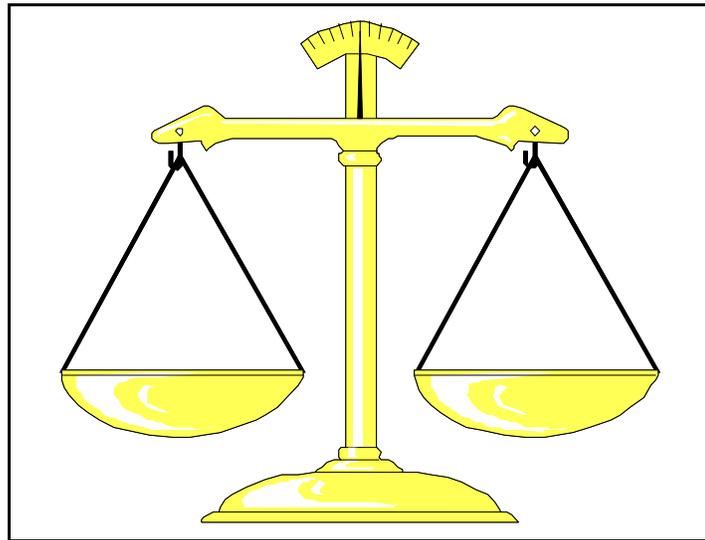


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

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

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION**

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

This report by the Sentencing Commission includes all bills introduced or amended through March 9, 2007. The report is submitted in conformance with the following requirements of G.S. 164-43:

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f) and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model to the provisions of the bill.

A one page summary is included for each bill (or each relevant section of a bill) which either creates a new crime, changes the classification of an existing crime, or prescribes a new range of punishments. The summary provides the bill number, the short title, and a brief description. At the bottom of the summary is an analysis and a finding of whether the bill appears consistent with the Commission's classification criteria as specified in G.S. 164-41 (*see* following page for a description of the criteria). Following the summary is an analysis of the projected impact of the bill (a more detailed impact analysis is provided to the Fiscal Research Division). The impact estimates assume an effective date of December 1, 2007.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on March 16, 2007.

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

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

THE OFFENSE CLASSIFICATION CRITERIA

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

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria.

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

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

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

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

The Commission developed a misdemeanor offense classification system based on the type and degree of harm that results or tends to result from an offense (refer to the classification criteria on the following pages). This is similar to the felony offense classification system. It uses the same types of harm (person, property, and society) and degrees of harm (serious, significant, and minor). The Commission

divided the criteria into four groups to conform to the four misdemeanor offense classes. The misdemeanor criteria are separate from the felony criteria because the harms that result from the misdemeanor offenses are viewed as being separate from the harms that result from the felony offenses.

The Commission then reviewed the most frequently convicted misdemeanor offenses and recommended reclassifying some of them based on a comparison of the elements of the crimes to the criteria. The Commission also decided that it would use the misdemeanor offense classification criteria for the classification of all new misdemeanor offenses and the reclassification of existing misdemeanor offenses proposed in the future. This report includes a comparison of offenses proposed in this session to the misdemeanor offense classification criteria.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • Reserved for First Degree Murder

[Reasonably tends to result or does result in:]

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

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

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

- E** • Serious personal injury

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

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

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

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

- M** • All other misdemeanors

* Personal injury includes both physical and mental injury.

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

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

MISDEMEANOR OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

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

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

* Personal injury includes both physical and mental injury.

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

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 28/SB 68 – UP PENALTIES/SEX OFFENSES WITH CHILD VICTIM

STATUTE

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

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class D felony.

PROPOSED: Class C felony.

ANALYSIS

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

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

(See also SB 17.)

FINDINGS



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



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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 28/SB 68 – UP PENALTIES/SEX OFFENSES WITH CHILD VICTIM (cont.)

STATUTE

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

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class D felony.

ANALYSIS

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

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

(See also SB 17.)

FINDINGS

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

A Class D felony tends to result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling. This offense does not result in a serious infringement on property interests. This offense would be consistent with a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE PREPARED: 3/14/07

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 28/SB 68 – UP PENALTIES/SEX OFFENSES WITH CHILD VICTIM (cont.)

STATUTE

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

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

(See also SB 17.)

FINDINGS

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

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

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 28/SB 68 – UP PENALTIES/SEX OFFENSES WITH CHILD VICTIM (cont.)

STATUTE

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

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

This provision is similar to a provision in HB 614 which the Sentencing Commission reviewed in March 2005. The proposal was to move the offense from a Class I felony to a Class E felony. The Commission found the provision inconsistent with the Offense Classification Criteria. The offense was subsequently moved to Class H.

(See also SB 17.)

FINDINGS

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

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

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

DATE PREPARED: 3/14/07

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

BILL NUMBER/SHORT TITLE: HB 28/SB 68 – UP PENALTIES/SEX OFFENSES WITH CHILD VICTIM (cont.)

STATUTE

§ 14-202.1. Taking indecent liberties with children.

DESCRIPTION

A person who

1. is 16 years of age or older and
2. at least 5 years older than the child in question,
3. willfully
 - a. takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire, or
 - b. commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony for a second or subsequent offense.

ANALYSIS

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

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

(See also SB 17.)

FINDINGS



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



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

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 28/SB 68 – UP PENALTIES/SEX OFFENSES WITH CHILD VICTIM (cont.)

STATUTE

§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful performances to minors.

DESCRIPTION

Subsection (a):

A person who

1. sells, furnishes, presents, or distributes
2. to
 - a. a minor, or
 - b. a person the defendant believes to be a minor,
3. material that is harmful to minors
4. with or without consideration and
5. knowing the character or content of the material.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

BILL CONTINUED ON NEXT PAGE

- 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 28/SB 68 – UP PENALTIES/SEX OFFENSES WITH CHILD VICTIM (cont.)

STATUTE

§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful performances to minors.

DESCRIPTION

Subsection (b):

A person who

1. allows
2. either
 - a. a minor, or
 - b. a person the defendant believes to be a minor,
3. to view a live performance that is harmful to minors
4. with or without consideration and
5. knowing the character or content of the material.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 3/12/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 39/SB 91 – ENDANGERED MANUFACTURING AND JOBS ACT

STATUTE

§ 66-154. Remedies.

DESCRIPTION

A person who

1. willfully and maliciously
2. misappropriates
3. a trade secret.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

8 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 44/SB 27 – DV ORDERS/REPEAT VIOLATORS

STATUTE

§ 50B-4.1. Violation of valid protective order.

DESCRIPTION

Subsection (f):

A person who

1. knowingly
2. violates a valid protective order
3. after having been previously convicted of one offense under Chapter 50B.

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.

Violating a valid protective order is a Class A1 misdemeanor. Currently, it becomes a Class H felony after the defendant has been previously convicted of three offenses under Chapter 50B.

This bill is identical to HB 2089/SB 1450, which the Sentencing Commission reviewed in June 2006. The Commission found the bill to be inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

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

DATE PREPARED: 3/14/07

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 44: DOMESTIC VIOLENCE ORDERS/REPEAT VIOLATORS

PREPARED: MARCH 8, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 50B-4.1(f) currently makes it a Class H felony for a person to knowingly violate a valid protective order after having been previously convicted of three offenses under Chapter 50B. This bill would reduce the number of prior convictions required for the offense to one.

In FY 2005/06, there were eight Class H felony convictions for violations of G.S. 50B-4.1(f). Almost 63% of those convictions had an Active sentence imposed.

In FY 2005/06, there were 1,369 Class A1 misdemeanor convictions for violations of G.S. 50B-4.1(a). 942 of the 1,369 convictions had at least one prior conviction. It is unknown how many of the 942 Class A1 misdemeanor convictions had a prior violation under Chapter 50B.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Since it is unknown how many of the current misdemeanor convictions would become felony convictions under the current proposal, several scenarios are provided to estimate the need for additional prison beds. See Table 1 for a summary of the results.

1% Scenario

If, for example, 1% (or 9) of the 942 convictions for violation of Chapter 50B with at least one prior conviction moved from a Class A1 misdemeanor to a Class H felony under the current proposal, the combination of active sentences and probation revocations would result in the need for 3 additional prison beds the first year and 6 additional prison beds the second year.

2.5% Scenario

If, for example, 2.5% (or 24) of the 942 convictions for violation of Chapter 50B with at least one prior conviction moved from a Class A1 misdemeanor to a Class H felony under the current proposal, the combination of active sentences and probation revocations would result in the need for 8 additional prison beds the first year and 15 additional prison beds the second year.

5% Scenario

If, for example, 5% (or 47) of the 942 convictions for violation of Chapter 50B with at least one prior conviction moved from a Class A1 misdemeanor to a Class H felony under the current proposal, the combination of active sentences and probation revocations would result in the need for 14 additional prison beds the first year and 30 additional prison beds the second year.

10% Scenario

If, for example, 10% (or 94) of the 942 convictions for violation of Chapter 50B with at least one prior conviction moved from a Class A1 misdemeanor to a Class H felony under the current proposal, the combination of active sentences and probation revocations would result in the need for 28 additional prison beds the first year and 59 additional prison beds the second year.

Table 1: Domestic Violence Orders/Repeat Violators
Move Class A1 Misdemeanors to Class H Felonies

Scenarios	# Convictions	Prison Beds Year 1	Prison Beds Year 2
1%	9	3	6
2.5%	24	8	15
5%	47	14	30
10%	94	28	59

NORTH CAROLINA 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 47 – VIOLATE ORDER/POSSESS DEADLY WEAPON
FELONY [V.2]**

STATUTE

§ 50B-4.1. Violation of valid protective order.

DESCRIPTION

Subsection (g):

A person who

1. knowingly violates
2. a valid protective order
3. by failing to stay away from a place, or a person, as so directed under the terms of the order
4. while in possession of a deadly weapon.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Violating a valid protective order is a Class A1 misdemeanor. It becomes a Class H felony after the defendant has been previously convicted of three offenses under Chapter 50B.

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

BILL NUMBER/TITLE: HB 47/Violate Order/Possess Deadly Weapon Felony [v.2]

PREPARED: FEBRUARY 28, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. 50B-4.1 to add subsection (g) which makes it a Class I felony for a person to knowingly violate a valid protective order by failing to stay away from a place or a person as directed by the order and to do so while possessing a deadly weapon.

In FY 2005/06, there were 1,369 misdemeanor convictions for violating a valid protective order (G.S. 50B-4.1(a)) and eight Class H felony convictions for repeatedly violating a valid protective order (G.S. 50B-4.1(f)). Of the 1,369 misdemeanor convictions, eight also had a concurrent conviction for an offense involving a deadly weapon. Of the eight felony convictions, none had a deadly weapon conviction. Of these convictions, it is unknown how many violations would meet the criteria of the new offense: failing to stay away from a person or place as directed by the order and to do so while possessing a deadly weapon.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 55 – SECURITY AND IMMIGRATION COMPLIANCE

STATUTE

§ 135A-1. Verification of lawful presence required to receive public benefits; definitions; exceptions.

DESCRIPTION

Subsection (g):

A person who

1. knowingly and willfully
2. makes a false, fictitious, or fraudulent statement of representation
3. in an affidavit executed under subsection (e) of the statute (Verification of lawful presence in the United States in order to receive public benefits).

PROPOSED OFFENSE CLASS

Punished by a fine of not more than \$1,000 or by imprisonment for one to five years, or both.

ANALYSIS

This statute does not assign an offense class to the offense but it does not exempt the offense from structured sentencing either.

Fraudulent misrepresentation for AFDC (G.S. 108A-39(b)), Food Stamp Program (108A-53(a)), and Health Insurance Program for Children (G.S. 108A-70.28)) are Class I felonies.

This provision is identical to a provision in HB 2809, SB 1223, and SB 1627 which the Sentencing Commission reviewed in June 2006. The Commission found the provision inconsistent with the Offense Classification Criteria and noted that it would be consistent with the criteria for a Class F felony.

FINDINGS

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

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

Under Structured Sentencing, offenses are classified in specific offense classes, rather than with offense-specific punishments. This offense would be consistent with a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

DATE PREPARED: 3/14/07

BILL CONTINUED ON NEXT PAGE

- 14 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 55 – SECURITY AND IMMIGRATION COMPLIANCE
(cont.)

STATUTE

§ 84B-9. Violations; penalties.

DESCRIPTION

Any person who violates any provision of the proposed Chapter 84B, Immigration Assistance Registration Act. (The purpose of the Act is to establish and enforce ethical standards for immigration assistance services provided by individuals who are not licensed attorneys.)

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for first offense, Class 1 misdemeanor for second and subsequent offenses committed within five years of a previous conviction for the same offense.

ANALYSIS

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

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

FINDINGS

■ Bill is **consistent** with Offense Classification Criteria as to the Class 2 misdemeanor.

■ Bill is **inconsistent** with Offense Classification Criteria as to the Class 1 misdemeanor.

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 74/SB 34 – KILL POLICE ANIMAL

STATUTE

§ 14-163.1. Assaulting a law enforcement agency animal or an assistance animal.

DESCRIPTION

Subsection (a1):

A person who

1. knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and
2. willfully kills or attempts to kill the animal.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

G.S. 14-163.1 currently makes it a Class I felony for a person to willfully cause or attempt to cause serious harm to a law enforcement agency animal or an assistance animal.

Under G.S. 14-2.5, attempts are punished one class lower than the offense which the offender attempted to commit.

The bill also creates an aggravating factor for an offense committed against or proximately causing serious harm or death to a law enforcement agency animal or assistance animal while engaged in the performance of the animal's official duties.

FINDINGS

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

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

DATE PREPARED: 3/12/07

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

BILL NUMBER/TITLE: HB 74/SB 34/Kill Police Animal

PREPARED: FEBRUARY 23, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 14-163.1(a1)

N.C.G.S. 14-163.1 currently makes it a Class 2 misdemeanor to willfully taunt, tease, harass, delay or obstruct a law enforcement or assistance animal in the performance of its duties, a Class 1 misdemeanor to “harm” such an animal, and a Class I felony to cause “serious harm” to the animal. Section 1 of the proposed bill adds subsection (a1) to G.S. 14-163.1, creating a new Class H felony to willfully kill or attempt to kill a law enforcement or assistance animal. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for any offense under G.S. 14-163.1. The lack of an AOC offense code is some indication that offenses under this statute are infrequently charged and/or infrequently result in convictions.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class 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.

N.C.G.S. 15A-1340.16(d)(6a)

Section 2 of the proposed bill adds a new aggravating factor for felony sentencing, N.C.G.S. 15A-1340.16(d)(6a), for any offense that was committed against or proximately caused serious harm or death to a law enforcement or assistance animal while engaged in the performance of the animal’s duties. The aggravating factor is limited to death or “serious harm” as it is defined in G.S. 14-163.1. Because the Administrative Office of the Courts lacks an offense code for the “serious harm” offense under the current G.S. 14-163.1 (and the killing of such an animal, as would be prohibited by Section 1 of the proposed bill), it is unknown how many offenders might qualify for aggravated sentences under the proposed factor.

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 2005/06, 3% (n=285) of all felony convictions receiving an active sentence fell in the aggravated sentence range. The Administrative Office of the Courts’ computerized Criminal Information System 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., little impact for low-level felonies with increasing impact as one moves up the grid to having a substantial impact for Class B1 felonies). Therefore, it is not possible to determine the impact on the state prison system.

NORTH CAROLINA 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 84 – LABEL FOOD ITEMS FROM CLONED ANIMALS

STATUTE

§ 106-130. Foods deemed misbranded.
§ 106-124. Violations made misdemeanor.

DESCRIPTION

Subsection (16):

A person who manufactures, sells, or delivers

1. a food item
2. that is the product of a cloned animal or the progeny of a cloned animal and
3. the food item or its packaging when displayed for sale at retail
4. does not bear a conspicuous label that identifies the food item as being the product of a cloned animal or the progeny of a cloned animal.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: HB 84 – LABEL FOOD ITEMS FROM CLONED ANIMALS
(cont.)**

STATUTE

§ 106-130. Foods deemed misbranded.
§ 106-124. Violations made misdemeanor.

DESCRIPTION

Subsection (17):
A person who is not the customer
1. removes, obscures, or alters
2. the labeling requirement under G.S. § 106-130(16).

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 90 – SECRET COMPARTMENTS IN MOTOR VEHICLES

STATUTE

§ 90-108.1. Vehicles with false, hidden, or secret compartments.

DESCRIPTION

Subsection (c):

A person who

1. owns or operates any vehicle and
2. knows that the vehicle contains a false, hidden, or secret compartment.

(“Secret compartment” is defined as any enclosure that is intended or designed to be used to conceal, hide, or prevent discovery by law enforcement officers of the false, hidden or secret compartment, or its contents, and which is integrated into or attached to a vehicle. The term excludes a compartment or enclosure that is designed and installed by the manufacturer of the vehicle prior to the sale of the vehicle.)

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

This provision is identical to a provision in HB 2145 which the Sentencing Commission reviewed in June 2006. 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.

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: HB 90 – SECRET COMPARTMENTS IN MOTOR VEHICLES
(cont.)**

STATUTE

§ 90-108.1. Vehicles with false, hidden, or secret compartments.

DESCRIPTION

Subsection (d):

A person who

1. installs, creates, builds, or fabricates
2. a false, hidden, or secret compartment in any vehicle.

(“Secret compartment” is defined as any enclosure that is intended or designed to be used to conceal, hide, or prevent discovery by law enforcement officers of the false, hidden or secret compartment, or its contents, and which is integrated into or attached to a vehicle. The term excludes a compartment or enclosure that is designed and installed by the manufacturer of the vehicle prior to the sale of the vehicle.)

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

This provision is identical to a provision in HB 2145 which the Sentencing Commission reviewed in June 2006. 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.

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 90 – SECRET COMPARTMENTS IN MOTOR VEHICLES
(cont.)

STATUTE

§ 90-108.1. Vehicles with false, hidden, or secret compartments.

DESCRIPTION

Subsection (e):

A person who

1. sells, trades, or otherwise disposes of a vehicle
2. he or she knows to contain a false, hidden, or secret compartment.

(“Secret compartment” is defined as any enclosure that is intended or designed to be used to conceal, hide, or prevent discovery by law enforcement officers of the false, hidden or secret compartment, or its contents, and which is integrated into or attached to a vehicle. The term excludes a compartment or enclosure that is designed and installed by the manufacturer of the vehicle prior to the sale of the vehicle.)

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

This provision is identical to a provision in HB 2145 which the Sentencing Commission reviewed in June 2006. 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.

DATE PREPARED: 3/14/07

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 90: SECRET COMPARTMENTS IN MOTOR VEHICLES

PREPARED: FEBRUARY 21, 2007

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 90-108.1(c)

Subsection (c) makes it a Class I felony for any person to own or operate any vehicle he or she knows to contain a false or secret compartment.

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

G.S. 90-108.1(d)

Subsection (d) makes it a Class I felony for any person to install, create, build, or fabricate a false, hidden or secret compartment in any vehicle.

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

G.S. 90-108.1(e)

Subsection (e) makes it a Class I felony for any person to sell, trade, or otherwise dispose of a vehicle he or she knows to contain a false, hidden, or secret compartment.

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 105 – MODIFY LAWS FOR DESECRATING GRAVES

STATUTE

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

DESCRIPTION

Subsection (a)(1a):

A person who

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

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: HB 105 – MODIFY LAWS FOR DESECRATING GRAVES
(cont.)**

STATUTE

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

DESCRIPTION

Subsection (1a):

A person who

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

OFFENSE CLASS

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

PROPOSED: Class H felony.

ANALYSIS

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

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

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 116 – TISSUE BANK ACCREDITATION

STATUTE

§ 131E-172. Inspection, enforcement, penalties.

DESCRIPTION

Any person who

1. knowingly and willfully
2. engages in the recovery of human tissue for human transplantation
3. without registration with the Food and Drug Administration or accreditation by the AATB or EBAA as required by Article 8A of Chapter 131E of the General Statutes.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor punishable by a fine only of not more than \$500.00 for the first offense and not more than \$500.00 for each subsequent offense.

ANALYSIS

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

FINDINGS

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

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

It is inconsistent with Structured Sentencing to limit the punishment to a fine only.

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: HB 143 – POLYSOMNOGRAPHIC TECHNOLOGISTS
LICENSURE**

STATUTE

§ 90-724. Violation a misdemeanor.

DESCRIPTION

Any person who violate any provision of Article 42, Polysomnographic Technologists Licensure Act, of Chapter 90 of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 153 – LOCAL OPTION TAX MENU

STATUTE

§ 105-534.7. Penalties.

§ 105-236. Penalties; situs of violations; penalty disposition.

DESCRIPTION

A person who

1. fails or refuses
2. to file the return or pay a tax
3. levied under Article 48, Local Government Meals Tax, of Chapter 105 of the General Statutes.

PROPOSED OFFENSE CLASS

The criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes (Class 1 misdemeanor).

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 183 – BAN CELL PHONE USE BY SCHOOL BUS DRIVERS

STATUTE

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

DESCRIPTION

A person who

1. operates a public or private school bus or a public activity bus
2. upon a public street or highway
3. while using a mobile telephone
4. to engage in a call
5. while such vehicle is in motion.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor punishable by a fine of not less than \$100.00.

ANALYSIS

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

(See also HB 186.)

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 186 –BAN MOBILE USE PHONE BY SCHOOL BUS DRIVERS

STATUTE

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

DESCRIPTION

A person who

1. operates a public or private school bus, a public activity bus, or a private passenger vehicle owned by a private school or day care center and used primarily to transport children to and from a school or day care center,
2. upon a public street or highway
3. while using a mobile telephone
4. to engage in a call
5. while such vehicle is in motion.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor punishable by a fine of not less than \$100.00.

ANALYSIS

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

(See also HB 183.)

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 253 – BAN MOBILE PHONE USE ON SCHOOL BUSES

STATUTE

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

DESCRIPTION

A person who

1. operates a public or private school bus or a public activity bus
2. upon a public street or highway
3. while using a mobile telephone
4. to engage in a call
5. while such vehicle is in motion.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor punishable by a fine of not less than \$100.00.

ANALYSIS

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

(See also HB 186.)

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 263 – UNBORN VICTIMS OF VIOLENCE

STATUTE

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

DESCRIPTION

A person who

1. murders
2. a pregnant woman and
3. thereby causes the death of an unborn child.

PROPOSED OFFENSE CLASS

The punishment is the same as the punishment provided for the murder of the pregnant woman. First degree murder is a Class A felony; second degree murder is a Class B2 felony.

ANALYSIS

Conduct relating to any medical treatment or an abortion is excluded from the offense.

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

This provision is identical to a provision in SB 1425, which the Sentencing Commission reviewed in June 2004, and a provision in HB 1324, which the Sentencing Commission reviewed in May 2005. The Commission found that the Offense Classification Criteria were not applicable.

FINDINGS

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

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 263 – UNBORN VICTIMS OF VIOLENCE (cont.)

STATUTE

§ 14-18. Punishment for manslaughter.

DESCRIPTION

A person who

1. commits voluntary or involuntary manslaughter
2. of a pregnant woman and
3. thereby causes the death of an unborn child.

PROPOSED OFFENSE CLASS

The punishment is the same as the punishment provided for voluntary manslaughter or involuntary manslaughter of the pregnant woman. Voluntary manslaughter is a Class D felony; involuntary manslaughter is a Class F felony.

ANALYSIS

Conduct relating to any medical treatment or an abortion is excluded from the offense.

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

This provision is identical to a provision in HB 1324 which the Sentencing Commission reviewed in May 2005. The Commission found that the Offense Classification Criteria were not applicable.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 263 – UNBORN VICTIMS OF VIOLENCE (cont.)

STATUTE

§ 14-18.2. Injury to pregnant woman.

DESCRIPTION

A person who

1. in the commission of a felony
2. causes injury
3. to a woman
4. which injury results in a miscarriage or stillbirth by the woman.

PUNISHMENT RANGE

CURRENT: One class higher than the felony committed.

PROPOSED: A separate offense, the same punishment as the underlying felony.

ANALYSIS

This is currently an enhancement to the underlying offense. This bill also removes the requirement that the defendant know the woman is pregnant.

This provision is identical to a provision in HB 1324 which the Sentencing Commission reviewed in May 2005. The Commission found that it was 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.

Note: If a fetus is classified as a human being for the purposes of criminal law, then the conduct punished under the proposed offense is likely subject to the felony murder rule.

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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 263 – UNBORN VICTIMS OF VIOLENCE (cont.)

STATUTE

§ 14-18.2. Injury to pregnant woman.

DESCRIPTION

A person who

1. in the commission of a misdemeanor that is an act of domestic violence as defined in Chapter 50B of the General Statutes
2. causes injury to a woman
3. which injury results in a miscarriage or stillbirth by the woman.

PUNISHMENT RANGE

CURRENT: One class higher than the misdemeanor committed.

PROPOSED: A separate offense, the same punishment as the underlying misdemeanor.

ANALYSIS

This is currently an enhancement to the underlying offense. This bill also removes the requirement that the defendant know the woman is pregnant.

This provision is identical to a provision in House Bill 1324 from the 2005 Session. The Sentencing Commission did not review this provision because it did not review misdemeanor provisions.

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 267/SB 125 – ALCOHOL INHALERS ILLEGAL

STATUTE

§ 90-113.10. Inhaling fumes for purpose of causing intoxication.
§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

A person who

1. knowingly
2. breathes or inhales
3. any compound, liquid, or chemical
4. containing ethyl alcohol
5. for the purpose of inducing a condition of intoxication.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

This bill adds ethyl alcohol to the existing offense.

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

FINDINGS

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 267/SB 125 – ALCOHOL INHALERS ILLEGAL (cont.)

STATUTE

§ 90-113.10A. Inhalant paraphernalia.
§ 90-113.13. Violation a misdemeanor.

DESCRIPTION

A person who

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

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 274 – STREET GANG PREVENTION ACT

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (a):

A person who

1. is employed by or associated with a criminal street gang and (“Criminal street gang” is defined as any organization, association, or group of three or more persons, whether formal or informal, which engages in a pattern of criminal gang activity as defined by statute)
2. conducts or participates in the criminal street gang
3. through a pattern of criminal gang activity. (“Criminal gang activity” is defined as the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the listed offenses, provided that at least one of these offenses occurred after December 1, 2005, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity)

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and 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 criteria for a Class H felony.

FINDINGS

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 274 – STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (b):

A person who

1. acquires or maintains, directly or indirectly,
2. through a pattern of criminal gang activity or proceeds derived therefrom
3. any interest in or control of any real or personal property of any nature, including money.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and 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 criteria for a Class H felony.

FINDINGS



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



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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 274 – STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (c):

Any person who

1. occupies a position of organizer, supervisor, or any other position of management with regard to a criminal street gang, and
2. engages in, directly or indirectly, or conspires to engage in
3. a pattern of criminal gang activity.

PUNISHMENT RANGE

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

PROPOSED: If the person violates subsection (a), (b), (d), (e), or (f) of this statute and violates this subsection, then punished by imprisonment for an additional 10 years which shall be served consecutively to any other sentence imposed (a separate sentence).

ANALYSIS

The bill states that “Any crime committed in violation of this section shall be considered a separate offense” but it is structured like an enhancement.

Under G.S. 14-2.4, conspiracies are punished one class lower than the offense which the offender conspired to commit.

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and a provision in HB 50 which the Commission reviewed in March, 2005. 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.

DATE PREPARED: 3/14/07

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40 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 PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (d):

A person who

1. causes, encourages, solicits, or coerces
2. another
3. to participate in a criminal street gang.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and a provision in HB 50 which the Commission reviewed in March, 2005, except that they were Class G felonies. The Commission found that provision to be inconsistent with the Offense Classification Criteria but recommended that the “causes, encourages, solicits” portion of the offense would be consistent with the criteria for a Class I felony and that the “coerces” portion of the offense would be consistent with the criteria for a Class H felony.

FINDINGS



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



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

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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 PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (e):

A person who

1. communicates, directly or indirectly,
2. with another
3. a threat of injury or damage to the person or property of the other person or to any associate or relative of the other person
4. with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such gang.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and a provision in HB 50 which the Commission reviewed in March, 2005, except that it was classified as a Class G felony. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

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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 PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (f):

A person who

1. communicates, directly or indirectly,
2. with another
3. a threat of injury or damage to the person or property of the other person or to any associate or relative of the other person
4. with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003, and a provision in HB 50 which the Commission reviewed in March, 2005, except that it was classified as a Class G felony. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

FINDINGS



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



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

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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 PREVENTION ACT (cont.)

STATUTE

§ 14-50.19. Enhanced offense for criminal gang activity.

DESCRIPTION

A person who

1. is convicted of an offense and
2. that offense is committed for the benefit of, at the direction of, or in association with, any criminal street gang.

PUNISHMENT RANGE

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

PROPOSED: Punished one class higher than the class of the offense committed.

ANALYSIS

This provision is identical to a provision in HB 50 which the Commission reviewed in March, 2005. The Commission found that provision to be inconsistent with G.S. 164-41 and noted that there is currently an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang (G.S. 15A-1340.16(d)(2a)).

FINDINGS

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

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

Note: There is currently an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang (G.S. 15A-1340.16(d)(2a)).

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44 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 PREVENTION ACT (cont.)

STATUTE

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

DESCRIPTION

A person who

1. willfully and wantonly
2. discharges or attempts to discharge
3. a firearm,
4. as part of a pattern of criminal gang activity,
5. from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure
6. toward a person or persons not within that enclosure.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property, is a Class E felony. It becomes a Class D felony if the weapon is discharged into an occupied dwelling or into any occupied vehicle, aircraft, watercraft, or other conveyance that is in operation. It becomes a Class C felony if the violation results in serious bodily injury to any person.

This provision is identical to a provision in HB 50 which the Commission reviewed in March, 2005. 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.

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 274 – STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang, and the defendant possessed, displayed, or discharged a firearm during the commission of the felony.

DESCRIPTION

Notwithstanding G.S. 15A-1340.16A (the current firearm enhancement):

A person who

1. is convicted of a Class A, B1, B2, C, D, or E felony and
2. committed that felony for the benefit of, at the direction of, or in association with any criminal street gang, and
3. possessed, displayed, or discharged a firearm during the commission of the felony.

PUNISHMENT RANGE

CURRENT: If any person is convicted of a Class A through E felony and they used, displayed, or threatened to use or display a firearm, their minimum sentence may be increased by 60 months. The enhancement does not apply if the evidence of the use, display, or threat to use or display the firearm is needed to prove an element of the felony or if the person is not sentenced to an active sentence.

PROPOSED: For possession, an additional minimum term of 60 months; for displaying, an additional minimum term of 84 months; for discharging, an additional minimum term of 120 months. This sentence must be active and consecutive to any other sentence being served. The enhancement applies regardless of whether the evidence is also necessary to prove an element of the felony or the person received an intermediate punishment.

ANALYSIS

It only applies to persons associated with a criminal street gang and it includes discharging a firearm.

This provision is identical to a provision in HB 50 which the Commission reviewed in March, 2005. 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.

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 308 – STATE CONTRACTS/ILLEGAL IMMIGRANTS

STATUTE

§ 143-129.1A. Contracts with illegal immigrants prohibited; verification and certification required.

DESCRIPTION

A person who

1. submits a certification that he or she has verified the legal status or authorization to work in the United States of each individual employed by the contractor to perform work under the contract
2. knowing the certification to be false.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 344/SB 222 – AMEND ARMED ROBBERY

STATUTE

§ 14-87. Robbery with firearms, apparent firearms, or other dangerous weapons.

DESCRIPTION

A person who,

1. unlawfully takes, attempts to take, or aids or abets another person or persons in taking
2. personal property
3. from another or from a place of business, residence or banking institution or any other place
4. where there is a person or persons in attendance,
5. at any time, either day or night,
6. having in possession or with the use or threatened use of any apparent firearm, whereby a reasonable person under the circumstances would believe that his or her life was endangered or threatened.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

Robbery with a firearm is a Class D felony.

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

Under G.S. 14-2.5, attempts are punished one class lower than the offense which the offender attempted to commit.

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 367/SB 201 – INCREASE PENALTY/THEFT OF METALS

STATUTE

§ 66-11. Dealing in regulated metals property; penalties for violations of section.

DESCRIPTION

A person who violates any of the provisions of G.S. 66-11 (record keeping requirements for secondary metals recyclers).

OFFENSE CLASS

CURRENT: Class 1 misdemeanor for all violations.

PROPOSED: Class I felony for a second or subsequent violation.

ANALYSIS

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

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

FINDINGS



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



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

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

DATE PREPARED: 3/14/07

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: HB 367/SB 201 – INCREASE PENALTY/THEFT OF METALS
(cont.)**

STATUTE

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

DESCRIPTION

A person who

1. willfully
2. injures, destroys, or pulls down
3. any telegraph, telephone or electric-power-transmission pole, wire, insulator, or any other fixture or apparatus attached to a telegraph, telephone or electric-power-transmission line,
4. with the intent to sell or use the pole, wire, insulator, or any other fixture or apparatus
5. to obtain any direct or indirect profit gain, remuneration, or compensation.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

50 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 389 – CRIM. OFFENSE/FALSE STATEMENT TO SBI
AGENT**

STATUTE

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

DESCRIPTION

Subsection (c):

A person who,

1. in response to an official inquiry by a sworn agent of the State Bureau of Investigation,
2. willfully does any of the following:
 - a. falsifies or conceals by any trick, scheme, or device a material fact.
 - b. makes any materially false, fictitious, or fraudulent statement or representation.
 - c. uses any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

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

(See also HB 478.)

FINDINGS



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



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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 414 – AMEND METALS PRODUCTS REGULATIONS

STATUTE

§ 66-11. Dealing in regulated metals property; violations of section Class A1 misdemeanor.

DESCRIPTION

A person who violates any of the provisions of G.S. 66-11 (record keeping requirements, requirements to retain metals for seven days before selling or altering, and requirement to report suspected stolen property for secondary metals recyclers).

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 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.

(See also HB 367/SB 201.)

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 441 – FELONY/STEAL OR CUT ANOTHER’S TIMBER

STATUTE

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

DESCRIPTION

A person who

1. knowingly and willfully
2. cuts down, injures, or removes
3. any standing, growing, or fallen tree or log, and
4. it is the property of another and he is not the bona fide owner.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

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

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 478 – RESTORE CONFIDENCE IN THE LEGISLATURE
ACT

STATUTE

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

DESCRIPTION

Subsection (c):

A person who,

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

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

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

(See also HB 389.)

FINDINGS

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

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

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 478 – RESTORE CONFIDENCE IN THE LEGISLATURE
ACT (cont.)

STATUTE

§ 120C-304. Restrictions.

§ 120C-602. Punishment for violation.

DESCRIPTION

A legislator or agent of the legislator who

1. knowingly influences or knowingly attempts to influence
2. the selection of a lobbyist as defined in statute.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

Under G.S. 14-2.5, attempts are punished one class lower than the offense which the offender attempted to commit.

FINDINGS



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



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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 478 – RESTORE CONFIDENCE IN THE LEGISLATURE
ACT (cont.)

STATUTE

§ 163-278.301. Creation of legal assistance funds.

DESCRIPTION

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

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

STATUTE

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

DESCRIPTION

A driver of a vehicle who

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

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 519 – AMEND CPA CRIMINAL PUNISHMENT

STATUTE

§ 93-13. Violation of Chapter; penalty.

DESCRIPTION

A person who violates:

1. G.S. 93-3, Unlawful use of title “certified public accountant” by individual; or
2. G.S. 93-4, Use of title by firm; or
3. G.S. 93-5, Use of title by corporation; or
4. G.S. 93-6, Practice as accountants permitted; use of misleading titles prohibited.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor.

PROPOSED: Class 1 misdemeanor.

ANALYSIS

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

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

FINDINGS

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

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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 554 – ASSAULT DISABLED PERSON/INSTITUTIONAL SETTING-AB

STATUTE

§ 14-32.2. Patient abuse and neglect; punishments.

DESCRIPTION

A person who

1. physically abuses
2. either
 - a. a patient of a health care facility or
 - b. a resident of a residential care facility, and
3. the conduct evinces a pattern of conduct and
4. the conduct is willful or culpably negligent and
5. proximately causes bodily injury to a patient or resident.

OFFENSE CLASS

CURRENT: Class A1 misdemeanor.

PROPOSED: Class F felony.

ANALYSIS

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

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

The statute also contains the following penalties:

- Class C felony where intentional conduct proximately causes the death of the patient or resident.
- Class E felony where culpably negligent conduct proximately causes the death of the patient or resident.
- Class F felony where such conduct is willful or culpably negligent and proximately causes serious bodily injury to the patient or resident.

FINDINGS

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

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

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. The proposed bill amends the offense class of subdivision (b)(4) to the same class as an existing offense in subdivision (b)(3), which has a more serious degree of injury.

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 572 – PROHIBIT HUMAN CLONING

STATUTE

§ 14-465. Human cloning.

DESCRIPTION

A person who

1. knowingly
2. does any of the following:
 - a. Clones a human being, participates in cloning a human being, or attempts to clone a human being.
 - b. Uses public or private funds or public facilities to clone a human being or to attempt to clone a human being.
 - c. As a public employee, allows any person to clone a human being or to attempt to clone a human being while the person is making use of public funds or public facilities.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This bill is identical to Senate Bill 1040 which the Sentencing Commission reviewed in May 2005. The Commission found the bill to be inconsistent with the Offense Classification Criteria.

FINDINGS



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



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

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 5 – METHADONE DISTRIBUTION/2ND DEGREE MURDER

STATUTE

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

DESCRIPTION

A person who:

1. distributes a substance described in G.S. 90-90 [Schedule II]
2. the ingestion of which causes the death of the user.

PROPOSED OFFENSE CLASS

Class B2 felony.

ANALYSIS

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

The Sentencing Commission did not use the Offense Classification Criteria in the classification of homicide offenses.

The proposed offense is identical to that in SB 1613 in 2005/06. The Commission determined that the Offense Classification Criteria were not applicable to that offense.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 3/9/07

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 5 - METHADONE DISTRIBUTION/SECOND DEGREE MURDER

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

General Statute 14-17 makes it second degree murder if a person unlawfully distributes opium, cocaine, or methamphetamine and the ingestion of the substance causes the death of the user. The proposed draft amends that offense to include the remaining Schedule II controlled substances. Second-degree murder is a Class B2 felony.

It is not known how many overdose deaths might lead to a conviction for second-degree murder under the proposed amendment. In FY 2005/06, there were 206 convictions for second-degree murder and two convictions for attempted second-degree murder. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. The average minimum sentence imposed for the 206 second-degree murder convictions was 172 months, with an average estimated time served of 183 months.

Currently, if a person unlawfully distributed any other Schedule II controlled substance and that proximately causes the death of the user, the person might be convicted of involuntary manslaughter (G.S. 14-18), a Class F felony. In FY 2005/06, there were 89 involuntary manslaughter convictions. It is not known how many of these deaths were proximately caused by the unlawful distribution of a Schedule II controlled substance.

Adding the remaining Schedule II controlled substances to the list of controlled substances for which an overdose death can lead to a conviction of second-degree murder could have impact on the prison population. Class B2 felonies have a long-term effect on the prison population due to the mandatory active sentence and long sentences imposed, which results in a "stacking" effect. If, for example, there were one additional conviction per year as a result of the proposed amendment, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

Summary of Potential Impact on YDC Resources

Criminal bills that create or expand Class A through Class E felony offenses, which are classified as "Violent" under the juvenile disposition chart, may also increase the need for Youth Development Center (YDC) resources. YDC commitment is authorized in all Delinquency History Levels for the adjudication of Violent offenses. In FY 2005/06, 27% of juveniles adjudicated delinquent for a Violent offense received a Level 3 (*i.e.*, YDC) commitment. It is important to note that small increases in the demand for YDC resources represent a relatively large increase in the need for these resources as the current YDC population is only about 458 (as of January 2007).

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHILD
CTRS.**

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subdivision (e)(8):

Any person

1. 21 years of age or older
2. who violates G.S. 90-95(a)(1) (manufactures, sells, delivers, or possesses with intent to manufacture, sell, or deliver a controlled substance)
3. within 1,000 feet of a child care center, elementary or secondary school.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The current offense under G.S. 90-95(e)(8) makes it a Class E felony to violate 90-95(a)(1) within 300 feet of a school or child care center.

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

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHILD
CTRS. (cont.)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subdivision (e)(10):

Any person

1. 21 years of age or older
2. who violates G.S. 90-95(a)(1) (manufactures, sells, delivers, or possesses with intent to manufacture, sell, or deliver a controlled substance)
3. within 1,000 feet of a public park.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The current offense under G.S. 90-95(e)(10) makes it a Class E felony to violate 90-95(a)(1) within 300 feet of a *playground in* a public park. In addition to expanding the distance from the park, the proposed bill amends the location element to delete the requirement that there be a playground in the park.

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

The Sentencing Commission did not use the Offense Classification Criteria in the classification of drug offenses.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHILD
CTRS. (cont.)

STATUTE

§ 14-269.2. Weapons on campus or other educational property.

DESCRIPTION

Subsection (b):

Any person who

1. possesses or carries, whether openly or concealed
2. any gun, rifle, pistol, or other firearm of any kind
3. on educational property of the school or to a curricular or extracurricular activity sponsored by a school.

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 significant societal injury as Class H felonies.

Willful discharge of a firearm on educational property remains a Class F felony under the proposed bill.

BB guns, stun guns, air guns and the like, and persons other than students or employees of the school in question who carry weapons onto school grounds in a locked container in a vehicle, are governed by subsections (d), (e), and (f) of G.S. 14-269.2 (*See* SB 8, Misdemeanor Review).

The statute exempts certain law enforcement, emergency, and military personnel from the offense, as well as weapons used solely for educational or school-sanctioned ceremonial purposes.

FINDINGS



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



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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHILD
CTRS. (cont.)

STATUTE

§ 14-269.2. Weapons on campus or other educational property.

DESCRIPTION

Subsection (b1):

Any person who

1. possesses or carries, whether openly or concealed
2. any dynamite cartridge, bomb, grenade, mine, or other powerful explosive (as defined in G.S. 14-284.1)
3. on educational property or to a curricular or extracurricular activity sponsored by a school.

OFFENSE CLASS

CURRENT: Class G felony.

PROPOSED: Class F felony.

ANALYSIS

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

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

This subsection does not apply to fireworks.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHILD
CTRS. (cont.)**

STATUTE

§ 14-269.2. Weapons on campus or other educational property.

DESCRIPTION

Subsection (c):

Any person who

1. causes, encourages, or aids
2. a minor
3. to possess or carry, whether openly or concealed
4. any gun, rifle, pistol, or other firearm of any kind
5. on educational property.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

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

This subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

FINDINGS

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

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHILD
CTRS. (cont.)**

STATUTE

§ 14-269.2. Weapons on campus or other educational property.

DESCRIPTION

Subsection (c1):

Any person who

1. causes, encourages, or aids
2. a minor
3. to possess or carry, whether openly or concealed
4. any dynamite cartridge, bomb, grenade, mine, or other powerful explosive (as defined in G.S. 14-284.1)
5. on educational property.

OFFENSE CLASS

CURRENT: Class G felony.

PROPOSED: Class F felony.

ANALYSIS

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

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

This subsection does not apply to fireworks.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHIL
CTRS. (cont.)**

STATUTE

§ 14-269.2. Weapons on campus or other educational property.

DESCRIPTION

Subsection (d):

Any person who

1. possesses or carries, whether openly or concealed
2. any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metal knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument, except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance
3. on educational property.

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 personal injury or serious societal injury as Class 1 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious personal injury as Class A1 misdemeanors.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHIL
CTRS. (cont.)

STATUTE

§ 14-269.2. Weapons on campus or other educational property.

DESCRIPTION

Subsection (e):

Any person who

1. causes, encourages, or aids
2. a minor
3. to possess or carry, whether openly or concealed
4. any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metal knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument, except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance
5. on educational property.

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 personal injury or serious societal injury as Class 1 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious personal injury as Class A1 misdemeanors.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHIL
CTRS. (cont.)**

STATUTE

§ 14-269.2. Weapons on campus or other educational property.

DESCRIPTION

Subsection (f):

Any person who:

1. possesses or carries, whether openly or concealed
2. any gun, rifle, pistol, or other firearm of any kind
3. on educational property of the school or to a curricular or extracurricular activity sponsored by a school
4. and the person:
 - a. is not a student attending school or an employee of the school working on the educational property
 - b. is not a student or employee of the school attending a curricular or extracurricular activity sponsored by the school; and
 - c. the firearm is:
 - i. not loaded
 - ii. in a motor vehicle
 - iii. in a locked container or gun rack.

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 personal injury or serious societal injury as Class 1 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious personal injury as Class A1 misdemeanors.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 8 – EXPAND SAFE ZONES/SCHOOLS, PARKS, CHIL
CTRS. (cont.)

STATUTE

§ 14-269.5. Possessing or carrying firearms in public parks, in child care centers, or on playgrounds.

DESCRIPTION

Any person who:

1. possesses or carries, whether openly or concealed
2. any gun, rifle, or pistol
3. in any public park, in a child care center, or on any playground.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

Carrying a concealed firearm under G.S. 14-269(a1) currently is a Class 2 misdemeanor for the first offense and a Class I felony for a second or subsequent offense.

The proposed bill exempts persons also exempted under G.S. 14-269(b) and certain emergency and private security personnel in the performance of their duties.

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 10 – VIOLATE ORDER/POSSESS DEADLY WEAPON
FELONY**

STATUTE

§ 50B-4.1. Violation of valid protective order.

DESCRIPTION

Subsection (g):

Any person who:

1. while in possession of a deadly weapon
2. knowingly violates a valid protective order entered by the courts of this state, another state, or an Indian tribe
3. by failing to stay away from a place or a person as dictated by the terms of the order.

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.

(See also HB 47 and SB 28.)

FINDINGS

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

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

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 property loss. This offense would be consistent with a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 17 – UP PENALTIES/SEX OFFENSES WITH CHILD VICTIM

STATUTE

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

DESCRIPTION

Any person who:

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

OFFENSE CLASS

CURRENT: Class D felony.

PROPOSED: Class C felony.

ANALYSIS

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

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

(See also HB 28/SB 68 and SB 132.)

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 17 – UP PENALTIES/SEX OFFENSES WITH CHILD
VICTIM (cont.)**

STATUTE

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

DESCRIPTION

Any person who:

1. knowing the character or content of the material
2. does either of the following:
 - a. records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or
 - b. Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class D felony.

ANALYSIS

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

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

(See also HB 28/SB 68 and SB 132.)

FINDINGS



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



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

A Class D felony tends to result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling. This offense does not result in an infringement on property interests. This offense would be consistent with a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE PREPARED: 3/9/07

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 17 – UP PENALTIES/SEX OFFENSES WITH CHILD
VICTIM (cont.)

STATUTE

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

DESCRIPTION

Any person who:

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

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

(*See also* HB 28/SB 68 and SB 132.)

FINDINGS

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

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 17 – UP PENALTIES/SEX OFFENSES WITH CHILD
VICTIM (cont.)**

STATUTE

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

DESCRIPTION

Any person who is 16 years of age or older, who:

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

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

The Sentencing Commission reviewed a similar provision in HB 614 (2005) to change the offense class from Class I to Class E. The Commission found the proposed reclassification to be inconsistent with the Offense Classification Criteria. (The offense class was changed to Class H by separate legislation: SB 472, S.L. 2005-121.)

(See also HB 28/SB 68.)

FINDINGS



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



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

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

DATE PREPARED: 3/9/07

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 17 – UP PENALTIES/SEX OFFENSES WITH CHILD
VICTIM (cont.)

STATUTE

§ 14.202.1 Taking indecent liberties with children.

DESCRIPTION

Any person 16 years of age or older who:

1. with any child of either sex under the age of 16 years
2. while at least five years older than the victim
3. does either of the following:
 - a. willfully takes or attempts to take any immoral, improper, or indecent liberties for the purpose of arousing or gratifying sexual desire; or
 - b. willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of the child.

OFFENSE CLASS

CURRENT: Class F felony, regardless of prior record.

PROPOSED: Class F felony for first offense. Class E felony for second or subsequent offense.

ANALYSIS

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

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

(See also HB 28/SB 68.)

FINDINGS

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

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

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

DATE PREPARED: 3/9/07

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78 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 17 – UP PENALTIES/SEX OFFENSES WITH CHILD
VICTIM (cont.)**

STATUTE

§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful material to minors.

DESCRIPTION

Subdivision (a)(1):

A person who

1. knowing the content character or content of the material
2. sells, furnishes, presents or distributes material
3. that is harmful to minors (as defined by statute)
4. to a person the defendant believes to be a minor.

Subdivision (a)(2):

A person who

1. knowing the content character or content of the material
2. allows a person the defendant believes to be a minor
3. to peruse material
4. that is harmful to minors (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 personal injury or serious societal injury as Class 1 misdemeanors.

The current offense of disseminating harmful material to minors applies only to actual minors. The statute exempts dissemination made with parental consent or by schools, churches, museums, public libraries, governmental agencies, medical clinics, or hospitals carrying out their legitimate functions.

(See also HB 28/SB 68.)

FINDINGS



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



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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 17 – UP PENALTIES/SEX OFFENSES WITH CHILD
VICTIM (cont.)

STATUTE

§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful material to minors.

DESCRIPTION

Subsection (b):

A person who:

1. knowing the content character or content of the performance
2. allows a person the defendant believes to be a minor
3. to view a live performance
4. that is harmful to minors (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 personal injury or serious societal injury as Class 1 misdemeanors.

The current offense of exhibiting a harmful performance to minors applies only to actual minors.

The statute exempts dissemination made with parental consent or by schools, churches, museums, public libraries, governmental agencies, medical clinics, or hospitals carrying out their legitimate functions.

(See also HB 28/SB 68.)

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

80 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 28 – VIOLATE ORDER/POSSESS DEADLY WEAPON
FELONY**

STATUTE

§ 50B-4.1. Violation of valid protective order.

DESCRIPTION

Subsection (g):

Any person who:

1. while in possession of a deadly weapon
2. knowingly violates a valid protective order entered by the courts of this state, another state, or an Indian tribe
3. by failing to stay away from a place or a person as dictated by the terms of the order.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

This provision is identical to that of SB 10 – Violate Order/Possess Deadly Weapon Felony.

(See also HB 47.)

FINDINGS

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

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

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 property loss. This offense would be consistent with a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

DATE PREPARED: 3/9/07

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 60 – DMV TEMPORARY LOCATIONS

STATUTE

§ 20-63. Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.

DESCRIPTION

A former contract agent of the Division of Motor Vehicles (a person, firm, corporation or governmental subdivision commissioned to conduct registration-related transactions on behalf of DMV) who:

1. upon the closing of the only contract license plate agency in the county
2. fails to allow the posting for 30 days of contact information for a new, temporary registration location
3. at the former registration location.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

82 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 82 – ENDANGERMENT OF JUVENILE

STATUTE

§ 14-318.5. Endangering a juvenile.

DESCRIPTION

Any parent or other person providing care or supervision to a juvenile:

1. whose willful act or omission
2. in the care of the juvenile
3. is so gross, wanton, and culpable as to show reckless disregard for human life.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 82 – ENDANGERMENT OF JUVENILE (cont.)

STATUTE

§ 14-318.5. Endangering a juvenile.

DESCRIPTION

Any parent or other person providing care or supervision to a juvenile:

1. whose willful act or omission
2. in the care of the juvenile
3. is so gross, wanton, and culpable as to show reckless disregard for human life
4. and results in serious injury (as defined by statute).

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 82 – ENDANGERMENT OF JUVENILE (cont.)

STATUTE

§ 14-318.5. Endangering a juvenile.

DESCRIPTION

Any parent or other person providing care or supervision to a juvenile:

1. whose willful act or omission
2. in the care of the juvenile
3. is so gross, wanton, and culpable as to show reckless disregard for human life
4. and results in serious bodily injury (as defined by statute).

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 83 – AMEND DOMESTIC CRIM. TRESPASS

STATUTE

§ 14-134.3. Domestic criminal trespass.

DESCRIPTION

Subsection (c):

Any person who

1. subject to a valid protective order enforceable under Chapter 50B
2. enters after being forbidden or remains at after being ordered to leave
3. property being operated as a safe house or haven for victims of domestic violence
4. without being present pursuant to a judicial order or separation agreement that gives the defendant the right to be present for visitation with children.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Domestic trespass at the residence of a present or former spouse or person with whom the defendant has lived as if married is a Class 1 misdemeanor.

Domestic trespass upon the property of a domestic violence safe house or haven while armed with a deadly weapon is a Class G felony.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 83 – AMEND DOMESTIC CRIM. TRESPASS (cont.)

STATUTE

§ 15A-2001. Capital offenses; plea of guilty.

[Correct statute for the proposed factor below appears to be G.S. 15A-2000(e).]

DESCRIPTION

New capital aggravating circumstance (12):

The defendant was the subject of a valid protective order enforceable under Chapter 50B of the General Statutes at the time of the commission of the capital felony and committed the capital felony on the premises of a safe house or haven for victims of domestic violence.

PUNISHMENT RANGE

PROPOSED: Finding of the aggravating circumstance after conviction of a capital (Class A) felony would render the defendant eligible for the death penalty.

ANALYSIS

The Sentencing Commission did not use the Offense Classification Criteria in the classification of homicide offenses.

The Sentencing Commission was instructed in 2005 to study “whether the State's capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe.” S.L. 2005-295. The Sentencing Commission recommended:

- against the adoption of the proposed aggravating circumstance; and
- the “continued support and expansion” of other, innovative programs designed to address the problem of domestic violence.

FINDINGS

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

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

G.S. 164-41 is not applicable.

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 87 – NO VIOLENT/OBSCENE VIDEO GAME SALES TO MINOR

STATUTE

§ 14-317.2. Disseminating to a minor a video game that is harmful to minors.

DESCRIPTION

Subdivision (a)(1):

Any person who:

1. knowing the content or character of the game
2. sells, rents, or otherwise disseminates
3. for consideration
4. to a minor
5. a video game
6. that is harmful to minors (as defined by statute).

Subdivision (a)(2):

Any person who:

1. knowing the character of content of the game
2. allows a minor to operate
3. for consideration
4. a video game
5. that is harmful to minors (as defined by statute)
6. in a video arcade.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The statute exempts dissemination made with parental consent or by a defendant who requested and received identification indicating that the minor was at least 18 years old, and the defendant reasonably believe the minor to be at least 18 years old.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 87 – NO VIOLENT/OBSCENE VIDEO GAME SALES TO MINOR (cont.)

STATUTE

§ 14-317.3. Video games that are harmful to minors shall be located in an area not open to view by minors.

DESCRIPTION

Subsection (a):

Any video game retailer who

1. sells or rents video games that are harmful to minors (as defined by statute); and
2. fails to place such games and all advertising for such games in an area of the business establishment that is not open to view by minors and is labeled “adults only.”

Subsection (b):

Any person who

1. has custody, control, or supervision of a video arcade
2. that includes games harmful to minors (as defined by statute); and
3. fails to place such games and all advertising for such games in an area within the arcade that is not open to view by minors and is labeled “adults only.”

PROPOSED OFFENSE CLASS

Class 2 misdemeanor. Each day’s violation is a separate offense.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 87 – NO VIOLENT/OBSCENE VIDEO GAME SALES TO MINOR (cont.)

STATUTE

§ 14-317.3. Video games that are harmful to minors shall be located in an area not open to view by minors.

DESCRIPTION

Subsection (a):

A person who

1. either:
 - a. is a video game retailer; or
 - b. has custody, control, or supervision of a video arcade; and
2. fails to post a sign notifying customers of a video game rating system
3. in a prominent area.

Subsection (b):

A person who

1. either:
 - a. is a video game retailer; or
 - b. has custody, control, or supervision of a video arcade; and
2. fails to make available upon request the video game rating system and information explaining it.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

90 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 92 – DANGEROUS DOGS/LIABILITY INSURANCE

STATUTE

§ 67-4.6. Owner required to have insurance.

DESCRIPTION

Subsection (a):

Any person who:

1. owns a dog determined to be dangerous or potentially dangerous (per G.S. 67-4.1(a)), and
2. fails to obtain liability insurance of at least \$100,000 for injury or damage done by the dog
3. within 30 days of the determination of dangerousness.

Subsection (b):

Any person who:

1. fails to produce evidence of the above-required liability insurance
2. upon demand by an animal control officer.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS ACT

STATUTE

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

DESCRIPTION

Any person who:

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

OFFENSE CLASS

CURRENT: Class D felony.

PROPOSED: Class C felony.

ANALYSIS

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

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

This provision is identical to that of SB 17 – Up Penalties/Sex Offenses with Child Victim.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT (cont.)**

STATUTE

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

DESCRIPTION

Any person who:

1. knowing the character or content of the material
2. does either of the following:
 - a. records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or
 - b. Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class D felony.

ANALYSIS

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

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

This provision is identical to that of SB 17 – Up Penalties/Sex Offenses with Child Victim.

FINDINGS

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

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

A Class D felony tends to result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling. This offense does not result in an infringement on property interests. This offense would be consistent with a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT (cont.)

STATUTE

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

DESCRIPTION

Any person who:

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

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

This provision is identical to that of SB 17 – Up Penalties/Sex Offenses with Child Victim.

FINDINGS

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

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

This offense would be consistent with a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT (cont.)**

STATUTE

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

DESCRIPTION

Any person who is 16 years of age or older, who:

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

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

The current offense of solicitation of a child by computer, without the defendant or other person actually appearing at the meeting location, is a Class H felony.

FINDINGS



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



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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS
ACT (cont.)**

STATUTE

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

DESCRIPTION

Subsection (c):

Any person who:

1. in response to an official inquiry (as defined by subsection (a))
2. by a sworn agent of the State Bureau of Investigation (SBI)
3. willfully does any of the following:
 - a. falsifies or conceals by any trick, scheme, or device a material fact
 - b. makes any materially false, fictitious, or fraudulent statement or representation
 - c. uses any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

(See also SB 132.)

FINDINGS

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

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 132 – PROTECT CHILDREN FROM SEXUAL PREDATORS ACT (cont.)

STATUTE

§ 14-318.5. Requiring parental permission for minors to access social networking Web sites.

DESCRIPTION

Subsection (b):

Any owner or operator of a social networking web site who

1. allows a minor
2. using a protected computer (defined by statute as geographically within N.C.)
3. to become a member or create a profile on the web site
4. without permission of the minor's parent or guardian.

Any owner or operator of a social networking web site who

1. allows a minor
2. using a protected computer
3. to have a profile on the web site
4. without providing the minor's parent or guardian access to the profile web page at all times.

PROPOSED OFFENSE CLASS

For the first offense, Class 3 misdemeanor.

For the second or subsequent offense, Class 1 misdemeanor.

ANALYSIS

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

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

FINDINGS



Bill is **consistent** with the Offense Classification Criteria as to the Class 3 misdemeanor.



Bill is **inconsistent** with Offense Classification Criteria as to the Class 1 misdemeanor.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Conviction Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing. This offense would be consistent with a Class 1 misdemeanor for all violations.

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 150 – OUTDOOR ADV. VEGETATION REMOVAL
CHANGES**

STATUTE

§ 136-133.1. Outdoor advertising selective vegetation removal zone.

DESCRIPTION

Any person who:

1. removes vegetation
2. between an outdoor advertising (sign, billboard, etc.) and the right-of-way
3. outside the area 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 serious injury to property or serious societal injury as Class 1 misdemeanors.

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

98 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 159 – PRESC. DRUG DATA CONFIDENTIAL

STATUTE

§ 90-85.42. License, transfer, use, or sale of pharmacy prescription data for commercial purposes prohibited.

DESCRIPTION

Any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet pharmacy or similar entity who:

1. licenses, transfers, uses, or sells
2. records relative to prescription information
3. containing patient-identifiable or prescriber-identifiable data
4. for a commercial purpose.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The proposed bill exempts from the offense transfers of data for certain commercial purposes directly related to the prescription process (*e.g.*, pharmacy reimbursement), patient care, and research.

Violation under this statute is also an unfair or deceptive trade practice under Chapter 75 (civil remedies, only).

FINDINGS



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



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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 171 – RAISE COMPULSORY SCHOOL ATTENDANCE AGE

STATUTE

§ 115C-378. Children required to attend.

DESCRIPTION

Effective July 1, 2009:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 17 years
3. who fails to cause the child to attend school
4. continuously for a period equal to the time the public school to which the child is assigned is in session
5. until the child graduates from high school.

Effective July 1, 2011:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 18 years
3. who fails to cause the child to attend school
4. continuously for a period equal to the time the public school to which the child is assigned is in session
5. until the child graduates from high school.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

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100 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 171 – RAISE COMPULSORY SCHOOL ATTENDANCE
AGE (cont.)**

STATUTE

§ 116-235. Children required to attend.

DESCRIPTION

Effective July 1, 2009:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 17 years
3. enrolled at the N.C. School of Science and Mathematics
4. who fails to cause the child to attend school
5. continuously for a period equal to the time the School is in session
6. until the child graduates from high school.

Effective July 1, 2011:

A parent, guardian or other person in this State

1. having charge or control
2. of a child between the ages of 7 and 18 years
3. enrolled at the N.C. School of Science and Mathematics
4. who fails to cause the child to attend school
5. continuously for a period equal to the time the School is in session
6. until the child graduates from high school.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 175 – INTERSTATE WILDLIFE VIOLATOR COMPACT

STATUTE

§ 113-300.8. Violations.

DESCRIPTION

Any person who:

1. either:
 - a. hunts, fishes, traps, possesses or transports wildlife in this State, or
 - b. purchases or possesses a license or privilege to do so
2. after having his license, privilege, or right to hunt, fish, trap, possess or transport wildlife has been revoked or suspended under the [interstate] Wildlife Violator Compact.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

Under current statutes, it is a Class 1 misdemeanor to, among others, engage in regulated wildlife activity with an improper or false permit, to apply for a permit to which the applicant is not entitled, to make false statements in an application for a license or permit, to counterfeit a permit, to engage in regulated activity during a period of suspension or revocation, or willfully circumvent the terms of a suspension or revocation.

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

102 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 179 – ACTIONS TO ADDRESS MEDICAID FRAUD

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (e):

Any provider of medical assistance who:

1. knowing and willfully
2. executes, or attempts to execute, a scheme or artifice to
 - a. defraud the medical assistance program
 - b. obtain, by means of false or fraudulent pretenses, representations or promises, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program
3. in connection with the delivery of or payment for health care benefits, items, or services.

PROPOSED OFFENSE CLASS

If the value of the health care benefits, items, or services is less than \$100,000, a Class H felony.

If the value of the health care benefits, items, or services is \$100,000 or more, a Class C felony.

ANALYSIS

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

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

Under G.S. 14-2.5, attempts are punishable under the next lower classification as the offense which the offender attempted to commit.

FINDINGS



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



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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 179 – ACTIONS TO ADDRESS MEDICAID FRAUD (cont.)

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (f):

Any person who:

1. knowingly and willfully
2. solicits or receives any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind
3. either:
 - a. in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part from [the Medical Assistance Program]; or
 - b. in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part from [the Medical Assistance Program].

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Under G.S. 14-2.6, solicitation of an offense is punishable two offense classes lower than the offense solicited.

FINDINGS

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

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

DATE PREPARED: 3/9/07

BILL CONTINUED ON NEXT PAGE

104 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 179 – ACTIONS TO ADDRESS MEDICAID FRAUD (cont.)

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (g):

Any person who:

1. knowingly and willfully
2. offers or pays any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind
3. either:
 - a. to induce another to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part from [the Medical Assistance Program]; or
 - b. to induce another to purchase, lease, order, or arrange for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part from [the Medical Assistance Program].

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 190 – HAZ. MATERIALS TASK FORCE
RECOMMENDATIONS

STATUTE

§ 130A-295.01. Additional requirement for commercial hazardous waste treatment facilities.

DESCRIPTION

Subsection (c):

An operator of a commercial hazardous waste facility who:

1. either:
 - a. fails to maintain off-site copies, or
 - b. fails to make accessible to the Department of Health and Human Services (DHHS), the county within which the facility is located, any municipality with planning jurisdiction over the site, or emergency response agencies with a role under the facility's contingency plan
2. of information concerning the quantity, type, location, and hazards of the waste at the facility, and of the manifests designating waste for treatment, storage, or disposal at a permitted facility.

Subsection (d):

An applicant for a permit for a commercial hazardous waste facility who

1. fails to provide every owner of property within one-fourth mile of the boundary of the facility
2. by certified mail
3. within 10 days of filing the application and again at the midpoint of the term of the permit
4. notice of:
 - a. the filing of the permit, and
 - b. the description and location of the facility, the wastes, both hazardous and nonhazardous, that are to be received and processed at the facility, and the facility's planned response to emergencies.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor [pursuant to G.S. 130A-25(a) and G.S. 14-3].

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

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106 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 190 – HAZ. MATERIALS TASK FORCE
RECOMMENDATIONS (cont.)**

STATUTE

§ 130A-295.01. Additional requirement for commercial hazardous waste treatment facilities.

DESCRIPTION

Subsection (e):

An operator of a commercial hazardous waste facility who

1. fails to report to DHHS
2. any change in “sensitive land use” or population density within one-fourth mile of the boundary of the facility
3. that occurred within the previous calendar year
4. by January 31 of each year.

Subsection (f):

An applicant for a commercial hazardous waste facility who:

1. fails to provide security and surveillance 24/7
2. capable of immediately detecting unauthorized access to the facility, monitoring conditions, identifying operator errors, and detecting any discharge that could, directly or indirectly
 - a. cause a fire, explosion, or release of hazardous waste/constituents into the environment, or
 - b. threaten human health.

Subsection (h):

A commercial hazardous waste facility that

1. fails to obtain and maintain an on-site wind monitor approved by DHHS
2. capable of remote determination of real-time wind direction.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor [pursuant to G.S. 130A-25(a) and G.S. 14-3].

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 229 – MURDER/VIOLATION OF PROT. ORDER

STATUTE

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

DESCRIPTION

Any respondent subject to a valid protective order who:

1. murders
2. the petitioner, minor family member, or other person protected by the order.

PROPOSED OFFENSE CLASS

The murder “shall be deemed to be in the first degree, a Class A felony” and punished by imprisonment for life without parole.

ANALYSIS

The Sentencing Commission reserved Class A for first-degree murder.

The proposed offense applies “unless the conduct is covered under some other provision of law providing greater punishment,” so murders that are otherwise in the first degree with capital aggravating factors would continue to be eligible for the death penalty.

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

108 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 232 – MODIFY COUNTERFEIT SALES PROVISIONS

STATUTE

§ 80-11.1. Criminal use of counterfeit mark.

DESCRIPTION

Subdivision (b)(2):

Any person who

1. knowingly and willfully
2. either:
 - a. uses or causes to be used, or
 - b. has possession, custody, or control of goods having
3. a counterfeit mark
4. used thereon or in connection with goods or services intended for sale.
5. with a retail sales value more than \$3,000 and up to \$10,000.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The proposed bill amends the definition of “retail sales value” to mean the number of items bearing the counterfeit mark times the price at which the counterfeit item is offered for sale. The current definition sets the value based on the retail sales price of items legitimately bearing the mark.

FINDINGS



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



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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 232 – MODIFY COUNTERFEIT SALES PROVISIONS
(cont.)**

STATUTE

§ 80-11.1. Criminal use of counterfeit mark.

DESCRIPTION

Subdivision (b)(3):

Any person who:

1. knowingly and willfully
2. either:
 - a. uses or causes to be used, or
 - b. has possession, custody, or control of goods having
3. a counterfeit mark
4. used thereon or in connection with goods or services intended for sale.
5. with a retail sales value more than \$10,000.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The proposed bill amends the definition of “retail sales value” to mean the number of items bearing the counterfeit mark times the price at which the counterfeit item is offered for sale. The current definition sets the value based on the retail sales price of items legitimately bearing the mark.

FINDINGS

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

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

DATE PREPARED: 3/9/07

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 232 – MODIFY COUNTERFEIT SALES PROVISIONS
(cont.)**

STATUTE

§ 80-11.1. Criminal use of counterfeit mark.

DESCRIPTION

Subdivision (b)(2):

Any person who

1. knowingly and willfully
2. either:
 - a. uses or causes to be used, or
 - b. has possession, custody, or control of goods having
3. a counterfeit mark
4. used thereon or in connection with goods or services intended for sale.
5. with a retail sales value not more than \$3,000.

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 as Class 2 misdemeanors.

The proposed bill amends the definition of “retail sales value” to mean the number of items bearing the counterfeit mark times the price at which the counterfeit item is offered for sale. The current definition sets the value based on the retail sales price of items legitimately bearing the mark.

FINDINGS



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



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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 236 – REGULATION OF PROFESSIONAL
HOUSEMOVING

STATUTE

§ 20-371. Penalties.

DESCRIPTION

Any person who:

1. engages in housemoving
2. in violation of any provision of Article 16 of Chapter 20 of the General Statutes (regarding licensing, permits for specific moves, insurance coverage, bonds, routes, conditions of the move, and removal and replacement of signs and other obstructions) or any regulation of the Department of Transportation governing housemoving.

G.S. 20-359.1(c):

Any insurance company who:

1. issues a policy to a housemover, and
2. fails to notify the Department of Transportation within 30 days of the policy's change, cancellation, or nonrenewal.

PROPOSED OFFENSE CLASS

CURRENT: Class 3 misdemeanor, which may include a fine of not more than \$500.

PROPOSED: First offense is a Class 3 misdemeanor, which may include a fine of not more than \$500.

Second offense is a Class 2 misdemeanor, which may include a fine of at least \$1,000.

Third offense is a Class 1 misdemeanor, which shall include a fine of at least \$2,000.

ANALYSIS

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

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

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

FINDINGS

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

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

112 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 295 – FETAL MURDER

STATUTE

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

DESCRIPTION

Any person who:

1. murders
2. a pregnant woman, and
3. thereby causes the death of a child in utero at the time of the murder.

PROPOSED OFFENSE CLASS

The punishment is the same as the punishment provided for the murder of the pregnant woman. First degree murder is a Class A felony; second degree murder is a Class B2 felony.

ANALYSIS

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

The Sentencing Commission did not use the Offense Classification Criteria in the classification of homicide offenses.

The proposed offense is substantively identical to that in HB 1324 in 2005/06. The Commission determined that the Offense Classification Criteria were not applicable to that offense.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 311 – INCREASE PENALTY/FELON WITH FIREARM

STATUTE

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

DESCRIPTION

Any convicted felon who:

1. purchases, owns, possesses, or has in his custody, care, or control
2. any firearm, or weapon of mass death and destruction (as defined by statute) or firearm muffler or silencer.

OFFENSE CLASS

CURRENT: Class G felony.

PROPOSED: Class F felony.

ANALYSIS

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

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 356 – ENHANCE PENALTY FOR RAPE OF CHILD VICTIM

STATUTE

§ 15A-1340.16E. Enhance sentence if defendant is convicted of first degree rape or first degree sexual offense and the victim was 11 years of age or younger.

DESCRIPTION

Any person who:

1. is convicted of first degree rape (G.S. 14-27.2) or first degree sexual offense (G.S. 14-27.4)
2. against a child 11 years of age or younger.

PUNISHMENT RANGE

CURRENT: Sentence is imposed according to the felony punishment chart for Class B1.

PROPOSED: Sentence is imposed according to the felony punishment chart for Class B1, with the minimum sentence enhanced by 60 months. The maximum sentence would be that which corresponds to the increased minimum.

ANALYSIS

The enhancement does not apply if the evidence that the victim of the offense was 11 years of age or younger is needed to prove an element of the offense.

Under the current statutes affected, engaging in sex with a child 12 years of age or younger by an offender more than 12 years of age and at least four years older than the victim constitutes first degree rape (for vaginal intercourse) or first degree sexual offense (other sexual acts).

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 371 – USE OF SENATE SEALS AND COAT OF ARMS

STATUTE

§ 120-271. Use of likenesses of any seal or coat of arms of the Senate.

DESCRIPTION

Any person who:

1. except as directed by the Senate or its Principal Clerk, or for official use of the State of North Carolina
2. knowingly uses, manufactures, reproduces, sells or purchases for resale, separately or appended to any article
3. any likeness of any seal or coat of arms of the Senate or any substantial portion thereof.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

116 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 393 – FELONY/STEAL OR CUT ANOTHER’S TIMBER

STATUTE

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

DESCRIPTION

Any person who:

1. not being the bona fide owner thereof
2. knowingly and willfully
3. cuts down, injures, or removes any standing, growing or fallen tree or log
4. causing damage of more than \$1,000.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Cutting, injuring, or removing another’s timber resulting in damage of \$1,000 or less would remain a Class 1 misdemeanor.

FINDINGS



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



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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 466 – AMEND CONCEALED WEAPONS LAW

STATUTE

§ 14-269. Carrying concealed weapons.

DESCRIPTION

Subsection (a1):

Any person who

1. willfully and intentionally
2. carries
3. concealed about his person
4. any pistol, gun, air or gas operated pistol or gun, or any object similar in appearance, whether capable of being fired or not
5. when not on his own premises.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for the first offense.

Class I felony for the second or subsequent offense.

ANALYSIS

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

The proposed bill eliminates the affirmative defenses of subsection (b1) (that the weapon was not a firearm; that the defendant was engaged in or on the way to or from an activity in which he legitimately use the weapon; that the defendant legitimately possessed the weapon for that legitimate use; and that the defendant did not use or attempt to use the weapon for an illegal purpose).

FINDINGS

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

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

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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 466 – AMEND CONCEALED WEAPONS LAW (cont.)

STATUTE

§ 14-269. Carrying concealed weapons.

DESCRIPTION

Subsection (a):

Any person who

1. willfully and intentionally
2. carries
3. concealed about his person
4. any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, switchblade knife, ballistic knife, machete, slingshot, blackjack, throwing star, oriental dart, or other weapon
5. when not on his own premises.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

The proposed bill deletes the adjective “deadly” regarding such weapons, so the weapon concealed need not be a “deadly” one to commit the offense.

The proposed bill also eliminates the affirmative defenses of subsection (b1) (that the weapon was not a firearm; that the defendant was engaged in or on the way to or from an activity in which he legitimately use the weapon; that the defendant legitimately possessed the weapon for that legitimate use; and that the defendant did not use or attempt to use the weapon for an illegal purpose).

FINDINGS



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



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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 466 – AMEND CONCEALED WEAPONS LAW (cont.)

STATUTE

§ 14-269. Carrying concealed weapons.

DESCRIPTION

Subsection (a1):

Any person who

1. willfully and intentionally
2. carries
3. concealed about his person
4. any pistol, gun, air or gas operated pistol or gun, or any object similar in appearance, whether capable of being fired or not
5. when not on his own premises.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for the first offense.

Class I felony for the second or subsequent offense.

ANALYSIS

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

The proposed bill eliminates the affirmative defenses of subsection (b1) (that the weapon was not a firearm; that the defendant was engaged in or on the way to or from an activity in which he legitimately use the weapon; that the defendant legitimately possessed the weapon for that legitimate use; and that the defendant did not use or attempt to use the weapon for an illegal purpose).

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

120 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 481 – NOTARIZED CONSENT FOR MINOR’S ABORTION

STATUTE

§ 90-21.7. Parental consent required.

DESCRIPTION

Subsection (a1):

A physician who

1. intentionally or knowingly
2. performs an abortion
3. on an unemancipated minor
4. based on written consent of the minor’s parent, guardian, or other responsible adult
5. if such written consent was not:
 - a. signed at the facility where the abortion is to be performed, or
 - b. acknowledged by a notary public.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 481 – NOTARIZED CONSENT FOR MINOR’S ABORTION
(cont.)**

STATUTE

§ 90-21.7. Parental consent required.

DESCRIPTION

Subsection (a1):

A physician who

1. intentionally or knowingly
2. fails to maintain
3. in the medical records of the minor
4. a copy of the documentary evidence from which the physician determined that the adult giving consent for the minor’s abortion was an adult authorized to give it.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 482 – USE OF EMERGENCY DOORS/COMMISSION OF LARCENY

STATUTE

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

DESCRIPTION

Any person who:

1. willfully and without authority
2. conceals
3. goods or merchandise of any store not purchased by the person, and
4. exits the retail establishment through an emergency door installed and maintained to comply with Federal Occupational Health and Safety Administration rules requiring retailers to provide such doors that must remain unlocked.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

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

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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 556 – NONRESIDENTIAL BUILDING CODE

STATUTE

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

DESCRIPTION

Any person who:

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

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 573 – RESTRICT CONTRACTS & BENEFITS/ILLEGAL ALIENS

STATUTE

§135A-4. Method of verifying lawful presence in the United States; penalty for knowing misrepresentation; waiver.

DESCRIPTION

Any person who:

1. knowingly and willfully
2. makes a false, fictitious or fraudulent statement or representation
3. on 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 I felony.

ANALYSIS

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

The proposed bill contains an exemption to the offense such that “no person shall be guilty of any crime for executing an affidavit attesting to lawful presence in the United States that contains a false statement if the affidavit is not required by this section.”

FINDINGS



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



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

DATE PREPARED: 3/9/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 573 – RESTRICT CONTRACTS & BENEFITS/ILLEGAL ALIENS (cont.)

STATUTE

§ 143-129.1A. Contracts with illegal immigrants prohibited; verification and certification required.

DESCRIPTION

Any person who:

1. submits a certification of lawful status or authorization to work in the U.S. for all employees
2. knowing it to be false
3. in a bid or contract for construction, repair, or purchase of materials
4. with the State or any institution or political subdivision thereof.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 657 – OMNIBUS CIVIL RIGHTS ACT

STATUTE

§ 169-3-11. Investigations; inspections; records [Article 3, State Fair Employment Act].

DESCRIPTION

Any officer or employee of the Division of Fair Employment Practices or the N.C. Agency for Civil Rights who:

1. makes public in any manner
2. information obtained during investigation of a discriminatory employment practice
3. prior to the institution of any proceeding involving that information.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor [by operation of G.S. 14-3]

ANALYSIS

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

The proposed bill provides that any officer or employee committing the described violation “shall be guilty of a misdemeanor or shall be subject to the assessment of civil penalties of not more than one thousand dollars (\$1,000).” The statute does not specify any criteria for selecting between the two.

FINDINGS

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

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

DATE PREPARED: 3/9/07

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 675 – INDECENT LIBERTIES/INCREASE PENALTY

STATUTE

§ 14-202.1. Taking indecent liberties with children.

DESCRIPTION

Any person 16 years of age or older who:

1. with any child of either sex under the age of 16 years
2. while at least five years older than the victim
3. does either of the following:
 - a. willfully takes or attempts to take any immoral, improper, or indecent liberties for the purpose of arousing or gratifying sexual desire; or
 - b. willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of the child.

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.

(See also SB 17, reclassifying a second or subsequent offense in Class E.)

FINDINGS

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

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

DATE PREPARED: 3/14/07

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 675 – INDECENT LIBERTIES/INCREASE PENALTY
(cont.)**

STATUTE

§ 14-202.4. Taking indecent liberties with a student.

DESCRIPTION

Any person who:

1. is either:
 - a. a teacher, school administrator, student teacher, school safety officer, or coach of any age, or
 - b. other school personnel at least four years older than the victim; and
2. takes indecent liberties with a student
3. before the victim ceases to be a student
4. during or after the time the defendant and victim were present together in the same school.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class G felony.

ANALYSIS

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

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

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 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.

DATE PREPARED: 3/14/07

IMPACT ANALYSIS NOT REQUESTED YET