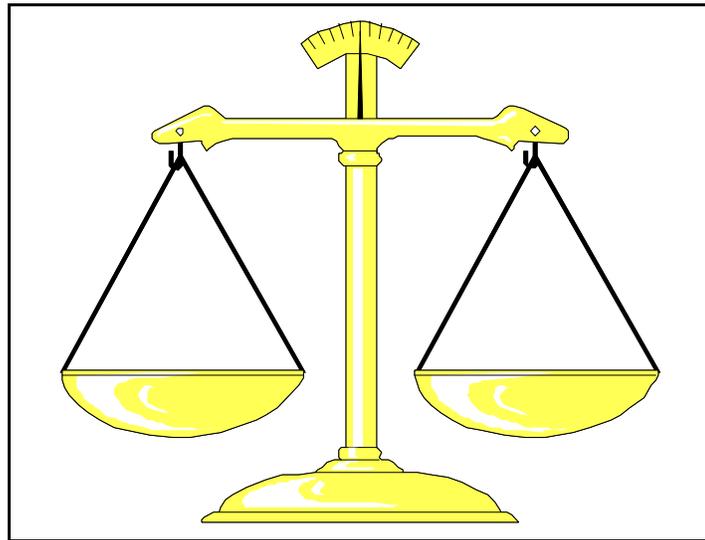


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2008 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 2008***

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION**

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

This report by the Sentencing Commission includes all bills introduced or amended through June 10, 2008. 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, 2008.

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 June 13, 2008.

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 274 – STREET GANG SUPPRESSION ACT [v.5]

STATUTE

§ 14-34.9. Discharging a firearm from within an enclosure.

DESCRIPTION

A person who

1. willfully or wantonly
2. discharges or attempts to discharge
3. a firearm,
4. as part of a pattern of criminal street 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 a provision in HB 274 [v.1] in March, 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: 6/10/08

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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 274 – STREET GANG SUPPRESSION ACT [v.5]

STATUTE

§ 14-50.16. Pattern of criminal street gang activity.

DESCRIPTION

Subdivision (a)(1):

A person who

1. is employed by or associated with a criminal street gang and
2. conducts or participates in
3. a pattern of criminal street gang activity.

“Criminal street gang” is defined as any ongoing organization, association, or group of three or more persons, whether formal or informal, that:

- (1) Has 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,
- (2) May have a common name, common identifying sign or symbol, and has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity.

“Criminal street gang activity” is defined as committing, attempting to commit, or soliciting, coercing, or intimidating another person to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang or street gang. An act or acts are included if accompanied by the necessary mens rea or criminal intent and would be chargeable by indictment under the following laws of this State:

- (1) Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).
- (2) Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

“Pattern of criminal street gang activity” is defined as engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity, that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2008, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity. Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity.

PROPOSED OFFENSE CLASS

Class H felony.

- 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.

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 E felonies. The Commission found that provision to be inconsistent with the Offense Classification Criteria but recommended that it would be consistent with the Offense Classification Criteria for a Class H felony.

This provision is identical to a provision in HB 274 [v.1] which the Commission reviewed in March, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria for 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: 6/10/08

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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 274 – STREET GANG SUPPRESSION ACT [V.5]

STATUTE

§ 14-50.16. Pattern of criminal street gang activity.

DESCRIPTION

Subdivision (a)(2):

A person who

1. is employed by or associated with a criminal street gang and
2. acquires or maintains
3. any interest in or control of any real or personal property
4. through a pattern of criminal street 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 similar 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 E felonies. The Commission found that provision to be inconsistent with the Offense Classification Criteria but recommended that it would be consistent with the Offense Classification Criteria for a Class H felony.

This provision is similar to a provision in HB 274 [v.1] which the Commission reviewed in March, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria for a Class H felony. This version adds the first element.

FINDINGS

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

DATE PREPARED: 6/10/08

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- 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 274 – STREET GANG SUPPRESSION ACT [V.5]

STATUTE

§ 14-50.16. Pattern of criminal street gang activity.

DESCRIPTION

Subsection (a):

Any person who

1. violates subdivision (a)(1) and
2. is an organizer, supervisor, or acts in any other position of management with regard to the criminal street gang.

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.

This provision is similar to a provision in HB 732 which the Commission reviewed in April, 2003, a provision in HB 50 which the Commission reviewed in March, 2005, and a provision in HB 274 [v.1] which the Commission reviewed in March, 2007, except that the provision was a punishment enhancement. The Commission found that provision to be inconsistent with G.S. 164-41.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

Note: Because of the additional element of being an organizer, etc., an offender could be charged with violations of subdivision (a)(1) (see page 2) and this proposed offense.

DATE PREPARED: 6/10/08

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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 274 – STREET GANG SUPPRESSION ACT [V.5]

STATUTE

§ 14-50.17. Soliciting; encouraging participation.

DESCRIPTION

A person who

1. causes, encourages, solicits, or coerces
2. a person 16 years of age or older
3. to participate in criminal street 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 similar 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 and did not have the minimum age requirement. 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.

This provision is similar to a provision in HB 274 [v.1] which the Commission reviewed in March, 2007, except that it did not have the minimum age requirement. The Commission found that provision to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/10/08

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6 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 274 – STREET GANG SUPPRESSION ACT [V.5]

STATUTE

§ 14-50.18. Soliciting; encouraging participation; minor.

DESCRIPTION

A person who

1. causes, encourages, solicits, or coerces
2. a person under 16 years of age
3. to participate in criminal street gang activity.

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.

This provision is similar 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 and did not have the age requirement. 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.

This provision is similar to a provision in HB 274 [v.1] which the Commission reviewed in March, 2007, except that it did not have the age requirement. The Commission found that provision to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

DATE PREPARED: 6/10/08

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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 274 – STREET GANG SUPPRESSION ACT [V.5]

STATUTE

§ 14-50.19. Threats to deter from gang withdrawal.

DESCRIPTION

A person who

1. communicates a threat of injury to a person, or
2. damages the property of another,
3. with the intent to deter a person from assisting another to withdraw from membership 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 similar 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.

This provision is similar to a provision in HB 274 [v.1] which the Commission reviewed in March, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria for 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: 6/10/08

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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 274 – STREET GANG SUPPRESSION ACT [V.5]

STATUTE

§ 14-50.20. Threats of punishment or retaliation.

DESCRIPTION

A person who

1. communicates a threat of injury to a person, or
2. damages the property of another,
3. as punishment or retaliation against a 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 similar 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.

This provision is similar to a provision in HB 274 [v.1] which the Commission reviewed in March, 2007. The Commission found that provision to be consistent with the Offense Classification Criteria for 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: 6/10/08

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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 274 – STREET GANG SUPPRESSION ACT [V.5]

STATUTE

§ 14-50.22. Enhanced offense for criminal gang activity.

DESCRIPTION

A person who

1. is convicted of a misdemeanor 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 conviction level.

PROPOSED: Punished one class higher than the class of the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony.

ANALYSIS

This provision is similar to a provision in HB 50 which the Commission reviewed in March, 2005, and a provision in HB 274 [v.1] which the Commission reviewed in March, 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)). That provision was not limited to misdemeanor 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.

DATE PREPARED: 6/10/08

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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 274 – STREET GANG SUPPRESSION ACT [V.5]

STATUTE

§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony.

DESCRIPTION

A person who

1. is convicted of a Class A, B1, B2, C, D, or E felony and
2. the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and
3. the person actually possessed the firearm or deadly weapon about his or her person.

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.

PUNISHMENT RANGE

CURRENT: Punished according to the class of the offense and the offender’s prior record level. There is no enhancement if the person used, displayed, or threatened to use or display a deadly weapon other than a firearm.

PROPOSED: If any person is convicted of a Class A through E felony and they used, displayed, or threatened to use or display a deadly weapon, their minimum sentence may be increased by 60 months.

ANALYSIS

This bill adds “deadly weapon” to the existing firearm enhancement. The previous version was limited to a felony committed for the benefit of, at the direction of, or in association with any criminal street gang.

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: 6/10/08

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 274: STREET GANG SUPPRESSION ACT [v.5]

PCS 50886-RK-66

AMENDED: MAY 28, 2008

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The proposed bill creates several new felony offenses relating to criminal street gangs and criminal gang activity.

SECTION 2

G.S. 14-34.9. Discharging firearm from within an enclosure.

G.S. 14-34.9 makes it a Class E felony for a person to willfully or wantonly discharge or attempt to discharge a firearm as a part of a pattern of criminal street gang activity from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure. (See Section 3 below for definitions related to “pattern of criminal street gang activity.”)

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 2006/07, 53% of Class E convictions resulted in active sentences, with an average estimated time served of 29 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.

SECTION 3

G.S. 14-50.16. Pattern of criminal street gang activity.

Definitions

The definition of “pattern of criminal street gang activity” makes it unclear how some of the proposed offenses would be charged and their convictions punished. The definition establishes the “pattern” only after two convictions for offenses committed in furtherance of gang involvement and having the “same or similar purposes, results,” etc. It is therefore unclear whether a “pattern” offense (*e.g.*, G.S. 14-50.16) would be charged and result in conviction only as a derivative of a third offense (committed after the two convictions that established the pattern) or if a “pattern” offense could be charged and punished by itself after the second conviction without a new, underlying offense. For purposes of this analysis, it was assumed that the “pattern” offenses would be derivative to, and be charged and result in conviction in concert with, a third offense committed after the two convictions required by G.S. 14-50.16(d).

Potential Pool: Descriptive Information

Due to limitations of the data available, it is not possible to determine who would qualify as a member of a “criminal street gang.” It is possible to determine the potentially eligible felony and misdemeanor convictions based on the proposed definition of “a pattern of criminal street gang activity.”¹

In FY 2006/07 there were 31,711 felony convictions of which 30,276 convictions (or 95%) fell under the statutes included in the proposed definition of “criminal street gang activity.”² Of the 30,276 felony convictions, 22,576 fell in Prior Record Level II or higher, indicating at least one prior conviction.³ Of this potential pool, about 42% (n=9,457) received an active sentence with an average minimum sentence of 30 months.

In FY 2006/07, there were 164,882 misdemeanor convictions of which 95,654 convictions (or 58%) fell under the statutes included in the proposed definition of “criminal street gang activity.”⁴ Of the 95,654 misdemeanor convictions, 50,909 fell in Prior Conviction Level II or higher, indicating at least one prior conviction.⁵ Of this eligible pool, about 30% (n=15,416) received an active sentence with an average sentence length of about 49 days. Table 1 provides the offense class and average sentence imposed for the potential pool.

¹ The proposed definition of “pattern of criminal street gang activity” in the PCS requires prior convictions for at least two prior incidents of “criminal street gang activity.” It is unclear from the bill whether proposed offenses based on a “pattern” of activity may be charged and result in conviction immediately after the second conviction establishing the “pattern” is obtained, or whether the “pattern” offense may be charged and result in conviction only as a derivative of a new (third) offense, subsequent to the two prior convictions. For purposes of this analysis, it is assumed that the latter is required and that conviction for the “pattern”-based offenses will occur only in conjunction with a third offense.

² Convictions with life or death sentences (n=70) were excluded from the potential pool.

³ Because a “pattern of criminal street gang activity” requires that the offender have at least two prior convictions (not necessarily from different sessions of court), every offender who commits a “pattern” offense will have at least one prior conviction episode. Misdemeanants with at least one prior conviction episode must be sentenced in at least Prior Conviction Level II, resulting in the pool of 50,909 convictions from FY 2006/07 to represent the pool of misdemeanants who may be eligible for conviction of the proposed “pattern” offenses. The pool of convicted felons in Prior Record Level II or higher (n=22,576) assumes that the prior convictions that may establish the “pattern” for those offenders included at least one felony or Class A1 or Class 1 misdemeanor (any of which would result in at least one prior record level point, thus placing the offender in Prior Record Level II). However, because the definition of “criminal gang activity” is not limited to felonies or Class A1 or Class 1 misdemeanors, it is possible that an offender may establish a “pattern” of criminal gang activity solely by commission and conviction of Class 2 or Class 3 misdemeanors, which result in no prior record level points. (The definition of “criminal street gang” requires that the gang’s purpose include the commission of “felony offenses,” but that criterion does not appear in the definitions of “criminal street gang activity” or a “pattern” thereof.) It is therefore possible for an offender to be convicted of a “pattern” offense and still be sentenced in Prior Record Level I. It is not known how many of the 7,694 convicted felons in Prior Record Level I for FY 2006/07 also had at least two prior convictions for Class 2 or Class 3 misdemeanors and would therefore be eligible for conviction of the “pattern” offenses of the proposed bill.

⁴ See Footnote 1.

⁵ See Footnote 3.

**Table 1: Potential Pool (PRL/PCL II or Higher)
FY 2006/07**

| Offense Class | Number of Convictions | Average Minimum Sentence Imposed^a |
|-----------------------------|------------------------------|---|
| B1 | 70 | 292 months |
| B2 | 184 | 183 months |
| C | 872 | 95 months |
| D | 501 | 78 months |
| E | 782 | 34 months |
| F | 1,416 | 24 months |
| G | 3,350 | 18 months |
| H | 8,658 | 10 months |
| I | 6,743 | 7 months |
| Felony Subtotal | 22,576 | 30 months |
| A1 | 8,228 | 86 days |
| 1 | 20,204 | 58 days |
| 2 | 13,696 | 31 days |
| 3 | 8,781 | 16 days |
| Misdemeanor Subtotal | 50,909 | 49 days |

^a The average minimum sentence imposed is based on the minimum sentence imposed by the judge in court. Unlike average estimated time served, it does not take into account the percent of sentence served, consecutive sentencing, or credit for time served.

Summary of Estimated Impact

Since G.S. 14-50.16 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 G.S. 14-50.16.

For purposes of this analysis, it was assumed that the offenses are derivative offenses that occur only as the result of a “pattern of criminal street gang activity,” which means that they occur in conjunction with some other offense listed in G.S. 14-50.16(c).

Of the 22,576 felony convictions in Prior Record Level II or higher, 15,833 (70%) were for Class B1 through H offenses and, therefore, may not result in additional prison impact with regard to the derivative Class H offenses if the sentences are run concurrently with the companion offenses from G.S. 14-50.16(c). However, additional convictions for the derivative Class H offenses could result in substantial impact if consecutive sentencing is applied. In FY 2006/07, the average minimum sentence for Class H convictions was 10 months. Each Class B1 through H conviction to which consecutive sentencing is applied under the proposed bill would increase the minimum sentence length by an average of 10 months (*see* Table 1; *e.g.*, Class B1 conviction with a Class H consecutive sentence would be 302 months, Class B2 conviction with a Class H consecutive sentence would be 193 months, etc.).

The remaining 6,743 Class I felony convictions and the 50,909 misdemeanor convictions in the eligible pool could result in substantial prison impact with regard to the derivative Class H offenses, given the large number of potential convictions (n=57,652) affected. For the Class I felony convictions, additional convictions for the new Class H offenses could result in an additional three months if the sentences are run concurrently and an additional 10 months if the sentences are run consecutively. For the

misdemeanor convictions, additional convictions for the new Class H offenses could result in an additional 8 months (based on the average of 49 days or almost two months) if the sentences are concurrent and an additional 10 months if the sentences are consecutive.

The impact of the derivative Class F felony under G.S. 14-50.16(a) would depend on the offense class for the companion offense and whether the sentences are run concurrently or consecutively.

G.S. 14-50.16(a)(1)

G.S. 14-50.16(a)(1) makes it a Class H felony for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity. It is assumed for purposes of this analysis that the “pattern of criminal street gang activity” may be charged and result in conviction only as a derivative of a new (third) offense subsequent to the two prior convictions for criminal gang activity, as described in the proposed G.S. 14-50.16(d). Convictions for the offense of subsection (a)(1) therefore would occur in addition to convictions for other, companion offenses (both misdemeanor and felony).

The impact of the derivative Class H offense on the prison population would depend on the offense class for the companion offense and whether the sentences are run concurrently or consecutively (*see above Summary of Estimated Impact and Table 1*).

- For the 15,833 Class B1 through H convictions in the eligible pool, additional convictions for the derivative Class H offenses may not result in additional prison impact if the sentences are run concurrently, but could result in substantial impact if consecutive sentencing is applied.
- For the 6,743 Class I convictions and the 50,909 misdemeanor convictions in the eligible pool, additional convictions for the derivative Class H offenses may result in additional prison impact. The impact would vary depending on whether sentences are run concurrently or consecutively. The following threshold analyses assume that sentences are run concurrently. However, the impact would be greater if any sentences are run consecutively.
 - If, for example, it is assumed that 509 misdemeanor convictions (1% of the potentially eligible misdemeanor convictions) would result in a Class H conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 152 additional prison beds the first year and 310 additional prison beds the second year.
 - If, for example, it is assumed that 67 Class I convictions (1% of the potentially eligible Class I convictions) would result in a Class H conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 14 additional prison beds the first year and 21 additional prison beds the second year.

G.S. 14-50.16(a)(2)

G.S. 14-50.16(a)(2) makes it a Class H felony for a person employed by or associated with a criminal street gang to acquire or maintain any interest in or control of any real or personal property through a pattern of criminal street gang activity. It is assumed for purposes of this analysis that the “pattern of criminal street gang activity” may be charged and result in conviction only as a derivative of a new (third) offense subsequent to the two prior convictions for criminal gang activity, as described in the

proposed G.S. 14-50.16(d). Convictions for the derivative offense of subsection (a)(2) therefore would occur in addition to convictions for other, companion offenses (both misdemeanor and felony).

The impact of the derivative Class H offense on the prison population would depend on the offense class for the companion offense and whether the sentences are run concurrently or consecutively (*see* above Summary of Estimated Impact and Table 1).

- For the 15,833 Class B1 through H convictions in the eligible pool, additional convictions for the derivative Class H offenses may not result in additional prison impact if the sentences are run concurrently, but could result in substantial impact if consecutive sentencing is applied.
- For the 6,743 Class I convictions and the 50,909 misdemeanor convictions in the eligible pool, additional convictions for the derivative Class H offenses may result in additional prison impact. The impact would vary depending on whether sentences are run concurrently or consecutively. The following threshold analyses assume that sentences are run concurrently. However, the impact would be greater if any sentences are run consecutively.
 - If, for example, it is assumed that 509 misdemeanor convictions (1% of the potentially eligible misdemeanor convictions) would result in a Class H conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 152 additional prison beds the first year and 310 additional prison beds the second year.
 - If, for example, it is assumed that 67 Class I convictions (1% of the potentially eligible Class I convictions) would result in a Class H conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 14 additional prison beds the first year and 21 additional prison beds the second year.

G.S. 14-50.16(a)

G.S. 14-50.16(a) makes it a Class F felony for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal street gang activity as an organizer, supervisor, or in any other position of management with regard to a criminal street gang. It is assumed for purposes of this analysis that the “pattern of criminal street gang activity” may be charged and result in conviction only as a derivative of a new (third) offense subsequent to the two prior convictions for criminal gang activity, as described in the proposed G.S. 14-50.16(d). Convictions for the offense of subsection (a) therefore would occur in addition to convictions for other, companion offenses (both misdemeanor and felony).

The impact of the derivative Class F offense on the prison population would depend on the offense class for the companion offense and whether the sentences are run concurrently or consecutively (*see* above Summary of Estimated Impact and Table 1).

- For the 3,825 Class B1 through F convictions in the eligible pool, additional convictions for the derivative Class F offense may not result in additional prison impact if the sentences are run concurrently, but could result in substantial impact if consecutive sentencing is applied.
- For the 18,751 Class G through I convictions and the 50,909 misdemeanor convictions in the eligible pool, additional convictions for the derivative Class F offense may result in additional prison impact. The impact would vary depending on whether sentences are run concurrently or

consecutively. The following threshold analyses assume that sentences are run concurrently. However, the impact would be greater if any sentences are run consecutively.

- If, for example, it is assumed that 509 misdemeanor convictions (1% of the potentially eligible misdemeanor convictions) would result in a Class F conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 263 additional prison beds the first year and 570 additional prison beds the second year.
- If, for example, it is assumed that 67 Class I convictions (1% of the potentially eligible Class I convictions) would result in a Class F conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 29 additional prison beds the first year and 55 additional prison beds the second year.
- If, for example, it is assumed that 87 Class H convictions (1% of the potentially eligible Class H convictions) would result in a Class F conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 19 additional prison beds the first year and 45 additional prison beds the second year.
- If, for example, it is assumed that 34 Class G convictions (1% of the potentially eligible Class G convictions) would result in a Class F conviction as the most serious conviction under this proposal, the combination of active sentences and probation revocations would result in the need for 3 additional prison beds the first year and 9 additional prison beds the second year.

G.S. 14-50.17. Soliciting; encouraging participation.

G.S. 14-50.17 makes it a felony for a person to cause, encourage, solicit, or coerce a person 16 years of age or older to participate in criminal street gang activity. Violation of this section is a Class H felony. Since G.S. 14-50.17 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 G.S. 14-50.17.

In FY 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 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. 14-50.18. Soliciting; encouraging participation; minor.

G.S. 14-50.18 makes it a felony for a person to cause, encourage, solicit, or coerce a person under 16 years of age to participate in criminal street gang activity. Violation of this section is a Class F felony. Since G.S. 14-50.18 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 G.S. 14-50.18.

In FY 2006/07, 51% 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. 14-50.19. Threats to deter from gang withdrawal.

G.S. 14-50.19 makes it a Class H felony for a person to communicate a threat of injury to a person, or to damage the property of another, with the intent to deter a person from assisting another to withdraw from membership in a criminal street gang. Since G.S. 14-50.19 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 G.S. 14-50.19.

Persons eligible for conviction of this offense may include some portion of those currently convicted of the offenses listed below. The proposed offense does not encompass all conduct covered by the listed offenses because of some differences in the elements of each (*e.g.*, “communicating threats” requires that the victim actually believe the threat may be carried out, which the proposed offense does not, but the proposed offense applies only in the context of threats against those who help gang members defect).

**Table 2: Persons Eligible for Conviction under G.S. 14-50.19
FY 2006/07**

| G.S. | Description | Class | Number of Convictions |
|--------------|--|--------------|------------------------------|
| 14-16.7 | Threats against executive, legislative or court officers | 1 | 5 |
| 14-196(a)(2) | Threatening phone call | 2 | 196 |
| 14-196.3 | Cyberstalking ⁶ | 2 | 18 |
| 14-277.1 | Communicating threats | 1 | 2,861 |
| 14-394 | Anonymous or threatening letters, mailing or transmitting ⁷ | 1 | No AOC code |
| 14-127 | Injury to real property | 1 | 1,284 |
| 14-160 | Injury to personal property | 2,1 | 2,101 |

It is not known how many of the convictions in Table 2 would become Class H felonies under this proposed subsection.

In FY 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 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.

It is possible that convictions for this offense could be treated as separate offenses pursuant to G.S. 14-50.21. In that case, convictions may not result in additional prison impact if the sentences are run concurrently, but could result in substantial impact if consecutive sentencing is applied.

G.S. 14-50.20. Threats of punishment or retaliation.

⁶ The AOC has a single offense code for cyberstalking, which includes four distinct offenses. The proposed offense encompasses only one of those four.

⁷ G.S. 14-394 prohibits several forms of threatening or harassing communications, including to corporate victims. Only convictions reflecting communications to individuals would be eligible for conviction under the proposed offense. The AOC currently does not have a specific offense code for violations of G.S. 14-394. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

G.S. 14-50.20 makes it a Class H felony for a person to communicate a threat of injury to a person, or to damage the property of another, as punishment or retaliation against a person for having withdrawn from a criminal street gang. Since G.S. 14-50.20 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 G.S. 14-50.20.

Persons eligible for conviction of this offense may include some portion of those currently convicted of the offenses listed below. The proposed offense does not encompass all conduct covered by the listed offenses because of some differences in the elements of each (*see* section 19, above).

Table 3: Persons Eligible for Conviction under G.S. 14-50.20
FY 2006/07

| G.S. | Description | Class | Number of Convictions |
|--------------|--|-------|-----------------------|
| 14-16.7 | Threats against executive, legislative or court officers | I | 5 |
| 14-196(a)(2) | Threatening phone call | 2 | 196 |
| 14-196.3 | Cyberstalking ⁸ | 2 | 18 |
| 14-277.1 | Communicating threats | 1 | 2,861 |
| 14-394 | Anonymous or threatening letters, mailing or transmitting ⁹ | 1 | No AOC code |
| 14-127 | Injury to real property | 1 | 1,284 |
| 14-160 | Injury to personal property | 2,1 | 2,101 |

It is not known how many of the convictions in Table 3 would become Class H felonies under this proposed section.

In FY 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 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.

It is possible that convictions for this offense could be treated as separate offenses pursuant to G.S. 14-50.21. In that case, convictions may not result in additional prison impact if the sentences are run concurrently, but could result in substantial impact if consecutive sentencing is applied.

G.S. 14-50.22. Enhanced offense for criminal gang activity.

G.S. 14-50.22 enhances the sentence for a misdemeanor offense by one offense class if it was committed for the benefit of, at the direction of, or in association with, any criminal street gang. Class A1 misdemeanors would be enhanced to Class I felonies under this provision.

⁸ The AOC has a single offense code for cyberstalking, which includes four distinct offenses. The proposed offense encompasses only one of those four.

⁹ G.S. 14-394 prohibits several forms of threatening or harassing communications, including to corporate victims. Only convictions reflecting communications to individuals would be eligible for conviction under the proposed offense. The AOC currently does not have a specific offense code for violations of G.S. 14-394. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In FY 2006/07 there were 164,882 misdemeanor convictions – 14,010 Class A1, 96,286 Class 1, 29,735 Class 2, and 24,851 Class 3 convictions. It is not known how many of these convictions involved an offense committed for the benefit of, at the direction of, or in association with, any criminal street gang. As such, it is not possible to determine how many convictions would be affected by this proposal or to determine the impact of this proposal. However, enhancing a defendant's sentence by raising it one offense class higher than the class of the committed misdemeanor offense will, in general, increase the defendant's likelihood of receiving an active sentence and increase the chance of receiving a longer sentence that would result in the need for additional jail and prison beds.

Any Class 1, Class 2, or Class 3 misdemeanor convictions that would be raised one offense class higher (to Class A1, Class 1, or Class 2, respectively) could result in the need for additional jail beds (sentence of 90 days or less) or prison beds (sentence greater than 90 days).

Any Class A1 misdemeanor convictions raised to Class I felony convictions would result in the need for additional prison beds. In FY 2006/07, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months.

- If, for example, there were 12 Class A1 misdemeanor convictions per year that were raised to Class I felonies, 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.
- If, for example, it is assumed that 140 Class A1 misdemeanor convictions (1% of Class A1 misdemeanor convictions) would be raised to Class I felonies, the combination of active sentences and probation revocations would result in the need for 13 additional prison beds the first year and 42 additional prison beds the second year.

SECTION 5

Section 5 amends G.S. 15A-1340.16A (the firearm enhancement) such that the minimum sentence imposed upon conviction for a Class A, B1, B2, C, D, or E felony would be enhanced 60 months if the offender committed the felony by using, displaying, or threatening the use or display of, and actually possessed about his or her person, a deadly weapon. The enhancement would not apply if evidence of the use, display, or threatened use or display of the deadly weapon is needed to prove an element of the offense or if the person is not sentenced to active imprisonment. This new enhancement for deadly weapons is not limited to gang-related offenses.

In FY 2006/07 the current firearm enhancement, as defined in G.S. 15A-1340.16A, was not applied to any convictions. For this analysis, it was assumed that the proposed amendment to expand the enhancement to deadly weapons would not affect the application of the enhancement as it exists under current law.

In FY 2006/07, there were 3,552 Class A through E convictions.¹⁰ Of these convictions, 1,294 had a deadly weapon-related conviction as the most serious conviction, and, therefore, would not be eligible for the proposed deadly weapon enhancement. The identifiable eligible pool for the proposed enhancement would be comprised of 375 convictions that had accompanying charges or additional convictions for deadly weapon-related offenses. It is important to note that the eligible pool does not

¹⁰ The following were excluded from the Class A through Class E convictions: 1) 70 convictions that resulted in a life without parole or death sentence (Class A, violent habitual felons, and Class B1 in PRL V or VI sentenced in the aggravated range), and 2) 576 habitual felons who had a Class F through Class I felony as their most serious underlying conviction.

include situations in which the use, display, or threatened use or display of a deadly weapon did not result in separate charges or convictions.

It is not possible to estimate the impact of the proposed deadly weapon enhancement since it is not known how many convictions in the eligible pool would receive the 60-month enhancement. The proposed deadly weapon enhancement would result in additional prison impact for each conviction to which it would be applied (*see* Table 4 for the offense class distribution and average sentence imposed for the eligible pool). Short-term impact (*i.e.*, within the 10-year projection period) would result from the application of the proposed enhancement to Class C, D, and E convictions whose minimum sentences are currently less than 10 years. Long-term impact (*i.e.*, beyond the 10-year projection period) would result from the application of the proposed enhancement to convictions whose minimum sentences are currently greater than 10 years.

**Table 4: Eligible Pool for Deadly Weapon Enhancement
FY 2006/07**

| Offense Class | Number of Convictions | Average Minimum Sentence Imposed for Active Sentences (Months) |
|----------------------|------------------------------|---|
| B1 | 8 | 325 |
| B2 | 93 | 172 |
| C | 84 | 102 |
| D | 47 | 69 |
| E | 143 | 30 |
| Total | 375 | 107 |

CURRENT LAW REGARDING CRIMINAL STREET GANG CONDUCT

G.S. 15A-1340.16(d) lists aggravating factors that can be applied to felony sentences under Structured Sentencing. Under G.S. 15A-1340.16(d)(2a), it is an aggravating factor if:

The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A “criminal street gang” means 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 felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

The Administrative Office of the Courts’ Automated Criminal Infraction System does not contain data on the application of aggravating or mitigating factors, so it is not known how often this factor is currently used.

GANG DATA FROM THE DEPARTMENT OF CORRECTION¹¹

Since 1996, the Division of Prisons (DOP) has been using procedures to monitor and identify inmates who are members of gangs. In July 2005, the Division of Community Corrections (DCC) adopted DOP's procedures for identifying gang members. This information is maintained in the Department of Correction's (DOC's) management information system (OPUS).

Note: In North Carolina, offenders sentenced to active terms of greater than 90 days are incarcerated in the state prison system, while offenders who are sentenced to active terms of 90 days or less are incarcerated in county jail. Currently, each jail maintains its own data and there is not a statewide automated jail data system. As such, comparable information is not available regarding inmates in county jails who are gang members.

Current Prison and Probation Populations: May 24, 2008

On May 24, 2008, there were 30,172 felons and 1,610 misdemeanants sentenced under the Structured Sentencing Act in North Carolina's prison system. Of these 30,172 inmates, 2,172 (7%) were identified as gang affiliated. Of the 2,172 gang affiliated inmates, 70% were Class A-E felons, 16% were Class F-G felons, 13% were Class H-I felons, and approximately 1% were misdemeanants. Of these inmates, 1,541 (71%) were in Prior Record/Conviction Level II or higher.

On May 24, 2008, there were 37,999 felons and 51,559 misdemeanants sentenced under the Structured Sentencing Act who were under the supervision of DCC. Of these 89,558 offenders supervised in the community, 667 (0.7%) were identified as gang affiliated. Of the 667 gang affiliated offenders, 48% were felons and 52% were misdemeanants. Of these offenders, 371 (56%) were in Prior Record/Conviction Level II or higher.

Prison and Probation Entries: FY 2005/06

In FY 2005/06, there were 17,296 felony and 6,258 misdemeanor prison entries for offenders sentenced under the Structured Sentencing Act. Of these 23,554 prison entries, 808 (3%) were identified as gang affiliated. Of the 808 gang affiliated prison entries, 31% were Class A-E felons, 25% were Class F-G felons, 35% were Class H-I felons, and 9% were misdemeanants. Of these prison entries, 587 (73%) were in Prior Record/Conviction Level II or higher.

In FY 2005/06, there were 18,519 felony and 34,969 misdemeanor probation entries for offenders sentenced under the Structured Sentencing Act. Of these 53,448 probation entries, 401 (0.7%) were identified as gang affiliated. Of the 401 gang affiliated probation entries, 24% were Class A-E felons, 8% were Class F-G felons, 25% were Class H-I felons, and 43% were misdemeanants. Of these probation entries, 194 (48%) were in Prior Record/Conviction Level II or higher.

¹¹ The data provided in this section is based on a statistical memo prepared by the Department of Correction's Office of Research and Planning at the Sentencing Commission's request.

22 SOURCES: NC Sentencing and Policy Advisory Commission, FY 2006/07 Felony and Misdemeanor Simulation Data; FY 2006/07 Delinquent Disposition Simulation Data.

ADDITIONAL YOUTH DEVELOPMENT CENTER POPULATION ABOVE THAT PROJECTED UNDER THE JUVENILE CODE

Juvenile Eligibility for “Pattern” Gang Offenses

As with the adult impact analysis, the eligibility for adjudication of a “pattern” offense assumes that the pattern offense would be charged and eligible for adjudication only as a derivative offense to a separate (third) offense that occurred after the two prior offenses that established the pattern.

However, it is unclear whether juveniles would be eligible for the “pattern” offenses in the bill at all. The current definition of a “pattern of criminal street gang activity” (G.S. 14-50.16(d)) requires two prior incidents of criminal street gang activity that resulted in “conviction.” For a juvenile still within the jurisdiction of the juvenile court, prior offenses could have resulted only in “adjudication” as a delinquent. Per G.S. 7B-2412, prior adjudication as a delinquent “shall [not] be considered conviction of any criminal offense... .”

Juvenile Dispositions and Consolidated Sentencing

Where the adult prison impact analysis of this bill addressed consolidated versus consecutive sentencing, the juvenile YDC impact analysis does not. If a juvenile is adjudicated of more than one offense during a session of juvenile court, the court must consolidate the offenses for disposition and impose a single disposition for the consolidated offenses. The disposition must be specified for the class of offense and delinquency history level of the most serious offense.

Transfers to Superior Court

A juvenile 13 or older charged with any felony may be transferred to Superior Court for trial as an adult. Because all of the substantive offenses in the bill are felonies, expanding the bill’s pool of potential offenders to include juveniles would permit transfer to Superior Court for any juvenile 13 or older charged with any of the substantive felonies in the bill. This is true even for the “pattern” offenses in the bill when the accompanying third offense (after the two priors that establish the pattern) is a misdemeanor, because the pattern offenses are all separate substantive felonies (G.S. 14-50.21). However, it is not known how many juveniles would be transferred due to this bill and, therefore, it is not possible to project the impact of transferred cases.¹² This analysis assumes none of these cases would be transferred to Superior Court.

Pattern of Criminal Street Gang Activity

Potential Pool: Descriptive Information

In FY 2006/07, there were 7,973 juvenile delinquent dispositions extracted from NC-JOIN, the management information system of the Department of Juvenile Justice and Delinquency Prevention. Of the 7,973 delinquent dispositions, 2,822 (or 35%) had a current adjudication for one of the offenses included in the proposed definition of “criminal street gang activity” and had one or more prior

¹² It is also unclear whether the analysis for adult impact of the PCS, which assumed Prior Record Level II or higher for the pool of potential offenders under the “pattern” offenses, would be applicable to transferred juveniles. Because offenses for which a juvenile was adjudicated delinquent cannot be counted for prior record points in felony sentencing, juveniles transferred for offenses under the bill would be highly unlikely to have prior adult criminal convictions, and therefore would be sentenced in Prior Record Level I.

delinquency history points, indicating at least one prior delinquent adjudication and, thus, providing some indication of a “pattern of criminal street gang activity.”¹³ (See Table 1.)

In FY 2006/07, 963 (or 12%) of the 7,973 cases were identified as juveniles that either associated with a gang or were a gang member. This data is based on the information entered into NC-JOIN from the Risk Assessment and is self-reported by the juvenile or by a responsible adult.¹⁴ These 963 “gang association” cases are the closest representation to the bill’s definition of “criminal street gang” that the data provide (see Table 1).

Of the 963 “gang association” cases, 440 had a current adjudication for one of the offenses included in the proposed definition of “pattern of criminal street gang activity” and one or more prior delinquency history points, indicating at least one prior delinquent adjudication. Overall, this group was more serious and/or criminally persistent in terms of offense level and delinquency history level compared to the 7,973 delinquent dispositions in FY 2006/07. As a result, a higher proportion of this group was committed to a YDC relative to the overall group of juveniles. (See Table 1.)

**Table 1: Description of the Potential Pool of Delinquent Dispositions for Juveniles
FY 2006/07**

| | Total Dispositions | | Adjudicated for an Eligible Offense & at Least One Prior Adjudication* | | Identified with a Gang Association | | | |
|--|--------------------|------|--|------|------------------------------------|------|--|------|
| | | | | | Total Dispositions | | Adjudicated for an Eligible Offense & at Least One Prior Adjudication* | |
| | (n=7,973) | | (n=2,822) | | (n=963) | | (n=440) | |
| | # | % | # | % | # | % | # | % |
| Offense Classification | | | | | | | | |
| Violent Class A-E Fel. | 249 | 3.1 | 113 | 4.0 | 55 | 5.7 | 35 | 7.9 |
| Serious Class F-I Fel, Class A1 Misd | 2,414 | 30.3 | 911 | 32.3 | 351 | 36.5 | 167 | 38.0 |
| Minor Class 1-3 Misd. | 5,310 | 66.6 | 1,798 | 63.7 | 557 | 57.8 | 238 | 54.1 |
| Delinquency History Level | | | | | | | | |
| Low 0-1 Points | 5,781 | 72.5 | 927* | 32.9 | 553 | 57.4 | 100* | 22.7 |
| Medium 2-3 Points | 1,159 | 14.5 | 1,030 | 36.5 | 170 | 17.7 | 153 | 34.8 |
| High 4+ Points | 1,033 | 13.0 | 865 | 30.6 | 240 | 24.9 | 187 | 42.5 |
| Disposition Level | | | | | | | | |

¹³ The proposed definition of “pattern of criminal street gang activity” refers to a sequence of “offenses.” For this analysis, it is assumed that “offenses” mean “adjudications” and the juvenile is eligible at the time he or she is adjudicated for their third offense. Note that information about the specific prior adjudicated offenses was not available. Although most criminal offenses are covered in the definition of “a pattern of criminal street gang activity,” it is possible that the group includes cases with a prior adjudication involving offenses that fall outside the definition.

¹⁴ The Risk Assessment’s definition of the term “gang” is broader than the definition under the proposed bill. For purposes of evaluating peer relationships, the Risk Assessment defines a gang as “an organized, recognized group which has illegal activity as part of its purpose.” (Source: Risk and Needs Assessment Procedures, DJJDP)

| | | | | | | | | |
|------------------------------------|-------|------|-------|------|-----|------|-----|------|
| Level 1 Community | 5,568 | 69.8 | 1,430 | 50.7 | 525 | 54.5 | 172 | 39.1 |
| Level 2 Intermediate | 2,149 | 27.0 | 1,205 | 42.7 | 332 | 34.5 | 192 | 43.6 |
| Level 3 Commitment (YDC) | 256 | 3.2 | 187 | 6.6 | 106 | 11.0 | 76 | 17.3 |

SECTION 2

G.S. 14-34.9. Discharging firearm from within an enclosure.

G.S. 14-34.9 makes it a Class E felony for a person to willfully or wantonly discharge or attempt to discharge a firearm as a part of a pattern of criminal street gang activity from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure. Juveniles who violated the proposed section would be adjudicated of a Class E (Violent level) offense.

Since this is a new offense, the Sentencing Commission does not have any historical data with which to estimate the impact of this proposed section on the YDC population.

Of the 440 “gang association” delinquent dispositions that met the “pattern of criminal street gang activity” criteria and had one or more prior delinquency history points, 35 (or almost 8%) were adjudicated with a Violent level (Class A through Class E) offense. Of the 35 cases, the delinquency history level distribution was as follows: 5 (14%) Low; 10 (29%) Medium; and 20 (57%) High. Seventy-one percent (n=25) were committed to a YDC as a result of their current adjudication. In FY 2006/07, the average length of stay in a YDC for juveniles adjudicated delinquent with a Violent level offense was 17.2 months.

SECTION 3

Summary of Estimated Impact

The offenses under section G.S. 14-50.16 are derivative offenses that occur only as the result of a “pattern of criminal street gang activity,” which means that they occur in conjunction with some other offense listed in G.S. 14-50.16(c). The text for individual subsections below gives the potential YDC impact of each provision based on its status as a derivative offense.

For G.S. 14-50.16(a)(1), G.S. 14-50.16(a)(2), and G.S. 14-50.16(a), YDC impact analyses was completed. By using the Risk Assessment data in NC-JOIN, an eligible pool (n=440) was identified with a “gang association.” This pool also had a “pattern of criminal street gang activity” (*see* Descriptive Information section for details). The impact of the derivative Class H or Class F (Serious level) offense on the YDC population would depend on the offense level for the companion offense. The shift from Minor offense level (Class 1 through Class 3 offenses) to Serious offense level is where the YDC impact occurs. Table 2 provides a summary of YDC impact for subsections (a)(1), (a)(2) and (a).

Table 2: Summary of Additional YDC Population Above that Projected

| Fiscal Year | G.S. 14-50.16(a)(1) Reclassify Minor to Serious (Class H) | G.S. 14-50.16(a)(2) Reclassify Minor to Serious (Class H) | G.S. 14-50.16(a) Reclassify Minor to Serious (Class F) |
|--------------------|--|--|---|
| Year 1 | 37 | 37 | 37 |
| Year 2 | 43 | 43 | 43 |
| Year 3 | 37 | 37 | 37 |
| Year 4 | 42 | 42 | 42 |
| Year 5 | 42 | 42 | 42 |

NOTES:

1. Assumes effective for crimes committed on or after 12/1/2008. Based on this effective date, Fiscal Year 2009/10 would represent the first full year of impact.
2. Assumes no changes in judicial or prosecutorial behavior.
3. Assumes no deterrent or incapacitative effects.

The estimated YDC impact for the stand-alone offenses in G.S. 14-50.17-20 is unknown. Of the 7,973 juvenile delinquent dispositions, 2,414 (or 30%) were adjudicated with a Serious level (Class F through Class A1) offense. Six percent (n=155) were committed to a YDC as a result of their current adjudication. In FY 2006/07, the average length of stay in a YDC for juveniles adjudicated delinquent with a Serious level offense was 11.5 months. The commitment rate for juveniles adjudicated with a Minor level offense is lower than juveniles adjudicated with a Serious level offense; therefore, YDC impact is expected.

G.S. 14-50.16. Pattern of criminal street gang activity.

G.S. 14-50.16(a)(1)

G.S. 14-50.16(a)(1) makes it a Class H felony for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity. A juvenile adjudicated for this offense would be disposed in the Serious offense level.

It is assumed for purposes of this analysis that “gang association” data extracted from NC-JOIN indicates “criminal street gang.” It also assumed that the “pattern of criminal street gang activity” may be prosecuted and adjudicated only as a derivative of a new (third) offense subsequent to the two prior adjudications for criminal gang activity, as described in the proposed G.S. 14-50.16(d). Adjudications for the offense in subsection (a)(1), therefore, would occur in addition to adjudications for other, companion offenses (both misdemeanor and felony).

The eligible pool used to determine the impact on the YDC population is the 440 cases identified with a “gang association” and a “pattern of criminal street gang activity.” (See Table 1 for descriptive information.)

Because juvenile offenses are consolidated for disposition, the impact of the derivative Class H (Serious level) offense on the YDC population would depend on the offense level for the companion offense. Therefore, the shift from Minor offense level (Class 1 through Class 3 offenses) to Serious offense level is where the YDC impact would occur.

- For the 35 Violent level (Class A through Class E) cases adjudicated delinquent in the eligible pool, additional delinquent adjudications for the derivative Serious (Class H) offense may not result in additional YDC impact.
- For the 167 Serious Level (Class F through Class A1) cases adjudicated delinquent in the eligible pool, additional delinquent adjudications for the derivative Serious (Class H) offense may not result in additional YDC impact.¹⁵
- For the 235 Minor level (Class 1 through Class 3) offenses that would be reclassified as the derivative Serious level (Class H) offense, the projected YDC impact is shown in Table 3.

Table 3: Reclassify Minor Level to Serious Level (Class H)

| Fiscal Year | Additional YDC Population Above That Projected |
|--------------------|---|
| Year 1 | 37 |
| Year 2 | 43 |
| Year 3 | 37 |
| Year 4 | 42 |
| Year 5 | 42 |

NOTES:

1. Assumes effective for crimes committed on or after 12/1/2008. Based on this effective date, Fiscal Year 2009/10 would represent the first full year of impact.
2. Assumes no changes in judicial or prosecutorial behavior.
3. Assumes no deterrent or incapacitative effects.

G.S. 14-50.16(a)(2)

G.S. 14-50.16(a)(2) makes it a Class H felony for a person employed by or associated with a criminal street gang to acquire or maintain any interest in or control of any real or personal property through a pattern of criminal street gang activity. A juvenile adjudicated for this offense would be disposed in the Serious offense level.

The derivative offense of subsection (a)(2) requires a “pattern of criminal street gang activity.” It is assumed for purposes of this analysis that “gang association” data extracted from NC-JOIN indicates criminal gang activity. It also assumed that the “pattern of criminal street gang activity” may be prosecuted and adjudicated only as a derivative of a new (third) offense subsequent to the two prior adjudications for criminal gang activity, as described in the proposed G.S. 14-50.16(d). Adjudications for the offense in subsection (a)(2), therefore, would occur in addition to adjudications for other, companion offenses (both misdemeanor and felony).

¹⁵ The YDC simulation model, which uses YDC length of stay and disposition levels, is based on the offense level, not the offense class. Therefore, the 68 Class I and Class A1 delinquent dispositions would show no impact based on the proposed amendment, but could result in YDC impact if the judge chooses the more serious disposition level because of the higher offense class.

The eligible pool used to determine the impact on the YDC population is the 440 cases identified with a “gang association” and a “pattern of criminal street gang activity.” (See Table 1 for descriptive information.)

Because juvenile offenses are consolidated for disposition, the impact of the derivative Class H (Serious level) offense on the YDC population would depend on the offense level for the companion offense. Therefore, the shift from Minor offense level (Class 1 through Class 3 offenses) to Serious offense level is where the YDC impact would occur.

- For the 35 Violent level (Class A through Class E) cases adjudicated delinquent in the eligible pool, additional delinquent adjudications for the derivative Serious (Class H) offense may not result in additional YDC impact.
- For the 167 Serious Level (Class F through Class A1) cases adjudicated delinquent in the eligible pool, additional delinquent adjudications for the derivative Serious (Class H) offense may not result in additional YDC impact.¹⁶
- For the 235 Minor level (Class 1 through Class 3) offenses that would be reclassified as the derivative Serious level (Class H) offense, the projected YDC impact is shown in Table 4.

Table 4: Reclassify Minor Level to Serious Level (Class H)

| Fiscal Year | Additional YDC Population Above That Projected |
|--------------------|---|
| Year 1 | 37 |
| Year 2 | 43 |
| Year 3 | 37 |
| Year 4 | 42 |
| Year 5 | 42 |

NOTES:

1. Assumes effective for crimes committed on or after 12/1/2008. Based on this effective date, Fiscal Year 2009/10 would represent the first full year of impact.
2. Assumes no changes in judicial or prosecutorial behavior.
3. Assumes no deterrent or incapacitative effects.

G.S. 14-50.16(a)

G.S. 14-50.16(a) makes it a Class F felony for a person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal street gang activity as an organizer, supervisor, or in any other position of management with regard to a criminal street gang.

¹⁶ The YDC simulation model, which uses YDC length of stay and disposition levels, is based on the offense level, not the offense class. Therefore, the 68 Class I and Class A1 delinquent dispositions would show no impact based on the proposed amendment, but could result in YDC impact if the judge chooses the more serious disposition level because of the higher offense class.

Since there are no data available to identify a person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang, the eligible pool used to determine the impact on the YDC population is the 440 cases identified with a “gang association” and a “pattern of criminal street gang activity.” (See Table 1 for descriptive information.)

Because juvenile offenses are consolidated for disposition, the impact of the derivative Class F (Serious level) offense on the YDC population would depend on the offense level for the companion offense. Therefore, the shift from Minor offense level (Class 1 through Class 3 offenses) to Serious offense level is where the YDC impact would occur.

- For the 35 Violent level (Class A through Class E) cases adjudicated delinquent in the eligible pool, additional delinquent adjudications for the derivative Serious (Class F) offense may not result in additional YDC impact.
- For the 167 Serious Level (Class F through Class A1) cases adjudicated delinquent in the eligible pool, additional delinquent adjudications for the derivative Serious (Class F) offense may not result in additional YDC impact.¹⁷
- For the 235 Minor level (Class 1 through Class 3) offenses that would be reclassified as the derivative Serious level (Class F) offense, the projected YDC impact is shown in Table 5.

Table 5: Reclassify Minor Level to Serious Level (Class F)

| Fiscal Year | Additional YDC Population Above That Projected |
|--------------------|---|
| Year 1 | 37 |
| Year 2 | 43 |
| Year 3 | 37 |
| Year 4 | 42 |
| Year 5 | 42 |

NOTES:

1. Assumes effective for crimes committed on or after 12/1/2008. Based on this effective date, Fiscal Year 2009/10 would represent the first full year of impact.
2. Assumes no changes in judicial or prosecutorial behavior.
3. Assumes no deterrent or incapacitative effects.

G.S. 14-50.17. Soliciting; encouraging participation.

G.S. 14-50.17 makes it a Class H (Serious Level) felony for a person to cause, encourage, solicit, or coerce a person 16 years of age or older to participate in criminal street gang activity. This is a stand-alone offense, and does not require a prior pattern of criminal street gang activity.

¹⁷ The YDC simulation model which uses YDC length of stay and disposition levels is based on the offense level, not the offense class. Therefore, the 162 Class G through Class A1 delinquent dispositions would show no impact based on the proposed amendment, but could result in YDC impact if the judge chooses the more serious disposition level because of the higher offense class.

It should be noted that there is no requirement that the person solicited be younger than the offender. Therefore, for example, a juvenile 15 years old would be eligible for adjudication for the Class H (Serious level) version of this offense for soliciting participation in gang activity for a 17-year old.

The Sentencing Commission does not have any historical data with which to estimate the impact of this amendment on the YDC population.

Of the 7,973 juvenile delinquent dispositions in FY 2006/07, 2,414 (or 30%) were adjudicated with a Serious level (Class F through Class A1) offense. Of the 2,414 cases, the delinquency history level distribution is as follows: 1,528 (63%) Low; 408 (17%) Medium; and 478 (20%) High. Six percent (n=155) were committed to a YDC as a result of their current adjudication. In FY 2006/07, the average length of stay in a YDC for juveniles adjudicated delinquent with a Serious level offense was 11.5 months.

G.S. 14-50.18. Soliciting; encouraging participation; minor.

G.S. 14-50.18 makes it a Class F (Serious Level) felony for a person to cause, encourage, solicit, or coerce a person under 16 years of age to participate in criminal street gang activity. This is a stand-alone offense, and does not require a prior pattern of criminal street gang activity.

It should be noted that there is no requirement that the person solicited be younger than the offender. Therefore, for example, a juvenile 12 years old would be eligible for adjudication for the Class F (Serious level) version of this offense for soliciting participation in gang activity for a 15-year old.

The Sentencing Commission does not have any historical data with which to estimate the impact of this amendment on the YDC population.

Of the 7,973 juvenile delinquent dispositions in FY 2006/07, 2,414 (or 30%) were adjudicated with a Serious level (Class F through Class A1) offense. Of the 2,414 cases, the delinquency history level distribution is as follows: 1,528 (63%) Low; 408 (17%) Medium; and 478 (20%) High. Six percent (n=155) were committed to a YDC as a result of their current adjudication. In FY 2006/07, the average length of stay in a YDC for juveniles adjudicated delinquent with a Serious level offense was 11.5 months.

G.S. 14-50.19. Threats to deter from gang withdrawal.

G.S. 14-50.19 makes it a Class H (Serious level) felony for a person to communicate a threat of injury to a person, or to damage the property of another, with the intent to deter a person from assisting another to withdraw from membership in a criminal street gang. This is a stand-alone offense, and does not require a prior pattern of criminal street gang activity.

Juveniles eligible for adjudication of this offense may include some portion of those currently adjudicated of the offenses listed in Table 6. The proposed offense does not encompass all conduct covered by the listed offenses because of some differences in the elements of each (*e.g.*, “communicating threats” requires that the victim actually believe the threat may be carried out, which the proposed offense does not, but the proposed offense applies only in the context of threats against those who help gang members defect).

**Table 6: Juveniles Eligible for Adjudication under G.S. 14-50.19
FY 2006/07**

| G.S. | Description | Class | Number of Adjudications |
|--------------|---|--------------|--------------------------------|
| 14-196(a)(2) | Threatening phone call | 2 | 2 |
| 14-196.3 | Cyberstalking | 2 | 5 |
| 14-277.1 | Communicating threats | 1 | 280 |
| 14-394 | Anonymous or threatening letters, mailing or transmitting | 1 | 0 |
| 14-127 | Injury to real property | 1 | 336 |
| 14-160 | Injury to personal property | 2 | 96 |
| 14-106(b) | Injury to personal property in excess of \$200 | 1 | 193 |

It is not known how many of the adjudications in Table 6 would become Class H (Serious level) felonies under the proposed offense or how many additional adjudications may result from this offense.

Of the 7,973 juvenile delinquent dispositions in FY 2006/07, 2,414 (or 30%) were adjudicated with a Serious level (Class F through Class A1) offense. Of the 2,414 cases, the delinquency history level distribution is as follows: 1,528 (63%) Low; 408 (17%) Medium; and 478 (20%) High. Six percent (n=155) were committed to a YDC as a result of their current adjudication. In FY 2006/07, the average length of stay in a YDC for juveniles adjudicated delinquent with a Serious level offense was 11.5 months.

G.S. 14-50.20. Threats of punishment or retaliation.

G.S. 14-50.20 makes it a Class H felony for a person to communicate a threat of injury to a person, or to damage the property of another, as punishment or retaliation against a person for having withdrawn from a criminal street gang. This is a stand-alone offense, and does not require a prior pattern of criminal street gang activity.

Juveniles eligible for adjudication of this offense include some portion of those currently adjudicated of the offenses listed in Table 7. The proposed offense does not encompass all conduct covered by the listed offenses because of some differences in the elements of each (*see* G.S. 14-50.19, above).

**Table 7: Juveniles Eligible for Adjudication under G.S. 14-50.20
FY 2006/07**

| G.S. | Description | Class | Number of Adjudications |
|--------------|---|--------------|--------------------------------|
| 14-196(a)(2) | Threatening phone call | 2 | 2 |
| 14-196.3 | Cyberstalking | 2 | 5 |
| 14-277.1 | Communicating threats | 1 | 280 |
| 14-394 | Anonymous or threatening letters, mailing or transmitting | 1 | 0 |
| 14-127 | Injury to real property | 1 | 336 |
| 14-160 | Injury to personal property | 2 | 96 |
| 14-106(b) | Injury to personal property in excess of \$200 | 1 | 193 |

It is not known how many of the adjudications in Table 7 would become Class H (Serious level) felonies under the proposed offense or how many additional adjudications may result from this offense.

Of the 7,973 juvenile delinquent dispositions in FY 2006/07, 2,414 (or 30%) were adjudicated with a Serious level (Class F through Class A1) offense. Of the 2,414 cases, the delinquency history level distribution is as follows: 1,528 (63%) Low; 408 (17%) Medium; and 478 (20%) High. Six percent (n=155) were committed to a YDC as a result of their current adjudication. In FY 2006/07, the average length of stay in a YDC for juveniles adjudicated delinquent with a Serious level offense was 11.5 months.

G.S. 14-50.22. Enhanced offense for criminal gang activity.

G.S. 14-50.22 enhances the sentence for a misdemeanor offense by one offense class if it was committed for the benefit of, at the direction of, or in association with, any criminal street gang. Class A1 misdemeanors would be enhanced to Class I felonies under this provision.

Juvenile Impact

Juveniles adjudicated delinquent for Class 2 or 3 misdemeanors committed for gang purposes still would be disposed in the Minor offense level. Juveniles adjudicated for Class A1 misdemeanors still would be disposed in the Serious offense level when enhanced to Class I. The only juvenile dispositions that would be affected by this provision are those for adjudication of Class 1 misdemeanors (Minor offense level) that would be reclassified to Class A1 misdemeanors (Serious offense level) for disposition.

Table 8 provides a summary of the juveniles adjudicated delinquent with a misdemeanor offense in FY 2006/07. Under the proposed enhancement, some portion of 2,936 Class 1 (Minor level) offenses from the 7,973 delinquent dispositions may increase to a Class A1 (Serious level) offense if the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang.

If the enhancement is strictly interpreted to require street gang involvement, as defined in G.S. 14-50.16, then some portion of the 278 Class 1 (Minor level) offenses from the 963 identified “gang association” delinquent dispositions may increase to a Class A1 (Serious level) offense if the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang.

**Table 8: Potential Misdemeanors Enhanced One Offense Class Higher
FY 2006/07**

| Current Class | Dispositions | Dispositions with Gang Association |
|-----------------|--------------|------------------------------------|
| | (n=7,973) | (n=963) |
| Class A1 | 798 | 82 |
| Class 1 | 2,936 | 278 |
| Class 2 | 2,102 | 236 |
| Class 3 | 438 | 43 |
| Total | 6,274 | 639 |

It is not known how many of Class 1 (Minor level) offenses listed in Table 8 involved an offense committed for the benefit of, at the direction of, or in association with, any criminal street gang and would become Class A1 (Serious level) offenses. Therefore, YDC impact is not known.

Of the 7,973 juvenile delinquent dispositions in FY 2006/07, 2,414 (or 30%) were adjudicated with a Serious level (Class F through Class A1) offense. Of the 2,414 cases, the delinquency history level distribution is as follows: 1,528 (63%) Low; 408 (17%) Medium; and 478 (20%) High. Six percent (n=155) were committed to a YDC as a result of their current adjudication. In FY 2006/07, the average length of stay in a YDC for juveniles adjudicated delinquent with a Serious level offense was 11.5 months.

Transfers

Currently, juveniles charged with misdemeanors cannot be transferred to the Superior Court for trial as adults. It is not clear whether the enhancement of Class A1 misdemeanors to Class I felonies under this provision would permit juveniles 13 and older and charged with Class A1 misdemeanors to be transferred. The bill does not specify whether the gang element must be pled in the juvenile petition and probable cause found, and therefore whether a Class A1 misdemeanor committed for gang purposes would be treated as a substantive Class I felony for the purpose of eligibility for transfer. (*See, e.g., State v. Jones, 358 N.C. 473 (2004) (possession of cocaine, a Class 1 misdemeanor under G.S. 90-95(d)(2) that is “punishable as a Class I felony,” is actually a substantive Class I felony).*)

SECTION 5

Section 5 amends G.S. 15A-1340.16A (the firearm enhancement) to include any deadly weapon. The minimum sentence imposed upon conviction for a Class A, B1, B2, C, D, or E felony would be enhanced 60 months if the juvenile committed the felony by using, displaying, or threatening the use or display of, and actually possessed about his or her person, a firearm *or other deadly weapon*. The enhancement would not apply if evidence of the use, display, or threatened use or display of the firearm or deadly weapon is needed to prove an element of the offense or if the person is not sentenced to active imprisonment. This new enhancement for deadly weapons is not limited to gang-related offenses.

It is not possible to estimate the YDC impact of the proposed deadly weapon enhancement since it is not known how many juveniles in the eligible pool would receive the 60-month enhancement. It is also not known how the proposed deadly weapon enhancement would be applied. In FY 2006/07, the average age of juveniles adjudicated delinquent was 14 years with an average YDC length of stay of 12.5

months. Most juveniles would “age out” of the juvenile system before the applied weapons enhancement could be completed.

NORTH CAROLINA 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 517 – FLEEING ACCIDENT SCENE/INCREASE PENALTY [V.3]

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

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 G felony.

ANALYSIS

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

The 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 [v.1] which the Commission reviewed in March, 2007, except that it was proposed as a Class F felony. The Commission found that provision to be consistent with the Offense Classification Criteria for 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.

A Class G felony tends to result in serious property loss from the person or from the person’s dwelling. This offense does not result in serious property loss from the person or 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: 6/10/08

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 517: FLEEING ACCIDENT SCENE/INCREASE PENALTY. (PCS)

PREPARED: JUNE 4, 2008

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 20-166(a) currently makes it a Class H felony for the driver of a vehicle to willfully leave the scene of an accident if the driver knows or reasonably should know that the vehicle which he or she is operating is involved in an accident or collision and that the accident or collision has resulted in injury or death to any person. This bill would keep the offense as a Class H felony if it resulted in injury and make it a Class G felony if any person suffers serious bodily injury (as defined by G.S. 14-32.4(a)) or death.

In FY 2006/07, there were 98 Class H felony convictions for violations of G.S. 20-166(a). It is not known how many of these convictions would become Class G felony convictions under the proposed bill. Therefore, the impact on the prison population is not known. Impact on the prison population would result from the higher percentage of active sentences imposed and longer sentence lengths for Class G felonies. In FY 2006/07, 35% of Class H convictions resulted in active sentences (with an average estimated time served of 10 months), while 41% of Class G convictions resulted in active sentences (with an average estimated time served of 16 months). If, for example, there were three Class H convictions per year that would become Class G convictions under this proposed bill, this would result in the need for one additional prison bed the first year and one additional prison bed the second year.

The following scenarios were prepared based on a request by Fiscal Research staff:

If, for example, 10% (or 10) of the 98 Class H convictions would become Class G convictions under this proposed bill, this would result in the need for two additional prison beds the first year and two additional prison beds the second year.

If, for example, 15% (or 15) of the 98 Class H convictions would become Class G convictions under this proposed bill, this would result in the need for two additional prison beds the first year and three additional prison beds the second year.

If, for example, 20% (or 20) of the 98 Class H convictions would become Class G convictions under this proposed bill, this would result in the need for three additional prison beds the first year and five 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 933 – JESSICA LUNSFORD ACT FOR NC [V.3]

STATUTE

§ 14-27.2A. Rape of a child; adult offender.

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 (G.S. 14-27.2(a)(1)), a Class B1 felony. This statute declares G.S. 14-27.2(a)(1) to be a lesser included offense.

This provision is identical to a provision in HB 933 [v.1] which the Commission reviewed in May, 2007, except that it was amended to G.S. 14-27.2, First-degree rape. The Commission found that provision to be consistent with the Offense Classification Criteria for a Class B1 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: 6/10/08

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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 [V.3]

STATUTE

§ 14-27.2A. Rape of a child; adult offender.

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

This provision is identical to a provision in HB 933 [v.1] which the Commission reviewed in May, 2007, except that it was amended to G.S. 14-27.2, First-degree rape. 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: 6/10/08

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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 [V.3]

STATUTE

§ 14-27.4A. Sexual offense with a child; adult offender.

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 (G.S. 14-27.4(a)(1)), a Class B1 felony. This statute declares G.S. 14-27.4(a)(1) to be a lesser included offense.

This provision is identical to a provision in HB 933 [v.1] which the Commission reviewed in May, 2007, except that it was amended to G.S. 14-27.4, First-degree sexual offense. The Commission found that provision to be consistent with the Offense Classification Criteria for a Class B1 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: 6/10/08

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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 [V.3]

STATUTE

§ 14-27.4A. Sexual offense with a child; adult offender.

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

This provision is identical to a provision in HB 933 [v.1] which the Commission reviewed in May, 2007, except that it was amended to G.S. 14-27.4, First-degree sexual offense. 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: 6/10/08

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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 [V.3]

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,
 - 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
 - a. 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
 - b. 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 in March, 2007, and HB 933 [v.1] which the Sentencing Commission reviewed in May, 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: 6/10/08

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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 [V.3]

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
a. 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 E 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 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 in March, 2007, and HB 933 [v.1] which the Sentencing Commission reviewed in May, 2007, except that it was classified as a Class D felony. The Commission found the provision to be 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.

DATE PREPARED: 6/10/08

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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 [V.3]

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 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 personal injury or in significant societal injury as Class H felonies.

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, and HB 933 [v.1] which the Sentencing Commission reviewed in May, 2007, except that it was classified as a Class E felony. The Commission found the provision to be 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.

DATE PREPARED: 6/10/08

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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 [V.3]

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.

This provision is identical to a provision in HB 933 [v.1] which the Sentencing Commission reviewed in May, 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: 6/10/08

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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 [V.3]

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. is required to register under the Sex Offender Registration Program and
2. committed any of the following offenses:
 - (a) any offense in Article 7A of this Chapter
 - (b) any offense where the victim of the offense was under the age of 16 years at the time of the offense
3. is at any of the following locations:
 - (a) On the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds.
 - (b) Within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that is not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.
 - (c) At any place where minors gather for regularly scheduled educational, recreational, or social programs.

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.

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.

This provision is similar to a provision in HB 933 [v.1] which the Sentencing Commission reviewed in May, 2007, except that it was classified as a Class F felony. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class F 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 H felony if it was limited to being on the specified premises.

DATE PREPARED: 6/10/08

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 933: JESSICA LUNSFORD ACT FOR NC [v.3].

PREPARED: JUNE 11, 2008

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1.

This section creates G.S. 14-27.2A, Rape of a child; adult offender, which would make it an 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.¹⁸

In FY 2006/07, 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 these convictions was 220 months (or 18.3 years). 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 2006/07, no convictions 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 2006/07, there were 19 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 340 months (or 28.3 years).¹⁹ It is not known how many of these 19 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 18 of the projection period based on the current average

¹⁸ In North Carolina, a person may be convicted of a criminal offense beginning at age 16.

¹⁹ This average excludes the one conviction that received a life sentence.

minimum sentence imposed. Additional convictions would continue to stack up over the 10-year projection period.

Under the proposed change, it is 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. Under the proposed change, offenders would also not be subject to the nine months of post-release supervision that follows release from prison for offenders convicted of Class B1 felonies under current law.

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;²⁰ 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 creates G.S. 14-27.4A, Sexual offense with a child; adult offender, which would make it an 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.²¹

In FY 2006/07, there were 30 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 236 months (or 19.7 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 2006/07, there were 9 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 267 months (or 22.3 years). It is not known how many of these 9 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:

²⁰ 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.

²¹ See Footnote 1.

- 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 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 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.

Under the proposed change, it is 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. Under the proposed change, offenders would also not be subject to the nine months of post-release supervision that follows release from prison for offenders convicted of Class B1 felonies under current law.

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;²² 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 2006/07. 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 73 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.

²² See Footnote 3.

This section reclassifies G.S. 14-190.17, Second degree sexual exploitation of a minor, from a Class F 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 19 convictions for this offense in FY 2006/07. 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 F Second Degree Sexual Exploitation of a Minor convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (53% for Class E compared to 51% for Class F) and longer average estimated time served (29 months for Class E compared to 20 months for Class F). If, for example, there were 19 Class F felony convictions that were reclassified as Class E felony convictions, this would result in the need for no additional prison beds the first year and three additional prison beds the second year. No additional prison beds would be needed in year one because average estimated time served for both Class E and Class F felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. 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 H felony. There were 29 convictions for this offense in FY 2006/07. 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 H convictions under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 16% for Class I) and longer average estimated time served (10 months for Class H compared to 7 months for Class I). If, for example, there were 29 Class I felony convictions that were reclassified as Class H felony convictions, this would result in the need for six additional prison beds the first year and nine additional prison beds the second year.

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 73 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 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) with the opportunity to petition superior court to shorten the registration period after 10 years of registration. (*See Section 8 below.*)

SECTIONS 8-10.

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 three business days (currently 10 days), and to expand the time for maintaining registration from ten years to at least thirty years with the opportunity to petition superior court to shorten the registration period after 10 years of registration.

The proposed changes in Sections 8-10 add additional restrictions to sex offender registration that may make compliance with registration requirements more difficult, including a potential 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 2006/07, there were 291 convictions under G.S. 14-208.11 (which represents an increase from 234 convictions in FY 2005/06, 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 2006/07, 51% 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.

Note: Section 8 applies to registrations made on or after December 1, 2008.

SECTION 11.

This section amends G.S. 14-208.12A to permit a person required to register to petition the superior court to terminate the registration requirement after ten years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration. (*It is currently a ten year period and the person can petition at the end of it.*) (*See Sections 8-10.*)

SECTION 12.

This section creates G.S. 14-208.18, Sex offender unlawfully on premises. The offense applies to persons convicted of an offense that requires registration as a sex offender and that was either an offense in Article 7A of Chapter 14 (Rape and Other Sex Offenses) or an offense where the victim of the offense was under the age of 16 years at the time of the offense. This offense makes it a Class H felony for a person to whom the statute applies to be at any of the following locations:

- (1) On the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds.
- (2) Within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that is not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in

- subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.
- (3) At any place where minors gather for regularly scheduled educational, recreational, or social programs.

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 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 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.

In FY 2006/07, there were a total of 971 convictions for offenses that require registration as a sex offender and that were either an offense in Article 7A of Chapter 14 (311 convictions) or an offense where the victim of the offense was under the age of 16 years at the time of the offense by statute (660 convictions). In addition, there were 300 convictions for offenses that require registration as a sex offender which could be covered under the proposed statute; however, it is not known whether any of these convictions had victims under the age of 16 years.

G.S. 14-208.16, Residential restrictions (Class G felony), and G.S. 14-208.17, Sexual predator prohibited from working or volunteering for child-involved activities; limitation on residential use (Class F felony), 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.

SECTIONS 14-15.

Similar to Sections 8-10, 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 three business days (currently 10 days).

The proposed changes in Sections 14-15 add additional restrictions to sex offender registration that may make compliance with registration requirements more difficult. 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 2006/07, there were 291 convictions under G.S. 14-208.11 (which represents an increase from 234 convictions in FY 2005/06, 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 2006/07, 51% 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 16.

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. 14-27.2A, Rape of a child; adult offender, and G.S. 14-27.4A, Sexual offense with a child; adult offender, who are sentenced to 25 years active punishment and

satellite-based monitoring for the duration of the offender's natural 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. (*See also* Section 1 and Section 2).

SECTION 17.

This section amends G.S. 14-208.41, Enrollment in satellite-based monitoring programs mandatory; lengths of enrollment, to add subsection (c) which would require that the offenders specified in 14-208.40(a)(3) who receive a sentence of 25 years of active punishment 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 2006/07, 51% 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 18.

This section amends G.S. 14-208.43, Request for termination of satellite-based monitoring requirement, to include the offenders specified in G.S. 14-208.40(a)(3). (*See* Section 17.)

SECTION 19.

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 20.

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 21.

This section enacts G.S. 115C-332.1, Sex offender registries checks for certain contractual personnel, that requires the local board of education to require employers of contractual personnel to conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. There is no criminal sanction mentioned.

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 - AGGRAVATING FACTOR/NO PROBATION COMPLIANCE [V.3]

STATUTE

§ 15A-1340.16. Aggravated and mitigated sentences.

DESCRIPTION

A person who

1. commits a criminal offense and
2. willfully failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision during the 10-year period prior to the commission of the offense for which he defendant is being sentenced.

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.

This provision is similar to a provision in HB 1003 [v.1] which the Sentencing Commission reviewed in May, 2007, except that it did not have a 10-year limitation. The Commission found the 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: 6/10/08

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1003 (PCS): AGGRAVATING FACTOR/NO PROBATION COMPLIANCE

PREPARED: JUNE 4, 2008

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. 15A-1340.16(d), Aggravated and mitigated sentences, to add a new aggravating factor. Factor (12a) would allow the judge to sentence from the aggravated range if the jury found that the defendant previously failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision. The factor is limited to the past 10 years but it does not state whether that is within 10 years of the date of the offense or the date of sentencing. The factor does not require that the violation occurred during a current period of supervised probation, parole, or post-release supervision and it does not require that the defendant was revoked for the violation. It is not known how many additional offenders would receive an aggravated sentence as a result of the proposed bill. As a result, it is not possible to determine the impact of this bill. The potential pool of offenders would be all offenders who had previously been placed on probation, parole, or post-release supervision and failed to comply with conditions within the 10-year period.

The aggravated sentence range allows the judge to impose a sentence that is up to 25% longer than the longest sentence in the presumptive sentence range. During FY 2006/07, 3% (n=303) of all felony convictions receiving an active sentence were in the aggravated sentence range. The Administrative Office of the Courts' (AOC's) Automated Criminal Information System (ACIS) does not contain data on the application of aggravating or mitigating factors. The aggravating factor in the proposed bill could apply to a wide range of offenses and the impact of aggravated sentences varies considerably by offense class (e.g., the impact would increase as offense seriousness increases, with little impact for low-level felonies and substantial impact for the most serious felonies). Of the 31,781 felony convictions in FY 2006/07, 23,776 (75%) were in Prior Record Level II or higher, indicating at least one prior conviction for which the offender could have been placed on supervised probation, parole, or post-release supervision and could have failed to comply with conditions.

Felony prior record level calculation (G.S. 15A-1340.14(b)(7)) currently assigns one prior record level point if the current offense was committed while the defendant was on supervised or unsupervised probation, parole, or post-release supervision. While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the basis by which the points were assigned.

NORTH CAROLINA 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 2192 – FAILURE TO RELEASE A SECURITY INTEREST

STATUTE

§ 20-58.4. Release of security interest.

DESCRIPTION

Subsection (b1):

A person, firm, corporation, or other legal entity that

1. fails to release a security interest as required by subsections (a) and (b) of G.S. 20-58.4.

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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/12/08

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 2339/SB 1816, SB 1860 – AMEND CHILD ABUSE/CHILD FATALITY TASK FORCE [V.2]

STATUTE

§ 14-318.2. Child abuse a Class 1 misdemeanor.

DESCRIPTION

A parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who

1. (a) inflicts physical injury, or
(b) allows physical injury to be inflicted, or
(c) creates or allows to be created a substantial risk of physical injury,
2. upon or to such child
3. by other than accidental means.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class A1 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 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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/11/08

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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 2339/SB 1816, SB 1860 – AMEND CHILD ABUSE/CHILD FATALITY TASK FORCE [V.2]

STATUTE

§ 14-318.4. Child abuse a felony.

DESCRIPTION

Subsection (a4):

A parent or any other person who

1. provides care to or supervision of a child less than 16 years of age
2. willfully acts or omits an act in the care of the child
3. that is so gross, wanton, and culpable
4. as to show reckless disregard for human life and
5. the act or omission results in serious bodily injury to the child.

“Bodily injury” is as defined in G.S. 14-32.4, Assault inflicting serious bodily injury.

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. 14-318.4(a) currently makes it a Class E felony for a parent or other person providing care to intentionally inflict any serious physical injury upon or to the child. Subsection (a3) makes it a Class C felony for a parent or other person providing care to intentionally inflict any serious bodily injury upon or to the child.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 6/11/08

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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 2339/SB 1816, SB 1860 – AMEND CHILD ABUSE/CHILD FATALITY TASK FORCE [V.2]

STATUTE

§ 14-318.4. Child abuse a felony.

DESCRIPTION

Subsection (a5):

A parent or any other person who

1. provides care to or supervision of a child less than 16 years of age
2. willfully acts or omits an act in the care of the child
3. that is so gross, wanton, and culpable
4. as to show reckless disregard for human life and
5. the act or omission results in serious physical injury to the child.

“Serious physical injury” is defined as physical injury that causes great pain and suffering. The term includes serious mental injury.

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.

G.S. 14-318.4(a) currently makes it a Class E felony for a parent or other person providing care to intentionally inflict any serious physical injury upon or to the child. Subsection (a3) makes it a Class C felony for a parent or other person providing care to intentionally inflict any serious bodily injury upon or to the child.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/11/08

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 2403/SB 1788 – REGULATE DANGEROUS ANIMALS

STATUTE

§ 153A-131.1. Possession or harboring of inherently dangerous wild animals.

DESCRIPTION

A county shall by ordinance regulate, restrict, or prohibit the possession or harboring of inherently dangerous wild animals (defined by statute). The statute sets out the provisions that the counties shall include in the ordinances regarding the person possessing the animal (*e.g.*, register with the local animal control authority, provide an inventory of each animal, obtain and maintain a liability insurance policy, develop and maintain a written plan for the quick and safe recapture or destruction of the animal in the event the animal escapes).

PROPOSED OFFENSE CLASS

Class 3 misdemeanor for the first offense.

ANALYSIS

G.S. 14-4, Violation of local ordinances misdemeanor, makes violation of a local ordinance a Class 3 misdemeanor.

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: 6/11/08

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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 2403/SB 1788 – REGULATE DANGEROUS ANIMALS

STATUTE

§ 153A-131.1. Possession or harboring of inherently dangerous wild animals.

DESCRIPTION

A county shall by ordinance regulate, restrict, or prohibit the possession or harboring of inherently dangerous wild animals (defined by statute). The statute sets out the provisions that the counties shall include in the ordinances regarding the person possessing the animal (e.g., register with the local animal control authority, provide an inventory of each animal, obtain and maintain a liability insurance policy, develop and maintain a written plan for the quick and safe recapture or destruction of the animal in the event the animal escapes).

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for the second offense.
Class 1 misdemeanor for the third and subsequent offenses.

ANALYSIS

G.S. 14-4, Violation of local ordinances misdemeanor, makes violation of a local ordinance a Class 3 misdemeanor.

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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

The Structured Sentencing misdemeanor 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: 6/11/08

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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 2403/SB 1788 – REGULATE DANGEROUS ANIMALS

STATUTE

§ 153A-131.1. Possession or harboring of inherently dangerous wild animals.

DESCRIPTION

Subdivision (g)(2):

A person who

1. deliberately releases
2. an inherently dangerous wild animal (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, 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: 6/11/08

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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 2403/SB 1788 – REGULATE DANGEROUS ANIMALS

STATUTE

§ 153A-131.1. Possession or harboring of inherently dangerous wild animals.

DESCRIPTION

Subdivision (g)(2):

A person who

1. deliberately releases
2. an inherently dangerous wild animal (as defined by statute) and
3. it results in serious injury or death.

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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

Note: The offense could be consistent with a Class H felony if it delineated where a person could not release an inherently dangerous wild animal.

DATE PREPARED: 6/11/08

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 2417 – CRIMES OF TORTURE AND ENFORCED
DISAPPEARANCE**

STATUTE

§ 14-34.9. Torture; enforced disappearance.

DESCRIPTION

Subsection (b):

A person who

1. commits
2. torture.

“Torture” is defined as follows: In addition to the definition of torture provided at the common law, the term also includes any act by which serious pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining from the person or from a third person information or a confession, punishing the person for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing the person or a third person, or for any reason based on discrimination of any kind, when the pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The term does not include pain or suffering arising only from, inherent in, or incidental to lawful interrogation, detention, arrest, use of force, or other lawful sanctions.

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 similar to a provision in HB 1682. Upon the request of the sponsor, the Sentencing Commission reviewed that offense in January, 2008, and found that it would be consistent with a Class E felony. The Commission also suggested several changes to the wording of the definition which are generally incorporated into this bill.

FINDINGS

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

DATE PREPARED: 6/11/08

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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 2417 – CRIMES OF TORTURE AND ENFORCED
DISAPPEARANCE

STATUTE

§ 14-34.9. Torture; enforced disappearance.

DESCRIPTION

Subsection (c):

A person who

1. commits
2. enforced disappearance.

“Enforced disappearance of person” is defined as follows: The arrest, detention, or abduction of a person by, or with the authorization, support, or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts of the person, with the intention of depriving the detainee of due process of the law.

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.

This provision is similar to a provision in HB 1682. Upon the request of the sponsor, the Sentencing Commission reviewed that offense in January, 2008, and found that it would be consistent with a Class F felony. The Commission also suggested several changes to the wording of the definition which are generally incorporated into this bill.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/11/08

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 2417: CRIMES OF TORTURE AND ENFORCED DISAPPEARANCE

PREPARED: MAY 29, 2008

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 14-34.9. Torture; enforced disappearance.

G.S. 14-34.9(b)

G.S. 14-34.9(b) makes it a Class E Felony to commit torture. Subsection (a)(4) defines torture as both “the definition of torture provided at common law” and any act by which serious mental or physical pain or suffering is intentionally inflicted on a person for purposes such as obtaining from the person or from a third person information or a confession, punishing the person for an act or she or a third person has committed or is suspected of having committed, or intimidating or coercing the person or a third person based on discrimination of any kind, when the pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

There is no extant common law offense of torture. A statute now provides that murder by torture is first-degree murder. Torture in this context has been defined as a course of conduct intentionally inflicting grievous pain and suffering for the purpose of punishment, persuasion, or sadistic pleasure. Subsections (a)(4) and (b) can thus be construed to include any conduct intentionally inflicting grievous pain and suffering for the purpose of punishment, persuasion, or sadistic pleasure, regardless of whether it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity. However, the instant analysis assumes that the offense covers only acts by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity.

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 2006/07, 53% of Class E convictions resulted in active sentences, with an average estimated time served of 29 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.

G.S. 14-34.9(c)

G.S. 14-34.9(c) makes it a Class F Felony to arrest, detain, or abduct of a person as, or with the authorization, support, or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts of the person, with the intention of depriving the detainee of due process of law.

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 2006/07, 51% 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.

NORTH CAROLINA 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 2499 – DROUGHT/WATER MANAGEMENT
RECOMMENDATIONS

STATUTE

§ 143-355.4. Enforcement.

DESCRIPTION

A person who

1. violates
2. emergency water conservation rules adopted by the Secretary of the Department of Environment and Natural Resources pursuant to G.S. 143-355.3(b).

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: 6/12/08

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 2589 – INCREASE MAXIMUM SPEED FOR MOPEDS

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

A person who

1. is less than 18 years of age
2. operates a moped
3. upon any highway or public vehicular area of this State
4. with a motor that has a piston displacement of greater than 50 cubic centimeters and up to 150 cubic centimeters
5. without a license to operate a motor 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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 6/12/08

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 2610 – EMPLOYERS MUST USE FEDERAL E-VERIFY PROGRAM

STATUTE

§ 64-12. Knowingly employing unauthorized alien prohibited; penalties.

DESCRIPTION

Subsection (b):

A person who

1. knowingly
2. files
3. a false and frivolous complaint that an employer allegedly intentionally or knowingly employed an unauthorized alien.

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.

This provision is identical to a provision in SB 1596 in the felony section of this review.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/13/08

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 1314, SB 1980 – AMEND MASSAGE & BODYWORK THERAPY ACT [V.3]

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 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.

This provision is identical to a provision in HB 1426/SB 1314 [v.1] which the Commission reviewed in May, 2007, except that it was classified as a Class 1 misdemeanor. The Commission found that provision to be inconsistent with the Offense Classification Criteria for 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: 6/12/08

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 1596 – NC CITIZEN PROTECTION ACT

STATUTE

§ 14-462. Unlawful transportation of an alien; penalty.

DESCRIPTION

A person who

1. knowingly
2. transports or attempts to transport
3. within North Carolina
4. any illegal alien
5. that the person knows has entered or remained in the United States in violation of law
6. for the purpose of avoiding discovery of the alien by persons or agencies authorized to enforce immigration laws.

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, attempts are punished one class lower than the offense which the offender attempted to commit.

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 serious property loss. This offense would be consistent with a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant societal injury as Class H felonies. The conduct covered by this offense could currently be prosecuted as common law obstruction of justice which is a Class H felony if it was done with deceit and intent to defraud.

DATE PREPARED: 6/11/08

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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 1596 – NC CITIZEN PROTECTION ACT

STATUTE

§ 14-463. Unlawful concealment of an alien; penalty.

DESCRIPTION

A person who

1. knowingly
2. conceals or shelters from detection
3. in any place, including any building or means of transportation,
4. any illegal alien
5. that the person knows has entered or remained in the United States in violation of law
6. for the purpose of avoiding discovery of the alien by persons or agencies authorized to enforce immigration laws.

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 serious property loss. This offense would be consistent with a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant societal injury as Class H felonies. The conduct covered by this offense could currently be prosecuted as common law obstruction of justice which is a Class H felony if it was done with deceit and intent to defraud.

DATE PREPARED: 6/11/08

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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 1596 – NC CITIZEN PROTECTION ACT

STATUTE

§ 108A-112. 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 of U.S. citizenship, permanent residency, qualified alien or non-immigrant status
4. in an application for public benefits.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in SB 573 which the Sentencing Commission reviewed in March, 2007, and HB 1485 which the Sentencing Commission reviewed in May, 2007, except that it was classified as a Class I felony. The Commission found that provision to be consistent with the offense classification criteria for a Class I felony.

G.S. 108A-39. Fraudulent misrepresentation (public assistance). If amount is \$400 or less, Class 1 misdemeanor; If amount is more than \$400, Class I felony.

G.S. 108A-53. Fraudulent misrepresentation (food stamps). If amount is \$400 or less, Class 1 misdemeanor; If amount is more than \$400, 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.

Class H felonies tend 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: 6/11/08

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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 1596 – NC CITIZEN PROTECTION ACT

STATUTE

§ 14-113.20. Identity theft.

DESCRIPTION

A person who

1. knowingly
2. obtains, possesses, or uses
3. identifying information of another person, living or dead,
4. with the intent to fraudulently represent that the person is the other person for any of the following purposes:
 - (a) Making financial or credit transactions in the other person's name.
 - (b) Obtaining anything of value, benefit, or advantage.
 - (c) Avoiding legal consequences.
 - (d) Obtaining employment.

PROPOSED OFFENSE CLASS

Class G felony, except it is punishable as a Class F felony if: (i) the victim suffers arrest, detention, or conviction as a proximate result of the offense, or (ii) the person is in possession of the identifying information pertaining to three or more separate persons.

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

DATE PREPARED: 6/11/08

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74 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 1596 – NC CITIZEN PROTECTION ACT

STATUTE

§ 64-12. Intentionally or knowingly employing unauthorized alien prohibited.

DESCRIPTION

Subsection (b):

A person who

1. knowingly
2. files
3. a false and frivolous complaint that an employer allegedly intentionally or knowingly employed an unauthorized alien.

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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/11/08

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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 1596 – NC CITIZEN PROTECTION 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.

ANALYSIS

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

This provision is identical to a provision in HB 55 which the Sentencing Commission reviewed in March, 2007, and HB 1485 and SB 1189 which the Sentencing Commission reviewed in May, 2007. The Commission found the provision to be consistent with the Offense Classification Criteria for the 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: 6/11/08

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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 1596 – NC CITIZEN PROTECTION 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 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 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, and HB 1485 and SB 1189 which the Sentencing Commission reviewed in May, 2007. The Commission found the provision to be inconsistent with the Offense Classification Criteria for the Class 1 misdemeanor. The Commission noted that 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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Structured Sentencing misdemeanor 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: 6/11/08

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 1633 – PROSTHETIST/ORTHOTIST/PEDORTHIST
LICENSURE**

STATUTE

§ 90-202.23. License required; exemptions.

DESCRIPTION

A person who

1. practices or offers to practice
2. prosthetics, orthotics, or pedorthics as defined in Article 12B of Chapter 90, uses the title 'Licensed Prosthetist, Licensed Orthotist, or Licensed Pedorthist, uses the letters 'LP', 'LO', or otherwise indicates or implies that the person is a licensed prosthetist, licensed orthotist, or licensed pedorthist,
3. without a license.

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.

G.S. 90-18, Practicing without license; practice defined; penalties (Practice of Medicine Act) is 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: 6/12/08

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 1804 – MULTIUNIT ASST. HOUSING SVS. REGIS. FEE

STATUTE

§ 131D-2. Licensing of adult care homes for the aged and disabled.

DESCRIPTION

An individual or corporation that

1. establishes, conducts, manages, or operates
2. a multiunit housing with services program,
3. subject to registration under this statute, and
4. fails to register.

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: 6/12/08

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 1988 – UNLAWFUL TO BURN CROSS/HANG NOOSE

STATUTE

§ 14-401.14A. Unlawful to burn a cross or hang a noose with the intent to intimidate.

DESCRIPTION

A person who

1. (a) burns a cross or
(b) hangs a noose
2. with the intent to intimidate another
3. because of age, color, religion, nationality, or country of origin.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

G.S. 14-12.12(b), Placing burning or flaming cross on property of another or on public street or highway, is a Class I felony.

G.S. 14-12.13, Placing exhibit with intention of intimidating, etc., another, is a Class I felony.

G.S. 14-12.14, Placing exhibit while wearing mask, hood, or other disguise, is a Class I felony.

G.S. 14-401.14(a), Ethnic intimidation; teaching any technique to be used for ethnic intimidation, is a Class 1 misdemeanor.

In addition, any person who commits a Class 2 or Class 3 misdemeanor because of the victim's race, color, religion, nationality, or country of origin, is guilty of a Class 1 misdemeanor, and any person who commits a Class A1 or Class 1 misdemeanor because of the victim's race, color, religion, nationality, or country of origin, is guilty of a Class I felony under G.S. 14-3(c).

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. 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: 6/12/08

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1988: UNLAWFUL TO BURN CROSS/HANG NOOSE

PREPARED: MAY 29, 2008

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 14-401.14A, Unlawful to burn a cross or hang a noose with the intent to intimidate, would make it a Class H felony for a person to burn a cross or hang a noose with the intent to intimidate another because of race, color, religion, nationality, or country of origin.

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 2006/07, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 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.

The conduct covered by the proposed offense may currently be punished under G.S. 14-12.12(b), 14-12.13, 14-12.14, and 14.401.14(a) (see table below). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. G.S. 14-12.12(b), 14-12.13, and 14-12.14. The lack of an AOC offense code is some indication that these offenses are infrequently charged and/or infrequently result in convictions. In FY 2006/07, there were 6 convictions under 14-401.14(a). It is not known how many of these convictions involved the conduct covered under the proposed offense.

| Citation | Offense | Class |
|---------------|---|----------------------|
| 14-12.12.(b) | Placing burning or flaming cross on property of another or on public street or highway. | Class I felony. |
| 14-12.13. | Placing exhibit with intention of intimidating, etc., another. | Class I felony. |
| 14-12.14. | Placing exhibit while wearing mask, hood, or other disguise. | Class I felony. |
| 14-401.14.(a) | Ethnic intimidation; teaching any technique to be used for ethnic intimidation. | Class 1 misdemeanor. |

In addition, any person who commits a Class 2 or Class 3 misdemeanor because of the victim's race, color, religion, nationality, or country of origin, is guilty of a Class 1 misdemeanor, and any person who commits a Class A1 or Class 1 misdemeanor because of the victim's race, color, religion, nationality, or country of origin, is guilty of a Class I felony under G.S. 14-3(c).

NORTH CAROLINA 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 2010 – CREATE TITLING CATEGORIES-
REPLICA/STREET ROD**

STATUTE

§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.

DESCRIPTION

Subsection (a)(2):

A transferor of a motor vehicle who

1. transfers a motor vehicle
2. when the transferor has knowledge that the vehicle is, or was, a flood vehicle, a reconstructed vehicle, a specially constructed vehicle, or a salvage motor vehicle,
3. without disclosing that fact in writing to the transferee prior to the transfer of the 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.

This bill adds “a specially constructed vehicle” to the existing 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: 6/12/08

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 2066 – ADJUST B1-E FELONY PENALTIES

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 here months. An offender would be on post-release supervision for twelve months.

ANALYSIS

This bill is identical to HB 246/SB 209 which the Sentencing Commission reviewed in April, 2003, and HB 1215 which the Sentencing Commission reviewed in May, 2005, and HB 805/SB 933 which the Sentencing Commission reviewed in May, 2007. 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: 6/11/08

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 2067 – EVEN OUT PRIOR CRIMINAL RECORD POINT RANGES

STATUTE

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

DESCRIPTION

Subsection (c):

Restructures 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 no more than 4 points.

Level III – At least 5, but no more than 8 points.

Level IV – At least 9, but no more than 14 points.

Level V – At least 15, but no 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 no more than 5 points.

Level III – At least 6, but no more than 9 points.

Level IV – At least 10, but no more than 13 points.

Level V – At least 14, but no more than 17 points.

Level VI – At least 18 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 HB 807/SB 935 which the Sentencing Commission reviewed in May, 2007. 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: 6/11/08

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 2068 – ESTABLISH PROPORTIONATE 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 HB 264/SB 208 which the Sentencing Commission reviewed in April, 2003, and HB 1186 which the Sentencing Commission reviewed in May, 2005, and HB 806/SB 823 which the Sentencing Commission reviewed in May, 2007. 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: 6/11/08

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 2080 – UNC CAMPUS SAFETY/FUNDS [V.2]

STATUTE

§ 14-277.6. Communicating a threat of mass violence on educational property.

DESCRIPTION

A person who

1. without lawful authority
2. does all of the following:
 - (a) willfully threatens to commit an act of mass violence on educational property or at a curricular or extracurricular activity sponsored by a school.
 - (b) communicates that threat to any person or group of persons by any means of communication.
 - (c) makes the threat in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out.

PROPOSED OFFENSE CLASS

Class H felony

ANALYSIS

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

G.S. 14-277.1, Communicating threats, is a Class 1 misdemeanor.

G.S. 14-277.5, Making a false report concerning mass violence on educational property, is a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Note: This bill would also be consistent if it were expanded to include threats to commit an act of mass violence on other public properties.

DATE PREPARED: 6/11/08

IMPACT ANALYSIS NOT REQUESTED YET

NC SENTENCING AND POLICY ADVISORY COMMISSION

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