 14-27.4(a), First degree sexual offense, for offenders who were 18 or older at the time of the offense. It is not known whether any of these convictions were for victims under the age of 13 years. The average minimum sentence imposed for these convictions was 250 months (or 20.8 years). It is not known how many of these 16 convictions would meet the elements of the proposed offense.

The proposed offense would be classified as a Class B1 felony; however, offenders would not be punished under the Structured Sentencing Act. The court, in its discretion, has two punishment options:

- Life imprisonment without parole, or
- 25 years mandatory active punishment followed by satellite-based monitoring for life.

³ Sexually violent predators are based on a finding of the court. Recidivists are defined as having a prior reportable conviction. It is not known how many offenders were found to be sexually violent predators or recidivists. AOC's Automated Criminal Information System does not contain any information regarding sexually violent predators or recidivists. Aggravated offense means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of sexual violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

⁴ See Footnote 1.

There is no short-term impact (*i.e.*, within the ten-year projection period) for this proposed change. Additional long-term impact would occur if additional offenders receive life imprisonment without parole or if the 25 year mandatory active sentence exceeds the minimum sentence an offender would receive under current law. For example, each offender convicted of First degree sexual offense of child who received either the 25 year sentence or life without parole under this proposal would result in the need for an additional prison bed beginning in year 20 of the projection period based on the current average minimum sentence imposed. Additional convictions would continue to stack up over the 10-year projection period.

Under the proposed change, it is also possible that an offender could receive a shorter sentence than under current law. Under Structured Sentencing, sentence lengths for Class B1 felons range from 144 months (or 12 years) (lowest mitigated sentence in Prior Record Level I) to 480 months (or 40 years) (highest presumptive sentence in Prior Record Level VI) to life without parole (highest aggravated sentence in Prior Record Levels V and VI). The proposed amendment would limit the punishment options to either life imprisonment without parole or 25 years mandatory active punishment.

Offenders convicted under G.S. 14-27.4 are currently subject to satellite-based monitoring for life only if they are classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense;⁵ otherwise, it is for a definite period. Under the proposed amendment, offenders who receive the 25 years mandatory active punishment would be required to submit to satellite-based monitoring for life. The proposed amendment may have an impact on resources needed for satellite-based monitoring that would be dependent upon the number of additional offenders assigned to this sanction.

SECTION 3.

This section reclassifies G.S. 14-190.16, First degree sexual exploitation of a minor, from a Class D felony to a Class C felony. There were three convictions for this offense in FY 2005/06. Due to the small number of convictions, a more detailed impact projection using the Structured Sentencing Simulation Model would not be reliable.

Impact on the prison population would occur if Class D First Degree Sexual Exploitation of a Minor convictions become Class C convictions under the proposed bill because of the longer average estimated time served (95 months for a Class C compared to 75 months for a Class D). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period. Based on the differences in average estimated time served, Class D convictions that would become Class C convictions under this proposal would result in the need for additional prison beds beginning in year six of the projection period.

SECTION 4.

This section reclassifies G.S. 14-190.17, Second degree sexual exploitation of a minor, from a Class F felony to a Class D felony. An offender would become qualified for post-release supervision; he or she would already be required to enroll in the satellite-based monitoring program. There were 14 convictions for this offense in FY 2005/06. Due to the small number of convictions, a more detailed impact projection using the Structured Sentencing Simulation Model would not be reliable.

⁵ See Footnote 3.

Impact on the prison population will occur if Class F Second Degree Sexual Exploitation of a Minor convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 47% for Class F) and longer average estimated time served (75 months for Class D compared to 19 months for Class F). If, for example, there were 14 Class F felony convictions that were reclassified as Class D felony convictions, this would result in the need for seven additional prison beds the first year and 14 additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

SECTION 5.

This section reclassifies G.S. 14-190.17A, Third degree sexual exploitation of a minor, from a Class I felony to a Class E felony. An offender would become qualified for post-release supervision; he or she would already be required to enroll in the satellite-based monitoring program. There were 21 convictions for this offense in FY 2005/06. Due to the small number of convictions, a more detailed impact projection using the Structured Sentencing Simulation Model would not be reliable.

Impact on the prison population will occur if Class I Third Degree Sexual Exploitation of a Minor convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (49% for Class E compared to 15% for Class I) and longer average estimated time served (31 months for Class E compared to 7 months for Class I). If, for example, there were 21 Class I felony convictions that were reclassified as Class E felony convictions, this would result in the need for nine additional prison beds the first year and 21 additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

SECTION 6.

This section reclassifies G.S. 14-190.18, Promoting prostitution of a minor, from a Class D felony to a Class C felony. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Impact on the prison population would occur if Class D Promoting Prostitution of a Minor convictions become Class C convictions under the proposed bill because of the longer average estimated time served (95 months for a Class C compared to 75 months for a Class D). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period. Based on the differences in average estimated time served, Class D convictions that would become Class C convictions under this proposal would result in the need for additional prison beds beginning in year six of the projection period.

SECTION 7.

This section creates a new felony offense, “Lewd or lascivious molestation.” (G.S. 14-202.5) This section makes it an offense for a person, 18 years of age or older, to intentionally touch in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 12 years of age, or force or entice a person under 12 years of age to so touch the perpetrator. Since this section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be sentenced under the proposed section.

The offense would be classified as a Class B1 felony; however, offenders would not be punished under the Structured Sentencing Act. The court, in its discretion, has two punishment options:

- a. Life imprisonment without parole, or
- b. 25 years mandatory active punishment followed by satellite-based monitoring for life.

The conduct covered under this proposed offense may be currently covered under G.S. 14-202.1, Indecent Liberties with Children, which is a Class F felony, or under G.S. 14-202.4(a), Indecent Liberties with Student, which is a Class I felony. However, it is not known how many of the current convictions under G.S. 14-202.1 and G.S. 14-202.4(a) would meet the age restrictions and other elements of the proposed offense. In FY 2005/06, there were 583 convictions for Indecent Liberties with Children (G.S. 14-202.1) and 6 convictions for Indecent Liberties with Student (G.S. 14-202.4(a)) for offenders who were 18 or older at the time of the offense.⁶ The age of the victim is not known. (*See* the impact projection on the following page for percentage-based scenarios.)

In addition, the conduct covered under this proposed bill may be currently covered under G.S. 14-27.5A, Sexual Battery, and G.S. 14-33(c)(3), Assault on a Child Under 12, both of which are Class A1 misdemeanor offenses. In FY 2005/06, there were 162 convictions under G.S. 14-27.5A and 137 convictions under G.S. 14-33(c)(3) for offenders who were 18 or older at the time of the offense. It is not known how many of these convictions would meet the age restrictions and other elements of the proposed offense. Due to their short sentence lengths and low rate of active punishments imposed, convictions for misdemeanor offenses typically do not have a significant impact on the prison system. However, if any of the convictions under G.S. 14-27.5A or G.S. 14-33(c)(3) would become Class B1 convictions under the proposed bill, it would result in both immediate and long-term impact on the prison system due to the required Active sentence and the minimum sentence length of 25 years. Each conviction would result in the need for one additional prison bed immediately and for a minimum of 25 years. The build-up of these convictions over the years would result in substantial long-term impact.

LEWD OR LASCIVIOUS MOLESTATION

Scenarios: These scenarios assume that a specified percentage of the 589 offenders age 18 or older who were convicted of Indecent Liberties with Children and Indecent Liberties with Student would meet the elements of the proposed offense. These offenders would then be convicted of a Class B1 felony and sentenced to a minimum of 25 years.

⁶ See Footnote 1.

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS		
	Scenario A: 10%	Scenario B: 25%	Scenario C: 50%
Year 1	14	38	77
Year 2	41	124	254
Year 3	89	246	509
Year 4	138	375	772
Year 5	186	512	1,048
Year 6	244	655	1,339
Year 7	303	801	1,638
Year 8	360	948	1,936
Year 9	418	1,104	2,241
Year 10	478	1,258	2,555

NOTES:

1. Assumes effective for crimes committed on or after 12/1/2007. Based on this effective date, Fiscal Year 2008/09 would represent the first full year of impact due to the gap between the time a felony offense is committed and the offender is sentenced.
2. Since the projection period is limited to 10 years, it was assumed that all offenders sentenced under the proposed bill would receive a 25 year sentence (the minimum under the proposal). However, the actual sentence could be 25 years or life imprisonment under the proposed bill.
3. This projection does not take into account any potential impact on post-release supervision caseloads or potential resource needs for satellite-based monitoring that would occur after the offender serves his/her 25 year sentence (minimum) and is supervised for the remainder of his/her natural life. In addition, this projection does not include any potential prison impact due to the revocation of post-release supervision for these offenders since it would occur outside the 10-year projection period.
4. Assumes no deterrent or incapacitative effects.

Except for offenders convicted of assault on a child under 12, offenders are currently subject to satellite-based monitoring for life only if they are classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense;⁷ otherwise, it is for a definite period. Under the proposed amendment, offenders who receive the 25 years mandatory active punishment would be required to submit to satellite-based monitoring for life. The proposed amendment may have an impact on resources needed for satellite-based monitoring that would be dependent upon the number of additional offenders assigned to this sanction.

SECTION 8.

This section adds “Lewd or lascivious molestation” (G.S. 14-202.5; *see* Section 7) to the list of “Sexually violent offenses” for which an offender must register on the sex offender registry. This would

⁷ *See* Footnote 3.

also include conspiracy, attempt, and solicitation to commit the offense, as well as aiding and abetting the offense. Since Lewd or lascivious molestation is a new offense created in Section 7 of the proposed bill, it is not known how many convictions there might be for this offense (*see* analysis for Section 7) and, therefore, how many additional offenders would be required to register on the sex offender registry for sexually violent offenses.

Under current law, an offender convicted of a sexually violent offense is required to maintain a registration on the sex offender registry for at least ten years (would become at least thirty years under Section 10 of the bill). If they are classified as a sexually violent predator, they must maintain a registration for life. Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11). In FY 2005/06, there were 234 convictions under G.S. 14-208.11 (which represents an increase from 147 convictions in FY 2004/05 and 116 convictions in FY 2003/04).

This section would require more offenders to maintain a registration. It is not known how many of these additional offenders will fail to comply with their registration requirements. In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed section per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

In addition, under Section 10 of the proposed bill, the time period for maintaining registration on the sex offender registry would be expanded from ten years to life with a minimum of at least thirty years. It is not known how many additional registration violations might occur as a result of increasing the registration period (*see* analysis for Section 10).

SECTION 9.

This section amends G.S. 14-208.6A, Lifetime registration requirements for criminal offenders, to state the intent of the General Assembly to establish a 30 year registration requirement (is currently 10 years). (*See* Section 10.)

SECTIONS 10-12.

These sections amend G.S. 14-208.7, 14-208.9, and 14-208.9A to make the registration requirements stricter by requiring the offender to comply with them within 48 hours (currently 10 days), and to expand the time for maintaining registration from ten years to life with a minimum of at least thirty years. (Termination is no longer automatic.) Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11).

The proposed changes in Sections 10-12 add additional restrictions to sex offender registration that may make compliance with registration requirements more difficult, including an expansion in the time period for maintaining registration on the sex offender registry. Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11). In FY 2005/06, there were 234 convictions under G.S. 14-208.11 (which represents an increase from 147 convictions in FY 2004/05 and 116 convictions in FY 2003/04).

It is not known how many additional registration violations might occur as a result of these proposed changes. In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average

estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

SECTION 13.

This section increases the minimum time a person required to register must be registered before he or she can petition the superior court to terminate the registration requirement from 10 years to 30 years. (See Section 10.) It is not known how many sex offenders will meet the conditions and have their registration requirement terminated after thirty years, nor is it known how many will be continued and for how long. Offenders who continue to be required to register may subsequently violate G.S. 14-208.11, Failure to comply with registration requirements, which is a Class F felony. In FY 2005/06, there were 234 convictions under G.S. 14-208.11 (which represents an increase from 147 convictions in FY 2004/05 and 116 convictions in FY 2003/04).

It is not known how many additional registration violations might occur as a result of this proposed change. In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

SECTION 14.

This section creates a new felony offense, Unlawful for sex offender to be on certain premises where children are or where a reasonable person knows that children regularly congregate. (G.S. 14-208.18) This makes it a Class F felony for a person convicted of an offense that requires registration as a sex offender to be on the premises of any of the following: a school, child care center, park, playground, children's museum, library, business that a reasonable person knows is a place where children regularly congregate, or any other facility that a reasonable person knows is a place where children regularly congregate.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

G.S. 14-208.16, Residential restrictions, and G.S. 14-208.17, Sexual predator prohibited from working or volunteering for child-involved activities; limitation on residential use, currently restrict the movements and activities of sex offenders. Both statutes took effect December 1, 2006. As a result, there are no historical data available for these offenses.

SECTION 16-17.

Similar to Sections 10-12, these sections amend G.S. 14-208.27 and 14-208.28 to make the change of address requirement and the verification of registration information requirement stricter by requiring the offender to comply with them within 48 hours (currently 10 days). (See Section 10 for analysis.)

SECTION 18.

This section amends G.S. 14-208.40, Establishment of program; creation of guidelines; duties, to add a third category of offenders to be monitored under the sex offender monitoring program (satellite-based monitoring) – offenders convicted of G.S. 14-24.2(a1), First-degree rape of a child less than 13 years of age by an offender who is at least 18 years of age, G.S. 14-24.4(a1), First-degree sexual offense of a child less than 13 years of age by an offender who is at least 18 years of age, and G.S. 14-202.5, Lewd or lascivious molestation of a child, who are sentenced to 25 years active punishment and satellite-based monitoring for the duration of the offender's natural life. (See Section 19.) The proposed amendment may have an impact on resources needed for satellite-based monitoring that would be dependent upon the number of additional offenders assigned to this sanction. (See also Sections 1, 2, and 7 for the potential pool of offenders.)

SECTION 19.

This section amends G.S. 14-208.41, Enrollment in satellite-based monitoring programs mandatory; lengths of enrollment, to require that the offenders specified in 14-208.40(a)(3) enroll in the program as required by previous statutes. Failure to enroll (G.S. 14-208.44(a)) is a Class F felony. Since G.S. 14-208.44 was enacted in 2006, there is no historical data available for this offense.

It is not known how many additional offenders will be required to enroll in satellite-based monitoring programs under this proposal. In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions per year under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

SECTION 20.

This section amends G.S. 14-208.42, Lifetime registration offenders required to submit to satellite-based monitoring for life and to continue on unsupervised probation upon completion of sentence, to include the offenders specified in 14-208.40(a)(3). There is no sanction specified for violation of unsupervised probation. (See Section 19.)

SECTION 21.

This section amends G.S. 14-208.43, Request for termination of satellite-based monitoring requirement, to include the offenders specified in 14-208.40(a)(3). (See Section 19.)

SECTION 22.

This section amends G.S. 15A-1345, Arrest and hearing on probation violation, to require the court to make a finding that the probationer is not a danger to the public prior to release with or without bail if

the probationer has been convicted of an offense at any time that requires registration under the Sex Offender and Public Protection Registration Programs. This proposed amendment could impact local jail populations; however, the impact cannot be determined.

SECTION 23.

This section amends G.S. 15A-1368.4, Conditions of post-release supervision, to require that a post-release supervisee who is a sex offender be held without bond until the preliminary hearing is conducted when he or she is arrested for a violation of post-release supervision. This proposed amendment would impact local jail populations; however, the impact cannot be determined.

SECTION 24.

Section 24 creates a new statute, Background screening requirements for certain contractual personnel (G.S. 115C-332A), that requires the local school board to require contractual personnel to undergo a criminal history check before they are permitted on school grounds when students are present, allowed to have direct contact with students, or allowed to have access to or control of school funds. There is no criminal sanction mentioned, but the statute refers to the criteria for criminal history checks set out in G.S. 115C-332. G.S. 115C-332 makes it a Class A1 misdemeanor for any applicant for employment to willfully furnish, supply, or otherwise give false information on an employment application that is the basis for a criminal history record check.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 115C-332. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Since it is unclear whether violations of the proposed statute would fall under G.S. 115C-332, it is not known whether the proposed change would increase the number of offenders sentenced under this statute. In FY 2005/06, 26% of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class A1 convictions was 50 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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 946 - VANDALISM DAMAGES MORE THAN \$5,000/FELONY [V.2]

STATUTE

§ 14-144. Injuring houses, churches, fences and walls.

DESCRIPTION

A person who, by any other means than burning or attempting to burn,

1. unlawfully and willfully
2. (a) demolishes, destroys, defaces, injures or damages any of the houses or other buildings mentioned in Chapter 14, Article 15 (Arson and Other Burnings); or
(b) demolishes, pulls down, destroys, defaces, damages or injures any church, uninhabited house, outhouse or other house or building not mentioned in Article 15; or
(c) burns, destroys, pulls down, injures or removes any fence, wall or other enclosure, or any part thereof, surrounding or about any yard, garden, cultivated field or pasture, or about any church or graveyard, or about any factory or other house in which machinery is used.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor if the damage is \$5,000 or less; Class I felony if the damage is more than \$5,000.

ANALYSIS

Currently, the offense is a Class 2 misdemeanor regardless of the amount of damage.

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

G.S. 14-62, Burning of certain buildings, is a Class F felony.

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

G.S. 14-127, Willful and wanton injury to real property, is a Class 1 misdemeanor.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 946: VANDALISM DAMAGES MORE THAN \$10,000/FELONY

PREPARED: April 27, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. 14-144, Injuring houses, churches, fences and walls, to add a Class I felony if the damage is more than \$10,000. If the damage is \$10,000 or less, it is a Class 2 misdemeanor. All violations are currently Class 2 misdemeanors. The Administrative Office of the Courts (AOC) currently does not have a specified offense code for violations of G.S.14-144. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

The proposed bill reclassifies the Class 2 misdemeanor offense to a Class I felony if damage is more than \$10,000. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 6.2 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Some offenses eligible for conviction under G.S. 14-144 currently may be convicted under G.S. 14-127 for willful and wanton injury to real property. In FY 2005/06 there were 1,251 convictions for this offense, which is a Class 1 misdemeanor. It is not known how many of those convictions would qualify under the proposed Class I felony.

Scenarios:

The following scenarios were prepared based on a request by Fiscal Research staff. They assume that the specified percentage of the 1,251 convictions under G.S. 14-127 meet the requirements of the proposed G.S. 14-144.

2.5% Scenario

If, for example, 2.5% (or 32) of the convictions for injury to real property moved from a Class 1 misdemeanor to a Class I felony under the current proposal, the combination of active sentences and probation revocations would result in the need for 3 additional prison beds the first year and 10 additional prison beds the second year.

5% Scenario

If, for example, 5% (or 63) of the convictions for injury to real property moved from a Class 1 misdemeanor to a Class I felony under the current proposal, the combination of active sentences and probation revocations would result in the need for 6 additional prison beds the first year and 19 additional prison beds the second year.

7.5% Scenario

If, for example, 7.5% (or 94) of the convictions for injury to real property moved from a Class 1 misdemeanor to a Class I felony under the current proposal, the combination of active sentences and

probation revocations would result in the need for 8 additional prison beds the first year and 27 additional prison beds the second year.

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 948 – FALSE REPORTS TO LAW ENFORCEMENT

STATUTE

§ 14-225. False reports to law enforcement agencies or officers.

DESCRIPTION

Subsection (c):

A person who,

1. in response to an official inquiry by a sworn agent of the State Bureau of Investigation
2. who is investigating a Class A, B, C, D, E, F, or G felony,
3. willfully does any of the following:
 - a. falsifies or conceals by any trick, scheme, or device a material fact.
 - b. makes any materially false, fictitious, or fraudulent statement or representation.
 - c. uses any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

G.S. 14-225(b) currently makes it a Class 2 misdemeanor for a person to willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report for the purpose of interfering with the operation of a law enforcement agency or to hinder or obstruct any law enforcement officer in the performance of his duty.

This provision is identical to a provision in HB 389, HB 478, and SB 132 which the Sentencing Commission reviewed in March, 2007. The Commission found that the provision was inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

A Class H felony tends to result in significant societal injury. This offense does not result in significant societal injury. This offense would be consistent with a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

DATE PREPARED: 4/30/07

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 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 953 - REGULATE SALES/GLASS VIALS & CIGARETTE WRAP. [V.2]

STATUTE

§ 90-113.80. Restriction on sales of certain products that may be used as drug paraphernalia.

DESCRIPTION

A retailer who

1. willfully and knowingly
2. (a) Offers glass vial or cigarette wrapping papers for retail sale by self-service. These products shall be stored and sold behind the counter when sold in any establishment. The retailer shall require every purchaser of a glass vial or cigarette wrapping papers to furnish photo identification, to enter his or her name and address in a record of sale, and to sign the record of sale attesting to the validity of the information.
- (b) Fails to maintain the record of sale of the glass vial or cigarette wrapping papers to the consumer for a period of two years from the date of each transaction. The record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The retailer may destroy the information after two years from the date of the transactions.
- (c) Fails to require that employees of the establishment involved in the sale of glass vials or cigarette wrapping papers be trained in the requirements of this section. The retailer shall have a duty to supervise employees in complying with the provisions of this section.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor for the first offense and a Class 2 misdemeanor for a second offense. A retailer convicted of a third or subsequent offense occurring on the same premises or in another establishment owned or operated by the retailer shall be guilty of a Class 1 misdemeanor.

ANALYSIS

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

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to society as Class 3 misdemeanors.

FINDINGS

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

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

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

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

60 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 965/SB 1217 – WINDOW TINTING CERTIFICATION

STATUTE

§ 20-127. Windows and windshield wipers.

DESCRIPTION

Subdivision (d)(3):

A person who

1. offers for sale or use in this State
2. any tinting product or material,
3. for use on the window of a vehicle,
4. that would not be in compliance with this section if placed on the vehicle.
 - (1) The total light transmission of the tinted window shall be at least thirty-five percent (35%).
 - (2) The light reflectance of the tinted window shall be twenty percent (20%) or less.
 - (3) Tinted film or another material used to tint the window shall be nonreflective and shall not be red, yellow, or amber.]

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

A Class 2 misdemeanor tends to result in significant injury to society. This offense does not result in significant injury. This offense would be consistent with a Class 3 misdemeanor. The Sentencing Commission classified offenses which reasonably tend to result or do result in minor injury to society as Class 3 misdemeanors.

DATE PREPARED: 4/30/07

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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 965/SB 1217 – WINDOW TINTING CERTIFICATION

STATUTE

§ 20-127. Windows and windshield wipers.

DESCRIPTION

Subdivision (d)(4):

A person who

1. installs
2. any tinting product,
3. for remuneration,
4. on the window of a vehicle that is subject to a safety inspection in this State and
5. the resulting tinted window does not meet the window tinting restrictions set in this section.
 - (1) The total light transmission of the tinted window shall be at least thirty-five percent (35%).
 - (2) The light reflectance of the tinted window shall be twenty percent (20%) or less.
 - (3) Tinted film or another material used to tint the window shall be nonreflective and shall not be red, yellow, or amber.]

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 965/SB 1217 – WINDOW TINTING CERTIFICATION

STATUTE

§ 20-127. Windows and windshield wipers.

DESCRIPTION

Subdivision (d)(5):

A person who

1. installs
2. any tinting product,
3. for remuneration,
4. on the window of a vehicle that is subject to a safety inspection in this State and
5. the resulting tinted window does not meet the window tinting restrictions set in this section and
6. the person fails to affix a certification sticker required by subsection (c1) of this section.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 965/SB 1217: WINDOW TINTING CERTIFICATION

PREPARED: APRIL 5, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. 20-127, Windows and windshield wipers, to expand two existing offenses and add three new offenses. Violations remain a Class 2 misdemeanor.

G.S. 20-127(d)(1)-(d)(2)

Subsection (d)(1) currently makes it a Class 2 misdemeanor for a person to apply tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in G.S. 20-127. This bill amends the list of exceptions from the window tinting restrictions to exclude a window of a multipurpose vehicle that is behind the driver of the vehicle (includes minivans and pickup trucks).

Subsection (d)(2) currently makes it a Class 2 misdemeanor for a person to drive on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in G.S. 20-127. This bill amends the list of exceptions from the window tinting restrictions to exclude a window of a multipurpose vehicle that is behind the driver of the vehicle (includes minivans and pickup trucks).

The Sentencing Commission does not maintain statistical information on Class 2 or 3 misdemeanor traffic offenses. However, since the proposed bill affects misdemeanor offenses, the proposed expansion of these subsections would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

G.S. 20-127(d)(3)-(d)(5)

Subsections (d)(3) through (5) create new Class 2 misdemeanor offenses. Since these sections create new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

In FY 2005/06, 17% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 13 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for these proposed offenses would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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 969/SB 1080 - NATUROPATHIC PHYSICIAN LICENSING ACT

STATUTE

§ 90-804. License required; exemptions.

DESCRIPTION

A person who

1. (a) practices or offers to practice as a naturopathic physician,
(b) performs naturopathic medicine, or
(c) uses any card, title, or abbreviation to indicate that the person is a naturopathic physician, and
2. has not been licensed under the provisions of Article 42 (Naturopathic Physicians) of Chapter 90 of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 4/30/07

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 993/SB 944 – MODIFY PENALTY FOR HIT AND RUN/SERIOUS INJURY

STATUTE

§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

DESCRIPTION

A driver of a vehicle who

1. knows or reasonably should know
2. that the vehicle which he or she is operating is involved in an accident or collision; and
3. that the accident or collision has resulted in death or serious bodily injury as defined in G.S. 14-32.4(a).

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.

The offense currently makes it a Class H felony if the accident or collision resulted in injury or death. The Class H felony would remain to cover accidents or collisions that result in injury.

This provision is identical to a provision in HB 517 which the Sentencing Commission reviewed in March, 2007. The Commission found that the provision was consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

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 995 - INCREASE PENALTY/STARVATION OF ANIMALS

STATUTE

§ 14-360. Cruelty to animals; construction of section.

DESCRIPTION

A person who

1. maliciously tortures, mutilates, maims, cruelly beats, disfigures, poisons, or kills, or kills by intentional deprivation of necessary sustenance,
2. any animal.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 995 - INCREASE PENALTY/STARVATION OF ANIMALS

STATUTE

§ 14-360. Cruelty to animals; construction of section.

DESCRIPTION

A person who

1. causes or procures to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, or killed by intentional deprivation of necessary sustenance,
2. any animal.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 995: INCREASE PENALTY/STARVATION OF ANIMALS

PREPARED: May 9, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. 14-360(b), Cruelty to animals; construction of section, to make it a Class I felony for a person to maliciously kill any animal by intentional deprivation of necessary sustenance or cause or procure any animal to be killed by intentional deprivation of necessary sustenance. It is currently a Class I felony for a person to maliciously kill any animal or cause or procure any animal to be killed. There were 9 Class I convictions under G.S. 14-360(b), Cruelty to animals, during FY 2005/06. Since violation of the current statute is a Class I, it is not clear if there would be any additional convictions of the proposed offense.

Subsection (a) currently makes it a Class 1 misdemeanor for a person to intentionally deprive any animal of necessary sustenance or cause or procure any animal to be deprived of necessary sustenance. This subsection does not require that the offense be done “maliciously.” There were 196 convictions under G.S. 14-360(a), Cruelty to animals, as Class 1 misdemeanors in FY 2005/06. It is not known how many of these convictions would meet the elements of the proposed statute and become Class I felonies.

In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

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 1003/SB 1461 - AGGRAVATING FACTOR/NO
PROBATION COMPLIANCE

STATUTE

§ 15A-1340.16. Aggravated and mitigated sentences.

DESCRIPTION

A person who

1. commits a criminal offense and
2. previously failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision.

PUNISHMENT RANGE

CURRENT: Sentenced from the presumptive range.

PROPOSED: Sentenced from the aggravated range.

ANALYSIS

Structured sentencing allows for aggravated sentences.

Under G.S. 15A-1340.14, Prior record level for felony sentencing, one prior record level point is assigned if the offense was committed while the defendant was on probation, parole, or post-release supervision.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1094 - INCREASE PENALTIES FOR AUDIOVISUAL PIRACY

STATUTE

§ 14-440.1. Unlawful operation of an audiovisual recording device.

DESCRIPTION

A person who

1. knowingly
2. operates or attempts to operate an audiovisual recording device
3. in a motion picture theater
4. to transmit, record, or otherwise make a copy of a motion picture, or any part thereof,
5. without the written consent of the motion picture theater owner.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor for the first offense; Class I felony for second and subsequent offenses.

PROPOSED: Class I felony.

ANALYSIS

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-58. Punishment for arson.

DESCRIPTION

A person who

1. willfully and maliciously
2. burns
3. the unoccupied dwelling house or other buildings within the curtilage
4. of another.

(*NC Crimes*, by Robert L. Farb)

OFFENSE CLASS

CURRENT: Class G felony.

PROPOSED: Class F felony.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1206/SB 1491 – ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-72. Larceny.

DESCRIPTION

Larceny

A person who

1. takes personal property belonging to another
2. and carries it away
3. without the consent of the possessor, and
4. with the intent to deprive the possessor of its use permanently
5. knowing that the taker was not entitled to it.

Receiving Stolen Goods

A person who

1. receives or conceals property
2. stolen by another
3. knowing, or with reasonable grounds to believe, that it was stolen, and
4. with dishonest purpose.

Possessing Stolen Goods

A person who

1. possesses stolen property
2. knowing, or having reasonable grounds to believe, that it was stolen
3. with a dishonest purpose.

(*NC Crimes*, by Robert L. Farb)

OFFENSE CLASS

CURRENT: Class 1 misdemeanor if the value of the goods is \$1,000 or less; Class H felony if the value of the goods is more than \$1,000.

PROPOSED: Class 1 misdemeanor if the value of the goods or property is \$1,000 or less;
Class H felony if the value of the goods or property exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the goods or property exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the goods or property exceeds \$50,000 but does not exceed \$100,000;
Class E felony if the value of the goods or property exceeds \$100,000.

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 or occasioned by the taking or removing of property as Class H felonies.

OFFENSE CLASS

PROPOSED: Class G felony if the value of the goods or property exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class F felony if the value of the goods or property exceeds \$50,000 but does not exceed \$100,000.

ANALYSIS

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

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class E felony if the value of the goods or property exceeds \$100,000.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-74. Larceny by servants and other employees.

DESCRIPTION

A servant or other employee who is 16 years of age or older

1. to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in G.S. 14-75, by his master shall be delivered safely to be kept to the use of his master,
2. shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof,
3. with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him repose by his said master; or

Any servant who is 16 years of age or older

1. being in the service of his master,
2. without the assent of his master,
3. shall embezzle such money, goods or other chattels, or any part thereof, or otherwise convert the same to his own use,
4. with like purpose to steal them, or
5. to defraud his master thereof.

OFFENSE CLASS

CURRENT: Class H felony if the value of the value of the money, etc., is less than \$100,000; Class C felony if the value of the money, etc., is \$100,000 or more.

PROPOSED: Class I felony if the value of the money, etc., is \$1,000 or less;
Class H felony if the value of the money, etc., exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the money, etc., exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the money, etc., exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the money, etc., exceeds \$100,000.

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, occasioned by the taking or removing of property, occasioned by breach of trust, formal or informal, or in personal injury, or in significant societal injury as Class H felonies.

OFFENSE CLASS

PROPOSED: Class I felony if the value of the money, etc., is \$1,000 or less.

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.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class G felony if the value of the money, etc., exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class F felony if the value of the money, etc., exceeds \$50,000 but does not exceed \$100,000.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 4/30/07

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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-90. Embezzlement of property received by virtue of office or employment.

DESCRIPTION

A person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, who

1. embezzles or fraudulently or knowingly and willfully misapplies or converts to his own use, or takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use
2. any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any a bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever
3. belonging to any other person or corporation, unincorporated association or organization
4. which shall have come into his possession or under his care.

OFFENSE CLASS

CURRENT: Class H felony if the value of the value of the property is less than \$100,000; Class C felony if the value of the property is \$100,000 or more.

PROPOSED: Class I felony if the value of the property is \$1,000 or less;
Class H felony if the value of the property exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the property exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the property exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the property exceeds \$100,000.

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, occasioned by the taking or removing of property, occasioned by breach of trust, formal or informal, or in personal injury, or in significant societal injury as Class H felonies.

OFFENSE CLASS

PROPOSED: Class I felony if the value of the property is \$1,000 or less.

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.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class G felony if the value of the property exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class F felony if the value of the property exceeds \$50,000 but does not exceed \$100,000.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-91. Embezzlement of State property by public officers and employees.

DESCRIPTION

An officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State or any security, or other property and effects of the same, who
1. embezzles or knowingly and willfully misapplies or converts the same to his own use, or otherwise willfully or corruptly abuses such trust.

OFFENSE CLASS

CURRENT: Class F felony if the value of the value of the property is less than \$100,000; Class C felony if the value of the property is \$100,000 or more.

PROPOSED: Class I felony if the value of the property is \$1,000 or less;
Class H felony if the value of the property exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the property exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the property exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the property exceeds \$100,000.

ANALYSIS

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

OFFENSE CLASS

PROPOSED: Class I felony if the value of the property is \$1,000 or less.

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.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class H felony if the value of the property exceeds \$1,000 but does not exceed \$10,000.

ANALYSIS

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

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class G felony if the value of the property exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-92. Embezzlement of funds by public officers and trustees.

DESCRIPTION

Subsection (a):

A person who

1. (a) is an officer, agent, or employee of a clerk of the superior court, a sheriff, treasurer, register of deeds or other public officer of any county, unit or agency of local government, or local board of education, or
(b) a person having or holding money or property in trust for one of the entities listed above,
2. embezzles or otherwise willfully and corruptly uses or misapplies the same for any purpose other than that for which such moneys or property is held.

OFFENSE CLASS

CURRENT: Class F felony if the value of the value of the money or property is less than \$100,000; Class C felony if the value of the money or property is \$100,000 or more.

PROPOSED: Class I felony if the value of the money or property is \$1,000 or less;
Class H felony if the value of the money or property exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the money or property exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the money or property exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the money or property exceeds \$100,000.

ANALYSIS

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

OFFENSE CLASS

PROPOSED: Class I felony if the value of the money or property is \$1,000 or less.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class H felony if the value of the money or property exceeds \$1,000 but does not exceed \$10,000.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class G felony if the value of the money or property exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-92. Embezzlement of funds by public officers and trustees.

DESCRIPTION

Subsection (b):

A clerk of the superior court, a sheriff, treasurer, register of deeds or other public officer of any county, unit or agency of local government, or local board of education who

1. embezzles or wrongfully converts to his own use, or corruptly uses, or misapplies for any purpose other than that for which the same are held, or fails to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do,
2. any moneys, funds, securities or other property
3. which such officer shall have received by virtue or color of his office in trust for any person or corporation.

OFFENSE CLASS

CURRENT: Class F felony if the value of the value of the money, etc., is less than \$100,000; Class C felony if the value of the money, etc., is \$100,000 or more.

PROPOSED: Class I felony if the value of the money, etc., is \$1,000 or less;
Class H felony if the value of the money, etc., exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the money, etc., exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the money, etc., exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the money, etc., exceeds \$100,000.

ANALYSIS

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

OFFENSE CLASS

PROPOSED: Class I felony if the value of the money, etc., is \$1,000 or less.

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.

FINDINGS



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



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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class H felony if the value of the money, etc., exceeds \$1,000 but does not exceed \$10,000.

ANALYSIS

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

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class G felony if the value of the money, etc., exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-93. Embezzlement by treasurers of charitable and religious organizations.

DESCRIPTION

A treasurer or other financial officer of any benevolent or religious institution, society or congregation who

1. (a) lends any of the moneys coming into his hands
(b) to any other person or association
(c) without the consent of the institution, association or congregation to whom such moneys belong;
or
2. fails to account for such moneys when called on.

OFFENSE CLASS

CURRENT: Class H felony if the value of the value of the money is less than \$100,000; Class C felony if the value of the money is \$100,000 or more.

PROPOSED: Class I felony if the value of the money is \$1,000 or less;
Class H felony if the value of the money exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the money exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the money exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the money exceeds \$100,000.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

OFFENSE CLASS

PROPOSED: Class I felony if the value of the money is \$1,000 or less.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class G felony if the value of the money exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class F felony if the value of the money exceeds \$50,000 but does not exceed \$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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-97. Appropriation of partnership funds by partner to personal use.

DESCRIPTION

A person engaged in a partnership business in the State of North Carolina who

1. without the knowledge and consent of his copartner or copartners,
2. takes funds belonging to the partnership business and
3. appropriates the same to his own personal use
4. with the fraudulent intent of depriving his copartners of the use thereof.

OFFENSE CLASS

CURRENT: Class H felony if the value of the value of the funds is less than \$100,000; Class C felony if the value of the funds is \$100,000 or more.

PROPOSED: Class I felony if the value of the funds is \$1,000 or less;
Class H felony if the value of the funds exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the funds exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the funds exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the funds exceeds \$100,000.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

OFFENSE CLASS

PROPOSED: Class I felony if the value of the funds is \$1,000 or less.

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.

FINDINGS

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

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

OFFENSE CLASS

PROPOSED: Class G felony if the value of the funds exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class F felony if the value of the funds exceeds \$50,000 but does not exceed \$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.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-98. Embezzlement by surviving partner.

DESCRIPTION

A surviving partner who

1. willfully and intentionally
2. converts any of the property, money or effects belonging to the partnership to his own use,
3. and refuses to account for the same on settlement.

OFFENSE CLASS

CURRENT: Class H felony if the value of the value of the property, etc., is less than \$100,000; Class C felony if the value of the property, etc., is \$100,000 or more.

PROPOSED: Class I felony if the value of the property, etc., is \$1,000 or less;
Class H felony if the value of the property, etc., exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the property, etc., exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the property, etc., exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the property, etc., exceeds \$100,000.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

OFFENSE CLASS

PROPOSED: Class I felony if the value of the property, etc., is \$1,000 or less.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class G felony if the value of the property, etc., exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class F felony if the value of the property, etc., exceeds \$50,000 but does not exceed \$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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-99. Embezzlement of taxes by officers.

DESCRIPTION

An officer who

1. appropriates to his own use
2. the State, county, school, city or town taxes.

OFFENSE CLASS

CURRENT: Class F felony if the value of the value of the taxes is less than \$100,000; Class C felony if the value of the taxes is \$100,000 or more.

PROPOSED: Class I felony if the value of the taxes is \$1,000 or less;
Class H felony if the value of the taxes exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the taxes exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the taxes exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the taxes exceeds \$100,000.

ANALYSIS

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

OFFENSE CLASS

PROPOSED: Class I felony if the value of the taxes is \$1,000 or less.

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.

FINDINGS

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

OFFENSE CLASS

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

PROPOSED: Class H felony if the value of the taxes exceeds \$1,000 but does not exceed \$10,000.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class G felony if the value of the taxes exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1206/SB 1491 - ADJUST PENALTY/ARSON & LARCENY

STATUTE

§ 14-100. Obtaining property by false pretenses.

DESCRIPTION

A person who

1. knowingly and designedly
2. by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event,
3. obtains or attempts to obtain
4. from any person within this State
5. any money, goods, property, services, chose in action, or other thing of value.

OFFENSE CLASS

CURRENT: Class H felony if the value of the value of the money, etc., is less than \$100,000; Class C felony if the value of the money, etc., is \$100,000 or more.

PROPOSED: Class I felony if the value of the money, etc., is \$1,000 or less;
Class H felony if the value of the money, etc., exceeds \$1,000 but does not exceed \$10,000;
Class G felony if the value of the money, etc., exceeds \$10,000 but does not exceed \$50,000;
Class F felony if the value of the money, etc., exceeds \$50,000 but does not exceed \$100,000;
Class C felony if the value of the money, etc., exceeds \$100,000.

ANALYSIS

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, occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

OFFENSE CLASS

PROPOSED: Class I felony if the value of the money, etc., is \$1,000 or less.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class G felony if the value of the money, etc., exceeds \$10,000 but does not exceed \$50,000.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class F felony if the value of the money, etc., exceeds \$50,000 but does not exceed \$100,000.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 1231 - CERTAIN LAW OFFICERS/WAIVE HANDGUN PERMIT [V.3]

STATUTE

§ 14-415.25. Exemption from permit requirement.

DESCRIPTION

An applicant (retired law enforcement officer), or any person assisting an applicant,

1. makes a willful and intentional misrepresentation
2. on any form or application submitted to the North Carolina Criminal Justice Education and Training Standards Commission.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 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 1253 – JUVENILE CODE REVISIONS

STATUTE

§ 7B-2508. Dispositional limits for each class of offense and delinquency history level.

DESCRIPTION

G.S. 14-202.2, Indecent liberties between children. (Class 1 misdemeanor)

G.S. 14-269, Carrying concealed weapons. (Class 2 misdemeanor)

G.S. 14-269.7(a), Prohibitions on handguns for minors. (Class 2 misdemeanor)

OFFENSE CLASS

CURRENT: “Minor” offense classification.

PROPOSED: “Serious” offense classification.

ANALYSIS

This bill would reclassify the three misdemeanor offenses from “Minor” to “Serious” for dispositional purposes.

“Minor” offense classification includes Class 1, 2, and 3 misdemeanor offenses.

“Serious” offense classification includes Class F through I felony offenses and Class A1 misdemeanor offenses.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1347 - FALSE REPORT/MASS VIOLENCE AT SCHOOL
[V.2]

STATUTE

§ 14-277.5. Making a false report concerning mass violence on educational property.

DESCRIPTION

A person who

1. by any means of communication
2. to any person or groups of persons,
3. makes a report
4. that an act of mass violence is going to occur
5. on educational property or at a curricular or extracurricular activity sponsored by a school
6. knowing or having reason to know the report is false.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

G.S. 14-69.1, Making a false report concerning destructive device, is a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/30/07

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 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 1354 – MOTOR VEHICLE CHOP SHOP ACT [V.2]

STATUTE

§ 20-401. Chop shop operation unlawful; restitution.

DESCRIPTION

Subdivision (a)(1):

1. A person who
2. owns, operates, or conducts
3. a chop shop.

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, occasioned by the taking or removing of property, occasioned by breach of trust, formal or informal, or in personal injury, or in significant societal injury as Class H felonies.

Chop shop – Any building, lot, or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to do either of the following:

1. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part or to prevent the identification of the motor vehicle or motor vehicle part.
2. Sell or dispose of the motor vehicle or motor vehicle part.

G.S. 14-71.1, Possessing stolen goods, is a Class H felony.

G.S. 14-72, Possessing stolen goods, is a Class H felony/Class 1 misdemeanor (depending on value).

G.S. 20-106, Receiving or transferring stolen vehicles, is a Class H felony.

G.S. 20-107, Injuring or tampering with vehicle/parts, is a Class 2 misdemeanor.

FINDINGS

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

DATE PREPARED: 5/1/07

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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 1354 – MOTOR VEHICLE CHOP SHOP ACT [v.2]

STATUTE

§ 20-401. Chop shop operation unlawful; restitution.

DESCRIPTION

Subdivision (a)(2):

A person who

1. transports
2. a motor vehicle or a motor vehicle part
3. to or from a location
4. knowing it to be a chop shop.

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, occasioned by the taking or removing of property, occasioned by breach of trust, formal or informal, or in personal injury, or in significant societal injury as Class H felonies.

G.S. 20-106, Receiving or transferring stolen vehicles, is a Class H felony.

FINDINGS

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

DATE PREPARED: 5/1/07

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1354 – MOTOR VEHICLE CHOP SHOP ACT [V.2]

STATUTE

§ 20-401. Chop shop operation unlawful; restitution.

DESCRIPTION

Subdivision (a)(3):

A person who

1. sells, transfers, purchases, or receives
2. a motor vehicle or motor vehicle part
3. either to or from a location
4. knowing it to be a chop shop.

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, occasioned by the taking or removing of property, occasioned by breach of trust, formal or informal, or in personal injury, or in significant societal injury as Class H felonies.

G.S. 14-71.1, Possessing stolen goods, is a Class H felony.

G.S. 14-72, Possessing stolen goods, is a Class H felony/Class 1 misdemeanor (depending on value).

G.S. 20-106, Receiving or transferring stolen vehicles, is a Class H felony.

FINDINGS

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

DATE PREPARED: 5/1/07

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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 1354 – MOTOR VEHICLE CHOP SHOP ACT [V.2]

STATUTE

§ 20-401. Chop shop operation unlawful; restitution.

DESCRIPTION

Subdivision (a)(4):

A person who

1. buys, disposes of, sells, transfers, or possesses
2. a motor vehicle or motor vehicle part
3. with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed.

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, occasioned by the taking or removing of property, occasioned by breach of trust, formal or informal, or in personal injury, or in significant societal injury as Class H felonies.

G.S. 20-108, Vehicles or component parts of vehicles without manufacturer's numbers, is a Class 2 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/07

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 1358 – CONSUMER HEALTH FREEDOM ACT

STATUTE

§ 90E-4. Prohibited acts.

§ 90-18. Practicing without license; practicing defined; penalties.

DESCRIPTION

A person who provides complementary and alternative health care services in accordance with Chapter 90E (The Consumer Health Freedom Act) of the General Statutes who engages in any of the following:

1. Performs surgery or any other procedure that harmfully punctures the skin of a person except finger pricking for screening purposes.
2. Prescribes or administers X-ray radiation to any person.
3. Prescribes or administers a legend drug, a legend device, or controlled substance to any person.
4. Performs a chiropractic adjustment of an articulation of the spine.
5. Performs massage therapy, except for a practice already exempt from massage therapy violations.
6. Provides to a person a diagnosis or treatment of a health condition and as a result of these services willfully causes that person recognizable and imminent risk of significant physical or mental harm.
7. Holds himself or herself out, states, indicates, advertises, or implies to any person that the person is a physician, surgeon, or medical doctor or that he or she is licensed, certified, or registered by this State to practice a health care profession.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor, except that if the person so practicing without a license is an out-of-state practitioner who has not been licensed and registered to practice medicine or surgery in this State, the person shall be guilty of a Class I felony.

ANALYSIS

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

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

FINDINGS

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

DATE PREPARED: 4/30/07

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 1360 – SMALL BUSINESS CONTRACTOR ACT [V.2]

STATUTE

§ 143B-472.117. False statements; penalty.

DESCRIPTION

Subsection (a):

A person who

1. knowingly
2. makes or causes any false statement or report to be made
3. in any application or in any document
4. submitted to the North Carolina Small Business Contractor Authority.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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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 1360 – SMALL BUSINESS CONTRACTOR ACT [v.2]

STATUTE

§ 143B-472.117. False statements; penalty.

DESCRIPTION

Subsection (b):

A person who

1. makes or causes any false statement or report to be made
2. to the North Carolina Small Business Contractor Authority
3. for the purpose of influencing the action of the Authority on an application for assistance or affecting assistance, whether or not assistance has been previously extended.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1372 - ORGAN DONATION/THE HEART PREVAILS
[V.2]

STATUTE

§ 130A-412.18. Sale or purchase of parts prohibited.

DESCRIPTION

A person who,

1. for valuable consideration,
2. knowingly purchases or sells
3. a body part
4. for transplantation or therapy
5. if removal of a body part from an individual is intended to occur after the individual's death.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 5/30/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1372 - ORGAN DONATION/THE HEART PREVAILS
[V.2]

STATUTE

§ 130A-412.18. Sale or purchase of parts prohibited.

DESCRIPTION

A person who,

1. for valuable consideration,
2. knowingly purchases or sells
3. a body part
4. for transplantation or therapy
5. if removal of a body part from an individual is intended to occur after the individual's death.

PUNISHMENT RANGE

CURRENT: N/A

PROPOSED: Class H felony subject to a fine not exceeding fifty thousand dollars (\$50,000) or imprisonment not exceeding five years, or both.

ANALYSIS

Offenses classified under structured sentencing are punished according to the felony punishment chart.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 5/30/07

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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 1372 - ORGAN DONATION/THE HEART PREVAILS
[V.2]

STATUTE

§ 130A-412.19. Other prohibited acts.

DESCRIPTION

A person who,

1. in order to obtain a financial gain,
2. intentionally falsifies, forges, conceals, defaces, or obliterates
3. a document of gift, an amendment or revocation of a document of gift, or a refusal.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/30/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1372 - ORGAN DONATION/THE HEART PREVAILS
[V.2]

STATUTE

§ 130A-412.19. Other prohibited acts.

DESCRIPTION

A person who,

1. in order to obtain a financial gain,
2. intentionally falsifies, forges, conceals, defaces, or obliterates
3. a document of gift, an amendment or revocation of a document of gift, or a refusal.

PUNISHMENT RANGE

CURRENT: N/A

PROPOSED: Class H felony subject to a fine not exceeding fifty thousand dollars (\$50,000) or imprisonment not exceeding five years, or both.

ANALYSIS

Offenses classified under structured sentencing are punished according to the felony punishment chart.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 5/30/07

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 1379 – AMEND LARCENY LAWS

STATUTE

§ 14-71. Receiving stolen goods.

DESCRIPTION

Any person who:

1. receives any chattel, property, money, valuable security or other thing whatsoever
2. the stealing or taking whereof amounts to larceny or a felony
3. knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken
4. whether or not the item has been feloniously stolen or taken.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 5/1/2007

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 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 1379 – AMEND LARCENY LAWS

STATUTE

§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.

DESCRIPTION

Larceny

Any person who:

1. commits larceny
2. of goods worth more than \$500.00.

Possession of stolen goods

Any person who:

1. possesses stolen goods
2. with a value of more than \$500.00
3. knowing or having reasonable grounds to believe that the goods are stolen.

Receiving stolen goods

Any person who:

1. receives stolen goods
2. with a value of more than \$500.00
3. knowing or having reasonable grounds to believe that the goods are stolen.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The proposed bill changes the threshold for felonious larceny, possession of stolen goods and receiving of stolen goods from \$1,000 to \$500. Offenses involving goods worth less than \$500 would remain Class 1 misdemeanors

FINDINGS

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

Class H felonies tend to result in serious property loss occasioned the taking or removing of property, or from any structure designed to house or secure any activity or property. These offenses do not result in serious property loss occasioned by the taking or removing of property, or from any structure designed to house or secure any activity or property. These offenses would be consistent with Class I felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in other serious property loss as Class I felonies.

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

110 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1379 – AMEND LARCENY LAWS

STATUTE

§ 14-72.1. Concealment of merchandise in mercantile establishments.

DESCRIPTION

Subsection (d):

Any person who

1. willfully and without authority
2. does any of the following:
 - a. transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price
 - b. marks said goods at a lower price
 - c. substitutes or superimposes thereon a false price tag or other product code used to identify the sales price, and
3. the presents the goods or merchandise for purchase.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

Class 2 misdemeanor for a second offense committed within 3 years of a conviction under this statute.

Class 1 misdemeanor for a third or subsequent offense committed within 5 years of conviction of two other offenses under this statute.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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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 1379 – AMEND LARCENY LAWS

STATUTE

§ 14-72.1. Concealment of merchandise in mercantile establishments.

DESCRIPTION

Subsection (d2):

Any person who

1. willfully and without authority
2. conceals the goods or merchandise of any store
3. not theretofore purchased by such person
4. while still on the premises of the store
5. and exits the store by a door erected and maintained to comply with 29 C.F.R. § 1910, Subpart E [OSHA workplace safety regulations].

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is substantively identical to a provision in SB 482 which the Sentencing Commission reviewed on March 16, 2007. The Commission found the provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/29/2007

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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 1379 – AMEND LARCENY LAWS

STATUTE

§ 14-72.1. Concealment of merchandise in mercantile establishments.

DESCRIPTION

Subsection (d3):

Any person who

1. willfully and without authority
2. conceals the goods or merchandise of any store
3. not theretofore purchased by such person
4. while still on the premises of the store
5. by removing, destroying, or deactivating a component of an antishoplifting or inventory control device
6. to prevent the activation of any antishoplifting or inventory control device.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 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 1379 – AMEND LARCENY LAWS

STATUTE

§ 14-72.7. Theft of infant formula.

DESCRIPTION

Any person who

1. takes and carries away
2. infant formula (as defined in 21 U.S.C. . § 321(z))
3. valued in excess of \$100.00.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 5/1/2007

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 1379 – AMEND LARCENY LAWS

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subsection (a):

Any person who

1. conspires with another
2. to commit theft of retail property
3. from a retail establishment
4. with a value exceeding \$1,500.00
5. aggregated over a 90-day period
6. with the intent to sell the retail property for monetary or other gain
7. and takes or causes the retail property to be placed in the control of a retail property fence (as defined by statute) or other person
8. in exchange for consideration.

PROPOSED OFFENSE CLASS

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. This offense would be consistent with a Class F or Class H felony. The Sentencing Commission classified offenses which result in serious societal injury as Class F felonies and offenses which result in significant societal injury as Class H felonies.

DATE PREPARED: 5/1/2007

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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 1379 – AMEND LARCENY LAWS

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subsection (b):

Any person who

1. receives or possesses
2. any retail property
3. taken or stolen in violation of this section [subsection (a)]
4. with the intent to distribute the property into interstate commerce.

PROPOSED OFFENSE CLASS

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.

FINDINGS

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

Class G felonies tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. This offense would be consistent with a Class F or Class H felony. The Sentencing Commission classified offenses which result in serious societal injury as Class F felonies and offenses which result in significant societal injury as Class H felonies.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1379/SB 1270: AMEND LARCENY LAWS

PREPARED: APRIL 24, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Section 1

Section 1 of the proposed bill amends the offense of receiving stolen goods (G.S. 14-71; Class H felony). In FY 2005/06, there were 7 Class H felony convictions for receiving stolen goods under G.S. 14-71.

The legal effect of the amendment is unclear. The elements of receiving stolen goods under G.S. 14-71 are that any person:

- a. receives goods of value
- b. the stealing or taking whereof amounts to larceny **or** a felony (emphasis added)
- c. knowing or having reasonable grounds to believe the goods to have been feloniously stolen or taken.

The amendment specifies that conviction for the offense may occur “whether or not the item has been feloniously stolen or taken.” The phrasing of the amendment permits two different interpretations:

1. conviction for receiving stolen goods does not require that theft of the item received have been a felony (*i.e.*, it would be a felony if theft of the goods was only a misdemeanor); or
2. conviction for receiving stolen goods does not require that the item received have been stolen at all (*i.e.*, it would be a felony for a person to receive goods that he has reasonable grounds to believe have been stolen, even if they actually were not stolen).

If the first interpretation is the intent of the amendment, then there would be no apparent effect. The offense under G.S. 14-71 already permits conviction for receiving stolen goods if the theft of the goods was larceny **or** a felony. Therefore, a person who receives goods the theft of which was only misdemeanor larceny is already eligible for conviction under this statute. As a result, the proposed amendment would not be expected to have an impact on the prison population.

If the second interpretation is the intent of the amendment, then Section 1 of the proposed bill expands the pool of potential offenders under G.S. 14-71 to include persons who receive goods that they believe to be stolen, even if the goods were not stolen at all. If this is the case, it is not known how many additional convictions may result from the proposed broadening of the current statute. If, for example, there were three additional Class H convictions per year as a result of the proposed amendment, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Section 2

Section 2 amends G.S. 14-72(a) to change the dollar threshold for felony larceny, possession of stolen goods, and receiving stolen goods from \$1,000 to \$500. Impact from this proposal would result from misdemeanor convictions that would become felony convictions.

The table below provides the frequency of convictions for relevant offenses during FY 2005/06:

Offense Description	Current Class	FY 2005/06 Convictions
Felony larceny offenses	H	1,171
Attempted felony larceny	I	68
Felony receive stolen goods/property	H	7
Felony possess stolen goods/property	H	713
Total felony convictions		1,959
Misdemeanor larceny offenses	1	14,544
Attempted misdemeanor larceny	2	179
Misdemeanor receive stolen goods/property	1	28
Misdemeanor possess stolen goods/property	1	2,080
Total misdemeanor convictions		16,831

It is not known how many of the above misdemeanor convictions involved goods valued at more than \$500 and would become felony convictions under the proposed amendment.

The data in the AOC's ACIS (Automated Criminal and Infraction System) contain a field for restitution ordered. It is unknown how often this field is utilized and/or contains other court associated costs. Of the 16,831 misdemeanor convictions under G.S. 14-72(a), 4,403 (or 26%) showed an order to pay restitution. Of those 4,403 convictions, 1,338 (or 30%) showed an order to pay restitution of more than \$500.

Since it is unknown how many of the current misdemeanor convictions would become felony convictions under the current proposal, several scenarios are provided to estimate the need for additional prison beds (see Table 1 and Table 2).

Table 1: Relevant Larceny, RSG, PSG Convictions (n=16,831)

Move Misdemeanors to Class H Felonies

Scenarios	# Convictions	Prison Beds Year 1	Prison Beds Year 2
5%	842	252	523
10%	1,683	502	1,045
15%	2,525	754	1,567
25%	4,208	1,255	2,611
50%	8,416	2,511	5,222

Table 2: Attempted Larceny Convictions (n=179)

Move Class 2 Misdemeanors to Class I Felonies

Scenarios	# Convictions	Prison Beds Year 1	Prison Beds Year 2
5%	9	1	3
10%	18	2	6
15%	27	3	8
25%	45	4	13
50%	90	8	26

Section 3

Section 3 of the proposed bill amends G.S. 14-72.1, Concealment of merchandise in mercantile establishments, to change the elements of an existing offense and create two new offenses.

Subsection (d)

The proposed bill amends the elements of the offense of larceny by changing price tags (Class 3, 2, or 1 misdemeanor, based on prior offenses in a specified time frame) to include placing upon a product any “other product code used to identify the sales prices” (e.g., false UPC bar codes). This amendment expands the pool of potential offenders under subsection (d).

In FY 2005/06, there were 74 Class 3 misdemeanor convictions under G.S. 14-72.1(d). It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2005/06, 23% of Class 3 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 3 convictions was 3 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions resulting from the proposed expansion of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2005/06, there were no Class 2 misdemeanor convictions under G.S. 14-72.1(d). It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2005/06, 17% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 13 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions resulting from the proposed expansion of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2005/06, there were no Class 1 misdemeanor convictions under G.S. 14-72.1(d). It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions resulting from the proposed expansion of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Subsection (d2)

Subsection (d2) creates a new offense, making it a Class H felony for any person to violate subsection (a) (shoplifting by concealment) and then exit the premises by an emergency door maintained in compliance with federal OSHA regulations (29 C.F.R. 1910, Subpart E).

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction under the proposed bill may currently be convicted of shoplifting by concealment under G.S. 14-72.1(a) and misdemeanor larceny under G.S. 14-72 (see Table 3). However, because shoplifting convictions generally indicate offenders who were apprehended before leaving the store, persons convicted of misdemeanor larceny constitute the more likely pool of offenders who satisfy

the new element under the proposed bill. It is possible that some offenders currently convicted of felonious larceny for theft of goods worth more than \$1,000.00 (G.S. 14-72, Class H) would be eligible for conviction under the proposed bill, but because felonious larceny and the proposed offense are both Class H felonies, there is no distinction between the two for sentencing purposes (*see shaded rows*).

Table 3: Potential Eligible Pool

G.S. Number	Offense Description	Offense Class	Number of Convictions
G.S. 14-72.1(a)	Shoplifting by concealment	Class 3 misdemeanor	2,861
G.S. 14-72	Misdemeanor larceny	Class 1 misdemeanor	14,467
	Aid & Abet Misd. Larceny	Class 1 misdemeanor	58
	Attempted Misd. Larceny	Class 2 misdemeanor	179
G.S. 14-72	Felony Larceny	Class H felony	826
	Aid & Abet Felony Larceny	Class H felony	6
	Attempted Larceny	Class I felony	68

It is not known how many of the misdemeanor convictions in Table 3 may instead be convicted as Class H felonies under the proposed bill.

If, for example, there were three convictions per year that would become Class H felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

It is also possible that convictions for the proposed offense would be *in addition to* convictions for larceny. Because larceny and shoplifting each has an element independent of the other, double jeopardy may not be implicated when an offender is convicted and punished for *both* the proposed offense of shoplifting through an emergency door and for larceny of the same goods arising from the same incident. If the new offense does not implicate concerns of double jeopardy with larceny, additional impact may also occur as a result of consecutive sentencing; however, the impact cannot be determined.

Subsection (d3)

Subsection (d3) creates a new offense, making it a Class H felony for any person to violate subsection (a) (shoplifting by concealment) by removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction under the proposed subsection include a subset of those currently convicted under G.S. 14-72.1(a). In FY 2005/06, there were 2,861 convictions for shoplifting by concealment. It is not known how many of these convictions may instead be convicted as Class H felonies under the proposed bill. If, for example, there were three convictions per year that would become Class H felonies under this proposed bill, the combination of active sentences and probation

revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Section 4

Section 4 of the proposed bill creates a new offense under G.S. 14-72.7, theft of infant formula, for any person to take or carry away infant formula (as defined in 21 U.S.C. 321(z)) valued in excess of one hundred dollars (\$100.00). Violation would be a Class H felony. Larceny of infant formula worth less than \$100 would remain a Class 1 misdemeanor under G.S. 14-72(a). (*Also see* Section 2).

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction under the proposed bill may currently be convicted of misdemeanor larceny (G.S. 14-72(a); Class 1 misdemeanor) and its related aiding and abetting (Class 1), attempt (Class 2), conspiracy (Class 2) and solicitation (Class 3) for thefts of infant formula valued between \$100 and \$1,000 (*see* Table 4). The Administrative Office of the Courts (AOC) currently does not have specific offense codes for conspiracy or solicitation to commit misdemeanor larceny. The lack of specific AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions. While AOC has a general offense code for misdemeanor conspiracy, it is not specific to conspiracy to commit misdemeanor larceny.

Table 4: Potential Eligible Pool

G.S. Number	Offense Description	Offense Class	Number of Convictions
G.S. 14-72	Misdemeanor larceny	Class 1 misdemeanor	14,467
	Aid & Abet Misd. Larceny	Class 1 misdemeanor	58
	Attempted Misd. Larceny	Class 2 misdemeanor	179

It is not known how many of the misdemeanor convictions in Table 4 may instead be convicted as Class H felonies under the proposed bill.

If, for example, there were three convictions per year that would become Class H felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Section 5

Section 5 of the proposed bill adds Article 16A, Organized Retail Theft, to Chapter 14. The new article contains two new offenses under G.S. 14-86.6.

G.S. 14-86.6(a) creates a new Class G felony for a person to conspire with another to commit theft of retail property from a retail establishment with a value of greater than \$1,500 aggregated over a 90-day period, with the intent to sell the retail property for monetary or other gain, and who takes or causes the

retail property to be placed in the control of a retail property fence (as defined by statute) or other person in exchange for consideration.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction of this offense currently may be convicted of larceny and related offenses, but the long combination of elements of this offense (*e.g.*, the proposed offense requires both a conspiracy and a taking incident to that conspiracy, with an additional element of transferring the goods for consideration) make it difficult to assess what combinations of current convictions would represent the eligible pool of offenders under the proposed statute.

G.S. 14-86.6(b) creates a new Class G felony for any person to receive or possess with intent to distribute in interstate commerce retail property that has been taken or stolen in violation of G.S. 14-86.6 (apparently pursuant to subsection (a), as that is the only subsection of the statute that addresses an actual “taking”).

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

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 1386 - STRENGTHEN PROHIBITION ON
COCKFIGHTING

STATUTE

§ 14-362. Cockfighting.

DESCRIPTION

Subsection (b):

A person who

1. owns, possesses, sells, or trains
2. a rooster, gamecock, or other fighting bird
3. with the intent that the bird be used in an exhibition featuring the baiting of that bird or the fighting of that bird with another bird or with another animal.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

G.S. 14-362(a) is a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1386 - STRENGTHEN PROHIBITION ON
COCKFIGHTING

STATUTE

§ 14-362. Cockfighting.

DESCRIPTION

Subsection (c):

A person who

1. manufactures, possesses, promotes, buys, sells, or transports
2. any of the implements commonly known as gaffs or slashers, or any other sharp implement designed to be attached in place of the natural spur of a rooster, gamecock, or other fighting bird, or any device intended to enhance an animal's fighting ability or for use in an exhibition of animal fighting.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

G.S. 14-362(a) is a Class I felony.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1398 – PAWN AND METAL TRANSACTION DATABASE

STATUTE

§ 66-11. Dealing in regulated metals property; violations of section Class 1 misdemeanor.

DESCRIPTION

Subdivision (b)(4):

A secondary metals recycler who

1. fails to input and transmit
2. the information recorded pursuant to subdivision (2) of G.S. 66-11
3. using the electronic reporting system operated pursuant to G.S. 114-44
4. within 12 hours of purchasing regulated metals property.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

A Class 1 misdemeanor tends to result in serious injury to property or serious injury to society. This offense does not result in serious injury. This offense would be consistent with a Class 2 misdemeanor. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

DATE PREPARED: 4/30/07

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1398 – PAWN AND METAL TRANSACTION DATABASE

STATUTE

§ 91A-7. Record keeping and reporting requirements.

§ 91A-11. Penalties.

DESCRIPTION

A pawnbroker who

1. fails to input and transmit
2. the information recorded pursuant to subsection (b) of G.S. 91A-7
3. using the electronic reporting system operated pursuant to G.S. 114-44
4. within 12 hours of a pawn transaction or purchase.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

126 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1399 - ENSURE INTEGRITY OF NC DRIVERS LICENSES

STATUTE

§ 20-31. Making false affidavits perjury or furnishing false information to obtain a drivers license, learners permit, or identification card.

DESCRIPTION

Subsection (a):

Any person who

1. makes any false affidavit, or knowingly swears or affirms falsely,
2. to any matter or thing required by the terms of Article 22 (Uniform Driver's License Act) to be sworn to or affirmed.

PUNISHMENT RANGE

CURRENT: Class I felony (punished according to the felony punishment chart).

PROPOSED: Class I felony and shall be fined not less than one thousand dollars (\$1,000) and shall be sentenced to a term of imprisonment not less than 90 days.

ANALYSIS

FINDINGS

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

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

G.S. 164-41 is not applicable.

Note: Under structured sentencing, offenses are punished according to the felony punishment chart. Requiring an active sentence where one is not required by the felony punishment chart is inconsistent with structured sentencing.

DATE PREPARED: 4/30/07

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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 1399 - ENSURE INTEGRITY OF NC DRIVERS LICENSES

STATUTE

§ 20-31. Making false affidavits perjury or furnishing false information to obtain a drivers license, learners permit, or identification card.

DESCRIPTION

Subsection (b):

1. A person who
2. furnishes false information
3. to obtain a drivers license, learners permit, or identification card
4. issued by the Division of Motor Vehicles.

PROPOSED OFFENSE CLASS

Class A1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to person, or battery of a person who is a vulnerable victim or a member of a protected class as Class A1 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1399 - ENSURE INTEGRITY OF NC DRIVERS LICENSES

STATUTE

§ 20-31. Making false affidavits perjury or furnishing false information to obtain a drivers license, learners permit, or identification card.

DESCRIPTION

Subsection (b):

1. A person who
2. furnishes false information
3. to obtain a drivers license, learners permit, or identification card
4. issued by the Division of Motor Vehicles.

PUNISHMENT RANGE

CURRENT: N/A

PROPOSED: Class A1 misdemeanor and shall pay a fine of not less than five hundred dollars (\$500.00) and be sentenced to a term of imprisonment of not less than 30 days.

ANALYSIS

FINDINGS

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

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

G.S. 164-41 is not applicable.

Note: Under structured sentencing, offenses are punished according to the misdemeanor punishment chart. Requiring an active sentence where one is not required by the misdemeanor punishment chart is inconsistent with structured sentencing.

DATE PREPARED: 4/30/07

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 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 1426/SB 1314 – AMEND MASSAGE & BODYWORK THERAPY ACT

STATUTE

§ 90-634. Enforcement; injunctive relief.

DESCRIPTION

An individual, association, partnership, corporation, or other entity who

1. opens, operates, or advertises
2. a massage and bodywork therapy school
3. without first having obtained the approval required by G.S. 90-637.1.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1426/SB 1314 – AMEND MASSAGE & BODYWORK THERAPY ACT

STATUTE

§ 14-202.11. Restrictions as to adult establishments.

DESCRIPTION

A person who

1. permits the practice of massage and bodywork therapy, as defined in G.S. 90-622,
2. in an adult establishment.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor for first violation, Class 2 misdemeanor for second or subsequent violations.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to person, minor injury to property, or minor injury to society as Class 3 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

Bill is **inconsistent** with 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 Conviction Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing. This offense would be consistent with a Class 3 misdemeanor. The Sentencing Commission classified offenses which reasonably tend to result or do result in minor injury to society as Class 3 misdemeanors.

DATE PREPARED: 4/30/07

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 1439 – MISDEMEANOR/NOT PRODUCE PUBLIC RECORDS

STATUTE

§ 132-6. Inspection and examination of records.

DESCRIPTION

A custodian of public records who

1. fails to permit any record in the custodian's custody to be inspected and examined
2. at reasonable times and under reasonable supervision by any person, and
3. as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

FINDINGS

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

A Class 2 misdemeanor tends to result in significant injury to property or significant injury to society. This offense does not result in significant injury. This offense would be consistent with a Class 3 misdemeanor. The Sentencing Commission classified offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

- 132 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1472/SB 1090 - AMEND SOCIAL WORKER LICENSURE LAWS

STATUTE

§ 90B-6. Functions and duties of the Board.

§ 90B-12. Violation a misdemeanor.

DESCRIPTION

A social worker who

1. is certified or licensed by the Board
2. fails to maintain records for a minimum of 10 years from the date the social worker terminates services to the client and the client services record is closed.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 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 1472/SB 1090 - AMEND SOCIAL WORKER LICENSURE LAWS

STATUTE

§ 90B-6. Functions and duties of the Board.

§ 90B-12. Violation a misdemeanor.

DESCRIPTION

A social worker who

1. is certified or licensed by the Board
2. fails to cooperate fully and in a timely manner
3. with the Board and its designated representatives
4. in an inquiry or investigation of the records
5. conducted by or on behalf of the Board.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1472/SB 1090 - AMEND SOCIAL WORKER LICENSURE LAWS

STATUTE

§ 90B-15. License or certificate to be displayed.
§ 90B-12. Violation a misdemeanor.

DESCRIPTION

A person who

1. is licensed or certified under Chapter 90B of the General Statutes.
2. fails to conspicuously display the license or certificate issued by the Board at the licensee's or certificate holder's primary place of practice.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

A Class 2 misdemeanor tends to result in significant injury to society. This offense does not result in significant injury. This offense would be consistent with a Class 3 misdemeanor. The Sentencing Commission classified offenses which reasonably tend to result or do result in minor injury to society as Class 3 misdemeanors.

DATE PREPARED: 4/30/07

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 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 1474 – RAISE COMPULSORY SCHOOL ATTENDANCE AGE

STATUTE

§ 115C-378. Children required to attend.

DESCRIPTION

Effective July 1, 2008:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 18 years
3. who fails to cause the child to attend school
4. continuously for a period equal to the time the public school to which the child is assigned is in session
5. until the child graduates from high school.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious societal injury as Class 1 misdemeanors.

This provision is substantively similar to a provision in SB 171 which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1474 – RAISE COMPULSORY SCHOOL ATTENDANCE AGE

STATUTE

§ 116-235. Children required to attend.

DESCRIPTION

Effective July 1, 2008:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 18 years
3. enrolled at the N.C. School of Science and Mathematics
4. who fails to cause the child to attend school
5. continuously for a period equal to the time the School is in session
6. until the child graduates from high school.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious societal injury as Class 1 misdemeanors.

This provision is substantively similar to a provision in SB 171 which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1476 – HEALTH INSURANCE FOR ALL CHILDREN

STATUTE

§ 108A-70.30E. Fraudulent misrepresentation.

DESCRIPTION

Subsection (a):

A person who

1. knowingly and willfully,
2. and with intent to defraud,
3. makes or causes to be made
4. a false statement or representation of a material fact
5. in an application for coverage under Subpart 2 (of Part 8 of Article 2 of Chapter 108A of the General Statutes) or intended for use in determining eligibility for coverage.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1476 – HEALTH INSURANCE FOR ALL CHILDREN

STATUTE

§ 108A-70.30E. Fraudulent misrepresentation.

DESCRIPTION

Subsection (b):

An applicant, recipient, or person acting on behalf of the applicant or recipient who

1. knowingly and willfully,
2. and with intent to defraud,
3. conceals, or fails to disclose
4. any condition, fact, or event
5. affecting the applicant's or recipient's initial or continued eligibility to receive coverage or benefits under this Subpart.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1476 – HEALTH INSURANCE FOR ALL CHILDREN

STATUTE

§ 108A-70.30E. Fraudulent misrepresentation.

DESCRIPTION

Subsection (c):

A person who

1. (a) knowingly, willingly,
(b) and with intent to defraud,
(c) obtains or attempts to obtain, or assists, aids, or abets
(d) another person, either directly or indirectly,
(e) to obtain money, services, or any other thing of value
(f) to which the person is not entitled as a recipient under this Subpart, or
2. otherwise deliberately misuses a Program identification card. (Misuse includes the sale, alteration, or lending of the Program identification card to others for services and the use of the card by someone other than the recipient to receive or attempt to receive Program coverage for services rendered to that individual.)

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1479 - JUVENILE CONTEMPT/PROCEDURES AND SANCTIONS

STATUTE

§ 5A-31. Contempt by a juvenile.

DESCRIPTION

(a) Each of the following, when done by an unemancipated minor who (i) is at least six years of age, (ii) is not yet 16 years of age, and (iii) has not been convicted of any crime in superior court, is contempt by a juvenile:

- (1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.
- (2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.
- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.
- (4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.
- (5) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.
- (6) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A of the General Statutes, Granting of Immunity to Witnesses.
- (7) Willful communication with a juror in an improper attempt to influence the juror's deliberations.
- (8) Any other act or omission specified in another Chapter of the General Statutes as grounds for criminal contempt.

(b) Contempt by a juvenile is direct contempt by a juvenile when each of the following conditions is met:

- (1) The act is committed within the sight or hearing of a presiding judicial official.
- (2) The act is committed in, or in the immediate proximity to, the room where proceedings are being held before the court.
- (3) The act is likely to interrupt or interfere with matters then before the court.

(c) Contempt by a juvenile that is not direct contempt by a juvenile is indirect contempt by a juvenile.

PROPOSED OFFENSE CLASS

Indirect contempt by a juvenile may be adjudged and sanctioned only pursuant to the procedures in Subchapter II of Chapter 7B of the General Statutes (Undisciplined and Delinquent Juveniles).

ANALYSIS

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

Indirect contempt by a juvenile is added to the “Minor” offense classification for the Juvenile Dispositional Chart.

“Minor” offense classification includes Class 1, 2, and 3 misdemeanor offenses.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1485 – NC ILLEGAL IMMIGRATION PREVENTION ACT

STATUTE

§ 84B-9. Violations; penalties.

DESCRIPTION

Any person who violates any provision of the proposed Chapter 84B, Immigration Assistance Registration Act.

(The purpose of the Act is to establish and enforce ethical standards for immigration assistance services provided by individuals who are not licensed attorneys.)

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for first offense, Class 1 misdemeanor for second and subsequent offenses committed within five years of a previous conviction for the same offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

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

This provision is identical to a provision in HB 55 which the Sentencing Commission reviewed in March, 2007. The Commission found that the provision was consistent with the Offense Classification Criteria as to the Class 2 misdemeanor but inconsistent as to the Class 1 misdemeanor.

FINDINGS

- Bill is **consistent** with Offense Classification Criteria as to the Class 2 misdemeanor.
- Bill is **inconsistent** with Offense Classification Criteria as to the Class 1 misdemeanor.
- Offense Classification Criteria are not applicable.

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

DATE PREPARED: 4/30/07

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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 1485 – NC ILLEGAL IMMIGRATION PREVENTION ACT

STATUTE

§ 135A-1. Verification of lawful presence required to receive public benefits; definitions; exceptions.

DESCRIPTION

Subsection (g):

A person who

1. knowingly and willfully
2. makes a false, fictitious, or fraudulent statement of representation
3. in an affidavit executed under subsection (e) of the statute (Verification of lawful presence in the United States in order to receive public benefits).

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.

Fraudulent misrepresentation for AFDC (G.S. 108A-39(b)), Food Stamp Program (108A-53(a)), and Health Insurance Program for Children (G.S. 108A-70.28)) are Class I felonies.

This provision is identical to a provision in HB 2809, SB 1223, and SB 1627 which the Sentencing Commission reviewed in June 2006. The Commission found the provision inconsistent with the Offense Classification Criteria and noted that it would be consistent with the criteria for a Class F felony.

This provision is similar to a provision in HB 55 which the Sentencing Commission reviewed in March, 2007. That provision was not classified and the Commission found that the provision was inconsistent with the Offense Classification Criteria. The Commission pointed out that it would be consistent with a Class I felony.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1492 - ANESTHESIOLOGIST ASSISTANTS LICENSURE
[V.2]

STATUTE

§ 90-18. Practicing without license; practicing defined; penalties.

DESCRIPTION

Subdivision (c) (20):

A person who

1. provides anesthesia services
2. under the supervision of an anesthesiologist licensed under Article 1 of Chapter 90 of the General Statutes
3. in accordance with rules adopted by the North Carolina Medical Board and
4. the person is not a licensed anesthesiologist assistant.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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.

FINDINGS

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

DATE PREPARED: 5/30/07

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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 1492 - ANESTHESIOLOGIST ASSISTANTS LICENSURE
[V.2]

STATUTE

§ 90-18. Practicing without license; practicing defined; penalties.

DESCRIPTION

Subdivision (c) (20):

A person who

1. provides anesthesia services
2. under the supervision of an anesthesiologist licensed under Article 1 of Chapter 90 of the General Statutes
3. in accordance with rules adopted by the North Carolina Medical Board and
4. the person is an out-of-state licensed anesthesiologist assistant but has not been licensed or registered to practice in North Carolina.

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.

FINDINGS

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

DATE PREPARED: 5/30/07

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1492: ANESTHESIOLOGIST ASSISTANTS LICENSURE [v.2]

PREPARED: MAY 14, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill establishes statutes to govern the licensure of anesthesiologist assistants. Providing anesthesia services as an assistant to an anesthesiologist without having a license would qualify as practicing medicine without a license (G.S. 90-18). If passed, the proposed bill would be effective when it becomes law.

Under the proposed bill, a person who practices without a license is guilty of a Class 1 misdemeanor. In FY 2005/06, there were no convictions for G.S. 90-18, practicing medicine without a license.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under the proposed bill, a person who practices without a license and is an out-of-state practitioner who has not been licensed and registered to practice medicine in North Carolina, is guilty of a Class I felony. In FY 2005/06, there were no convictions for G.S. 90-18, practicing medicine without a North Carolina license.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

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 1525 – INCREASE PENALTY/FRAUD IN APPLICATION

STATUTE

§ 20-30. Violations of license or learner's permit provisions.

DESCRIPTION

Subsection (5):

A person who

1. uses a false or fictitious name or gives a false or fictitious address
2. in any application for a driver's license or learner's permit, or any renewal or duplicate thereof.

A person who

1. knowingly
2. makes a false statement or conceals a material fact or otherwise commits a fraud
3. in any application for a driver's license or learner's permit, or any renewal or duplicate thereof.

A person who

1. procures, or knowingly permits or allows another
2. to commit any of the following acts:
 - (a) Use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof.
 - (b) Knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any application for a driver's license or learner's permit, or any renewal or duplicate thereof.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: 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.

FINDINGS

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

DATE PREPARED: 4/30/07

BILL CONTINUED ON NEXT PAGE

148 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1525 – INCREASE PENALTY/FRAUD IN APPLICATION

STATUTE

§ 20-30. Violations of license or learner’s permit provisions.

DESCRIPTION

Subsection (10):

A person who

1. possesses, manufactures, produces, sells, offers for sale, transfers, or conveys to another
2. any document used to apply for a learners permit or a drivers license,
3. knowing the document to be fictitious, altered, or counterfeit.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 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 1525 – INCREASE PENALTY/FRAUD IN APPLICATION

STATUTE

§ 20-37.8. Fraudulent use prohibited.

DESCRIPTION

A person who

1. uses a false or fictitious name or gives a false or fictitious address
2. in any application for a special identification card.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: 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.

FINDINGS

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

DATE PREPARED: 4/30/07

BILL CONTINUED ON NEXT PAGE

150 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1525 – INCREASE PENALTY/FRAUD IN APPLICATION

STATUTE

§ 20-37.8. Fraudulent use prohibited.

DESCRIPTION

A person who

1. knowingly
2. makes a false statement or conceals a material fact or otherwise commits a fraud
3. in any application for a special identification card.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: 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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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

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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 1525 – INCREASE PENALTY/FRAUD IN APPLICATION

STATUTE

§ 20-37.8. Fraudulent use prohibited.

DESCRIPTION

A person who

1. obtains or possesses
2. more than one special identification card
3. for a fraudulent purpose.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: 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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1525 – INCREASE PENALTY/FRAUD IN APPLICATION

STATUTE

§ 20-37.8. Fraudulent use prohibited.

DESCRIPTION

A person who

1. knowingly
2. permits or allows another
3. to commit any of the foregoing acts.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: 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.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1534/SB 1478 – MANUFACTURER
COUPONS/PURCHASING ABC PRODUCTS

STATUTE

§ 18B-1010. Manufacturer, bottler, and wholesaler rebates and coupons prohibited; restricted use of discounts in advertising.

DESCRIPTION

A manufacturer, bottler, or wholesaler of any alcoholic beverages who

1. advertises
2. by means of a coupon or rebate
3. offering a discount off the purchase of a malt beverage or wine.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1535/SB 1315 – EST. COMM. ASSOC. MANAGERS
LICENSE ACT

STATUTE

§ 93A-101. Violation a misdemeanor.

DESCRIPTION

A person who violates any provision of Article 6 (Community Association Managers Licensure Act) of Chapter 93A of the General Statutes.

(Act as a community association manager without a license; be covered by a fidelity bond or insurance policy; display license.)

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 1562 – UNATTENDED CHILDREN IN VEHICLES [V.3]

STATUTE

§ 14-318.5. Unlawful to leave an unattended child in a motor vehicle.

DESCRIPTION

A parent, legal guardian, or other person responsible for a child who is eight years of age or younger who

1. leaves that child in a motor vehicle
2. on any public street or in any public vehicular area
3. without the child being supervised in the motor vehicle by a person who is at least 14 years of age
4. if:
 - (a) the conditions within or in the immediate vicinity of the motor vehicle would cause a reasonable person to believe that the conditions may present a risk to the child's health or safety or
 - (b) the engine of the motor vehicle is running, or the keys to the motor vehicle are anywhere in the passenger compartment of the vehicle, and the child is not in the immediate proximity or line of sight of the parent, legal guardian, or other person responsible for the child.

PROPOSED OFFENSE CLASS

Warning citation for a first offense, Class 2 misdemeanor for second or subsequent offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

- Bill is **consistent** with Offense Classification Criteria.
- Bill is **inconsistent** with 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 Conviction Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing.

DATE PREPARED: 5/30/07

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 1575 – SMALL ENGINE OFF-ROAD VEHICLE
RESTRICTIONS [V.2]

STATUTE

§ 20-146.1A. Operation of small engine motorcycles or all-terrain vehicles.

DESCRIPTION

A person, firm, or corporation who

1. operates, or allows the operation of,
2. any motorcycle or all-terrain vehicle that has an engine size of 50 cubic centimeters or less
3. in any organized racing or organized practice event with motorcycles or all-terrain vehicles that have engine sizes greater than 50 cubic centimeters.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to person, minor injury to property, or minor injury to society as Class 3 misdemeanors.

FINDINGS

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

DATE PREPARED: 5/30/07

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 1609 – HAIR BRAIDER LICENSURE/COSMETIC ART ACT

STATUTE

§ 88B-22. Licenses required; criminal penalty.

DESCRIPTION

A person who

1. practices or attempts to practice
2. cosmetic art
3. for pay or reward in any form, either directly or indirectly,
4. without being licensed as a hair braider.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to person, minor injury to property, or minor injury to society as Class 3 misdemeanors.

G.S. 88B-22 currently covers apprentices to cosmetologists, cosmetologists, estheticians, and manicurists.

FINDINGS

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

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors. This offense does not appear to result in an injury.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

158 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1621 - 3RD ASSAULT ON LAW OFFICER/FELONY OFFENSE

STATUTE

§ 14-33.2. Habitual misdemeanor assault; repeated assaults on law enforcement officers.

DESCRIPTION

A person who

1. is convicted of a third or subsequent offense of G.S. 14-33(c)(4), Assault on government officer or employee, and
2. each offense was committed against a law enforcement officer.

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, occasioned by the taking or removing of property, occasioned by breach of trust, formal or informal, or in personal injury, or in significant societal injury as Class H felonies.

G.S. 14-33.2, Habitual misdemeanor assault, is a Class H felony.

FINDINGS

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

DATE PREPARED: 4/30/07

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 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 1631 – SAFER COMMUNITIES ACT

STATUTE

§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity based upon ethnicity, gender, age, sexual orientation, or disability; punishment of felony committed with animosity based upon ethnicity, gender, age, sexual orientation, or disability.

DESCRIPTION

A person who

1. commits a misdemeanor
2. because of the victim's real or perceived race, color, religion, nationality, gender, sexual orientation, disability, age, or country of origin.

PUNISHMENT RANGE

CURRENT: Class A1, 1, 2, or 3 misdemeanor.

PROPOSED: If the person committed a Class 2 or 3 misdemeanor, they are guilty of a Class 1 misdemeanor; if the person committed a Class A1 or 1 misdemeanor, they are guilty of a Class I felony.

ANALYSIS

This provision adds “real or perceived” and “gender, sexual orientation, disability, age” to the existing offense.

This provision is identical to a provision in Senate Bill 736 which the Sentencing Commission reviewed in April, 2003, Senate Bill 485 which the Sentencing Commission reviewed in March, 2005, and House Bill 1322 which the Sentencing Commission reviewed in May, 2005. The Commission found those provisions to be inconsistent with G.S. 164-41.

FINDINGS

- Bill is **consistent** with G.S. 164-41.
- Bill is **inconsistent** with G.S. 164-41.
- G.S. 164-41 is not applicable.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

160 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1655, 1843 – ENDANGERMENT OF JUVENILE

STATUTE

§ 14-318.5. Endangering a juvenile.

DESCRIPTION

Any parent or other person providing care or supervision to a juvenile:

1. whose willful act or omission
2. in the care of the juvenile
3. is so gross, wanton, and culpable as to show reckless disregard for human life.

PROPOSED OFFENSE CLASS

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.

This provision is identical to a provision in SB 82 which the Sentencing Commission reviewed in March, 2007. The Commission found that the provision was inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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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 1655, 1843 – ENDANGERMENT OF JUVENILE

STATUTE

§ 14-318.5. Endangering a juvenile.

DESCRIPTION

Any parent or other person providing care or supervision to a juvenile:

1. whose willful act or omission
2. in the care of the juvenile
3. is so gross, wanton, and culpable as to show reckless disregard for human life
4. and results in serious injury (as defined by statute).

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to a provision in SB 82 which the Sentencing Commission reviewed in March, 2007. The Commission found that the provision was consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1655, 1843 – ENDANGERMENT OF JUVENILE

STATUTE

§ 14-318.5. Endangering a juvenile.

DESCRIPTION

Any parent or other person providing care or supervision to a juvenile:

1. whose willful act or omission
2. in the care of the juvenile
3. is so gross, wanton, and culpable as to show reckless disregard for human life
4. and results in serious bodily injury (as defined by statute).

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

This provision is identical to a provision in SB 82 which the Sentencing Commission reviewed in March, 2007. The Commission found that the provision was consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1843/SB 82: ENDANGERMENT OF JUVENILE

PREPARED: MAY 7, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The proposed bill creates three new felony offenses for endangering a juvenile under G.S. 14-318.5. The proposed statute incorporates the definition of “juvenile” from G.S. 7B-101, meaning any person under 18 who is not married, emancipated, or a member of the armed forces.

Persons eligible for conviction under the offenses created in the proposed bill may include some portion of those currently convicted of the offenses in the table provided below.

Table 1

G.S. Number	Offense Description	Current Class	FY 2005/06 Convictions
Base pool of eligible convictions^a			
14-315(a)	Sell/Give Weapon To Minor (M)	1	1
14-315(a1)	Sell/Give Handgun To Minor	H	1
14-315.1	Storage Of Firearms/Minors	1	No AOC code ^b
14-316	Permit Children Use Firearms	2	0
14-316.1	Contributing to Delinquency of Juvenile ^c	1	391
14-318	Exposing Children To Fire	1	1
14-318.2	Misdemeanor Child Abuse	1	334
Endangering a juvenile			
14-33(c)(3)	Assault On Child Under 12 ^d	A1	164
Endangering a juvenile, serious injury			
14-33(c)(1)	Assault Inflicting Serious Injury ^e	A1	900
Endangering a juvenile, serious bodily injury			
14-32.4	Assault Inflicting Serious Bodily Injury ^e	F	212

^a Due to the breadth of the proposed bill, persons eligible for conviction under the offenses created in the proposed bill may also include some portion of those currently convicted under G.S. 20-32 (allow unlicensed minor to drive; Class 2 traffic), G.S. 20-34 (allow unlicensed to drive; Class 2 traffic), G.S. 20-135.2B (transport child open cargo bed; infraction), G.S. 20-137.1(a1) (child not in rear seat; infraction), G.S. 20-137.1(a) (fail to secure passenger under 16; infraction), and G.S. 20-171.9 (child bicycle safety violation; infraction). However, the Sentencing Commission does not maintain statistical information on Class 2 or 3 misdemeanor traffic offenses or on infractions.

^b The AOC currently does not have a specific offense code for violations of G.S. 14-315.1. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

^c The offense of contributing to the delinquency of a juvenile includes contributing to circumstances in which a juvenile might be adjudicated abused or neglected in addition to delinquent or undisciplined.

^d Assault on a child under 12 is included because that offense, like the proposed offense, does not necessarily require actual injury to the child. An assault by a parent or supervising individual that resulted in actual injury to a child under 12 could be prosecuted as assault, as misdemeanor child abuse under G.S. 14-318.2, or as felony child abuse under G.S. 14-318.5.

^e If the victim is 16 or 17 years old.

Endangering a juvenile

The proposed bill would make it a Class G felony for a parent or any other person providing care to or supervision of a juvenile to commit a willful act or omission in the care of the juvenile that is so gross, wanton, and culpable as to show reckless disregard for human life.

This offense does not require actual injury to the juvenile. A literal reading of the offense also does not require that the risk created by the act or omission be to the juvenile; however, the qualifier that the offense is Class G unless the offense results in some injury to the juvenile suggests that creating a risk of injury to a third party would not result in criminal liability under this statute for the parent or other supervising person.

The element that the act or omission be “gross, wanton, and culpable” is unclear. “Culpable” is merely a synonym for “responsible” or “liable;” it does not articulate a state of mind like “willfully” or “wantonly.” “Gross” appears as a standard of conduct in only a few criminal statutes, and none has any case law history to explain whether the term means anything other than a civil negligence standard (*e.g.*, G.S. 14-159.23 exempts cave owners from liability for injury unless such injury was the result of ‘gross negligence, wanton conduct, or intentional wrongdoing’).

“Wanton” requires a conscious and intentional disregard of and indifference to the rights and safety of others and without care for the consequences, meaning something more than mere negligence but less than malicious conduct. Many acts concerning juveniles currently prohibited by statute may be done “wantonly” depending on the circumstances of the particular act and the age of the juvenile involved (*e.g.*, driving around with an 11-year old in the back of a pickup truck may not be so wanton as to show a reckless disregard for the juvenile’s life, but the same act with a 4-year old in the back of the truck may be deemed wanton).

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

The conduct covered under this proposed offense may be currently covered under several existing offenses (*see* Table 1). In FY 2005/06, there were 728 convictions in the base pool of potentially eligible convictions and an additional 164 convictions for assault on a child under 12 that could result in convictions for the proposed offense. However, it is not known how many of these convictions may instead be convicted as Class G felonies under the proposed bill.

If, for example, there were two misdemeanor convictions per year that would become Class G felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

If, for example, there were three Class H convictions per year that would become Class G felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and one additional prison bed the second year.

Endangering a juvenile, serious injury

The proposed bill would make it a Class F felony to endanger a juvenile (as described above) if the endangerment results in serious injury. “Serious injury” is defined in the proposed G.S. 14-318.5 as “physical injury that causes great pain and suffering and also includes serious mental injury.”

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

The conduct covered under this proposed offense may be currently covered under several existing offenses (*see* Table 1). Because conviction of the proposed offense can result from a willful act (but does not have to), behaviors that would amount to assault may meet the elements of the proposed offense. However, assault by a parent or person providing care or supervision to a child under 16 that results in serious injury is already a more serious felony (G.S. 14-318.4(a); Class E), and therefore would not be likely to result in convictions under the proposed offense. The proposed bill would, however, make any persons currently convicted of assault inflicting serious injury against a 16- or 17-year old in their care (covered by the use of “juvenile” in the bill) eligible for conviction of this offense.

In FY 2005/06, there were 728 convictions in the base pool of potentially eligible convictions and an additional 900 convictions for assault inflicting serious injury. The number of assault inflicting serious injury convictions where the victim was 16 or 17 years old and under the defendant’s care is not known. Therefore, it is not known how many of these convictions may instead be convicted as Class F felonies under the proposed bill.

If, for example, there were two misdemeanor convictions per year that would become Class F felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

If, for example, there were three Class H convictions per year that would become Class F felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Endangering a juvenile, serious bodily injury

The proposed bill would make it a Class E felony to endanger a juvenile (as described above) if the endangerment results in serious bodily injury. “Serious bodily injury” is defined in the proposed G.S. 14-318.5, and is identical to the definition in G.S. 14-32.4 (assault inflicting serious bodily injury).

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 49% of Class E convictions resulted in active sentences, with an average estimated time served of 31 months. If, for example, there were two Class E convictions under this proposed bill per year, the combination of active sentences and

probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

The conduct covered under this proposed offense may be currently covered under several existing offenses (*see* Table 1). Because conviction of the proposed offense can result from a willful act (but does not have to), behaviors that would amount to assault may meet the elements of the proposed offense. However, assault by a parent or person providing care or supervision to a child under 16 that results in serious bodily injury is already a more serious felony (G.S. 14-318.4(a3); Class C), and therefore would not be likely to result in convictions under the proposed offense. The proposed bill would, however, make eligible for conviction of this offense any persons currently convicted of assault inflicting serious bodily injury against a 16- or 17-year old in their care (covered by the definition of “juvenile” in the bill).

In FY 2005/06, there were 728 convictions in the base pool of potentially eligible convictions and an additional 212 convictions for assault inflicting serious bodily injury. The number of assault inflicting serious injury convictions where the victim was 16 or 17 years old and under the defendant’s care is not known. Therefore, it is not known how many of these convictions may instead be convicted as Class E felonies under the proposed bill.

If, for example, there were two misdemeanor convictions per year that would become Class E felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

If, for example, there were three Class H convictions per year that would become Class E felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

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 1682 - NORTH CAROLINA NO PLACE FOR TORTURE ACT

STATUTE

§ 14-34.9. Torture, kidnapping, and enforced disappearances.

DESCRIPTION

Subsection (a):

A person who

1. commits
2. (a) torture, kidnapping, or the enforced disappearance of persons or
(b) attempts to commit torture, kidnapping, or the enforced disappearance of persons.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

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

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

Under G.S. 14-2.5, attempts are punished one class lower than the offense which the offender attempted to commit.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1682 - NORTH CAROLINA NO PLACE FOR TORTURE ACT

STATUTE

§ 14-34.9. Torture, kidnapping, and enforced disappearances.

DESCRIPTION

Subsection (b):

A person who

1. conspires to commit any of the acts prohibited in subsection (a) of this section or conspires to attempt to commit any of the acts prohibited in subsection (a) of this section, whether the act or attempt takes place inside or outside the State of North Carolina,
2. if any part of the conspiracy is performed or formulated within the State of North Carolina.

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.

Under G.S. 14-2.4, conspiracies are punished one class lower than the offense which the offender conspired to commit.

Under G.S. 14-2.5, attempts are punished one class lower than the offense which the offender attempted to commit.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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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 1682 - NORTH CAROLINA NO PLACE FOR TORTURE ACT

STATUTE

§ 14-34.9. Torture, kidnapping, and enforced disappearances.

DESCRIPTION

Subsection (b):

A person who

1. commits any of the offenses prohibited by subsection (a) or (b) and
2. death results to any person.

PROPOSED OFFENSE CLASS

Class B felony (does not specify B1 or B2).

ANALYSIS

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

The offense classification criteria were not used in the classification of homicide offenses.

FINDINGS

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

The Offense Classification Criteria were not used in the classification of homicide offenses.

Note: This conduct may be covered by the felony murder rule.

DATE PREPARED: 4/30/07

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 1729 – PROTECT VENUS FLYTRAP SAME AS GINSENG

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subsection (a)(12):

A person who

1. digs venus flytrap
2. on another person's land (except for the purpose of replanting).

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to person, minor injury to property, or minor injury to society as Class 3 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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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 1729 – PROTECT VENUS FLYTRAP SAME AS GINSENG

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subsection (a)(13):

A person who

1. buys venus flytrap
2. without obtaining the required documents as provided by the North Carolina Plant Conservation Board from the person selling the venus flytrap.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to person, minor injury to property, or minor injury to society as Class 3 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1729 – PROTECT VENUS FLYTRAP SAME AS GINSENG

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subsection (a)(14):

A person who

1. buys venus flytrap
2. for the purpose of resale or trade
3. without holding a currently valid permit as a venus flytrap dealer.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to person, minor injury to property, or minor injury to society as Class 3 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1729 – PROTECT VENUS FLYTRAP SAME AS GINSENG

STATUTE

§ 106-202.21A. Venus flytrap dealer permits.
§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subsection (a):

A person who

1. acts in the capacity of a dealer of venus flytrap, or engages, or offers to engage in the business of, advertises as, or assumes to act as a venus flytrap dealer,
2. without a currently valid permit.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to person, minor injury to property, or minor injury to society as Class 3 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1729 – PROTECT VENUS FLYTRAP SAME AS GINSENG

STATUTE

§ 14-79. Larceny of ginseng; venus flytrap.

DESCRIPTION

Subsection (b):

A person who

1. takes and carries away, or aids in taking or carrying away
2. any venus flytrap
3. growing upon the lands of another person,
4. with intent to steal the same.

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, occasioned by the taking or removing of property, occasioned by breach of trust, formal or informal, or in personal injury, or in significant societal injury as Class H felonies.

This bill would repeal the provision in G.S. 14-129, Taking, etc., of certain wild plants from land of another, that makes it a Class 3 misdemeanor for a person, firm or corporation to dig up, pull up or take from the land of another or from any public domain, the whole or any part of any venus flytrap.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 1733 – UNLAWFUL TO DISCLOSE UNDERCOVER
POLICE

STATUTE

§ 14-226.3. Disclosure of identity of undercover law enforcement officer or informant.

DESCRIPTION

Subsection (a):

A person who

1. has knowledge of the identity of an undercover law enforcement officer
2. intentionally discloses
3. any information identifying that officer
4. to another person,
5. knowing that the information identifies the officer and knowing that a law enforcement agency is taking affirmative measures to conceal that officer's identity as an undercover officer.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1733 – UNLAWFUL TO DISCLOSE UNDERCOVER
POLICE

STATUTE

§ 14-226.3. Disclosure of identity of undercover law enforcement officer or informant.

DESCRIPTION

Subsection (b):

A person who

1. has knowledge of the identity of a law enforcement informant
2. intentionally discloses any information identifying that informant
3. to another person,
4. knowing that the information identifies the informant and knowing that a law enforcement agency is taking affirmative measures to conceal that informant's activities.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1743 – ELECTION AMENDMENTS [V.4]

STATUTE

§ 163-278.32. Statements under oath.

DESCRIPTION

A person who

1. makes a certification as to a statement required to be filed under Article 22A (Regulating Contributions and Expenditures in Political Campaigns) of Chapter 163 of the General Statutes
2. knowing the information to be untrue.

(A certification under this Article shall be treated as under oath.)

OFFENSE CLASS

CURRENT: Class F felony (prosecuted for perjury under G.S. 14-209).

PROPOSED: Class I felony.

ANALYSIS

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

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

FINDINGS

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

DATE PREPARED: 5/30/07

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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 1743 – ELECTION AMENDMENTS [V.4]

STATUTE

§ 163-165.1. Scope and general rules.

DESCRIPTION

Subsection (e):

A person who

1. has access to an official voted ballot or record and
2. knowingly
3. discloses in violation of this section how an individual has voted that ballot.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 5/30/07

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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 1743 – ELECTION AMENDMENTS [V.4]

STATUTE

§ 163-82.6. Acceptance of application forms.

DESCRIPTION

Subdivision (a1)(3):

1. A person who
2. changes a person's information
3. on a voter registration form
4. prior to its delivery to a county board of elections.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 5/30/07

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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 1743 – ELECTION AMENDMENTS [V.4]

STATUTE

§ 163-82.6. Acceptance of application forms.

DESCRIPTION

Subdivision (a1)(4):

1. A person who
2. intimidates a person
3. into marking a party affiliation
4. other than the party affiliation the person desires.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 5/30/07

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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 1743 – ELECTION AMENDMENTS [V.4]

STATUTE

§ 163-82.6. Acceptance of application forms.

DESCRIPTION

Subdivision (a1)(5):

A person who

1. offers a person
2. a voter registration form
3. that has a party affiliation pre-marked
4. unless the person receiving the form has requested the pre-marking.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 5/30/07

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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 1743 – ELECTION AMENDMENTS [V.4]

STATUTE

§ 163-275. Certain acts declared felonies.

DESCRIPTION

Subsection (18):

A person who

1. instructs or coerces
2. a person who is not a citizen of the United States
3. to register to vote or to vote
4. knowing that the person is not a citizen 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.

FINDINGS

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

DATE PREPARED: 5/30/07

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 1749 – SALE OF DRUGS NEAR PARKS

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (e)(11):

A person who

1. is 21 years of age or older
2. commits an offense under G.S. 90-95(a)(1) (To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance)
3. on property that is a public park or within 300 feet of the boundary of real property that is a public park.

(Excludes the transfer of less than five grams of marijuana for no remuneration.)

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.

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

G.S. 90-95(e)(10) makes it a Class E felony for a person who is 21 years of age or older to commit an offense under G.S. 90-95(a)(1) on property that is a playground in a public park or within 300 feet of the boundary of real property that is a playground in a public park.

FINDINGS

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

The Offense Classification Criteria were not used in the classification of drug offenses.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1750 – CHANGE PENALTY FOR SPECIAL ID FRAUD

STATUTE

§ 20-37.8. Fraudulent use prohibited.

DESCRIPTION

A person who

1. uses a false or fictitious name or gives a false or fictitious address
2. in any application for a special identification card.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: 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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1750 – CHANGE PENALTY FOR SPECIAL ID FRAUD

STATUTE

§ 20-37.8. Fraudulent use prohibited.

DESCRIPTION

A person who

1. knowingly
2. makes a false statement or conceals a material fact or otherwise commits a fraud
3. in any application for a special identification card.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: 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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1750 – CHANGE PENALTY FOR SPECIAL ID FRAUD

STATUTE

§ 20-37.8. Fraudulent use prohibited.

DESCRIPTION

A person who

1. obtains or possesses
2. more than one special identification card
3. for a fraudulent purpose.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: 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.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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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 1750 – CHANGE PENALTY FOR SPECIAL ID FRAUD

STATUTE

§ 20-37.8. Fraudulent use prohibited.

DESCRIPTION

A person who

1. knowingly
2. permits or allows
3. another to commit any of the foregoing acts.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: 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.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1750: CHANGE PENALTY FOR SPECIAL ID FRAUD

PREPARED: MAY 17, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill reclassifies an existing offense.

G.S. 20-37.8, Fraudulent use prohibited, subsection (a) makes it unlawful for any person to use a false or fictitious name or give a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application or to obtain or possess more than one such card for a fraudulent purpose or knowingly to permit or allow another to commit any of the foregoing acts. Violation is a Class 2 misdemeanor. This bill would reclassify subsection (a) to a Class I felony.

In FY 2005/06, there was one conviction for violation of G.S.20-37.8(a). The Structured Sentencing Simulation Model typically cannot be used to project impact for misdemeanor to felony reclassifications. Using threshold data, if twelve Class 2 misdemeanor convictions were reclassified to Class I felony convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

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 1752/SB 1550 - AIDING AND ABETTING ALCOHOL POSSESSION

STATUTE

§ Sale to or purchase by underage persons.

DESCRIPTION

Subdivision (c)(3):

A parent or person who has legal or physical custody of a person less than 21 years of age who

1. aids or abets
2. the person less than 21 years of age
3. in violation of G.S. 18B-302(a) (Sale) or (b) (Purchase, Possession, or Consumption).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (and shall pay a fine of \$500).

ANALYSIS

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. 18B-302(c)(1) makes it a Class 2 misdemeanor for any person who is under the lawful age to purchase to aid or abet another in violation of subsection (a) or (b) of G.S. 18B-302.

G.S. 18B-302(c)(2) makes it a Class 1 misdemeanor for any person who is over the lawful age to purchase to aid or abet another in violation of subsection (a) or (b) of G.S. 18B-302.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

It is inconsistent with Structured Sentencing to impose a mandatory fine.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

190 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1756 – SAFE ARTIFICIAL SLOPE CONSTRUCTION ACT

STATUTE

§ 113A-270. Enforcement and penalties.

DESCRIPTION

A person who

1. knowingly or willfully violates any provision of Article 19 (Safe Artificial Slope Construction) or any ordinance, rule, regulation, or order duly adopted or issued by the Sedimentation Control Commission or a local government, or
2. knowingly or willfully initiates a slope construction activity for which an artificial slope construction plan is required without an approved plan.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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 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 1758 – MERCURY SWITCH REMOVAL PROGRAM
AMENDMENTS [V.3]

STATUTE

§ 130A-310.55. Violations of Article; enforcement.

DESCRIPTION

Subdivision (a)(1):

A person who

1. knowingly
2. flattens, crushes, bales, shreds, or otherwise alters the condition
3. of a vehicle from which accessible mercury switches have not been removed,
4. in any manner that would prevent or significantly hinder the removal of a mercury switch.

PROPOSED OFFENSE CLASS

(Misdemeanor pursuant to G.S. 130A-25(a).) Punished as provided in G.S. 14-3.

((a) Every person convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony.)

ANALYSIS

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.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This provision is consistent with the Offense Classification Criteria as long as it is limited to G.S. 14-3(a).

DATE PREPARED: 5/30/07

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192 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1758 – MERCURY SWITCH REMOVAL PROGRAM
AMENDMENTS [v.3]

STATUTE

§ 130A-310.55. Violations of Article; enforcement.

DESCRIPTION

Subdivision (a)(2):

A person who

1. willfully
2. fails to remove
3. a mercury switch
4. when the person is required to do so.

PROPOSED OFFENSE CLASS

(Misdemeanor pursuant to G.S. 130A-25(a).) Punished as provided in G.S. 14-3.

((a) Every person convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony.)

ANALYSIS

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.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This provision is consistent with the Offense Classification Criteria as long as it is limited to G.S. 14-3(a).

DATE PREPARED: 5/30/07

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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 1758 – MERCURY SWITCH REMOVAL PROGRAM
AMENDMENTS [v.3]

STATUTE

§ 130A-310.55. Violations of Article; enforcement.

DESCRIPTION

Subdivision (a)(3):

A person who

1. knowingly
2. makes a false report
3. that a mercury switch has been removed from an end-of-life vehicle.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 5/30/07

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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 1758 – MERCURY SWITCH REMOVAL PROGRAM
AMENDMENTS [v.3]

STATUTE

§ 130A-310.55. Violations of Article; enforcement.

DESCRIPTION

Subdivision (a)(4):

A person who

1. obtains
2. a mercury switch
3. from another source and
4. falsely report that it was removed from a vehicle processed for recycling.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/30/07

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 1765 – ASSAULT LEO/FELONY

STATUTE

§ 14-34.7. Assault inflicting injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (a):

A person who

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

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

This bill reduces the level of the injury from “serious bodily injury” to “bodily injury.”

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.

FINDINGS

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

Note: “Bodily injury” is not defined in law; it may be more appropriate to delete the word “bodily” and simply require that the assault inflict injury on the officer.

DATE PREPARED: 4/30/07

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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 1765 – ASSAULT LEO/FELONY

STATUTE

§ 14-34.7. Assault inflicting injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (b):

A person who

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

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

This bill reduces the level of the injury from "serious bodily injury" to "bodily injury."

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Note: "Bodily injury" is not defined in law; it may be more appropriate to delete the word "bodily" and simply require that the assault inflict injury on the officer.

DATE PREPARED: 4/30/07

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 1777/SB 1525 – RECOVERY OF CERTAIN I.T. EQUIPMENT

STATUTE

§ 130A-309.94. Responsibilities of manufacturers.

DESCRIPTION

A manufacturer who

1. sells or offers for sale
2. any covered device
3. in this State
4. if the manufacturer has not labeled the covered device in accordance with subsection (b) of G.S. 130A-309.94 and has not adopted and is not implementing a recovery program in accordance with subsection (c) of G.S. 130A-309.94.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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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 1777/SB 1525 – RECOVERY OF CERTAIN I.T. EQUIPMENT

STATUTE

§ 130A-309.94. Responsibilities of manufacturers.

DESCRIPTION

A retailer who

1. sells or offers for sale
2. a covered device
3. in this State
4. if the covered device is not labeled in accordance with G.S. 130A-309.94(b) and such device's manufacturer is not included in the Department of Environment and Natural Resources' list of manufacturers that have adopted and implemented a recovery program under Part 2E of Article 9 of Chapter 130A of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1786 – PROHIBIT TOUGHMAN MATCHES

STATUTE

§ 143-653. Ultimate warrior and toughman matches prohibited.

§ 143-658. Violations.

DESCRIPTION

A person who

1. promotes, conducts, or engages in
2. toughman matches.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

200 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1790 – RAISE COMPULSORY EDU. AGE & GRAD.RATE

STATUTE

§ 115C-378. Children required to attend.

DESCRIPTION

Effective July 1, 2009:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 17 years
3. who fails to cause the child to attend school
4. continuously for a period equal to the time the public school to which the child is assigned is in session
5. until the child graduates from high school.

Effective July 1, 2011:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 18 years
3. who fails to cause the child to attend school
4. continuously for a period equal to the time the public school to which the child is assigned is in session
5. until the child graduates from high school.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious societal injury as Class 1 misdemeanors.

This provision is identical to a provision in SB 171 which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1790 – RAISE COMPULSORY EDU. AGE & GRAD.RATE

STATUTE

§ 116-235. Children required to attend.

DESCRIPTION

Effective July 1, 2009:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 17 years
3. enrolled at the N.C. School of Science and Mathematics
4. who fails to cause the child to attend school
5. continuously for a period equal to the time the School is in session
6. until the child graduates from high school.

Effective July 1, 2011:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 18 years
3. enrolled at the N.C. School of Science and Mathematics
4. who fails to cause the child to attend school
5. continuously for a period equal to the time the School is in session
6. until the child graduates from high school.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious societal injury as Class 1 misdemeanors.

This provision is identical to a provision in SB 171 which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

202 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1793 – UNLAWFULLY REMOVE TREES & VEGETATION/PENALTY

STATUTE

§ 136-133.1. Outdoor advertising vegetation removal.
§ 136-135. Enforcement provisions.

DESCRIPTION

A person who

1. cuts, trims, or otherwise causes to be removed
2. vegetation
3. that is in front of or adjacent to outdoor advertising and also within the limits of highway rights-of-way
4. for the purpose of enhancing the visibility of outdoor advertising
5. without permission to do so by the Department of Transportation.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1802, 1803 - BATTERY ON A POLICE OFFICER/FELONY

STATUTE

§ 14-33.3. Battery on a law enforcement officer, probation or parole officer, or on a person employed at a State or local detention facility.

DESCRIPTION

A person who

1. commits a battery
2. on one of the following persons:
 - (a) a law enforcement officer;
 - (b) a probation or parole officer;
 - (c) a person who is employed at a detention facility operated under the jurisdiction of the State or a local government;
3. while the person is discharging or attempting to discharge his or her official duties.

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.

FINDINGS

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

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

204 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1817 – PROTECT CONSUMERS – RATE SPREAD HOME LOANS

STATUTE

§ 53-243.14. Criminal penalty.

DESCRIPTION

A person who violates G.S. 53-243.02 (License required; licensee record) of Article 19A (Mortgage Lending Act) of Chapter 53 of the General Statutes.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 1818 – AGRICULTURAL FAMILY PROTECTION ACT

STATUTE

§ 143-466. Records; information; inspection; enforcement.
§ 143-469. Penalties.

DESCRIPTION

A licensee who

1. knowingly
2. provides false records (regarding the sale and application of certain pesticides)
3. to the Pesticide Board.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 4/30/07

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 1839 – 30-DAY WAIT/UNSOLICITED MAILINGS/ATTORNEYS

STATUTE

§ 84-39. Unsolicited written communication.

DESCRIPTION

A licensed attorney who

1. sends, or knowingly permits to be sent,
2. on the attorney's behalf or on behalf of the attorney's firm, partner, associate, or any other attorney affiliated with the attorney or the attorney's firm,
3. an unsolicited written communication directly or indirectly
4. to a prospective client
5. for the purpose of obtaining professional employment
6. if the written communication concerns a traffic citation or an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, and
7. the accident or disaster occurred 30 days or less before the communication is mailed.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 4/30/07

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 1847 – REPORT LOST OR STOLEN GUN

STATUTE

§ 14-406.1. Duty to report lost or stolen weapon.

DESCRIPTION

A person who

1. owns or is in possession of a handgun, rifle, or shotgun and
2. suffers the loss or theft of the weapon and
3. fails to report the facts and circumstances of the loss or theft to a police department or sheriff's office in the jurisdiction where the loss or theft is reasonably believed to have occurred within 48 hours after the person knew or reasonably should have known of the theft or loss.

PROPOSED OFFENSE CLASS

An infraction for the first offense; a Class 3 misdemeanor for the second offense; a Class 2 misdemeanor for the third offense; and a Class 1 misdemeanor for the fourth and subsequent offenses.

ANALYSIS

An infraction is a noncriminal violation of law not punishable by imprisonment.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to person, minor injury to property, or minor injury to society as Class 3 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

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.

FINDINGS

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

Bill is **inconsistent** with 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 Conviction Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing.

DATE PREPARED: 4/30/07

IMPACT ANALYSIS NOT REQUESTED YET

208 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 2015 – POLYSOMNOGRAPHY PRACTICE ACT

STATUTE

§ 90-730. Violation a misdemeanor.

DESCRIPTION

A person who violates any provision of Article 42, Polysomnography Practice Act, of Chapter 90 of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

Polysomnography. – The allied health specialty involving the process of attended and unattended monitoring, analysis, and recording of physiological data during sleep and wakefulness to assist in the assessment of sleep and wake disorders and other sleep disorders, syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt normal sleep and wake cycles and activities, as performed by polysomnographic technologists, polysomnographic technicians, polysomnographic trainees, or polysomnographic students who are permitted to perform polysomnography services under this Article.

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.

This bill is substantively similar to HB 143 which the Sentencing Commission reviewed on March 16, 2007. The Commission found that bill to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/30/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 5 – METHADONE DISTRIBUTION/2ND DEGREE
MURDER [V.2]

STATUTE

§ 14-17. Murder in the first and second degree defined; punishment.

DESCRIPTION

A person who:

1. distributes a substance described in G.S. 90-89 [Schedule I] or G.S. 90-90 [Schedule II]
2. the ingestion of which causes the death of the user.

PROPOSED OFFENSE CLASS

Class B2 felony.

ANALYSIS

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

The Sentencing Commission did not use the Offense Classification Criteria in the classification of homicide offenses.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of homicide offenses.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 5: METHADONE DISTRIBUTION/SECOND DEGREE MURDER

PREPARED: MARCH 19, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

General Statute 14-17 makes it second degree murder if a person unlawfully distributes opium, cocaine, or methamphetamine, and the ingestion of the substance causes the death of the user. The proposed draft amends that offense to include the remaining Schedule II controlled substances and, in addition, all Schedule I controlled substances (G.S. 90-89). Second-degree murder is a Class B2 felony.

It is not known how many overdose deaths might lead to a conviction for second-degree murder under the proposed amendment. In FY 2005/06, there were 206 convictions for second-degree murder and two convictions for attempted second-degree murder. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. The average minimum sentence imposed for the 206 second-degree murder convictions was 172 months, with an average estimated time served of 183 months.

Currently, persons causing a death by unlawful distribution of substances other than opium, cocaine, or methamphetamine may be convicted of Involuntary Manslaughter, a Class F felony. In FY 2005/06, there were 89 involuntary manslaughter convictions. It is not known how many of these deaths were proximately caused by the unlawful distribution of a Schedule I or Schedule II controlled substance.

Adding the remaining Schedule II controlled substances and all of Schedule I controlled substances to the list of controlled substances for which an overdose death can lead to a conviction of second-degree murder could have impact on the prison population. Class B2 felonies have a long-term effect on the prison population due to the mandatory active sentence and long sentences imposed, which results in a "stacking" effect. If, for example, there were one additional conviction per year as a result of the proposed amendment, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

Summary of Potential Impact on YDC Resources

Criminal bills that create or expand Class A through Class E felony offenses, which are classified as "Violent" under the juvenile disposition chart, may also increase the need for Youth Development Center (YDC) resources. The proposed amendment may shift an unknown portion of a Class F offense (a "Serious" offense in the juvenile disposition chart) to a Class B2 offense (a "Violent" offense). A Level 3 (*i.e.*, YDC) commitment is authorized for juveniles adjudicated delinquent for a Serious offense only when their Delinquency History Level is "High," while YDC commitment is authorized for juvenile adjudicated delinquent with a Violent offense in all Delinquency History Levels. In FY 2005/06, 27% of juveniles adjudicated delinquent for a Violent offense received a Level 3 commitment; YDC commitment was imposed for 7% of juveniles adjudicated delinquent for a Serious offense. It is important to note that small increases in the demand for YDC resources represent a relatively large increase in the need for these resources as the current YDC population is only about 458 (as of January 2007).

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 125– ALCOHOL INHALERS ILLEGAL [V.2]

STATUTE

§ 90-113.10. Inhaling fumes for purpose of causing intoxication.

§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

Any person who:

1. knowingly
2. breathes or inhales
3. any compound, liquid or chemical
4. containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance
5. for the purpose of inducing a condition of intoxication.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed bill adds ethyl alcohol to the list of prohibited inhalants.

This provision is identical to that reviewed by the Commission in HB 267 [V.1] on March 16, 2007. The Commission found it to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 125– ALCOHOL INHALERS ILLEGAL [V.2]

STATUTE

§ 90-113.10A. Alcohol vaporizing devices prohibited.
§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

Any person who:

1. knowingly
2. manufactures, sells, gives, delivers, possesses or uses
3. an alcohol vaporizing device (as defined by statute).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed offense does not apply to devices designed and intended by the manufacturer to dispense medically prescribed or over-the-counter medications, provided the instrument is not used for the purpose of inducing a condition of intoxication.

The proposed bill defines an “alcohol vaporizing device” as “a device, machine, apparatus, or appliance that is designed or marketed for the purpose of mixing ethyl alcohol with pure or diluted oxygen, or another gas, to produce an alcoholic vapor that an individual can inhale or snort.”

This provision is substantially similar to G.S. 90-113.10A in HB 267, but limits the offense to devices specifically for the vaporization of ethyl alcohol.

FINDINGS

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

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 125– ALCOHOL INHALERS ILLEGAL [V.2]

STATUTE

§ 90-113.11. Possession of substances.
§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

Any person who:

1. possesses
2. any compound, liquid, or chemical
3. containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance which will induce intoxication
4. for the purpose of violating G.S. 90-113.10.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

214 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 125 – ALCOHOL INHALERS ILLEGAL [V.2]

STATUTE

§ 90-113.12. Sale of substance.

§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

Any person who:

1. sells, offers to sell, delivers, gives, or possesses with the intent to sell, deliver or give
2. any compound, liquid, or chemical
3. containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance which will induce intoxication
4. if he has reasonable cause to suspect that the product will be used for the purpose of violating G.S. 90-113.10.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 or opposition to the bill itself.

215

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 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS ACT [V.3]

STATUTE

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

DESCRIPTION

Any person who:

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

OFFENSE CLASS

CURRENT: Class D felony.

PROPOSED: Class C felony.

ANALYSIS

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

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

This provision is identical to that of SB 17 – Up Penalties/Sex Offenses with Child Victim.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT [V.3]**

STATUTE

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

DESCRIPTION

Any person who:

1. knowing the character or content of the material
2. does either of the following:
 - a. records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or
 - b. Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class D felony.

ANALYSIS

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

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious 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.

This provision is identical to that of SB 17 – Up Penalties/Sex Offenses with Child Victim.

FINDINGS

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

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

A Class D felony tends to 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. This offense does not result in an infringement on property interests. This offense would be consistent with a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT [V.3]**

STATUTE

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

DESCRIPTION

Any person who:

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

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

This provision is identical to that of SB 17 – Up Penalties/Sex Offenses with Child Victim.

FINDINGS

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

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

A Class E felony tends to result in serious personal injury. This offense does not result in serious personal injury. This offense would be consistent with 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 PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT [V.3]**

STATUTE

§ 14-202.3. Solicitation of child by computer to commit unlawful sex act.

DESCRIPTION

Any person who is 16 years of age or older, who:

1. knowingly and with the intent to commit an unlawful sex act
2. entices, advises, coerces, orders, or commands
3. by means of a computer
4. a person who:
 - a. is a child less than 16 years of age and at least 3 years younger than the defendant; or
 - b. the defendant believes to be such
5. to meet with the defendant or any other person
6. for the purpose of committing an unlawful sex act
7. and the defendant or the other person actually appears at the meeting location.

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.

The current offense of solicitation of a child by computer, without the defendant or other person actually appearing at the meeting location, is a Class H felony.

FINDINGS



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



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

A Class E felony tends to result in serious personal injury. This offense does not result in serious personal injury. This offense would be consistent with a Class C felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

DATE PREPARED: 3/9/07

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 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 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT [V.3]

STATUTE

§ 14-225. False reports to law enforcement agencies or officers.

DESCRIPTION

Subsection (c):

Any person who:

1. in response to an official inquiry (as defined by subsection (a))
2. by a sworn agent of the State Bureau of Investigation (SBI)
3. willfully does any of the following:
 - a. falsifies or conceals by any trick, scheme, or device a material fact
 - b. makes any materially false, fictitious, or fraudulent statement or representation
 - c. uses any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS

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

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

A Class H felony tends to result in significant societal injury. This offense does not result in significant societal injury. This offense would be consistent with a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

DATE PREPARED: 3/9/07

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: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT [V.3]**

STATUTE

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

DESCRIPTION

Any registered sex offender who:

1. accesses
2. a commercial social networking Web site (as defined by statute)
3. that permits minor children to become members.

Any registered sex offender who:

1. creates or maintains a personal Web page
2. on a commercial social networking Web site (as defined by statute).

PROPOSED OFFENSE CLASS

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling.

DATE PREPARED: 5/29/2007

IMPACT OF BILL 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 or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**SB 132: PROTECT CHILDREN FROM SEXUAL PREDATORS
PCS S132-CSRI-1 [v.10]**

PREPARED: MAY 16, 2007

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Section 1

The proposed bill amends G.S. 14-190.13, expanding the definition of “sexual activity” to include the “lascivious exhibition of the genitals or pubic area of any person.” The definitions of G.S. 14-190.13 apply to G.S. 14-190.14 through G.S. 14-190.19, inclusive, and to the proposed G.S. 14-190.25 in Section 5 of the proposed bill.

The addition to the definition of “sexual activity” expands the conduct prohibited and therefore the potential pool of offenders under the following statutes:

1) G.S. 14-190.16, First Degree Sexual Exploitation of a Minor (currently a Class D offense). There were 3 convictions for First Degree Sexual Exploitation of a Minor in FY 2005/06. Of these 3 convictions, all received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2005/06 the average estimated time served for an offender convicted of a Class D offense was 75 months. If, for example, there was one additional conviction for this offense per year, the proposed bill would result in the need for one additional prison bed the first year and two additional prison beds the second year (*Also see page 2, Section 2*).

2) G.S. 14-190.17, Second Degree Sexual Exploitation of a Minor (currently a Class F offense). There were 14 convictions for Second Degree Sexual Exploitation of a Minor in FY 2005/06. Of these 14 convictions, 57% (n=8) received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year (*Also see page 3, Section 3*).

3) G.S. 14-190.17A, Third Degree Sexual Exploitation of a Minor (currently a Class I offense). There were 21 convictions for this offense in FY 2005/06. Of these 21 convictions, none received an active sentence. It is not known how many additional convictions may result from broadening the definition of “sexual activity.”

In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one

additional prison bed the first year and four additional prison beds the second year (*Also see* page 3, Section 4).

4) G.S. 14-190.18, Promoting Prostitution of a Minor (currently a Class D offense). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Further, it is not known how many additional convictions may result from expanding the definition of “sexual activity.”

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2005/06 the average estimated time served for an offender convicted of a Class D offense was 75 months. If, for example, there was one conviction for this offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

5) G.S. 14-190.19, Participating in Prostitution of a Minor (currently a Class F offense). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.19. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Further, it is not known how many additional convictions may result from expanding the definition of “sexual activity.”

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Section 2

Under the proposed bill G.S. 14-190.16, First Degree Sexual Exploitation of a Minor, would be reclassified from a Class D felony to a Class C felony. There were three convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population would occur if Class D First Degree Sexual Exploitation of a Minor convictions become Class C convictions under the proposed bill because of the longer average estimated time served (95 months for a Class C compared to 75 months for a Class D). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. If, for example, there was one conviction for this offense per year, this bill would result in the need for one additional prison bed the sixth year and two additional prison beds the seventh year. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

Section 3

Under the proposed bill G.S. 14-190.17, Second Degree Sexual Exploitation of a Minor, would be reclassified from a Class F felony to a Class D felony. There were 14 convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population will occur if Class F Second Degree Sexual Exploitation of a Minor convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 47% for Class F) and longer average estimated time served (75 months for Class D compared to 19 months for Class F). If, for example, there were 14 Class F felony convictions that were reclassified as Class D felony convictions, this would result in the need for seven additional prison beds the first year and 14 additional prison beds the second year. In addition, there will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class F to a Class D.

Section 4

Under the proposed bill G.S. 14-190.17A, Third Degree Sexual Exploitation of a Minor, would be reclassified from a Class I felony to a Class E felony. There were 21 convictions for this offense in FY 2005/06. Due to the small number of convictions, a detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model.

Impact on the prison population will occur if Class I Third Degree Sexual Exploitation of a Minor convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (49% for Class E compared to 15% for Class I) and longer average estimated time served (31 months for Class E compared to 7 months for Class I). If, for example, there were 21 Class I felony convictions that were reclassified as Class E felony convictions, this would result in the need for nine additional prison beds the first year and 21 additional prison beds the second year. In addition, there will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class I to a Class E.

Section 6

The proposed bill creates a new offense under G.S. 14-202.3(c)(2), making it a Class E felony for any person 16 or older to solicit a person under 16 and at least 3 years younger than the defendant (or a person the defendant believes to be such) to meet with the defendant or another person for the commission of an unlawful sex act, if the defendant or other person actually appears at the meeting location.

Persons eligible for conviction of the proposed offense currently may be convicted of the existing Class H felony under G.S. 14-202.3. There were no convictions for which this offense was the most serious offense of conviction in fiscal years 2002/03, 2003/04, 2004/05, or 2005/06; thus, a detailed impact projection could not be computed using the Structured Sentencing Simulation Model.

Effective December 1, 2005, G.S. 14-202.3 was amended to include a prohibition on solicitation of a person whom the offender *believes* to be under 16 and at least 3 years younger than the offender. Because the amendment applied only to offenses committed on or after December 1, 2005, and because of the time required for a felony case to reach disposition, few convictions under the amended statute would be expected before the end of 2005/06. Therefore, it is unknown whether the 2005 amendment has resulted in additional offenders prosecuted under G.S. 14-202.3 and whether such offenders would be eligible for conviction of the new offense in the proposed bill.

In FY 2005/06, 49% of Class E convictions resulted in active sentences, with an average estimated time served of 31 months. If, for example, there were two Class E convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Section 7

Section 7 of the proposed bill creates a new offense under G.S. 14-225, making it a Class H felony, in response to an official inquiry by a sworn SBI agent, to willfully falsify or conceal by any trick, scheme or device a material fact; make any false, fictitious, or fraudulent statement or representation; or use any false writing or document, knowing it to contain any materially false, fictitious, or fraudulent statement or entry.

Persons eligible for conviction of the proposed offense currently may be convicted of the existing offense of giving a false report to a law enforcement agency or officer under G.S. 14-225, a Class 2 misdemeanor, or of the common law offense of obstructing justice. In FY 2005/06, there were 349 convictions under G.S. 14-225, and there were 88 convictions for obstructing justice, currently punishable as a Class 1 misdemeanor. The proposed offense is limited to false information given only to sworn agents of the SBI, but is broader than the existing offense in that it does not require that false information be given for the purpose of hindering the agent's investigation. It is not known how many of the convictions under the current offenses would meet the elements of the proposed offense or how many new convictions would result from the broader coverage.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Section 8.(b)

Section 8.(b) would enact a "new" G.S. 14-202.3, making it a Class G felony for a sex offender registered in accordance with Chapter 14, Article 27A to either:

- access a commercial social networking web site (as defined in Section 8.(a)) that permits minor children to become members, or
- create or maintain a personal web page on a commercial social networking web site.

NOTE: The statute enacted by this section already exists: G.S. 14-202.3, solicitation of child by computer to commit an unlawful sex act. Because the PCS also amends G.S. 14-202.3 in Section 6, it is assumed that this numbering was not meant as a repeal of the existing statute.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 229 – MURDER/VIOLATION OF PROT. ORDER [V.2]

STATUTE

§ 15A-2000(e). Capital offenses; plea of guilty.

DESCRIPTION

New capital aggravating circumstance (12):

The defendant knowingly violated a valid protective order entered under Chapter 50B of the General Statutes, and the murder victim was the petitioner, minor family member, or any other person designated as a protected party by the order.

PUNISHMENT RANGE

PROPOSED: Finding of the aggravating circumstance after conviction of a capital (Class A) felony would render the defendant eligible for the death penalty.

ANALYSIS

The Sentencing Commission was instructed in 2005 to study “whether the State's capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe.” S.L. 2005-295. The Sentencing Commission recommended:

- against the adoption of the proposed aggravating circumstance; and
- the “continued support and expansion” of other, innovative programs designed to address the problem of domestic violence.

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 Offense Classification Criteria were not used in the classification of homicide offenses.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**BILL NUMBER/TITLE: SB 229/MURDER/VIOLATION OF PROTECTIVE ORDER (S229-
CSRK-5 [v.6])**

PREPARED: APRIL 3, 2007

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

The PCS amends G.S. 15A-2000(e) to add a new aggravating circumstance to capital sentencing, which would permit imposition of the death penalty if a first-degree murder was committed in knowing violation of a protective order entered under Chapter 50B of the General Statutes, and the victim was the petitioner, minor family member, or any other person designated as a protected party by the order.

Persons eligible for the death penalty under the proposed bill would be those convicted of first degree murder who had currently-valid protective orders entered under Chapter 50B as of the date of the offense and who otherwise received a life sentence.

In FY 2005/06, there were 84 convictions for First Degree Murder (Class A). Offenders convicted of First Degree Murder may receive either a death sentence or life without parole. Of the 84 convictions for First Degree Murder in FY 2005/06, 7 received a death sentence and 77 received life without parole. It is unknown how many of the first degree murder convictions had currently-valid protective orders entered under Chapter 50B as of the date of the offense. However, one of the 77 First Degree Murder convictions with a life without parole sentence in FY 2005/06 also had a Class A1 misdemeanor conviction for violation of G.S. 50B-4.1 (violation of a domestic violence protective order). In addition, three of the 77 First Degree Murder convictions were identified in AOC's Automated Criminal Infraction System as domestic violence offenses but did not have a concurrent conviction under G.S. 50B-4.1.

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 236 – REGULATION OF PROFESSIONAL
HOUSEMOVING [V.3]

STATUTE

§ 20-371. Penalties.

DESCRIPTION

Any person who:

1. engages in housemoving
2. in violation of any provision of Article 16 of Chapter 20 of the General Statutes (regarding licensing, permits for specific moves, insurance coverage, bonds, routes, conditions of the move, and removal and replacement of signs and other obstructions) or any regulation of the Department of Transportation governing housemoving.

G.S. 20-359.1(c):

Any insurance company who:

1. issues a policy to a housemover, and
2. fails to notify the Department of Transportation within 30 days of the policy's change, cancellation, or nonrenewal.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor, which may include a fine of not more than \$500.

PROPOSED: Class 1 misdemeanor.

ANALYSIS

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

The offenses in the proposed bill are substantively identical to those reviewed by the Commission on March 16, 2007, in SB 236 [v.1]. The proposed offense classes in the previous version were Class 3 for the first offense, Class 2 for the second, and Class 1 for a third or subsequent offense. The Commission found that provision to be inconsistent with the Offense Classification Criteria, noting that increasing the offense class based on prior convictions is inconsistent with structured sentencing.

FINDINGS

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

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

Class 1 misdemeanors tend to result in serious injury to property or serious injury to society. This offense does not result in serious injury to property or serious injury to society. This offense would be consistent with a Class 2 misdemeanor. The Sentencing Commission recommended classifying offenses which result in significant injury to property or significant injury to society as Class 2 misdemeanors.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 393 – FELONY/STEAL OR CUT ANOTHER’S TIMBER
[V.2]

STATUTE

§ 14-135. Cutting, injuring or removing another’s timber.

DESCRIPTION

Any person who:

1. not being the bona fide owner thereof
2. knowingly and willfully
3. cuts down, injures, or removes any standing, growing or fallen tree or log
4. causing damage of more than \$2,500.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Cutting, injuring, or removing another’s timber resulting in damage of \$2,500 or less would remain a Class 1 misdemeanor.

The Sentencing Commission reviewed this provision with a felony threshold of \$1,000 in damage on March 16, 2007. The Commission found it consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 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 700/SB 694 – STANDARDS FOR CODE ENFORCEMENT OFFICIALS

STATUTE

§ 143-151.18. Violations; penalty; injunction.

DESCRIPTION

Any person who:

1. practices Code enforcement
2. without a currently valid certificate issued by the [North Carolina Code Officials Qualification] Board.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The current offense under G.S. 143-151.18 prohibits only representing one's self as a Code enforcement official without a valid certificate.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class 1 misdemeanors tend to result in serious injury to property or serious injury to society. This offense does not result in serious injury to property or serious injury to society. This offense would be consistent with a Class 2 misdemeanor. The Sentencing Commission recommended classifying offenses which result in significant injury to property or significant injury to society as Class 2 misdemeanors.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 727 – AMEND DRUG TRAFFICKING SENTENCE

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

G.S. 90-95(h)(5) [sentencing for drug trafficking]:

Sentence may be suspended if the defendant:

1. has no prior convictions that produced or threatened serious bodily harm
2. has no prior felony convictions for the manufacture, sale, delivery, or possession of controlled substances
3. did not possess a firearm during commission of the offense
4. played a minor role in the drug scheme that led to the offense
5. carried out the offense at the direction of another
6. stood to receive substantially less pecuniary gain from the offense than the person who directed its commission.

PUNISHMENT RANGE

CURRENT: Sentence for drug trafficking may be suspended only in cases of “substantial assistance.”

PROPOSED: Sentence for drug trafficking may be suspended for substantial assistance or upon findings described above.

ANALYSIS

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

(See also SB 1504.)

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 Offense Classification Criteria were not used in the classification of drug offenses.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 588/SB 731 – UPDATE THE UNAUTHORIZED INSURERS LAWS

STATUTE

§ 58-28-45. Unauthorized Insurers; prohibited acts.

DESCRIPTION

Subsection (a):

Any person who

1. acts as an agent, negotiates for or places or aids in placing insurance coverage
2. in this State
3. for an insurer not authorized to transact business in this State.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

PROPOSED: Class H felony. Sentence must include a fine of \$1,000 to \$5,000.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

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

The offense is “except as provided in G.S. 58-33-95,” which provides that a person who solicits, negotiates, or sells insurance or acts as a third-party administrator in this State for an unauthorized insurer is guilty of a Class 1 misdemeanor if he did not know that the insurer was unauthorized, and a Class H felony if he knew or should have known.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class H felonies tend to result in significant societal injury. This offense does not result in significant societal injury. In addition, fines imposed pursuant to a felony conviction are within the discretion of the court. Imposing a mandatory fine for a felony is inconsistent with Structured Sentencing.

DATE PREPARED: 5/1/2007

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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 588/SB 731 – UPDATE THE UNAUTHORIZED INSURERS LAWS

STATUTE

§ 58-28-45. Unauthorized Insurers; prohibited acts.

DESCRIPTION

Subsection (b):

Any person who

1. aids any unauthorized insurer
2. in effecting insurance or in transacting insurance business in this State
3. by
 - a. fixing rates
 - b. adjusting or investigating losses
 - c. inspecting or examining risks
 - d. acting as attorney-in-fact or as attorney for service of process [except as provided for the Commissioner of Insurance as agent for service of process in G.S. 58-16-35].

OFFENSE CLASS

CURRENT: Class 3 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

PROPOSED: Class H felony. Sentence must include a fine of \$1,000 to \$5,000.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

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

The offense is “except as provided in G.S. 58-33-95,” which provides that a person who solicits, negotiates, or sells insurance or acts as a third-party administrator in this State for an unauthorized insurer is guilty of a Class 1 misdemeanor if he did not know that the insurer was unauthorized, and a Class H felony if he knew or should have known.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class H felonies tend to result in significant societal injury. This offense does not result in significant societal injury. In addition, fines imposed pursuant to a felony conviction are within the discretion of the court. Imposing a mandatory fine for a felony is inconsistent with Structured Sentencing.

DATE PREPARED: 5/1/2007

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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 588/SB 731 – UPDATE THE UNAUTHORIZED INSURERS LAWS

STATUTE

§ 58-28-45. Unauthorized Insurers; prohibited acts.

DESCRIPTION

Subsection (c):

Any person who

1. makes, negotiates, or places, or aids in negotiating or placing
2. any insurance contract in this State
3. for another
4. who is an applicant for insurance covering property or risk in another state, territory, or district of the United States
5. with any insurer not authorized to transact insurance business in the state, territory, or district where the property or risk or any part thereof is located.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

PROPOSED: Class H felony. Sentence must include a fine of \$1,000 to \$5,000.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

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

The offense is “except as provided in G.S. 58-33-95,” which provides that a person who solicits, negotiates, or sells insurance or acts as a third-party administrator in this State for an unauthorized insurer is guilty of a Class 1 misdemeanor if he did not know that the insurer was unauthorized, and a Class H felony if he knew or should have known.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class H felonies tend to result in significant societal injury. This offense does not result in significant societal injury. In addition, fines imposed pursuant to a felony conviction are within the discretion of the court. Imposing a mandatory fine for a felony is inconsistent with Structured Sentencing.

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

234 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 588/SB 731 – UPDATE THE UNAUTHORIZED INSURERS LAWS

STATUTE

§ 58-28-45. Unauthorized Insurers; prohibited acts.

DESCRIPTION

Subsection (k)

Any person who:

1. acts as an officer, director, or controlling person
2. for a person engaged in violation of subsections (a), (b), or (c).

PROPOSED OFFENSE CLASS

Class H felony. Sentence must include a fine of \$1,000 to \$5,000.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class H felonies tend to result in significant societal injury. This offense does not result in significant societal injury. In addition, fines imposed pursuant to a felony conviction are within the discretion of the court. Imposing a mandatory fine for a felony is inconsistent with Structured Sentencing.

DATE PREPARED: 5/1/2007

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 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 588/SB 731 – UPDATE THE UNAUTHORIZED INSURERS LAWS

STATUTE

§ 58-28-45. Unauthorized Insurers; prohibited acts.

DESCRIPTION

Subsection (e):

Any person who

1. in an action against an unauthorized insurer
2. fails to deliver to the Commissioner of Insurance’s office two copies of the process and the required fees for service.

The Commissioner of Insurance who

1. fails to forward such process by registered mail, or
2. fails to keep a record of the process served.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

PROPOSED: Class 1 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

236 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 588/SB 731 – UPDATE THE UNAUTHORIZED INSURERS LAWS

STATUTE

§ 58-28-45. Unauthorized Insurers; prohibited acts.

DESCRIPTION

Subsection (f):

An unauthorized insurer who

1. institutes or files, or causes to be instituted or filed
2. any suit, action or proceeding in this State
3. to enforce any right, claim or demand arising out of the transaction of business in this State
4. before obtaining a license to transact insurance business in this State.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

PROPOSED: Class 1 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 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 588/SB 731 – UPDATE THE UNAUTHORIZED INSURERS LAWS

STATUTE

§ 58-28-45. Unauthorized Insurers; prohibited acts.

DESCRIPTION

Subsection (g):

An unauthorized insurer who

1. files or causes to be filed any pleading
2. in any action, suit, or proceeding against it
3. without either
 - a. filing with the clerk of court a bond as set by the court, or
 - b. procuring a license to transact insurance business in this State.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

PROPOSED: Class 1 misdemeanor, punishable only by a fine of \$1,000 to \$5,000.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 588: UPDATE THE UNAUTHORIZED INSURERS LAW

PREPARED: MARCH 29, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Currently, violation of any subsection of G.S. 58-28-45 (Uniform Unauthorized Insurers Act) is a Class 3 misdemeanor punishable only by a fine. The proposed bill amends subsection (h) of G.S. 58-28-45 (renamed "Unauthorized Insurers; prohibited acts") to specify offense classes under the different subsections and impose punishment under Structured Sentencing for some of them.

Reclassify G.S. 58-28-45(a) – (c)

The proposed bill reclassifies violation of the following subsections from Class 3 misdemeanors to Class H felonies, the punishment for which must include a fine from \$1,000 to \$5,000. When the defendant is other than an individual, the sentence must be a fine, only.

- Subsection (a) - acting as agent for insurer not authorized to do business in this State.
- Subsection (b) - aiding (by numerous acts) insurer not authorized to do business in this State to transact business here.
- Subsection (c) - making insurance contracts in this State for property in another state on behalf of insurer not authorized to do business in that other state.

For subsections (a) – (c), see also G.S. 58-33-95, below.

The Administrative Office of the Courts (AOC) currently does not have any specific offense codes for violations of G.S. 58-28-45. The lack of an AOC offense code is some indication that these offenses are infrequently charged and/or infrequently result in convictions. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class 3 misdemeanor convictions per year that would become Class H convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

G.S. 58-28-45(k)

The proposed bill creates a new Class H felony under subsection (k) for any person who acts as an officer, director, or controlling person for a person engaged in a violation of subsections (a) – (c). Punishment must include a fine from \$1,000 to \$5,000. When the defendant is other than an individual, the sentence must be a fine, only.

For subsection (k), see also G.S. 58-33-95, below.

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 bill on the prison population. It is not known how many

offenders might be sentenced under the proposed bill. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

G.S. 58-28-45(e) – (g)

The proposed bill specifies criminal penalties for violations of subsections (e) – (g) of G.S. 58-28-45, apparently making criminal certain failures to comply with the section's requirements for civil court filings and service of civil process. The offenses created would be Class 1 misdemeanors, punishable **only** by a fine (regardless of the legal nature of the defendant) of \$1,000 to \$5,000:

- Subsection (e):
 - making insufficient service of process in an action against an unauthorized insurer; or
 - failure of Commissioner of Insurance to forward service and maintain records thereof.
- Subsection (f) - unauthorized insurer filing suit pursuant to contracts in this State without obtaining license to transact insurance business in N.C.
- Subsection (g) - unauthorized insurer filing pleading in action against it without posting bond or obtaining license to transact insurance business in N.C.

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill. It is not known how many offenders might be sentenced under the proposed bill. However, since the offenses created would be Class 1 misdemeanors punishable only by a fine, the proposed offenses would not have an impact on the prison population or on local jail populations.

Applicability of G.S. 58-33-95

It is unclear how many persons would actually be eligible for prosecution under the felony provisions of the proposed bill. Currently G.S. 58-33-95(a) (not included in the proposed bill) makes it a crime for any person or entity to act as an agent for an unauthorized insurer by soliciting, negotiating, or selling insurance in this State on that insurer's behalf. Violation of that statute is a Class 1 misdemeanor if the agent does not know the insurer is unauthorized (subdivision (a)(2)), and a Class H felony if the agent knows or should know that the insurer is unauthorized ((a)(3)) (penalties effective December 1, 2004, S.L. 2004-166). Under the proposed bill, G.S. 58-28-45(a) – (c) and (k) subsume the prohibitions on soliciting, negotiating, or selling insurance on behalf of an unauthorized insurer in G.S. 58-33-95.

Therefore, any person currently convicted under G.S. 58-33-95 would appear to be eligible for conviction under G.S. 58-28-45(a) – (c) or (k), which, under the proposed bill, would result in a more severe punishment (Class H) for agents who were unaware that the insurer was unauthorized than under G.S. 58-33-95(a)(2) (Class 1 misdemeanor). (Note, however, that the proposed bill would cap any fine for the Class H felony of G.S. 58-28-45 at \$5,000, while the fine for the Class 1 misdemeanor of G.S. 58-33-95 has no maximum.)

However, the amended G.S. 58-28-45(h) in the bill states that “[e]xcept as provided in G.S. 58-33-95,” the penalties listed in subsection (h). It is therefore unclear if the provision of “[e]xcept as provided in G.S. 58-33-95” is intended to limit prosecution of agents ignorant of their insurer's unauthorized status to the Class 1 misdemeanor of G.S. 58-33-95(a)(2), or if the proposed bill supplants the misdemeanor

offense with the Class H felonies of G.S. 58-28-45(a) – (c) and (k). If the language of G.S. 58-28-45(h) is intended as a limit on the prosecution of agents who solicit, negotiate, or sell insurance while ignorant of their principals' unauthorized status, then persons committing the acts prohibited by G.S. 58-28-45(a) and some persons committing the acts prohibited by subsections (b) and (c) of the proposed bill would be ineligible for prosecution and sentencing pursuant to the proposed subsection (h).

By contrast, G.S. 58-33-115 (enacted at the same time as G.S. 58-33-95 in S.L. 1987-629) makes it a Class 1 misdemeanor for any person to act as an adjuster for an insurance contract made without authorization, including those made by a company not licensed to do business in the State. This act also is subsumed by G.S. 58-28-45(b) of the proposed bill, but G.S. 58-33-115 is not listed as a qualification of or limitation on the penalties of G.S. 58-28-45(h); therefore the State would have the option to pursue the more severe penalties of G.S. 58-28-45 without apparent limitation.

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 743 – REMOVE TEN-YEAR LIMITATION ON DWI
CONVICTION

STATUTE

§ 20-138.5. Habitual impaired driving.

DESCRIPTION

Any person who:

1. drives while impaired
2. having been convicted of three or more offenses involving impaired driving.

PROPOSED OFFENSE CLASS

Class F felony.

Sentence must include a minimum active term of not less than 12 months, and must run consecutively with and at the expiration of any sentence being served.

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 existing offense requires that the three prior convictions have occurred within 10 years of the present offense.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Driving While Impaired offenses are not classified under Structured Sentencing.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 777 – AMEND CPA CRIMINAL PUNISHMENT [V.2]

STATUTE

§ 93-13. Violation of Chapter; penalty.

DESCRIPTION

A person who violates any provision of:

1. G.S. 93-3, Unlawful use of title “certified public accountant” by individual; or
2. G.S. 93-4, Use of title by firm; or
3. G.S. 93-5, Use of title by corporation; or
4. G.S. 93-6, Practice as accountants permitted; use of misleading titles prohibited.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor.

PROPOSED: Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to society as Class 3 misdemeanors.

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

This provision is identical to HB 519 which the Sentencing Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT OF BILL 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 or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 777: AMEND CPA CRIMINAL PUNISHMENT

PREPARED: APRIL 4, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. 93-13, Violations of Chapter; penalty, to reduce the scope to violations of four specific statutes (it would no longer cover violations of G.S. 93-8) and reclassify the penalty from a Class 3 misdemeanor (punishable by a fine only) to a Class 1 misdemeanor (punished according to the misdemeanor punishment chart).

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 93-13. The lack of an AOC offense code is some indication that violations of this statute are infrequently charged and/or infrequently result in convictions. Since there is no offense code, the impact of the proposed reduction in scope (*i.e.*, whether there will be fewer convictions under this statute) is not known.

In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 3 convictions under this statute that would be reclassified to Class 1 convictions under this proposed bill would not be expected to have a significant impact on the prison population. There may be an impact on local jail populations since the offense is currently punished by a fine only; however, the impact cannot be determined.

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 989/SB 779 – PHOTO I.D. FOR VOTERS

STATUTE

§ 163-166.12. Voter identification.

DESCRIPTION

A voter who:

1. signs a certification that he
 - a. is indigent and unable to obtain proof of identification without payment of a fee or other cost, or
 - b. has a religious objection to being photographed
2. knowing the information to be false.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 788 – DWI SENTENCING

STATUTE

§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

DESCRIPTION

Subsection (d) [aggravating factors]:

Adds subdivision (8a)

One or more prior convictions as defined in G.S. 15A-1340.21 other than misdemeanor traffic offenses under this statute.

PUNISHMENT RANGE

CURRENT: Prior convictions for offenses other than DWI have no bearing on DWI sentencing.

PROPOSED: Prior convictions would constitute an aggravating factor, permitting sentencing for DWI at Level 3 if the aggravating factor substantially outweighs any mitigating factor(s) present.

ANALYSIS

The Sentencing Commission did not use the criteria in the classification of DWI offenses. DWI convictions are not sentenced pursuant to structured sentencing.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Driving While Impaired offenses are not classified under Structured Sentencing.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

246 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 789 – SPEEDING TO ELUDE ARREST/AGGRAVATING FACTORS

STATUTE

§ 20-141.5. Speeding to elude arrest.

DESCRIPTION

Subsection (b):

Any person who

1. operates a motor vehicle
2. on any street, highway, or public vehicular area
3. while fleeing or attempting to elude a law enforcement officer
4. who is in the lawful performance of his duties
5. when
 - a. a child under 16 is in the vehicle, and
 - b. another aggravating factor from subsection (b) is present.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The aggravating factor regarding children currently applies only if a child under 12 is in the vehicle.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 789 – SPEEDING TO ELUDE ARREST/AGGRAVATING FACTORS

STATUTE

§ 20-141.5. Speeding to elude arrest.

DESCRIPTION

Subsection (b):

Any person who

1. operates a motor vehicle
2. on any street, highway, or public vehicular area
3. while fleeing or attempting to elude a law enforcement officer
4. who is in the lawful performance of his duties
5. when
 - a. a child under 16 is in the vehicle, and
 - b. another aggravating factor from subsection (b) is present
6. and violation is the proximate cause of the death 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.

The aggravating factor regarding children currently applies only if a child under 12 is in the vehicle.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

248 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 729/SB 795 – PENALTIES FOR INSURANCE RATE
EVASION FRAUD.-AB

STATUTE

§ 58-36-120. Rate evasion fraud; obligations of insurers and agents; Rate Evasion Prevention Programs.

DESCRIPTION

Subsection (b):

Any person who

1. with the intent to deceive an insurer
2. presents or causes to be presented
3. a written or oral statement
4. in support of an application for auto insurance
5. knowing that the application contains false or misleading information
6. stating that the applicant is an eligible applicant (as defined by statute)
7. and the applicant is in fact not eligible.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 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 729/SB 795 – PENALTIES FOR INSURANCE RATE
EVASION FRAUD.-AB

STATUTE

§ 58-36-120. Rate evasion fraud; obligations of insurers and agents; Rate Evasion Prevention Programs.

DESCRIPTION

Subsection (b):

Any person who

1. assists, abets, solicits or conspires with another
2. to prepare or make any written or oral statement
3. intended to be presented to an insurer
4. in connection with or in support of an application of auto insurance
5. knowing that the statement contains false or misleading information
6. stating that the applicant is an eligible applicant (as defined by statute)
7. and the applicant is in fact not eligible.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Under G.S. 14-2.4, conspiracy to commit an offense is punishable one offense class lower than the offense conspired.

Under G.S. 14-2.6, solicitation of an offense is punishable two offense classes lower than the offense solicited.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

250 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 679/SB 796 – SAFETY/EMISSIONS INSPECTION
CHANGES

STATUTE

§ 20-183.8. Infractions and criminal offenses for violations of inspection requirements.

DESCRIPTION

Subdivision (c)(1):

Any person who forges an electronic inspection authorization.

Subdivision (c)(2):

Any person who

1. buys, sells, issues, or possesses
2. a forged electronic inspection authorization.

Subdivision (c)(3):

Any person who

1. buys sells, issues or possesses
2. an electronic inspection authorization
3. other than as the result of either
 - a. having a license as an inspection station, a self-inspector, or an inspection mechanic and obtaining the electronic inspection authorization from the Division through an electronic authorization vendor in the course of business; or
 - b. a vehicle inspection in which the vehicle passed inspection or for which it has a waiver.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The proposed bill replaces the current inspection sticker process with “electronic inspection authorizations.” The offenses above are existing offenses amended to account for the change.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 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 806 – LENGTHEN HOLD PERIOD FOR PAWNED ITEMS
[V.2]

STATUTE

§ 91A-10. Prohibitions.

§ 91A-11. Penalties.

DESCRIPTION

Any pawnbroker who:

1. sells, exchanges, barters, or removes from the pawnshop
2. any goods pledged, pawned, or purchased
3. before the earlier of
 - a. 5 days after the transaction was electronically reported to local law enforcement, or
 - b. 30 days after the transaction.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

G.S. 91A-10 currently requires that items be held for only 48 hours.

The statute amends G.S. 91A-7 to permit electronic reporting of pawn shop transactions to local law enforcement (as an alternative to current manual reporting) and to extend the “hold time” during which merchants must retain pawned items.

The proposed offense does not apply to items redeemed by the pledgor or purchased from wholesalers for resale.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

IMPACT ANALYSIS NOT REQUESTED YET

252 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 814 – REGULATE LEGAL ASSISTANCE FUNDS

STATUTE

§ 163-278.122. Appointment of treasurer.

DESCRIPTION

A legal assistance fund treasurer who:

1. fails to file
2. with the State Board of Elections
3. either
 - a. a statement of organization [describing the fund's purposes, affiliated organizations, financial data, and identities of assistant treasurers] or
 - b. a change in previously filed information within 10 days of the change.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

(See also HB 599.)

FINDINGS

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

DATE PREPARED: 5/1/2007

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 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 814 – REGULATE LEGAL ASSISTANCE FUNDS

STATUTE

§ 163-278.13. Detailed accounts to be kept by political treasurers.

DESCRIPTION

A legal assistance fund treasurer who fails to:

1. keep detailed accounts (as required by statute)
2. pay specific expenses [media and expenses greater than \$50.00] by verifiable form of payment
3. record proceeds from loans separately and with information required by statute.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

254 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 814 – REGULATE LEGAL ASSISTANCE FUNDS

STATUTE

§ 163-278.124. Statements filed with Board.

DESCRIPTION

A legal assistance fund treasurer who:

1. fails to file
2. with the State Board of Elections
3. organizational reports and quarterly reports as required by statute.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 or opposition to the bill itself.

255

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 814 – REGULATE LEGAL ASSISTANCE FUNDS

STATUTE

§ 163-278.125. Permitted uses of legal assistance funds.

DESCRIPTION

Any person who:

1. uses legal assistance funds
2. for anything other than:
 - a. reasonable expenses
 - b. actually incurred
 - c. by the elected official
 - d. in relation to a legal action or potential legal action brought by or against the elected official.

Any person who:

1. distributes monies remaining in a legal assistance fund
2. upon completion of the legal action or potential legal action
3. to any entity other than the Crime Victims Compensation Fund.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS

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

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 816 – DRUG TRAFFICKING/INCREASE PENALTIES

STATUTE

§ 90-95. Violations; penalties.
Subsection (h) [drug trafficking].

DESCRIPTION

Trafficking offenses under G.S. 90-95(h) are not subject to structured sentencing. Felony offense classes are designated for each offense, but the minimum and maximum sentences and minimum fines are specified for each offense. Absent “substantial assistance” by the defendant, sentences for drug trafficking may not be suspended.

PUNISHMENT RANGE

CURRENT: A fixed minimum and maximum sentence, depending on the substance and quantity trafficked.

PROPOSED: Increase all minimum and maximum sentences for trafficking by 60 months.

e.g., trafficking in 10-50 pounds of marijuana, currently punishable by 25 months minimum and 30 months maximum, would be punished with 85 months minimum and 90 months maximum.

ANALYSIS

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

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 Offense Classification Criteria were not used in the classification of drug offenses.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 833 – TOURISM INVESTMENT GRANTS

STATUTE

§ 143B-434.4. Travel and Tourism Capital Investment Program.

DESCRIPTION

Any member of the Travel and Tourism Grant Committee who:

1. provides services
2. for compensation
3. as an employee, consultant, or otherwise
4. to any project that was awarded a grant, or to any person or entity that contracts with that project
5. during or within two years after the end of service on the Committee
6. if the grant was awarded while the member was serving on the Committee.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

258 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 862[V.3]/SB 840[V.1] – AMEND PLANT PROTECTION AND CONSERVATION ACT.-AB

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Any person who violates Article 19B of Chapter 106 (Agriculture) or any rule promulgated thereunder by the North Carolina Plant Conservation Board (offenses concerning taking, possessing or disturbing plants on the protected plant list; commerce involving protected plants; harvesting and trade in ginseng; failing to keep required records; and false statements on required records and forms or in connection with any investigation made under the Article).

OFFENSE CLASS

CURRENT: Class 3 misdemeanor, punishable by a fine only (amount depending on prior convictions).

PROPOSED: Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 862: AMEND PLANT PROTECTION AND CONSERVATION ACT - AB

PREPARED: MARCH 26, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 106-202.19, Unlawful acts; penalties; enforcement, makes it a Class 3 misdemeanor (punished by a fine only) for a person to violate any of the provisions of Article 19B of Chapter 106 of the General Statutes or any rule of the North Carolina Plant Conservation Board adopted pursuant to Article 19B. This bill would reclassify violations to Class 2 misdemeanors.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 106-202.19. The lack of an AOC offense code is some indication that violations of this statute are infrequently charged and/or infrequently result in convictions.

In FY 2005/06, 17% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 13 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 3 convictions under this statute that would be reclassified to Class 2 convictions under this proposed bill would not be expected to have a significant impact on the prison population. There may be an impact on local jail populations since the offense is currently punished by a fine only; however, the impact cannot be determined.

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 1001/SB 850 – SCHOOL BUS SAFETY

STATUTE

§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

DESCRIPTION

Any driver who:

1. willfully
2. moves, passes, or attempts to pass
3. a school bus that
 - a. is stopped
 - b. for the purpose of receiving or discharging passengers, and
 - c. is displaying its mechanical stop signal or flashing red lights
4. and strikes any person causing injury.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The proposed bill amends the existing offense to lower the degree of injury required from “serious bodily” injury.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 854 – AMEND PRIVATE PROTECTIVE SERVICES ACT

STATUTE

§ 74C-12. Denial, suspension, or revocation of license, registration, or permit; duty to report criminal arrests.

DESCRIPTION

Subsection (d):

Any private protective services licensee who:

1. fails to report to the Private Protective Services Board
2. in writing
3. within 30 days
4. any charge, arrest, or conviction
5. for any misdemeanor or felony involving
 - a. an essential element of dishonesty, deceit, fraud, or misrepresentation
 - b. illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage
 - c. illegal use, carrying, or possession of a firearm
 - d. assault
 - e. unlawful breaking and entering, burglary, or larceny, or
 - f. moral turpitude.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 74C-17(b)).

ANALYSIS

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

262 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 854 – AMEND PRIVATE PROTECTIVE SERVICES ACT

STATUTE

§ 74C-13. Armed licensee or registered employee required to have firearm registration permit.

DESCRIPTION

Subsection (a):

Any private investigator who:

1. carries a firearm
2. in the performance of private protective service duties
3. without having a firearm registration permit issued by the Private Protective Services Board .

Subsection (b):

Any person, firm, association, or corporation and its agent who:

1. knowingly
2. permits or authorizes
3. an armed private investigator in its employ
4. to carry a firearm in the course of his or her duties
5. if he or she has not been issued a firearm registration permit or such permit is revoked, suspended, or expired.

Subdivision (b)(1):

Any private investigator who:

1. carries a firearm
2. not approved by the Private Protective Services Board.

Subdivision (b)(2):

Any private investigator who:

1. carries a firearm in the performance of his or her duties
2. not owned by the employer.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 74C-17(b)).

ANALYSIS

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.

The proposed bill extends the offenses to armed private investigators; the current offenses apply only to armed security guards/officers.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 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 818 [V.1]/SB 864 – AMEND PRACTICE OF MEDICINE LAWS

STATUTE

§ 90-18. Practicing without license; practicing defined; penalties.

DESCRIPTION

Subsection (a):

Any person who

1. is an out-of-state practitioner, and
2. performs an act
3. constituting the practice of medicine or surgery, as defined in [Chapter 90, Article 1]
 - a. advertising, holding out, or representing that the individual is licensed
 - b. offering or undertaking to prescribe, order, give or administer any drug or medicine for another
 - c. offering or undertaking to ... treat any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition, including management of pregnancy or parturition
 - d. offering or undertaking to perform any surgical operation on any individual
 - e. rendering a determination of medical necessity or a decision affecting diagnosis or treatment
 - f. using the designation 'Doctor,' [and related terms and acronyms] or any combination thereof in the conduct of any occupation or profession pertaining to the ... treatment of human disease or condition, unless the designation additionally contains the description of another branch of the healing arts for which the individual holds a valid license in this State
 - g. cosmetic procedures employing lasers or other means that involve the revision, destruction, incision, or structural alteration of human tissue, unless otherwise permitted by law
 - h. rendering a documented medical opinion concerning... treatment ... or the actual rendering of treatment to a patient in this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within a state to the physician or the physician's agent
 - i. the performance of any act described in this subdivision by use of any electronic means, including the Internet or a toll-free telephone number
4. without being licensed and registered to do so by the North Carolina Medical Board.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies. The proposed bill expands the definition of “practice of medicine or surgery” to include acts not previously covered by the definition in G.S. 90-18(b).

FINDINGS

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

DATE PREPARED: 5/1/2007

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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 818 [V.1]/SB 864 – AMEND PRACTICE OF MEDICINE LAWS

STATUTE

§ 90-18. Practicing without license; practicing defined; penalties.

DESCRIPTION

Subsection (a):

Any person who

1. performs an act
2. constituting the practice of medicine or surgery, as defined in [Chapter 90, Article 1]
 - a. advertising, holding out, or representing that the individual is licensed
 - b. offering or undertaking to prescribe, order, give or administer any drug or medicine for another
 - c. offering or undertaking to ... treat any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition, including management of pregnancy or parturition
 - d. offering or undertaking to perform any surgical operation on any individual
 - e. rendering a determination of medical necessity or a decision affecting diagnosis or treatment
 - f. using the designation 'Doctor,' [and related terms and acronyms] or any combination thereof in the conduct of any occupation or profession pertaining to the ... treatment of human disease or condition, unless the designation additionally contains the description of another branch of the healing arts for which the individual holds a valid license in this State
 - g. cosmetic procedures employing lasers or other means that involve the revision, destruction, incision, or structural alteration of human tissue, unless otherwise permitted by law
 - h. rendering a documented medical opinion concerning... treatment ... or the actual rendering of treatment to a patient in this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within a state to the physician or the physician's agent
 - i. the performance of any act described in this subdivision by use of any electronic means, including the Internet or a toll-free telephone number
3. without being licensed and registered to do so by the North Carolina Medical Board.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person or serious injury to society as Class 1 misdemeanors. The proposed bill expands the definition of “practice of medicine or surgery” to include acts not previously covered by the definition in G.S. 90-18(b).

FINDINGS

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

DATE PREPARED: 5/1/2007

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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 818 [V.1]/SB 864 – AMEND PRACTICE OF MEDICINE LAWS

STATUTE

§ 90-12.1A. Limited volunteer license.

DESCRIPTION

Subsection (e):

Any holder of a limited volunteer license who

1. practices medicine or surgery
2. either
 - a. at a place other than a clinic that specializes in treatment of indigent patients, or
 - b. for compensation

PROPOSED OFFENSE CLASS

Class 3 misdemeanor, the sentence for which must include a fine of \$25 to \$50.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property or minor injury to society as Class 3 misdemeanors.

The “limited volunteer license” may be issued in two forms:

- (a) a “military limited volunteer license” issued to an applicant licensed to practice in another state and authorized to treat personnel enlisted in the U.S. armed forces, and
- (b) a “retired limited volunteer license” issued to an applicant who is a retired physician and has allowed his or her license to practice in this State or another state to become inactive.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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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 818 [V.1]/SB 864 – AMEND PRACTICE OF MEDICINE LAWS

STATUTE

§ 90-12.2A. Special purpose license.

DESCRIPTION

Subsection (b):

Any holder of a special purpose license who

1. practices medicine or surgery
2. beyond the limitations of the special purpose license.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor, the sentence for which must include a fine of \$25 to \$50.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property or minor injury to society as Class 3 misdemeanors.

The “special purpose license” may be issued only to a person holding a full and unrestricted license to practice in at least one other jurisdiction and without any current or pending disciplinary or other action against him or her by any medical licensing agency.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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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 818 [V.1]/SB 864 – AMEND PRACTICE OF MEDICINE LAWS

STATUTE

§ 90-12.3A. Medical school faculty license.

DESCRIPTION

Subsection (b):

Any holder of a medical school faculty license who

1. practices medicine or surgery
2. outside the confines of the medical school or its affiliates.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor, the sentence for which must include a fine of \$25 to \$50.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property or minor injury to society as Class 3 misdemeanors.

The “medical school faculty license” may be issued only to a person who holds a full-time appointment to the faculty at the school of medicine of Duke University, UNC-Chapel Hill, Wake Forest University, or ECU, and who is not subject to any disciplinary order or other action against him or her by any medical licensing agency.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

268 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 868 – MISBRANDING OF BOTTLED SPRING WATER

STATUTE

§ 106-122. Certain acts prohibited.

DESCRIPTION

Subsection (1):

Any person who

1. bottles, sells, or delivers
2. water that is adulterated or misbranded [as defined by statute].

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (per G.S. 106-124(a)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

The proposed bill defines “misbranded” for bottled water in G.S. 106-130(16) as water that “purports to be or is represented as ‘North Carolina natural spring water’ and is offered for sale as a beverage, unless it is from a North Carolina natural spring.” “North Carolina natural spring water” is defined to exclude water reached, extracted or collected by any mechanical means.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

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 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 746/SB 869 – SEX OFFENDER/REGISTER E-MAIL ADDRESS

STATUTE

§ 14-208.7. Registration

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

DESCRIPTION

Any person who:

1. is required to register as a sex offender, and
2. fails to provide any “online identifier” that the person uses or intends to use.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 869: SEX OFFENDER/REGISTER E-MAIL ADDRESS

PREPARED: APRIL 11, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Section 1

Section 1 of the proposed bill amends G.S. 14-208.6(5), the definition of “sexually violent offense,” to include G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile) and G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). In FY 2005/06, there were no convictions under G.S. 14-318.4(a1) and eight convictions under G.S. 14-318.4(a2), both of which are Class E felonies.

Adding these offenses to the definition of “sexually violent offenses” expands the group of “reportable offenses” requiring registration as a sex offender. The expanded group of reportable offenses expands the pool of potential convictions under:

- G.S. 14-208.9A(c) (sex offender failure to comply with Sheriff’s request for new photo; Class 1 misdemeanor)
- G.S. 14-208.11(a) (failure to register; Class F felony)
- G.S. 14-208.11A (fail to report non-compliance of sex offender; Class H felony)
- G.S. 14-208.16 (violation of sex offender residential restriction; Class G felony)
- G.S. 14-208.17 (registrant working or volunteering for child-involved activities, violation of limitations on residential use; Class F felony)

In FY 2005/06, there were 234 convictions for failure to register under G.S. 14-208.11(a) (which represents an increase from 147 convictions in FY 2004/05 and 116 convictions in FY 2003/04). With the exception of G.S. 14-208.11(a), the listed offenses are new offenses (effective December 1, 2006). As a result, there are no historical data available for these offenses.

It is not known how many of the additional offenders under this section will fail to comply with their registration requirements.

- G.S. 14-208.9A(c): In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 convictions under this proposed bill would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.
- G.S. 14-208.11(a) and G.S. 14-208.17: In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

- G.S. 14-208.11A: In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.
- G.S. 14-208.16: In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two additional Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Adding G.S. 14-318.4(a1) and G.S. 14-318.4(a2) to the group of reportable offenses also expands the pool of persons potentially required to submit to GPS monitoring under G.S. 14-208.40(a)(2) (subject to DOC's risk assessment), which may result in additional resource needs for DCC and may also result in impact to the prison population due to revocation. In addition, those required to submit to GPS monitoring would expand the potential pool of offenders under G.S. 14-208.44, subsections (a) (failure to enroll; Class F felony) and (b) (tampering with GPS device; Class E felony). However, it is not known how many of the additional offenders under this section will be required to submit to GPS monitoring and may fail to enroll or tamper with the GPS device. These offenses are new offenses (effective December 1, 2006). As a result, there are no historical data available for these offenses.

- G.S. 14-208.44(a): In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.
- G.S. 14-208.44(b): In FY 2005/06, 49% of Class E convictions resulted in active sentences, with an average estimated time served of 31 months. If, for example, there were two additional Class E convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Section 7

The proposed bill amends several statutes governing sex offender registration to require that offenders include in their registration information any "online identifier" (*e.g.*, e-mail address) that they use or intend to use and to prohibit the use of any such identifier before it is provided to the Sheriff. Section 7 of the proposed bill creates a new offense under G.S. 14-208.11(a) (failure to register) by making it a Class F felony to fail to provide such online identifiers during registration. Failure to comply with registration requirements at any point during the registration period is a Class F felony. In FY 2005/06, there were 234 convictions for failure to register under G.S. 14-208.11(a).

It is not known how many additional registration violations might occur as a result of the proposed change. In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two additional Class F convictions

under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

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 896 – PROHIBIT HUMAN CLONING

STATUTE

§ 14-465. Human cloning.

DESCRIPTION

A person who

1. knowingly
2. does any of the following:
 - a. clones a human being, participates in cloning a human being, or attempts to clone a human being.
 - b. uses public or private funds or public facilities to clone a human being or to attempt to clone a human being.
 - c. as a public employee, allows any person to clone a human being or to attempt to clone a human being while the person is making use of public funds or public facilities.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to SB 1040 which the Sentencing Commission reviewed in May 2005 and HB 572 which the Commission reviewed on March 16, 2007. The Commission found the offense to be inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

274 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 915 – ASSISTED LIVING FACILITY AMENDMENTS

STATUTE

§ 131D-2.8. Penalties.

DESCRIPTION

Any individual or corporation that:

1. establishes, conducts, manages, or operates
2. a [assisted living] facility subject to licensure
3. without a license.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor, punishable only by a fine of no more than \$50.00 for the first offense, and no more than \$500.00 for each subsequent offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons or minor injury to society as Class 3 misdemeanors.

The proposed offense applies to facilities subject to licensure “under this section.” Section 131D-2.8 does not establish the licensing process. It is assumed for purposes of this analysis that the offense described would apply to failure to obtain a license for a facility subject to licensure under this “Article” or “Part.”

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 924 – SCHOOL BUS SAFETY ACT CORRECTION

STATUTE

§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

DESCRIPTION

Any driver who:

1. willfully
2. moves, passes, or attempts to pass
3. a school bus that
 - a. is stopped
 - b. for the purpose of receiving or discharging passengers, and
 - c. is displaying its mechanical stop signal or flashing red lights
4. and strikes any person.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The proposed bill amends the existing offense by deleting the element of “serious bodily injury” resulting from striking another person.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 924: SCHOOL BUS SAFETY ACT CORRECTION

PREPARED: MAY 15, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 20-217(g) currently makes it a Class I felony for a driver of a vehicle to pass a stopped school bus (while discharging or receiving passengers and with its arm guard out or red lights flashing) and strike any person resulting in serious bodily injury. The proposed bill amends the offense by deleting the element of serious bodily injury, therefore making it a Class I felony to pass a stopped school bus and strike any person. The removal of the element of injury expands the pool of potential offenders under the existing offense.

There were no convictions under G.S. 20-217 for passing a stopped school bus whether causing serious bodily injury or not during FY 2005/06. It is not known how many convictions may result from the proposed broadening of the current statute. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve additional Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year

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 948 – SMALL DAIRY SUSTAINABILITY [V.3]

STATUTE

§ 130A-279. Sale or dispensing of milk.

DESCRIPTION

Subsection (b):

Any person who

1. purchases a share or an interest in
2. a cow, goat, or other lactating animal or herd
3. for a herd with more than 10 animals.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The proposed provision does not appear to create a criminal offense subject to G.S. 130A-25(a).

DATE PREPARED: 5/29/2007

BILL CONTINUED ON NEXT PAGE

278 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 948 – SMALL DAIRY SUSTAINABILITY [V.3]

STATUTE

§ 130A-279. Sale or dispensing of milk.

DESCRIPTION

Subsection (c):

Any person who

1. dispenses
2. raw milk
3. for human consumption
4. without providing notice of the public health risks of human consumption of raw milk to the person to whom the raw milk is dispensed.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

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 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 728/SB 949 – STREAMLINE BUILDING CODE
ADOPTION.-AB

STATUTE

§ 143-138.12. North Carolina State Residential Building Code.

DESCRIPTION

Subsection (g) Violations:

Any person who

1. violates any provision of [Chapter 143, Article 9 (Building Code Council and Building Code)]
2. other than violation of occupancy limits.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor, punishable only by a fine not to exceed \$50.00.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property or minor injury to society as Class 3 misdemeanors.

This provision is redundant with G.S. 143-138(h), which provides the same penalties for violation of “this Article or the North Carolina State Building Code.” The proposed bill removes authority from the North Carolina State Building Code over “one-family or two-family residential buildings” and establishes the North Carolina Residential Building Code (and its promulgating Council) for those residences. G.S. 143-138(h) therefore would apply to violations of the North Carolina State Building Code in addition to violations of Article 9. The proposed G.S. 143-138.12(g) does not cover non-occupancy violations of the new North Carolina Residential Building Code, and therefore would apply only to violations of Article 9. The proposed bill adds no new substantive offenses to Article 9.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The finding that this offense is consistent with a Class 3 misdemeanor assumes that the apparent omission in the bill will be corrected to state that it applies to violations of rules promulgated under the proposed North Carolina Residential Building Code.

DATE PREPARED: 5/1/2007

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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 728/SB 949 – STREAMLINE BUILDING CODE
ADOPTION.-AB

STATUTE

§ 143-138.12. North Carolina State Residential Building Code.

DESCRIPTION

Subsection (g) Violations:

Any person who

1. violates any occupancy limit
2. set forth in the North Carolina Residential Building Code.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property or minor injury to society as Class 3 misdemeanors.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 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 988 – ILLEGAL IMMIGRANTS TAX COLLECTION
ENFORCEMENT

STATUTE

§ 105-236. Penalties; situs of violations; penalty disposition.

DESCRIPTION

Subdivision (a)(8):

Any person required to collect, withhold, account for, and pay over any tax who

1. willfully
2. fails to collect or truthfully account for and pay over the tax
3. when the tax is due from an unauthorized alien (as defined in 8 U.S.C. § 1324a(h)(3)).

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.

Failure to collect, withhold, account for and pay over a tax due from someone other than an unauthorized alien would remain a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 989 – GENITAL MUTILATION/CRIMINAL OFFENSE

STATUTE

§ 14-28.1. Female genital mutilation.

DESCRIPTION

Subdivision (a)(1):

Any person who

1. knowingly
2. circumcises, excises, or infibulates
3. in whole or in part
4. the genitals
5. of a female under 18 years of age.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

Malicious castration (G.S. 14-28) is a Class C felony. Purposeful castration or other maiming without malice aforethought (G.S. 14-29) is a Class E felony.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 989 – GENITAL MUTILATION/CRIMINAL OFFENSE

STATUTE

§ 14-28.1. Female genital mutilation.

DESCRIPTION

Subdivision (a)(2):

Any person who

1. as a parent, guardian, or person with immediate custody or control
2. of a female under 18 years of age
3. knowingly
4. consents to or permits
5. the circumcision, excision, or infibulation
6. in whole or in part
7. of the genitals of that female.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

Malicious castration (G.S. 14-28) is a Class C felony. Purposeful castration or other maiming without malice aforethought (G.S. 14-29) is a Class E felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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284 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 989 – GENITAL MUTILATION/CRIMINAL OFFENSE

STATUTE

§ 14-28.1. Female genital mutilation.

DESCRIPTION

Subdivision (a)(3):

Any person who

1. knowingly
2. removes or causes or permits the removal from this State
3. of a female under 18 years of age
4. for the purpose of circumcising, excising, or infibulating
5. in whole or in part
6. the genitals of that female.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

Malicious castration (G.S. 14-28) is a Class C felony. Purposeful castration or other maiming without malice aforethought (G.S. 14-29) is a Class E felony.

First-degree kidnapping (G.S. 14-39), in which the victim is either not released in a safe place or has been seriously injured or sexually assaulted, is a Class C felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 1058 – TELEPHONE RECORDS PRIVACY PROTECTION
ACT [V.3]**

STATUTE

§ 14-113.31. Prohibition of falsely obtaining, selling, or soliciting telephone records.

DESCRIPTION

Subsection (a):

Any person who

1. obtains or attempts to obtain
2. by any means, whether electronically, in writing, or in oral form
3. with or without consideration
4. a telephone record
5. pertaining to a customer who is a resident of this State
6. without the customer's consent
7. by
 - a. making a false statement or representation to an agent, representative, or employee of a telephone service provider
 - b. making a false statement or representation to a customer of a telephone service provider
 - c. knowingly providing to a telephone service provider a document that is fraudulent, that has been lost or stolen, or that has been obtained by fraud, or that contains a false, fictitious, or fraudulent statement or representation, or
 - d. accessing customer accounts of a telephone service provider via the Internet without prior authorization from the customer to whom the telephone records relate.

PROPOSED OFFENSE CLASS

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.

Under G.S. 14-2.5, attempt to commit an offense is punishable one offense class lower than the offense attempted.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. This offense would be consistent with a Class H or Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss occasioned by breach of trust, formal or informal, as Class H felonies, and offenses which reasonably tend to result or do result in other serious property loss as Class I felonies.

DATE PREPARED: 5/1/2007

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286 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1058 – TELEPHONE RECORDS PRIVACY PROTECTION ACT [V.3]

STATUTE

§ 14-113.31. Prohibition of falsely obtaining, selling, or soliciting telephone records.

DESCRIPTION

Subsection (b):

Any person who

1. knowingly
2. purchases, receives, or asks another person to obtain or purchase or attempts to obtain or purchase
3. a telephone record
4. of a third person
5. without the prior authorization of the third person
6. knowing or having reason to know that the other person will obtain the telephone record fraudulently.

PROPOSED OFFENSE CLASS

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.

Under G.S. 14-2.5, attempt to commit an offense is punishable one offense class lower than the offense attempted.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. This offense would be consistent with a Class H or Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss occasioned by breach of trust, formal or informal, as Class H felonies, and offenses which reasonably tend to result or do result in other serious property loss as Class I felonies.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1058 – TELEPHONE RECORDS PRIVACY PROTECTION ACT [V.3]

STATUTE

§ 14-113.31. Prohibition of falsely obtaining, selling, or soliciting telephone records.

DESCRIPTION

Subsection (c):

Any person who

1. sells or offers to sell
2. a telephone record
3. that was obtained without the customer's prior consent
4. knowing or having reason to know the record was obtained fraudulently.

PROPOSED OFFENSE CLASS

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. This offense would be consistent with a Class H or Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss occasioned by breach of trust, formal or informal, as Class H felonies, and offenses which reasonably tend to result or do result in other serious property loss as Class I felonies.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1058: TELEPHONE RECORDS PRIVACY PROTECTION ACT

PREPARED: APRIL 3, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The proposed bill enacts Article 19D of Chapter 14 of the General Statutes, "Telephone Records Privacy Protection Act." G.S. 14-113.31 of the proposed bill creates three new Class G felonies concerning the fraudulent acquisition or distribution of telephone records (as defined by statute).

G.S. 14-113.31(a) makes it a felony for any person to obtain, or attempt to obtain, by any means, whether electronically, in writing, or in oral form, with or without consideration, a telephone record pertaining to a customer who is a resident of this State without the customer's consent, by doing any of the following:

- (1) making a false statement or representation to an agent, representative, or employee of a telephone service provider.
- (2) making a false statement or representation to a customer of a telephone service provider.
- (3) knowingly providing to a telephone service provider a document that is fraudulent, that has been lost or stolen, that was obtained by fraud, or that contains a false, fictitious, or fraudulent statement or representation.
- (4) accessing customer accounts of a telephone service provider via the Internet without prior authorization of the customer to whom the records relate.

Violation of subsection (a) would be a Class G felony. 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 bill on the prison population.

Persons eligible for conviction under subdivisions (1) - (3) currently may be convicted, regardless of the element of the customer's consent, of obtaining property by false pretenses under G.S. 14-100 (Class H if the value of the property obtained is less than \$100,000; Class C if the value of the property obtained is \$100,000 or more). If the proposed bill intends that the offense created in subdivision (4) be a crime of fraud like the other offenses and assumes that access was without the consent of the telephone service provider in addition to the lack of consent by the customer, then persons eligible for conviction under subdivision (4) currently may be convicted of unlawful access of computers for the purpose of obtaining property by fraud under G.S. 14-454(a)(2) (Class 1 if the value of the property is \$1,000 or less; Class G felony if the value of the property is more than \$1,000).

In FY 2005/06, there were 1,634 felony convictions under G.S. 14-100 in Class H or below for obtaining property by false pretenses, attempt to obtain property by false pretenses, conspiracy to obtain property by false pretenses, and aiding and abetting obtaining property by false pretenses. Also in FY 2005/06, there were 2 Class G felony convictions and one Class 1 misdemeanor conviction for unlawful access of computers for the purpose of obtaining property by fraud under G.S. 14-454.

It is unknown if any of the 1,634 felony convictions at Class H or below under G.S. 14-100 or if the one misdemeanor conviction under G.S. 14-454 involved the fraudulent acquisition of telephone records, which would make those offenders eligible for the Class G offense of the proposed bill. (Persons eligible for conviction of the Class C offense of obtaining property by false pretenses for fraudulent acquisition of telephone records worth more than \$100,000 likely would continue to be prosecuted under G.S. 14-100, and therefore not be affected by the proposed bill, and only convictions for the misdemeanor offense of G.S. 14-454 could produce additional prison impact if raised to Class G under the proposed bill.) It also is not known how many new offenders might be sentenced under the proposed bill.

The pool of potential offenders under subdivision (4) also may be broader than those currently eligible for conviction under G.S. 14-454. Because subdivision (4) contains no language regarding the consent of the telephone service provider, the proposed bill appears to apply to any access of a telephone record via the Internet without the customer's prior consent, including those in which the telephone service provider with custody of the records licenses access to the records by a third party (*e.g.*, marketing or research firms). Subsection (4) therefore appears to impose criminal liability on the third party "legitimately" accessing those records pursuant to its license, but the telephone service provider giving out the record incurs no criminal liability (except, perhaps, for conspiracy with or solicitation of the third party to commit the offense).

Because it is not known how many offenders currently convicted under G.S. 14-100 and G.S. 14-454 may be eligible for conviction under the proposed bill, and because the scope of subdivision (4) is unclear, the impact on the prison population is not known.

In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

G.S. 14-113.31(b) makes it a Class G felony for any person to knowingly purchase, receive, or ask another person to obtain or purchase or attempt to obtain or purchase a telephone record of a third person without the prior authorization of the third person to whom the telephone record relates knowing or having reason to know that the other person will obtain the telephone record fraudulently.

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 bill on the prison population.

Persons eligible for conviction under subsection (b) currently may be convicted of receiving stolen goods under G.S. 14-71 (Class H) or G.S. 14-72 (Class 1 if the value of the records is \$1,000 or less; Class H if value of the records is more than \$1,000). Subsection (b) also prohibits conduct that would constitute solicitation of the offense in subsection (a), but would punish the solicitation at the same class as the principal offense. (Solicitation normally is punished two classes lower than the principal offense.) In FY 2005/06, there were 7 Class H felony convictions and 28 Class 1 misdemeanor convictions for receiving stolen goods. It is unknown if any of the convictions for receiving stolen goods involved the fraudulent acquisition of telephone records, which would make those offenders eligible for the Class G offense of the proposed bill. It also is not known how many new offenders might be sentenced under the proposed bill. Therefore, the impact on the prison population is not known.

In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per

year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

G.S. 14-113.31(c) makes it a Class G felony for any person to sell or offer to sell the telephone record obtained without the customer's prior consent if the seller knows or has reason to know that the record was obtained fraudulently.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

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 1104 – PSEUDOEPHEDRINE/SCHEDULE V DRUG

STATUTE

§ 90-93. Schedule V controlled substances.
§ 90-95. Violations; penalties.

DESCRIPTION

G.S. 90-95(a)(1):
Any person who sells pseudoephedrine.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The proposed bill creates the offense above by adding pseudoephedrine to G.S. 90-93, the list of Schedule V controlled substances.

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1104 – PSEUDOEPHEDRINE/SCHEDULE V DRUG

STATUTE

§ 90-93. Schedule V controlled substances.

§ 90-95. Violations; penalties.

DESCRIPTION

G.S. 90-95(a)(1):

Any person who

1. manufactures, delivers, or possesses with intent to manufacture, sell or deliver
2. pseudoephedrine.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The proposed bill creates the offense above by adding pseudoephedrine to G.S. 90-93, the list of Schedule V controlled substances.

Distribution of pseudoephedrine knowing or having reasonable cause to believe that it will be used to manufacture methamphetamine is a Class F felony. G.S. 90-95(d1)(2)b.

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1104 – PSEUDOEPHEDRINE/SCHEDULE V DRUG

STATUTE

§ 90-93. Schedule V controlled substances.

§ 90-95. Violations; penalties.

DESCRIPTION

G.S. 90-95(a)(3):

Any person who possesses pseudoephedrine.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

The proposed bill creates the offense above by adding pseudoephedrine to G.S. 90-93, the list of Schedule V controlled substances.

Possession of pseudoephedrine with the intent to manufacture methamphetamine or knowing or having reasonable cause to believe that it will be used to manufacture methamphetamine is a Class H felony. G.S. 90-95(d1)(2)a.

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1107 – ESTABLISH ART THERAPY LICENSURE ACT

STATUTE

§ 90-270.80B-4. License required.

§ 90-270.80B-13. Violations; injunctive relief.

DESCRIPTION

Any person who:

1. practices or offers to practice
2. as an art therapist
3. while not currently licensed.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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.

“Art therapy” is defined in the proposed bill as “the therapeutic use of art making, within a professional relationship, to improve and enhance the physical, mental, and emotional well-being of individuals experiencing illness, trauma, or challenges in living or seeking personal development.”

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 726/SB 1163 – AMEND ELECTROLYSIS PRACTICE ACT/FEES

STATUTE

§ 88A-4. Unlawful practice.

DESCRIPTION

Any person who:

1. practices electrology or laser, light source, or pulsed-light treatments
2. for the purpose of hair removal or reduction
3. without being licensed by the Board [of Electrolysis Examiners].

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1172 – RESTRAINING OF DOGS

STATUTE

§ 14-362.3. Restraining dogs in a cruel manner.

DESCRIPTION

Subsection (b) (limit on stationary tethering time):

Any person who

1. knowingly restrains a dog
2. using a chain, wire, or other tethering device
3. to a tree, fence, post, dog house or other stationary object
4. for more than three hours in a 24-hour period.

Subsection (b) (limit on stationary tether length):

Any person who:

1. knowingly restrains a dog
2. using a chain, wire, or other tethering device
3. to a tree, fence, post, dog house or other stationary object
4. using a tether
 - a. less than 15 feet in length, or
 - b. not attached in a manner to prevent strangulation or other injury to the dog and entanglement with objects other than the stationary object to which the tether is attached.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed offense exempts tethering while actively using the dog for shepherding livestock, and in cultivating agricultural products and hunting activities if the restraint is reasonably necessary for the safety of the dog.

The proposed statute permits a county, city, or town to, by ordinance, reduce the permissible time for tethering, including a prohibition on tethering, or to increase the time permitted for tethering to as much as nine hours in a 24-hour period.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1172 – RESTRAINING OF DOGS

STATUTE

§ 14-362.3. Restraining dogs in a cruel manner.

DESCRIPTION

Subsection (c) (limit on cable trolley tethering time):

Any person who

1. knowingly restrains a dog
2. using a chain, wire, or other tethering device
3. to a cable trolley system that allows movement of the restraining device
4. for more than six hours in a 24-hour period.

Subsection (b) (limit on cable trolley lengths):

Any person who:

1. knowingly restrains a dog
2. using a chain, wire, or other tethering device
3. to a cable trolley system that allows movement of the restraining device
4. using
 - a. a cable trolley for which the length along which the tethering device can move is less than 10 feet, or
 - b. a tethering device that prevents the dog from moving at least 10 feet away from the cable perpendicularly.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed offense exempts tethering while actively using the dog for shepherding livestock, and in cultivating agricultural products and hunting activities if the restraint is reasonably necessary for the safety of the dog.

The proposed statute permits a county, city, or town to, by ordinance, reduce the permissible time for tethering, including a prohibition on tethering, or to increase the time permitted for tethering to as much as 12 hours in a 24-hour period

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1172 – RESTRAINING OF DOGS

STATUTE

§ 14-362.3. Restraining dogs in a cruel manner.

DESCRIPTION

Subsection (d):

Any person who

1. knowingly restrains a dog
2. using a chain, wire, or other tethering device
3. attached to a choke-type or pronged collar on the dog.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed offense does not exempt the shepherding, agricultural or hunting activities exempted from the offenses in subsections (b) and (c).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1172 – RESTRAINING OF DOGS

STATUTE

§ 14-362.3. Restraining dogs in a cruel manner.

DESCRIPTION

Subsection (e):

Any person who

1. knowingly restrains a dog
2. using a chain, wire, or other tethering device
3. in such manner that does not allow the dog access to water and shelter.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed offense does not exempt the shepherding, agricultural or hunting activities exempted from the offenses in subsections (b) and (c).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1172: RESTRAINING OF DOGS

PREPARED: APRIL 10, 2007

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED
UNDER STRUCTURED SENTENCING**

The proposed bill creates several new offenses under a substantially-amended G.S. 14-362.3. The proposed offenses are all Class 1 misdemeanors (per subsection (a)), and prohibit:

- (b) tethering a dog to a stationary object for more than 3 hours out of 24 or with tethers that are too short or present a danger of entanglement;
- (c) tethering a dog to a “cable trolley system” (not defined) for more than 6 hours out of 24 or with a tether or trolley system that is too short;
- (d) attaching a dog’s tether via a choke-type or pronged collar; or
- (e) attaching a tether that does not allow the dog access to water and shelter.

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill. In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for these proposed offenses would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

The actual offense class for violations of the proposed bill is unclear. Because subsection (g) grants authority to cities, towns, and counties to alter the elements of the offenses in subsections (b) and (c), it is unclear whether convictions in municipalities that enact ordinances with altered elements would be Class 1 misdemeanors (per subsection (a)) or Class 3 misdemeanors under G.S. 14-4 (Violation of local ordinances misdemeanor).

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 1189 – SECURITY AND IMMIGRATION COMPLIANCE

STATUTE

§ 135A-1. Verification of lawful presence required to receive public benefits; definitions; exceptions.

DESCRIPTION

Subsection (g):

A person who

1. knowingly and willfully
2. makes a false, fictitious, or fraudulent statement of representation in an affidavit executed under subsection (e) of the statute (Verification of lawful presence in the United States in order to receive public benefits).

PROPOSED OFFENSE CLASS

Punished by a fine of not more than \$1,000 or by imprisonment for one to five years, or both.

ANALYSIS

This statute does not assign an offense class to the offense but it does not exempt the offense from structured sentencing either.

Fraudulent misrepresentation for AFDC (G.S. 108A-39(b)), Food Stamp Program (108A-53(a)), and Health Insurance Program for Children (G.S. 108A-70.28)) are Class I felonies.

This provision is identical to HB 55, which the Commission reviewed on March 16, 2007. The Commission found that provision to be inconsistent with the Offense Classification Criteria and pointed out that it would be consistent with a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Under Structured Sentencing, offenses are classified in specific offense classes, rather than with offense-specific punishments. This offense would be consistent with a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

DATE PREPARED: 5/1/2007

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302 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1189 – SECURITY AND IMMIGRATION COMPLIANCE

STATUTE

§ 84B-9. Violations; penalties.

DESCRIPTION

Any person who violates any provision of the proposed Chapter 84B, Immigration Assistance Registration Act. (The purpose of the Act is to establish and enforce ethical standards for immigration assistance services provided by individuals who are not licensed attorneys.)

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for first offense. Class 1 misdemeanor for second and subsequent offenses committed within five years of a previous conviction for the same offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

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

This provision is identical to HB 55, which the Commission reviewed on March 16, 2007. The Commission found the Class 2 misdemeanor to be consistent with the Offense Classification Criteria but found the Class 1 misdemeanor to be inconsistent with the Offense Classification Criteria because it increased the offense class based on prior convictions.

FINDINGS

■ Bill is **consistent** with Offense Classification Criteria as to the Class 2 misdemeanor.

■ Bill is **inconsistent** with Offense Classification Criteria as to the Class 1 misdemeanor.

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

DATE PREPARED: 5/1/2007

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 or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1206 – ELEVATOR CONTRACTORS AND MECHANICS
LICENSURE

STATUTE

§ 95-110.5A. Elevator mechanic or contractor license required; license requirements; reciprocity; fees; disciplinary action; hearings; rule-making authority.

§ 95-110.11. Violations; criminal penalties.

DESCRIPTION

Any person who:

1. makes a material and false statement, representation, or certification
2. in application for licensure as an elevator mechanic or elevator contractor.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor, which may include a fine up to \$5,000.00.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

304 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1218 – CANDIDATE FELONY DISCLOSURE [V.2]

STATUTE

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal. [Subsection (a1)]
§ 163-291.1. Disclosure of felony conviction.

DESCRIPTION

Any candidate for office who

1. knowingly
2. swears falsely to the truth, correctness, and completeness
3. of a notarized disclosure of felony conviction.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Per G.S. 163-275(4), it is a Class I felony for any person knowingly to swear falsely with respect to any matter pertaining to any primary or election.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 or opposition to the bill itself.

305

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 1246 – PROHIBIT BAITING OF BEARS [V.3]

STATUTE

§ 113-294. Specific violations.

DESCRIPTION

Subsection (r):

Any person who

1. places processed food products (as defined by statute)
2. as bait
3. in any area of the State
4. where the Wildlife Resources Commission has set an open season for taking black bears.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

The proposed offense exempts the “lawful disposal of solid waste or the legitimate feeding of domestic animals, livestock, or birds.”

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

306 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 1261 – LEGISLATIVE CAMPAIGNS PILOT

STATUTE

§ 163-278.13. Limitation on contributions.

DESCRIPTION

Subsection (e4):

Any person who:

1. in an election subsection the provisions of Chapter 163, Article 22I [the North Carolina Legislative Campaigns Pilot Program, established by the proposed bill]
2. either
 - a. accepts a contribution as a candidate for office or political committee, or
 - b. makes a contribution to a candidate for office or political committee
3. during the period from 21 days before the day of the general election to one day after the election
4. if that contribution causes the candidate to exceed the “trigger for rescue funds” [which authorizes release of funds to the candidate’s opponent], and
5. if
 - a. the candidate is opposed in the general election by a certified candidate (as defined by statute), and
 - b. the certified candidate has not already received the maximum rescue funds available.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

The proposed offense exempts contributions or loans secured entirely by the candidate’s own assets made to the candidate’s own campaign or to a political committee the principal purpose of which is to support the candidate’s campaign. The offense also contains a safe harbor provision, permitting the recipient three days in which to return the violating contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1263 – ELECTION LAW AMENDMENTS [V.3]

STATUTE

§ 163-165.1. Scope and general rules.

DESCRIPTION

Any person who:

1. has access to an official voted ballot and
2. knowingly
3. discloses to any member of the public
4. how an individual has voted.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

(See also HB 1743.)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

308 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-71. Receiving stolen goods.

DESCRIPTION

Any person who:

1. receives any chattel, property, money, valuable security or other thing whatsoever
2. the stealing or taking whereof amounts to larceny or a felony
3. knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken
4. whether or not the item has been feloniously stolen or taken.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 5/1/2007

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.

DESCRIPTION

Larceny

Any person who:

1. commits larceny
2. of goods worth more than \$500.00.

Possession of stolen goods

Any person who:

1. possesses stolen goods
2. with a value of more than \$500.00
3. knowing or having reasonable grounds to believe that the goods are stolen.

Receiving stolen goods

Any person who:

1. receives stolen goods
2. with a value of more than \$500.00
3. knowing or having reasonable grounds to believe that the goods are stolen.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The proposed bill changes the threshold for felonious larceny, possession of stolen goods and receiving of stolen goods from \$1,000 to \$500. Offenses involving goods worth less than \$500 would remain Class 1 misdemeanors

FINDINGS

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

Class H felonies tend to result in serious property loss occasioned the taking or removing of property, or from any structure designed to house or secure any activity or property. These offenses do not result in serious property loss occasioned by the taking or removing of property, or from any structure designed to house or secure any activity or property. These offenses would be consistent with Class I felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in other serious property loss as Class I felonies.

DATE PREPARED: 5/1/2007

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310 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-72.1. Concealment of merchandise in mercantile establishments.

DESCRIPTION

Subsection (d):

Any person who

1. willfully and without authority
2. does any of the following:
 - a. transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price
 - b. marks said goods at a lower price
 - c. substitutes or superimposes thereon a false price tag or other product code used to identify the sales price, and
3. the presents the goods or merchandise for purchase.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

Class 2 misdemeanor for a second offense committed within 3 years of a conviction under this statute.

Class 1 misdemeanor for a third or subsequent offense committed within 5 years of conviction of two other offenses under this statute.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-72.1. Concealment of merchandise in mercantile establishments.

DESCRIPTION

Subsection (d2):

Any person who

1. willfully and without authority
2. conceals the goods or merchandise of any store
3. not theretofore purchased by such person
4. while still on the premises of the store
5. and exits the store by a door erected and maintained to comply with 29 C.F.R. § 1910, Subpart E [OSHA workplace safety regulations]
6. upon which has been posted a notice, sign, or poster providing information about the felony offense and the punishment provided under this subsection.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The Sentencing Commission reviewed a previous draft of a substantively identical offense in SB 482 on March 16, 2007, and found it to be consistent with the Offense Classification Criteria. The Commission adopted that finding for this provision in version 1 of SB 1270 on May 4, 2007. Version 2 of the proposed bill adds the element that a sign must be posted on the door warning the offender of the felony offense.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-72.1. Concealment of merchandise in mercantile establishments.

DESCRIPTION

Subsection (d3):

Any person who

1. willfully and without authority
2. conceals the goods or merchandise of any store
3. not theretofore purchased by such person
4. while still on the premises of the store
5. by removing, destroying, or deactivating a component of an antishoplifting or inventory control device
6. to prevent the activation of any antishoplifting or inventory control device.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-72.1. Concealment of merchandise in mercantile establishments.

DESCRIPTION

Subsection (d4):

Any person who

1. willfully and without authority
2. conceals the goods or merchandise of any store
3. not theretofore purchased by such person
4. while still on the premises of the store
5. by affixing a product code obtained or created by the person
6. for the purpose of fraudulently obtaining goods or merchandise
7. from a merchant
8. for less than its actual sale price.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The Sentencing Commission reviewed a similar provision amending subsection (d) of G.S. 14-72.1 on May 4, 2007, which made it shoplifting (a class 3, 2, or 1 misdemeanor depending on the offender's prior convictions for shoplifting) to present goods for purchase after having superimposed a false price tag "or other product code used to identify the sales price." Version 2 of SB 1270 contains the same amendment to subsection (d). The Commission found that provision consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-72.7. Theft of infant formula.

DESCRIPTION

Any person who

1. takes and carries away
2. infant formula (as defined in 21 U.S.C. . § 321(z))
3. valued in excess of \$100.00.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subsection (a):

Any person who

1. conspires with another
2. to commit theft of retail property
3. from a retail establishment
4. with a value exceeding \$1,500.00
5. aggregated over a 90-day period
6. with the intent to sell the retail property for monetary or other gain
7. and takes or causes the retail property to be placed in the control of a retail property fence (as defined by statute) or other person
8. in exchange for consideration.

PROPOSED OFFENSE CLASS

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. This offense would be consistent with a Class F or Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious societal injury as Class F felonies and offenses which reasonably tend to result or do result in significant societal injury as Class H felonies.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1270 – AMEND LARCENY LAWS [V.2]

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subsection (b):

Any person who

1. receives or possesses
2. any retail property
3. taken or stolen in violation of this section [subsection (a)]
4. with the intent to distribute the property into interstate commerce.

PROPOSED OFFENSE CLASS

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. This offense would be consistent with a Class F or Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious societal injury as Class F felonies and offenses which reasonably tend to result or do result in significant societal injury as Class H felonies.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1270: AMEND LARCENY LAWS

PREPARED: MAY 7, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Section 1

Section 1 of the proposed bill amends the offense of receiving stolen goods (G.S. 14-71; Class H felony). In FY 2005/06, there were 7 Class H felony convictions for receiving stolen goods under G.S. 14-71.

The legal effect of the amendment is unclear. The elements of receiving stolen goods under G.S. 14-71 are that any person:

- d. receives goods of value
- e. the stealing or taking whereof amounts to larceny **or** a felony (emphasis added)
- f. knowing or having reasonable grounds to believe the goods to have been feloniously stolen or taken.

The amendment specifies that conviction for the offense may occur “whether or not the item has been feloniously stolen or taken.” The phrasing of the amendment permits two different interpretations:

- 3. conviction for receiving stolen goods does not require that theft of the item received have been a felony (*i.e.*, it would be a felony if theft of the goods was only a misdemeanor); or
- 4. conviction for receiving stolen goods does not require that the item received have been stolen at all (*i.e.*, it would be a felony for a person to receive goods that he has reasonable grounds to believe have been stolen, even if they actually were not stolen).

If the first interpretation is the intent of the amendment, then there would be no apparent effect. The offense under G.S. 14-71 already permits conviction for receiving stolen goods if the theft of the goods was larceny **or** a felony. Therefore, a person who receives goods the theft of which was only misdemeanor larceny is already eligible for conviction under this statute. As a result, the proposed amendment would not be expected to have an impact on the prison population.

If the second interpretation is the intent of the amendment, then Section 1 of the proposed bill expands the pool of potential offenders under G.S. 14-71 to include persons who receive goods that they believe to be stolen, even if the goods were not stolen at all. If this is the case, it is not known how many additional convictions may result from the proposed broadening of the current statute. If, for example, there were three additional Class H convictions per year as a result of the proposed amendment, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Section 2

Section 2 amends G.S. 14-72(a) to change the dollar threshold for felony larceny, possession of stolen goods, and receiving stolen goods from \$1,000 to \$500. Impact from this proposal would result from misdemeanor convictions that would become felony convictions.

The table below provides the frequency of convictions for relevant offenses during FY 2005/06:

Offense Description	Current Class	FY 2005/06 Convictions
Felony larceny offenses	H	1,171
Attempted felony larceny	I	68
Felony receive stolen goods/property	H	7
Felony possess stolen goods/property	H	713
Total felony convictions		1,959
Misdemeanor larceny offenses	1	14,544
Attempted misdemeanor larceny	2	179
Misdemeanor receive stolen goods/property	1	28
Misdemeanor possess stolen goods/property	1	2,080
Total misdemeanor convictions		16,831

It is not known how many of the above misdemeanor convictions involved goods valued at more than \$500 and would become felony convictions under the proposed amendment.

The data in the AOC's ACIS (Automated Criminal and Infraction System) contain a field for restitution ordered. It is unknown how often this field is utilized and/or contains other court associated costs. Of the 16,831 misdemeanor convictions under G.S. 14-72(a), 4,403 (or 26%) showed an order to pay restitution. Of those 4,403 convictions, 1,338 (or 30%) showed an order to pay restitution of more than \$500.

Since it is unknown how many of the current misdemeanor convictions would become felony convictions under the current proposal, several scenarios are provided to estimate the need for additional prison beds (see Table 1 and Table 2).

Table 1: Relevant Larceny, RSG, PSG Convictions (n=16,831)

Move Misdemeanors to Class H Felonies

Scenarios	# Convictions	Prison Beds Year 1	Prison Beds Year 2
5%	842	252	523
10%	1,683	502	1,045
15%	2,525	754	1,567
25%	4,208	1,255	2,611
50%	8,416	2,511	5,222

Table 2: Attempted Larceny Convictions (n=179)

Move Class 2 Misdemeanors to Class I Felonies

Scenarios	# Convictions	Prison Beds Year 1	Prison Beds Year 2
5%	9	1	3
10%	18	2	6
15%	27	3	8
25%	45	4	13
50%	90	8	26

Section 3

Section 3 of the proposed bill amends G.S. 14-72.1, Concealment of merchandise in mercantile establishments, to change the elements of an existing offense and create three new offenses.

Subsection (d)

The proposed bill amends the elements of the offense of larceny by changing price tags (Class 3, 2, or 1 misdemeanor, based on prior offenses in a specified time frame) to include placing upon a product any “other product code used to identify the sales prices” (e.g., false UPC bar codes). This amendment expands the pool of potential offenders under subsection (d).

In FY 2005/06, there were 74 Class 3 misdemeanor convictions under G.S. 14-72.1(d). It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2005/06, 23% of Class 3 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 3 convictions was 3 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions resulting from the proposed expansion of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2005/06, there were no Class 2 misdemeanor convictions under G.S. 14-72.1(d). It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2005/06, 17% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 13 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions resulting from the proposed expansion of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2005/06, there were no Class 1 misdemeanor convictions under G.S. 14-72.1(d). It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions resulting from the proposed expansion of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Subsection (d2)

Subsection (d2) creates a new offense, making it a Class H felony for any person to violate subsection (a) (shoplifting by concealment) and then exit the premises by an emergency door maintained in compliance with federal OSHA regulations (29 C.F.R. 1910, Subpart E), if upon the door has been placed a notice, sign or poster providing information about the felony offense.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction under the proposed bill may currently be convicted of shoplifting by concealment under G.S. 14-72.1(a) and misdemeanor larceny under G.S. 14-72 (see Table 3). However, because shoplifting convictions generally indicate offenders who were apprehended before leaving the store, persons convicted of misdemeanor larceny constitute the more likely pool of offenders who satisfy the new element under the proposed bill. It is possible that some offenders currently convicted of

felonious larceny for theft of goods worth more than \$1,000.00 (G.S. 14-72, Class H) would be eligible for conviction under the proposed bill, but because felonious larceny and the proposed offense are both Class H felonies, there is no distinction between the two for sentencing purposes (*see* shaded rows).

Table 3: Potential Eligible Pool

G.S. Number	Offense Description	Offense Class	Number of Convictions
G.S. 14-72.1(a)	Shoplifting by concealment	Class 3 misdemeanor	2,861
G.S. 14-72	Misdemeanor larceny	Class 1 misdemeanor	14,467
	Aid & Abet Misd. Larceny	Class 1 misdemeanor	58
	Attempted Misd. Larceny	Class 2 misdemeanor	179
G.S. 14-72	Felony Larceny	Class H felony	826
	Aid & Abet Felony Larceny	Class H felony	6
	Attempted Larceny	Class I felony	68

It is not known how many of the misdemeanor convictions in Table 3 may instead be convicted as Class H felonies under the proposed bill.

If, for example, there were three convictions per year that would become Class H felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

It is also possible that convictions for the proposed offense would be *in addition to* convictions for larceny. Because larceny and shoplifting each has an element independent of the other, double jeopardy may not be implicated when an offender is convicted and punished for *both* the proposed offense of shoplifting through an emergency door and for larceny of the same goods arising from the same incident. If the new offense does not implicate concerns of double jeopardy with larceny, additional impact may also occur as a result of consecutive sentencing; however, the impact cannot be determined.

Subsection (d3)

Subsection (d3) creates a new offense, making it a Class H felony for any person to violate subsection (a) (shoplifting by concealment) by removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction under the proposed subsection include a subset of those currently convicted under G.S. 14-72.1(a). In FY 2005/06, there were 2,861 convictions for shoplifting by concealment, which is a Class 3 misdemeanor. It is not known how many of these convictions may instead be convicted as Class H felonies under the proposed bill. If, for example, there were three convictions per year that would become Class H felonies under this proposed bill, the combination of

active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Subsection (d4)

Subsection (d4) creates a new offense, making it a Class H felony for any person to violate G.S. 14-72.1(a) (shoplifting by concealment) by affixing a product code obtained or created by the person for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction under the proposed subsection include a subset of those currently convicted under G.S. 14-72.1(a) because the proposed offense requires a violation of subsection (a). In FY 2005/06, there were 2,861 convictions for shoplifting by concealment, which is a Class 3 misdemeanor. It is not known how many of these convictions may instead be convicted as Class H felonies under the proposed bill. If, for example, there were three convictions per year that would become Class H felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

It is unclear how subsection (d4) interacts with subsection (d) as amended in the PCS. The amended subsection (d) makes it a misdemeanor for an offender to “place” a “product code used to identify the sales price” on merchandise and then present it for purchase. Subsection (d4) makes it a felony to “affix” a “product code” to merchandise for the purpose of obtaining the merchandise at less than its actual sale price (the product code in question therefore must affect or “identify the sales price,” as in subsection (d)), but it does not require actual presentation of the merchandise for purchase. Therefore a person who places/affixes an illegitimate product code (*e.g.*, a UPC scan code) onto merchandise and then conceals it while still in the store (the violation of subsection (a)) would be guilty of a Class H felony, while a person who places/affixes the same product code onto merchandise and then openly presents it for purchase (going farther than the concealer) would be guilty only of a misdemeanor. A person who places/affixes an illegitimate product code onto a product and then carries it around the store without concealing it has committed no offense until the merchandise is presented for purchase.

Section 4

Section 4 of the proposed bill creates a new offense under G.S. 14-72.7, theft of infant formula, for any person to take or carry away infant formula (as defined in 21 U.S.C. 321(z)) valued in excess of one hundred dollars (\$100.00). Violation would be a Class H felony. Larceny of infant formula worth less than \$100 would remain a Class 1 misdemeanor under G.S. 14-72(a). (*Also see* Section 2).

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 bill on the prison population. It is not known how many

offenders might be sentenced under the proposed bill. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction under the proposed bill may currently be convicted of misdemeanor larceny (G.S. 14-72(a); Class 1 misdemeanor) and its related aiding and abetting (Class 1), attempt (Class 2), conspiracy (Class 2) and solicitation (Class 3) for thefts of infant formula valued between \$100 and \$1,000 (*see* Table 4). The Administrative Office of the Courts (AOC) currently does not have specific offense codes for conspiracy or solicitation to commit misdemeanor larceny. The lack of specific AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions. While AOC has a general offense code for misdemeanor conspiracy, it is not specific to conspiracy to commit misdemeanor larceny.

Table 4: Potential Eligible Pool

G.S. Number	Offense Description	Offense Class	Number of Convictions
G.S. 14-72	Misdemeanor larceny	Class 1 misdemeanor	14,467
	Aid & Abet Misd. Larceny	Class 1 misdemeanor	58
	Attempted Misd. Larceny	Class 2 misdemeanor	179

It is not known how many of the misdemeanor convictions in Table 4 may instead be convicted as Class H felonies under the proposed bill.

If, for example, there were three convictions per year that would become Class H felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Section 5

Section 5 of the proposed bill adds Article 16A, Organized Retail Theft, to Chapter 14. The new article contains two new offenses under G.S. 14-86.6.

G.S. 14-86.6(a) creates a new Class G felony for a person to conspire with another to commit theft of retail property from a retail establishment with a value of greater than \$1,500 aggregated over a 90-day period, with the intent to sell the retail property for monetary or other gain, and who takes or causes the retail property to be placed in the control of a retail property fence (as defined by statute) or other person in exchange for consideration.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Persons eligible for conviction of this offense currently may be convicted of larceny and related offenses, but the long combination of elements of this offense (*e.g.*, the proposed offense requires both a conspiracy and a taking incident to that conspiracy, with an additional element of transferring the goods for consideration) make it difficult to assess what combinations of current convictions would represent the eligible pool of offenders under the proposed statute.

G.S. 14-86.6(b) creates a new Class G felony for any person to receive or possess with intent to distribute in interstate commerce retail property that has been taken or stolen in violation of G.S. 14-86.6 (apparently pursuant to subsection (a), as that is the only subsection of the statute that addresses an actual “taking”).

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

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 1307 – LOW-EMISSION VEHICLES PROGRAM/FUNDS

STATUTE

§ 20-54.2. Title and registration of low-emission vehicles; exemptions; penalties.

DESCRIPTION

Subsection (e):

Any person who

1. procures or attempts to procure
2. through fraud or misrepresentation
3. title or registration of a motor vehicle
4. that is subject to but does not comply with rules adopted pursuant to G.S. 143-215.111(6) [by the North Carolina Environmental Management Commission, to implement a low-emission vehicle program functionally equivalent to that established for the State of California by the California Air Resources Board].

Subsection (g):

Any person who

1. transfers or attempts to transfer
2. a motor vehicle or motor vehicle engine
3. that does not comply with rules adopted pursuant to G.S. 143-215.111(6) [see above].

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (per G.S. 20-176(c)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria with regard to subsection (e).
- Bill is **inconsistent** with Offense Classification Criteria with regard to subsection (g).
- Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1309 – PROPERTY TAX REFORM ACT OF 2007

STATUTE

§ 105-366. Remedies against personal property.

DESCRIPTION

Subsection (e) (Remedies Against Repossessing Agents of Mobile Homes):

Any person other than a county or a city who

1. takes possession of a mobile home
2. whether by judicial or nonjudicial authority
3. as a holder of a lien on the mobile home, and
4. fails to obtain a tax permit for moving the home and pay the taxes as required by G.S. 105-316.2.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor (per G.S. 105-316.6).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

326 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1310 – AMEND LAWS/MARRIAGE WITHOUT A LICENSE

STATUTE

§ 51-6. Solemnization without license unlawful.

DESCRIPTION

Subsection (a):

A man and woman who:

1. solemnize a marriage
2. under the laws of this State
3. without first obtaining a marriage license
4. signed by the register of deeds (or by a lawful deputy or assistant)
5. of the county in which the marriage license was issued.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The current offense for solemnization of a marriage without a license applies only to the minister, officer, or other person performing the ceremony. The proposed bill adds the marrying couple as criminally liable parties.

G.S. 51-7.1 of the proposed bill provides that a marriage contracted without a license is not rendered illegal.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1330 – SALE OF DOGS AND CATS AT SPECIALTY
MARKETS [V.2]

STATUTE

§ 66-254.2. Sale or transfer of dogs and cats.

DESCRIPTION

Any owner or operator of a “specialty market” who:

1. allows the sale or transfer
2. of a dog or cat
3. without meeting the standards applicable to pet shops under Chapter 19A [Protection of Animals] (except for licensing).

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

A “specialty market” is defined as “location, other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.” G.S. 66-250(4).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1337 – AMEND DENTAL HYGIENE ACT [V.3]

STATUTE

§ 90-233. Practice of dental hygiene.
§ 90-233.1. Violation a misdemeanor.

DESCRIPTION

A dental hygienist who:
1. establishes or operates
2. a separate care facility
3. that exclusively renders dental hygiene services.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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.

The proposed bill establishes a process by which dental hygienists may render services without the direct supervision of a dentist, for which the offense above is a new limitation.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class 1 misdemeanors tend to result in significant injury to person, serious injury to property or serious injury to society. This offense does not result in significant injury to person, serious injury to property, or serious injury to society. This offense would be consistent with a Class 3 misdemeanor. The Sentencing Commission recommended classifying offenses which result in minor injury to person, property, or society.

DATE PREPARED: 5/29/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1357 – MOTOR VEHICLE CHOP SHOP ACT

STATUTE

§ 20-402. Chop shop operation unlawful; restitution.

DESCRIPTION

Subsection (a) (operate a chop shop):

Any person who

- owns, operates, or conducts
- a chop shop (as defined by statute).

PROPOSED OFFENSE CLASS

Class G felony for the first offense.

Class F felony for a second or subsequent violation of G.S. 20-402 after previous conviction under that section.

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 significant personal injury or serious societal injury as Class F felonies.

The proposed bill defines a "chop shop" as "any building, lot, or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order either to: a. alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number or the motor vehicle or motor vehicle part in order to misrepresent the identity of the motor vehicle or motor vehicle part or to prevent the identification of the motor vehicle or motor vehicle part, or b. sell or dispose of the motor vehicle or motor vehicle part."

G.S. 20-106 currently makes it a Class H felony to possess a vehicle knowing or having reason to believe that it is stolen or receive or transfer a vehicle known or believed to be stolen with the intent to procure or pass title to it. G.S. 14-71.1 makes it a Class H felony to possess stolen goods. G.S. 20-107 makes it a Class 2 misdemeanor to tamper with a motor vehicle's parts. G.S. 14-160 makes it a Class 2 or Class 1 misdemeanor (based on dollar value of damage) to injure personal property.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies result or tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. In addition, 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 PREPARED: 5/1/2007

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330 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1357 – MOTOR VEHICLE CHOP SHOP ACT

STATUTE

§ 20-402. Chop shop operation unlawful; restitution.

DESCRIPTION

Subsection (a) (transport vehicle to chop shop):

Any person who

1. transports
2. a motor vehicle or motor vehicle part
3. to or from a location
4. knowing it to be a chop shop.

PROPOSED OFFENSE CLASS

Class G felony for the first offense.

Class F felony for a second or subsequent violation of G.S. 20-402 after previous conviction under that section.

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 significant personal injury or serious societal injury as Class F felonies.

G.S. 20-106 currently makes it a Class H felony to possess a vehicle knowing or having reason to believe that it is stolen or receive or transfer a vehicle known or believed to be stolen with the intent to procure or pass title to it. G.S. 14-71.1 makes it a Class H felony to possess stolen goods.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies result or tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. In addition, 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 PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1357 – MOTOR VEHICLE CHOP SHOP ACT

STATUTE

§ 20-402. Chop shop operation unlawful; restitution.

DESCRIPTION

Subsection (a) (trading with a chop shop):

Any person who

1. sells, transfers, purchases, or receives
2. a motor vehicle or motor vehicle part
3. to or from a location
4. knowing it to be a chop shop.

PROPOSED OFFENSE CLASS

Class G felony for the first offense.

Class F felony for a second or subsequent violation of G.S. 20-402 after previous conviction under that section.

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 significant personal injury or serious societal injury as Class F felonies.

G.S. 20-106 currently makes it a Class H felony to possess a vehicle knowing or having reason to believe that it is stolen or receive or transfer a vehicle known or believed to be stolen with the intent to procure or pass title to it.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies result or tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. In addition, 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 PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

332 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1357 – MOTOR VEHICLE CHOP SHOP ACT

STATUTE

§ 20-402. Chop shop operation unlawful; restitution.

DESCRIPTION

Subsection (b):

Any person who

1. knowingly
2. alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or removes, or causes any of those to be done to
3. a vehicle identification number (VIN)
4. with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part.

PROPOSED OFFENSE CLASS

Class G felony for the first offense.

Class F felony for a second or subsequent violation of G.S. 20-402 after previous conviction under that section.

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 significant personal injury or serious societal injury as Class F felonies.

G.S. 20-109 currently makes it a Class I felony to, among other things, "willfully deface, destroy, remove, cover, or alter the manufacturer's serial number, transmission number, or engine number."

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies result or tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. In addition, 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 PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1357 – MOTOR VEHICLE CHOP SHOP ACT

STATUTE

§ 20-402. Chop shop operation unlawful; restitution.

DESCRIPTION

Subsection (c):

Any person who

1. buys, disposes, sells, transfers, or possesses
2. a motor vehicle or motor vehicle part
3. with the knowledge that the vehicle identification number has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed.

PROPOSED OFFENSE CLASS

Class G felony for the first offense.

Class F felony for a second or subsequent violation of G.S. 20-402 after previous conviction under that section.

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 significant personal injury or serious societal injury as Class F felonies.

G.S. 20-108 currently makes it a Class 2 misdemeanor to, among other things, trade in stolen motor vehicle parts from which identifying numbers have been removed, defaced, altered, etc.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class G felonies result or tend to result in serious property loss from the person or from the person's dwelling. This offense does not result in loss of property from the person or from the person's dwelling. In addition, 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 PREPARED: 5/1/2007

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1357: MOTOR VEHICLE CHOP SHOP ACT

PREPARED: APRIL 16, 2007

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED
UNDER STRUCTURED SENTENCING**

The proposed bill creates five new offenses under three subsections of G.S. 20-402, regarding the operation of motor vehicle “chop shops.” Any violation of G.S. 20-402 would be a Class G felony for the first offense. A second or subsequent violation after conviction of a first offense under any part of G.S. 20-402 would be a Class F felony. A chop shop is defined in the proposed G.S. 20-401(a) and includes a broad range of acts concerning motor vehicles and motor vehicle parts. The breadth of the definition and the range of acts prohibited in the proposed bill encompass several existing offenses. However, due to imperfect matches between the elements of the existing and proposed offenses, it is not known how many of the convictions for the existing offenses would be eligible for conviction under the proposed bill.

Subsection (a)

Subsection (a) creates new offenses for any person to:

- own, operate, or conduct a chop shop
- transport a motor vehicle or motor vehicle part to or from a location, knowing it to be a chop shop
- sell, transfer, purchase, or receive a motor vehicle or motor vehicle part to or from a location, knowing it to be a chop shop

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill as Class G (first offense) or Class F felons (second or subsequent).

In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Own, operate, or conduct a chop shop

Because the offenses of subsection (a) require the additional element of maintaining a physical location as a chop shop (“building, lot, or other premises”), persons eligible for conviction of this offense include an unknown portion of those currently convicted under:

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-160	Injury to personal property	2,1	2,175
G.S. 14-71.1	Possession of stolen goods (F)	H	713
G.S. 14-71.1	Possession of stolen goods (M)	1	2,080
G.S. 20-106	Possess stolen motor vehicle	H	355
G.S. 20-107	Tampering with vehicle	2	1
G.S. 20-107(a)	Tampering with vehicle parts	2	0

It is not known how many of the convictions in the above table may instead be convicted as Class G felonies under the proposed bill.

If, for example, there were two misdemeanor convictions per year that would become Class G convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

If, for example, there were three Class H convictions per year that would become Class G convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and one additional prison bed the second year.

It also is not known how many offenders may be repeat offenders under the proposed bill and would be convicted and sentenced as Class F felons.

If, for example, there were two misdemeanor convictions per year that would become Class F convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

If, for example, there were three Class H convictions per year that would become Class F convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Transport a vehicle to or from a chop shop

Persons eligible for conviction of this offense currently include an unknown portion of those convicted under G.S. 20-106, possess stolen motor vehicle (Class H felony). In FY 2005/06, there were 355 convictions for possess stolen motor vehicle. It is not known how many of these convictions may instead be convicted as Class G (first offense) or Class F felonies (second or subsequent) under the proposed bill.

If, for example, there were three Class H convictions per year that would become Class G convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and one additional prison bed the second year.

If, for example, there were three Class H convictions per year that would become Class F convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In addition, it is probable that conviction for this proposed offense would occur in addition to conviction for larceny of a motor vehicle if a theft involves delivery of the stolen vehicle to a chop shop. In FY 2005/06, there were 339 convictions for felony larceny of a motor vehicle (Class H) and 19 convictions for misdemeanor larceny of a motor vehicle (Class 1). In addition, there were 826 convictions for felony larceny, but it is not known whether any of these convictions were for larceny of a motor vehicle. Therefore, additional impact may occur as a result of consecutive sentencing; however, the impact cannot be determined.

Trading in vehicles or parts with a chop shop

Persons eligible for conviction of this offense include an unknown portion of those currently convicted under:

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-71	Receiving stolen goods (M)	1	28
G.S. 14-71	Receiving stolen goods (F)	H	7
G.S. 20-106	Possess stolen motor vehicle	H	355

It is not known how many of the convictions in the above table may instead be convicted as Class G felonies under the proposed bill.

If, for example, there were two misdemeanor convictions per year that would become Class G convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

If, for example, there were three Class H convictions per year that would become Class G convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and one additional prison bed the second year.

It also is not known how many offenders may be repeat offenders under the proposed bill and would be convicted and sentenced as Class F felons.

If, for example, there were two misdemeanor convictions per year that would become Class F convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

If, for example, there were three Class H convictions per year that would become Class F convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Subsection (b)

Subsection (b) makes it a felony for any person to knowingly alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, remove, or cause any of those acts to be done to the vehicle identification number (VIN) with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill as Class G (first offense) or Class F felons (second or subsequent).

In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Persons eligible for conviction under subsection (b) include an unknown portion of those currently convicted under:

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-160	Injury to personal property	2,1	2,175
G.S. 20-107	Tampering with vehicle	2	1
G.S. 20-107(a)	Tampering with vehicle parts	2	0
G.S. 20-109(b)*	Altering serial numbers	I	3

*Because of the way AOC records convictions under G.S. 20-109 and due to the lack of clarity in the statute concerning the terms “serial number” and “vehicle identification number,” it is unclear whether or not convictions under that statute would qualify for conviction under the proposed offense.

It is not known how many of the convictions in the above table may instead be convicted as Class G felonies under the proposed bill.

If, for example, there were two misdemeanor convictions per year that would become Class G convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

If, for example, there were twelve Class I convictions per year that would become Class G convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for five additional prison beds the first year and seven additional prison beds the second year.

It also is not known how many offenders may be repeat offenders under the proposed bill and would be convicted and sentenced as Class F felons.

If, for example, there were two misdemeanor convictions per year that would become Class F convictions under this proposed bill, the combination of active sentences and probation

revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

If, for example, there were twelve Class I convictions per year that would become Class F convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for five additional prison beds the first year and eight additional prison beds the second year.

Subsection (c)

Subsection (c) makes it a felony for any person to buy, dispose, sell, transfer or possess a motor vehicle or motor vehicle part, knowing that the VIN has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated or removed.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill as Class G (first offense) or Class F felons (second or subsequent).

In FY 2005/06, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 16 months. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2005/06, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 20 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Persons eligible for conviction under this subsection currently may be convicted under G.S. 20-108(a) (trading or possessing vehicles or parts from which identification numbers have been removed, altered, etc.; Class 2 misdemeanor). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 20-108(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

If, for example, there were two misdemeanor convictions per year that would become Class G convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

If, for example, there were two misdemeanor convictions per year that would become Class F convictions under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

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 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (a):

A person who

1. is employed by or associated with a criminal street gang and
("Criminal street gang" is defined as any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult, which has a common name, common identifying sign or symbol, and three or more members individually or collectively engaged in or who have engaged in criminal gang activity.)
2. conducts or participates in the criminal street gang
3. through a pattern of criminal gang activity.
("Criminal gang activity" is defined as the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the listed offenses, provided that at least one of these offenses occurred after December 1, 2007, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity.)

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and in HB 50 which the Commission reviewed in March, 2005, except that they were Class E felonies. The Commission found that provision to be inconsistent with the Offense Classification Criteria but recommended that it would be consistent with the criteria for a Class H felony. The Commission reviewed this provision as a Class H felony in HB 274 on March 16, 2007, and found it to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

340 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (b):

A person who

1. acquires or maintains, directly or indirectly,
2. through a pattern of criminal gang activity or proceeds derived therefrom
3. any interest in or control of any real or personal property of any nature, including money.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and in HB 50 which the Commission reviewed in March, 2005, except that they were Class E felonies. The Commission found that provision to be inconsistent with the Offense Classification Criteria but recommended that it would be consistent with the criteria for a Class H felony. The Commission reviewed this provision as a Class H felony in HB 274 on March 16, 2007, and found it to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (c):

Any person who

1. occupies a position of organizer, supervisor, or any other position of management with regard to a criminal street gang, and
2. engages in, directly or indirectly, or conspires to engage in
3. a pattern of criminal gang activity.

PUNISHMENT RANGE

CURRENT: Punished according to the class of the offense and the offender's prior record level.

PROPOSED: If the person violates subsection (a), (b), (d), (e), or (f) of this statute and violates this subsection, then punished by imprisonment for an additional 10 years which shall be served consecutively to any other sentence imposed (a separate sentence).

ANALYSIS

The bill states that "Any crime committed in violation of this section shall be considered a separate offense" but it is structured like an enhancement.

Under G.S. 14-2.4, conspiracies are punished one class lower than the offense which the offender conspired to commit.

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, in HB 50 which the Commission reviewed in March, 2005, and in HB 274 which the Commission reviewed on March 16, 2007. The Commission found those provisions to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

342 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (d):

A person who

1. causes, encourages, solicits, or coerces
2. another
3. to participate in a criminal street gang.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and a provision in HB 50 which the Commission reviewed in March, 2005, except that they were Class G felonies. The Commission found that provision to be inconsistent with the Offense Classification Criteria but recommended that the “causes, encourages, solicits” portion of the offense would be consistent with the criteria for a Class I felony and that the “coerces” portion of the offense would be consistent with the criteria for a Class H felony. The Commission reviewed this provision as a Class H felony on March 16, 2007, and found it to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (e):

A person who

1. communicates, directly or indirectly,
2. with another
3. a threat of injury or damage to the person or property of the other person or to any associate or relative of the other person
4. with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such gang.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and a provision in HB 50 which the Commission reviewed in March, 2005, except that it was classified as a Class G felony. The Commission found that provision to be inconsistent with the Offense Classification Criteria. The Commission reviewed this provision as a Class H felony on March 16, 2007, and found it to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/1/2007

BILL CONTINUED ON NEXT PAGE

344 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (f):

A person who

1. communicates, directly or indirectly,
2. with another
3. a threat of injury or damage to the person or property of the other person or to any associate or relative of the other person
4. with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and a provision in HB 50 which the Commission reviewed in March, 2005, except that it was classified as a Class G felony. The Commission found that provision to be inconsistent with the Offense Classification Criteria. The Commission reviewed this provision as a Class H felony on March 16, 2007, and found it to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 14-50.19. Enhanced offense for criminal gang activity.

DESCRIPTION

A person who

1. is convicted of an offense and
2. that offense is committed for the benefit of, at the direction of, or in association with, any criminal street gang.

PUNISHMENT RANGE

CURRENT: Punished according to the class of the offense and the offender's prior record or conviction level.

PROPOSED: Punished one class higher than the class of the offense committed.

ANALYSIS

This provision is identical to a provision in HB 50 which the Commission reviewed in March, 2005, and in HB 274 which the Commission reviewed on March 16, 2007. The Commission found that provision to be inconsistent with G.S. 164-41 and noted that there is currently an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang (G.S. 15A-1340.16(d)(2a)).

FINDINGS

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

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

G.S. 164-41 is not applicable.

Note: There is currently an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang (G.S. 15A-1340.16(d)(2a)).

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 14-34.9. Discharging a firearm from within an enclosure.

DESCRIPTION

A person who

1. willfully and wantonly
2. discharges or attempts to discharge
3. a firearm,
4. as part of a pattern of criminal gang activity,
5. from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure
6. toward a person or persons not within that enclosure.

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. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property, is a Class E felony. It becomes a Class D felony if the weapon is discharged into an occupied dwelling or into any occupied vehicle, aircraft, watercraft, or other conveyance that is in operation. It becomes a Class C felony if the violation results in serious bodily injury to any person.

This provision is identical to a provision in HB 50 which the Commission reviewed in March, 2005, and in HB 274 which the Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1358 – STREET GANG PREVENTION ACT

STATUTE

§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang, and the defendant possessed, displayed, or discharged a firearm during the commission of the felony.

DESCRIPTION

Notwithstanding G.S. 15A-1340.16A (the current firearm enhancement):

A person who

1. is convicted of a Class A, B1, B2, C, D, or E felony and
2. committed that felony for the benefit of, at the direction of, or in association with any criminal street gang, and
3. possessed, displayed, or discharged a firearm during the commission of the felony.

PUNISHMENT RANGE

CURRENT: If any person is convicted of a Class A through E felony and they used, displayed, or threatened to use or display a firearm, their minimum sentence may be increased by 60 months. The enhancement does not apply if the evidence of the use, display, or threat to use or display the firearm is needed to prove an element of the felony or if the person is not sentenced to an active sentence.

PROPOSED: For possession, an additional minimum term of 60 months; for displaying, an additional minimum term of 84 months; for discharging, an additional minimum term of 120 months. This sentence must be active and consecutive to any other sentence being served. The enhancement applies regardless of whether the evidence is also necessary to prove an element of the felony or the person received an intermediate punishment.

ANALYSIS

It only applies to persons associated with a criminal street gang and it includes discharging a firearm.

This provision is identical to a provision in HB 50 which the Commission reviewed in March, 2005, and in HB 274 which the Commission reviewed on March 16, 2007. The Commission found that provision to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1364 – SCRAP VEHICLE PURCHASE/PARTS-RECORDS
[V.2]

STATUTE

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

DESCRIPTION

Any secondary metals recycler, salvage yard, or other person, firm, or corporation who:

1. purchases a motor vehicle
2. without a certificate of title
3. for a vehicle 10 model years old or older
4. and does not:
 - a. maintain the records required (subdivision (a)(1)), and
 - b. permit inspection by law enforcement while the recycler or salvage yard is open for business of any and all motor vehicles in its possession and of any records required to be maintained under subdivision (a)(1).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for the first offense.

Class I felony for a second or subsequent offense.

ANALYSIS

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

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

Dismantling or wrecking a motor vehicle without the certificate of title (and without forwarding it to the DMV) for a vehicle less than 10 model years old would remain a Class 2 misdemeanor pursuant to G.S. 20-61 and 20-176(c).

FINDINGS

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

Bill is **inconsistent** with 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 PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1364 – SCRAP VEHICLE PURCHASE/PARTS-RECORDS
[V.2]

STATUTE

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

DESCRIPTION

Any seller of a motor vehicle (or seller's agent) who:

1. when selling a motor vehicle to a secondary metals recycler or salvage yard
2. falsifies a written statement certifying that the seller or agent has the lawful right to sell or dispose of the motor vehicle.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for the first offense.

Class I felony for a second or subsequent offense.

ANALYSIS

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

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

The Sentencing Commission reviewed version 1 of SB 1364 (proposing new offenses for secondary metals recyclers or salvage yards that fail to meet recordkeeping duties for certain purchases) on May 4, 2007. Version 2 of SB 1364 contains the same offense provisions for purchasers and adds the offense above for false statements by sellers. The Commission found the proposed offense for purchasing recyclers and scrap yards inconsistent with the Offense Classification Criteria due to the increase in offense class for prior convictions.

FINDINGS

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

Bill is **inconsistent** with 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 PREPARED: 5/29/2007

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1364: SCRAP VEHICLE PURCHASE/PARTS-RECORDS

PREPARED: MAY 17, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates a new misdemeanor offense which is punishable as a felony for second or subsequent violations.

This bill creates G.S. 20-62.1, Purchase of vehicles for purposes of scrap or parts only. The statute requires any secondary metals recycler or salvage yard who purchases a motor vehicle without a certificate of title for a vehicle 10 model years old or older to do the following:

- a. maintain the records required (subdivision (a)(1)), and
- b. permit inspection by law enforcement while the recycler or salvage yard is open for business of any and all motor vehicles in its possession and of any records required to be maintained under subdivision (a)(1).

Knowingly and Willfully Violating the Requirements

Knowingly and willfully violating the requirements is a Class 1 misdemeanor for the first offense, Class I felony for a second or subsequent offense.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

It is also not known how many offenders may be repeat offenders under the proposed statute and would be convicted and sentenced as Class I felons. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

Falsify Statement

It is also a violation of the statute for any person to falsify the statement required under subsection (a)(1)g of this statute. Violation is a Class 1 misdemeanor for the first offense, Class I felony for a second or subsequent offense.

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 bill on the prison population. It is not known how many

offenders might be sentenced under the proposed bill. In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

It is also not known how many offenders may be repeat offenders under the proposed statute and would be convicted and sentenced as Class I felons. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

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 1380 – WILDLIFE RESOURCES/PROCLAMATIONS
AUTHORITY.-AB

STATUTE

§ 113-301.2. Proclamation authority to protect wildlife resources and gamelands.

DESCRIPTION

Any person who:

1. violates a proclamation
2. issued by the Wildlife Resources Commission [regarding wildlife resources or the conditions for public use of gamelands when immediate action is necessary to protect the wildlife resources of North Carolina from serious harm due to serious and unforeseen situations].

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to property or minor injury to society as Class 3 misdemeanors.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1402 – CONSTRUCTION STANDARDS/
MANUFACTURED HOUSING

STATUTE

§ 143-150.1. Plywood flooring in kitchen and bathroom areas of manufactured home.

DESCRIPTION

Any individual, director, officer or agent of a corporation who

1. knowingly and willfully
2. manufactures or sells a manufactured home in this State
3. the bathroom and kitchen flooring of which are not manufactured with treated plywood
4. such that it threatens the health or safety of any purchaser.

PROPOSED OFFENSE CLASS

Class I felony (by operation of G.S. 143-151(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.

This offense becomes effective only if the U.S. Congress amends the National Manufactured Housing Construction and Safety Standards Act of 1974 (citation omitted) to allow states to enact construction and safety standards for manufactured homes. (The federal act preempted state jurisdiction over manufactured housing construction standards.)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

354 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1410 – PEDORTHIST LICENSURE

STATUTE

§ 90-202.23. License required.

§ 90-202.32. Violations of this Article; injunctive relief.

DESCRIPTION

Any person who:

1. practices or offers to practice pedorthics (as defined by statute), or
2. uses the title ‘Licensed Pedorthist,’ the letters ‘LP’ or otherwise indicates or implies that he or she is a licensed pedorthist
3. without being licensed under Chapter 90, Article 12B.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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 1475/SB 1411 – RESTORE CIGARETTE TAX STAMPS

STATUTE

§ 105-113.34A. Forging or counterfeiting stamps.

DESCRIPTION

(Forging tax stamps)

Any person who

1. falsely or fraudulently
2. makes, forges, alters or counterfeits, or causes or procures to be falsely made, forged, altered or counterfeited
3. any stamp prepared or prescribed by the Secretary [of Revenue] under Chapter 105, Article 2A (Tobacco Products Tax).

PROPOSED OFFENSE CLASS

A felony, punishable by a fine of not more than \$2,000.00 or imprisonment in the State prison for a term of not more than 5 years, or both, in the discretion of the court.

ANALYSIS

The proposed bill does not assign an offense class to the offense, but it does not exempt the offense from structured sentencing either. Pursuant to G.S. 15A-1340.17(a), a “felony for which there is no classification” is a Class I 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 a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in other serious property loss as Class I felonies.

DATE PREPARED: 5/1/2007

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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 1475/SB 1411 – RESTORE CIGARETTE TAX STAMPS

STATUTE

§ 105-113.34A. Forging or counterfeiting stamps.

DESCRIPTION

(Uttering forged tax stamps)

Any person who

1. knowingly and willfully
2. utters, publishes, passes, or tenders as true
3. any false, altered, forged, or counterfeited stamps
4. for the purpose of evading the tax levied by this Article [Chapter 105, Article 2A (Tobacco Products Tax)].

PROPOSED OFFENSE CLASS

A felony, punishable by a fine of not more than \$2,000.00 or imprisonment in the State prison for a term of not more than 5 years, or both, in the discretion of the court.

ANALYSIS

The proposed bill does not assign an offense class to the offense, but it does not exempt the offense from structured sentencing either. Pursuant to G.S. 15A-1340.17(a), a “felony for which there is no classification” is a Class I 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 a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in other serious property loss as Class I felonies.

DATE PREPARED: 5/1/2007

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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 1475/SB 1411 – RESTORE CIGARETTE TAX STAMPS

STATUTE

§ 105-113.34A. Forging or counterfeiting stamps.

DESCRIPTION

(Possessing, securing, or manufacturing stamp or impression device)

Any person who

1. possesses, secures, manufactures, or causes to be secured or manufactured
2. a stamp or counterfeit impression device
3. not prescribed or authorized by the Secretary [of Revenue].

PROPOSED OFFENSE CLASS

A felony, punishable by a fine of not more than \$2,000.00 or imprisonment in the State prison for a term of not more than 5 years, or both, in the discretion of the court.

ANALYSIS

The proposed bill does not assign an offense class to the offense, but it does not exempt the offense from structured sentencing either. Pursuant to G.S. 15A-1340.17(a), a “felony for which there is no classification” is a Class I 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 a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in other serious property loss as Class I felonies.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

358 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 1430 – AMEND CRIM OFFENSES/INJURY TO PROPERTY [V.2]

STATUTE

§ 14-127. Willful and wanton injury to real property.

DESCRIPTION

Subdivision (a)(2):

Any person who

1. willfully and wantonly
2. damages, injures, or destroys
3. any real property
4. the damage to which is more than \$25,000.00 but not more than \$100,000.00.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Injury to real property causing damage of \$25,000.00 or less would remain a Class 1 misdemeanor under subdivision (a)(1).

The Sentencing Commission reviewed version 1 of SB 1430 on May 4, 2007. Subdivision (a)(2) made injury to real property causing damage of more than \$1,000 but less than \$100,000 a Class H felony. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1430 – AMEND CRIM OFFENSES/INJURY TO
PROPERTY [V.2]

STATUTE

§ 14-127. Willful and wanton injury to real property.

DESCRIPTION

Subdivision (a)(3):

Any person who

1. willfully and wantonly
2. damages, injures, or destroys
3. any real property
4. the damage to which is more than \$100,000.00.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The Sentencing Commission reviewed version 1 of SB 1430 on May 4, 2007. Subdivision (a)(3) made injury to real property causing damage of more than \$100,000 a Class D felony. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1430 – AMEND CRIM OFFENSES/INJURY TO
PROPERTY [V.2]

STATUTE

§ 14-160. Willful and wanton injury to personal property; punishments.

DESCRIPTION

Subdivision (a)(3):

Any person who

1. wantonly and willfully
2. injures
3. the personal property of another
4. the damage to which is more than \$25,000.00 but not more than \$100,000.00.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Injury to personal property causing damage of \$25,000.00 or less would remain a Class 2 misdemeanor for damage of \$200 or less (subdivision (a)(1)) and a Class 1 misdemeanor for damage from \$200 to \$25,000 (subdivision (a)(2)).

The Sentencing Commission reviewed version 1 of SB 1430 on May 4, 2007. Subdivision (a)(3) made injury to personal property causing damage of more than \$1,000 but less than \$100,000 a Class I felony. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1430 – AMEND CRIM OFFENSES/INJURY TO PROPERTY [V.2]

STATUTE

§ 14-160. Willful and wanton injury to personal property; punishments.

DESCRIPTION

Subdivision (a)(4):

Any person who

1. wantonly and willfully
2. injures
3. the personal property of another
4. the damage to which is more than \$100,000.00.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The Sentencing Commission reviewed version 1 of SB 1430 on May 4, 2007. Subdivision (a)(4) made injury to personal property causing damage of more than \$100,000 a Class D felony. The Commission found that provision to be inconsistent with the Offense Classification Criteria. The Commission recommended that this provision would be consistent with a Class F or Class H felony. Class F felonies are those which reasonably tend to result or do result in significant personal injury or serious societal injury. Class H felonies are those which reasonably tend to result or do result in serious property loss occasioned by breach of trust, formal or informal, by the taking or removing of property, or from any structure designed to house or secure any activity or property.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

IMPACT ANALYSIS NOT REQUESTED YET

362 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1447 – AMEND DOMESTIC CRIM. TRESPASS

STATUTE

§ 14-134.3. Domestic criminal trespass.

DESCRIPTION

Subsection (c):

Any person who

1. subject to a valid protective order enforceable under Chapter 50B
2. enters after being forbidden or remains at after being ordered to leave
3. property being operated as a safe house or haven for victims of domestic violence
4. without being present pursuant to a judicial order or separation agreement that gives the defendant the right to be present for visitation with children.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Domestic trespass at the residence of a present or former spouse or person with whom the defendant has lived as if married is a Class 1 misdemeanor.

Domestic trespass upon the property of a domestic violence safe house or haven while armed with a deadly weapon is a Class G felony.

This provision is identical to SB 83, which the Commission reviewed on March 16, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: SB 1447 – AMEND DOMESTIC CRIM. TRESPASS

STATUTE

§ 15A-2001. Capital offenses; plea of guilty.
[Correct statute for the proposed factor below appears to be G.S. 15A-2000(e).]

DESCRIPTION

New capital aggravating circumstance (12):
The defendant was the subject of a valid protective order enforceable under Chapter 50B of the General Statutes at the time of the commission of the capital felony and committed the capital felony on the premises of a safe house or haven for victims of domestic violence.

PUNISHMENT RANGE

PROPOSED: Finding of the aggravating circumstance after conviction of a capital (Class A) felony would render the defendant eligible for the death penalty.

ANALYSIS

The Sentencing Commission did not use the Offense Classification Criteria in the classification of homicide offenses.

The Sentencing Commission was instructed in 2005 to study “whether the State's capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe.” S.L. 2005-295. The Sentencing Commission recommended:

- against the adoption of the proposed aggravating circumstance; and
- the “continued support and expansion” of other, innovative programs designed to address the problem of domestic violence.

This provision is identical to SB 83 which the Commission reviewed on March 16, 2007. The Commission found G.S. 164-41 to be inapplicable to this provision.

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 Offense Classification Criteria were not used in the classification of homicide offenses.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

364 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 953[V.1]/SB 1449 – REGULATE SALES/GLASS VIALS & CIGARETTE WRAP.

STATUTE

§ 90-113.80. Restriction on sales of certain products that may be used as drug paraphernalia.

§ 90-113.31. Penalties (Subsection (a)).

DESCRIPTION

G.S. 90-113.80(b):

Any retailer who

1. willfully and knowingly
2. either
 - a. offers glass vials (as defined by statute) or cigarette wrapping papers for sale by self-service, or
 - b. fails to obtain photo identification and require customers to provide their names and addresses and sign the record of each sale.

G.S. 90-113.80(c):

Any retailer who

1. willfully and knowingly
2. either
 - a. fails to maintain records of each sale for two years from the date of transaction, or
 - b. fails to make such records available within 48 hours of such transaction for inspection by law enforcement officials.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for the first offense.

Class 1 misdemeanor for a second or subsequent offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

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

FINDINGS

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

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

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

DATE PREPARED: 5/1/2007

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

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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 953[V.1]/SB 1449 – REGULATE SALES/GLASS VIALS & CIGARETTE WRAP.

STATUTE

§ 90-113.80. Restriction on sales of certain products that may be used as drug paraphernalia.

§ 90-113.31. Penalties (Subsection (b)).

DESCRIPTION

G.S. 90-113.80(b):

Any employee who

1. willfully and knowingly
2. either
 - a. sells glass vials (as defined by statute) or cigarette wrapping papers by self-service, or
 - b. fails to obtain photo identification and require customers to provide their names and addresses and sign the record of each sale.

Any purchaser who

1. willfully and knowingly
2. either
 - a. purchases glass vials (as defined by statute) or cigarette wrapping papers by self-service, or
 - b. fails to provide photo identification and provide their name and address and sign the record of the sale.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor for the first offense. Class 2 misdemeanor for a second offense. Class 1 misdemeanor for a third or subsequent offense.

G.S. 90-113.81(b) provides that these penalties “shall not be construed to apply to bona fide innocent purchasers.”

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to society as Class 3 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

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

FINDINGS

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

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

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

DATE PREPARED: 5/1/2007

IMPACT OF BILL AVAILABLE

366 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 1464 – MANAGEMENT OF WILDLIFE RESOURCES

STATUTE

§ 113-291.11. Feeding of alligators prohibited.

DESCRIPTION

Any person who:

1. intentionally
2. feeds alligators
3. outside of captivity.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor for the first offense. Class 2 misdemeanor for a second or subsequent offense.
(Per G.S. 113-135.)

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property or minor injury to society as Class 3 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

FINDINGS

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

Bill is **inconsistent** with 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 Conviction Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing.

DATE PREPARED: 5/1/2007

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 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 1491 – PROHIBIT BLUNT WRAPS [V.2]

STATUTE

§ 90-113.21. General Provisions.

§ 90-113.22. Possession of drug paraphernalia.

DESCRIPTION

Any person who:

1. knowingly
2. uses or possesses with intent to use
3. a blunt wrap
4. to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal a controlled substance which it would be unlawful to possess, or to inject, ingest, inhale, or otherwise introduce into the body a controlled substance which it would be unlawful to possess.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed bill amends G.S. 90-113.21(a) to add “blunt wraps” to the list of items that constitute “drug paraphernalia.” A “blunt wrap” is defined as “(i) a product that contains less than fifty percent (50%) tobacco or has a homogenized tobacco leaf wrapper that contains more than sixteen percent (16%) moisture and is designed for use as a wrap for another substance that is smoked or (ii) a product that is marketed and sold as a blunt wrap.”

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

BILL CONTINUED ON NEXT PAGE

368 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 1491 – PROHIBIT BLUNT WRAPS [V.2]

STATUTE

§ 90-113.21. General Provisions.

§ 90-113.23. Manufacture or delivery of drug paraphernalia.

DESCRIPTION

[Manufacture or delivery other than to a minor]

Any person who:

1. delivers, possesses with intent to deliver, or manufactures with intent to deliver
2. a blunt wrap
3. knowing that it will be used
4. to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal a controlled substance which it would be unlawful to possess, or that it will be used to inject, ingest, inhale, or otherwise introduce into the body a controlled substance which it would be unlawful to possess.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed bill amends G.S. 90-113.21(a) to add “blunt wraps” to the list of items that constitute “drug paraphernalia.” A “blunt wrap” is defined as “(i) a product that contains less than fifty percent (50%) tobacco or has a homogenized tobacco leaf wrapper that contains more than sixteen percent (16%) moisture and is designed for use as a wrap for another substance that is smoked or (ii) a product that is marketed and sold as a blunt wrap.”

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

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 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 1491 – PROHIBIT BLUNT WRAPS [V.2]

STATUTE

§ 90-113.21. General Provisions.

§ 90-113.23. Manufacture or delivery of drug paraphernalia.

DESCRIPTION

[Delivery to a minor]

Any person over 18 who:

1. delivers
2. a blunt wrap
3. to a person under 18 and at least three years younger than the defendant.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The proposed bill amends G.S. 90-113.21(a) to add “blunt wraps” to the list of items that constitute “drug paraphernalia.” A “blunt wrap” is defined as “(i) a product that contains less than fifty percent (50%) tobacco or has a homogenized tobacco leaf wrapper that contains more than sixteen percent (16%) moisture and is designed for use as a wrap for another substance that is smoked or (ii) a product that is marketed and sold as a blunt wrap.”

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

BILL CONTINUED ON NEXT PAGE

370 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 1491 – PROHIBIT BLUNT WRAPS [V.2]

STATUTE

§ 90-113.21. General Provisions.

§ 90-113.24. Advertisement of drug paraphernalia.

DESCRIPTION

Any person who:

1. purchases or otherwise procures
2. an advertisement
3. in any newspaper, magazine, handbill, or other publication, or on a billboard, sign, or other outdoor display
4. knowing that the purpose of the advertisement, in whole or in part, is to promote the sale
5. of blunt wraps
6. designed or intended for use as drug paraphernalia.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

The proposed bill amends G.S. 90-113.21(a) to add “blunt wraps” to the list of items that constitute “drug paraphernalia.” A “blunt wrap” is defined as “(i) a product that contains less than fifty percent (50%) tobacco or has a homogenized tobacco leaf wrapper that contains more than sixteen percent (16%) moisture and is designed for use as a wrap for another substance that is smoked or (ii) a product that is marketed and sold as a blunt wrap.”

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1491: PROHIBIT BLUNT WRAPS (PCS S1491-CSR-17[v.1])

PREPARED: MAY 14, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The proposed bill amends G.S. 90-113.21(a)(12), to add a new item to the list of “drug paraphernalia” as defined in that subsection. The new item is the “blunt wrap,” which includes:

- (1) a product that contains less than fifty percent (50%) tobacco or has a homogenized tobacco leaf wrapper that contains more than sixteen percent (16%) moisture and is designed for use as a wrap for another substance that is smoked, or
- (2) a product that is marketed or sold as a blunt wrap.

The definition of blunt wraps as drug paraphernalia potentially increases the pool of offenders for the following offenses:

G.S. 90-113.22, Possession of drug paraphernalia, would make it unlawful to possess a blunt wrap. There were 16,852 Class 1 convictions under G.S. 90-113.22 during FY 2005/06. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

G.S. 90-113.23, Manufacture or delivery of drug paraphernalia [possess w/intent to deliver; manufacture w/intent to deliver], would make it a Class 1 misdemeanor to manufacture with intent to deliver or possess with intent to deliver a blunt wrap. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 90-113.23. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In FY 2005/06, 20% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Violation of G.S. 90-113.23, Manufacture or delivery of drug paraphernalia [delivery by person over 18 to certain minors] would make it a Class I felony for an adult to deliver a blunt wrap to certain minors. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 90-113.23. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per

year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

G.S. 90-113.24, Advertisement of drug paraphernalia, would make it a Class 2 misdemeanor to advertise a blunt wrap for sale. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 90-113.24. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In FY 2005/06, 17% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 13 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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 1495 – VEHICLES USED FOR TOWING TO BE MARKED
[V.2]

STATUTE

§ 20-101. Certain business vehicles to be marked.

§ 20-176. Penalty for misdemeanor or infraction.

DESCRIPTION

Any motor vehicle not subject to 49 C.F.R. 390 [the federal motor carrier safety regulations] that:

1. is equipped to tow or transport another vehicle
2. for hire
3. without the name and address of the owner printed on the side of the vehicle in letters not less than three inches in height.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to society as Class 2 misdemeanors.

Pursuant to G.S. 20-176(a) and (c), violation of the provisions of G.S. 20-101 is a Class 2 misdemeanor.

Version 1 of SB 1495 contained a similar offense for any “owner or operator” who failed to mark a wrecker properly (with a “wrecker identification number” as proposed in that version). Version 2 does not specify with its amendment of G.S. 20-101 whether the offense is committed by the owner of the vehicle who allows it to be used while unmarked or by the driver operating the unmarked vehicle.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/29/2007

IMPACT ANALYSIS NOT REQUESTED YET

374 A finding that a bill is either consistent or inconsistent with G.S. 164-41 or with the Sentencing Commission’s Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1504 – EARLY RELEASE/CERTAIN DRUG VIOLATIONS

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

G.S. 90-95(h)(5) [sentencing for drug trafficking]:

Sentence may be suspended if the defendant:

1. has no prior convictions that produced or threatened serious bodily harm
2. has no prior felony convictions for the manufacture, sale, delivery, or possession of controlled substances
3. did not possess a firearm during commission of the offense
4. played a minor role in the drug scheme that led to the offense
5. carried out the offense at the direction of another
6. stood to receive substantially less pecuniary gain from the offense than the person who directed its commission.

PUNISHMENT RANGE

CURRENT: Sentence for drug trafficking may be suspended only in cases of “substantial assistance.”

PROPOSED: Sentence for drug trafficking may be suspended for substantial assistance or upon findings described above.

ANALYSIS

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

(See also SB 727.)

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1504 – EARLY RELEASE/CERTAIN DRUG VIOLATIONS

STATUTE

§ 15A-1370A. Early release of certain inmates.

DESCRIPTION

Any inmate serving a sentence for violation of G.S. 90-95 (manufacture, sale, delivery, possession, or possession with intent to manufacture, sell, or deliver a controlled substance; creation, sale, delivery, or possession with intent to sell or deliver a counterfeit controlled substance; possession of controlled substance precursors; drug trafficking; attempt or conspiracy to commit any of the foregoing) who:

1. meets all of the criteria of G.S. 90-95(h)(5)b.
2. has no violence-related infractions or attempts escapes during incarceration
3. has served at least one half of his or her sentence, and
4. does not have an order of removal against him or her from the U.S. Office of Homeland Security.

PUNISHMENT RANGE

CURRENT: Sentence must be served in accordance with structured sentencing or the sentencing provisions for drug trafficking in concert with DOC regulations for earned time.

PROPOSED:

DOC may release an inmate who meets the criteria described above, considering:

1. whether the inmate's early release would unduly depreciate the seriousness of the inmate's crime or promote disrespect for the law
2. whether the inmate's continued correctional treatment, medical care, or vocational or other training in the institution will substantially enhance the inmate's capacity to lead a law-abiding life if released at a later date, and
3. whether there is a substantial risk that the inmate would engage in further criminal conduct in the United States.

Release would be permitted for inmates under order of removal by the U.S. Office of Homeland Security if the release is to Homeland Security, will result in the inmate's immediate removal from the United States, and release is accompanied by a warrant for the inmate's retaking if not deported.

ANALYSIS

Currently, no inmate sentenced to an active term may be released unconditionally prior to the expiration of the minimum sentence imposed.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1509 – PROHIBIT SEX OFFENDERS LIVING WITH MINORS

STATUTE

§ 14-208.18. Sexual predator prohibited from living with minor children.

DESCRIPTION

Any person required to register as a sex offender who resides in a household with a minor child.

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.

The offense does not apply if the offender is the blood parent of the minor and the offense was not against that minor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Class F felonies are those that reasonably tend to result or do result in significant personal injury or serious societal injury. This offense may be consistent with Class F in some cases, but not all registered sex offenders are predators registered as a result of offenses against children.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1527 – AMEND INSURANCE LAWS/PRODUCERS AND BAIL BONDS

STATUTE

§ 58-71-165. Monthly report required.

DESCRIPTION

Any person who:

1. is an insurer with surety bondsmen in this State, and
2. knowingly and willfully
3. falsifies a [monthly report of bonds for which the insurer is liable].

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The current offense applies to surety bondsmen (the agents of the insurer). The proposed bill imposes criminal liability on the principal insurer.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

378 A finding that a bill is either consistent or inconsistent with G.S. 164-41 or 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 1529 – IMPLEMENT MODERNIZATION COMMISSION RECOMMEND.

STATUTE

§ 105-616. Penalties.

DESCRIPTION

Any person who:

1. fails or refuses
2. to file the return for or pay the tax
3. levied under Chapter 105, Article 61 (Local Government Meals Tax).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 105-236(8) and (9)).

ANALYSIS

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

The proposed offense applies only to retailers in cities or counties that levy the meals tax (on sales of prepared food and drink) as permitted in Chapter 105, Article 60 (enacted by the proposed bill). Punishment is as provided in G.S. 105-236 for failure to pay or file a return for State sales and use taxes.

The Commission reviewed an identical provision in HB 153 (Local Option Tax Menu) on March 16, 2007, and found it to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with G.S. 164-41 or with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1553 – RECYCLING DISCARDED COMPUTER EQUIPMENT

STATUTE

§ 130A-309.93. Requirements for manufacturers.

DESCRIPTION

Subsection (b):

Any manufacturer (as defined by statute) who

1. offers for sale
2. in this State
3. computer equipment
4. without a visible, permanent label affixed
5. clearly identifying the manufacturer.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1553 – RECYCLING DISCARDED COMPUTER EQUIPMENT

STATUTE

§ 130A-309.94. Prohibited sales of computer equipment.

DESCRIPTION

Subsection (a):

Any manufacturer (as defined by statute) who

1. is not in compliance with G.S. 130A-309.93 (regarding development and implementation of a recycling plan; annual reporting of sales and recycling efforts; and payment of recycling program costs), and
2. either
 - a. offers computer equipment for sale in this State, or
 - b. fails to provide support to retailers to ensure the manufacturer's equipment is not offered for sale in this State.

Subsection (b):

Any retailer who

1. offers computer equipment for sale in this State
2. from a manufacturer not in compliance with G.S. 130A-309.93.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1553 – RECYCLING DISCARDED COMPUTER EQUIPMENT

STATUTE

§ 130A-309.95. Certification of computer equipment recycling facilities.

DESCRIPTION

Any business that:

1. accepts for recycling
2. discarded computer equipment
3. without certification [by the Department of Environment and Natural Resources] as a computer equipment recycling facility.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1553 – RECYCLING DISCARDED COMPUTER EQUIPMENT

STATUTE

§ 130A-309.96. Requirements for certified computer equipment recycling facilities.

DESCRIPTION

Any certified computer equipment recycling facility that:

1. fails to identify the manufacturer of discarded computer equipment delivered to its facility, if generated by a household in this State
2. fails to maintain an accounting and itemized inventory of discarded computer equipment delivered to its facility and report that accounting annually
3. fails to “work cooperatively” with manufacturers to ensure implementation of a practical and feasible financing system for invoicing manufacturers for their share of recycling costs, or
4. fails to ensure that costs for recycling discarded computer equipment at its facility are reasonable.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1553 – RECYCLING DISCARDED COMPUTER EQUIPMENT

STATUTE

§ 130A-309.101. Disposal ban.

DESCRIPTION

Any person who:

1. disposes of discarded computer equipment
2. in a landfill or by incineration.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1553 – RECYCLING DISCARDED COMPUTER EQUIPMENT

STATUTE

§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

DESCRIPTION

Subdivision (f)(14):

Any person who

1. knowingly
2. disposes of discarded computer equipment
3. in a landfill.

Subdivision (f1)(7):

Any person who:

1. knowingly
2. disposes of discarded computer equipment
3. by incineration
4. in an incinerator for which a permit is required under Chapter 130A, Article 9.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (per G.S. 130A-25(a) and 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/1/2007

IMPACT ANALYSIS NOT REQUESTED YET

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