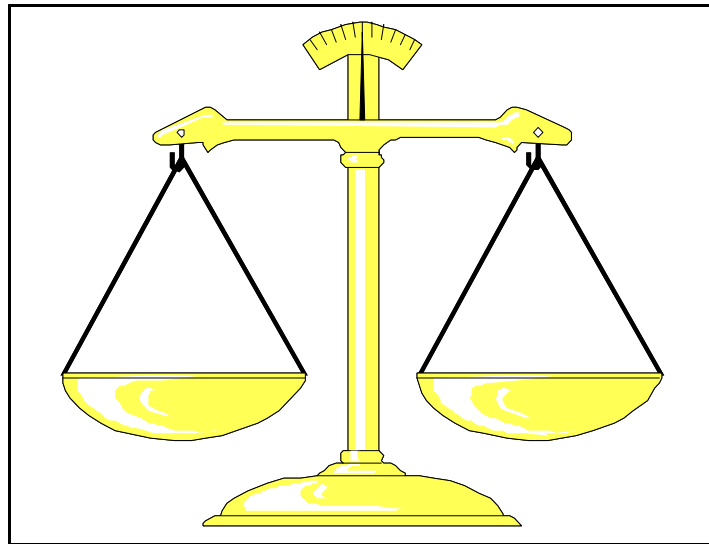


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2009 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
MARCH 2009***

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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 February 20, 2009. 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, 2009.

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 February 27, 2009.

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

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

THE OFFENSE CLASSIFICATION CRITERIA

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

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

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

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

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

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

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

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

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • Reserved for First Degree Murder

[Reasonably tends to result or does result in:]

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

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

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

- E** • Serious personal injury

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

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

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

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

- M** • All other misdemeanors

* Personal injury includes both physical and mental injury.

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

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

MISDEMEANOR OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

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

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

* Personal injury includes both physical and mental injury.

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

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 8 – PROHIBIT CELL PHONES IN PRISON [V.1]

STATUTE

§ 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities.

DESCRIPTION

Subsection (c):

Any person who

1. knowingly
2. gives or sells
3. a. a mobile telephone or other wireless communications device, or
b. a component of one of those devices,
4. a. to an inmate in the custody of the Department of Correction, or
b. to a person who is not an inmate for delivery to an inmate.

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.

(See also SB 167.)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class 1 misdemeanor. The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

DATE PREPARED: 2/20/09

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 14 – CHIROPRACTIC SERVICES/INSURANCE [V.1]

STATUTE

§ 58-50-30. Right to choose services of optometrist, podiatrist, licensed clinical social worker, certified substance abuse professional, licensed professional counselor, dentist, chiropractor, psychologist, pharmacist, certified fee-based practicing pastoral counselor, advanced practice nurse, licensed marriage and family therapist, or physician assistant.

DESCRIPTION

Subsection (a3):

An insurer who

1. impose as a limitation on treatment or level of coverage
2. a co-payment amount charged to the insured
3. for chiropractic services
4. that is higher than the co-payment amount charged to the insured for the services of a duly licensed primary care physician for a comparable medically necessary treatment or condition.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor (pursuant to G.S. 58-50-70).

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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 23 – STRENGTHEN CHILD LABOR VIOLATION PENALTIES [V.1]

STATUTE

§ 95-139. Criminal Penalties.

DESCRIPTION

Subsection (b):

Any employer who

1. willfully
2. violates any standard, rule, regulation, or order promulgated pursuant to the authority of the Occupational Safety and Health Act of North Carolina (Article 16 of Chapter 95 of the General Statutes), and
3. the violation causes the death of any employee under 18 years of age.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

This section does not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

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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 23 – STRENGTHEN CHILD LABOR VIOLATION PENALTIES [V.1]

STATUTE

§ 95-139. Criminal Penalties.

DESCRIPTION

Subsection (b):

Any employer who

1. willfully
2. violates any standard, rule, regulation, or order promulgated pursuant to the authority of the Occupational Safety and Health Act of North Carolina (Article 16 of Chapter 95 of the General Statutes), and
3. the violation causes the death of any employee under 18 years of age, and
4. the employer has previously been convicted of a violation of this section.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

This section does not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide.

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

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 2/20/09

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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 23 – STRENGTHEN CHILD LABOR VIOLATION PENALTIES [V.1]

STATUTE

§ 95-139. Criminal Penalties.

DESCRIPTION

Subsection (b):

Any person who

1. gives advance notice of any inspection to be conducted under the Occupational Safety and Health Act of North Carolina (Article 16 of Chapter 95 of the General Statutes),
2. without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated.

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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

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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 23 – STRENGTHEN CHILD LABOR VIOLATION PENALTIES [v.1]

STATUTE

§ 95-139. Criminal Penalties.

DESCRIPTION

Subsection (b):

Any person who

1. knowingly
2. makes any false statement, representation, or certification
3. in any application, record, report, plan, or any other document filed or required to be maintained pursuant to the Occupational Safety and Health Act of North Carolina (Article 16 of Chapter 95 of the General Statutes), and pertaining to an employee under 18 years of age.

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

DATE PREPARED: 2/20/09

IMPACT ANALYSIS NOT REQUESTED YET

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 43 – SCHOOL BD. MEMBERS/FAILURE TO DISCHARGE DUTY [V.1]

STATUTE

§ 14-230. Willfully failing to discharge duties.

DESCRIPTION

Any school board member who

1. willfully
2. omits, neglects or refuses to discharge
3. any of the duties of his office.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 14-230 currently applies to any clerk of any court of record, sheriff, magistrate, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

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 67 – LICENSE PLATE FRAME/STATE NAME VISIBLE
[V.1]

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

Subsection (g):

Any operator of a motor vehicle who

1. willfully
2. a. mutilates, bends, twists, covers or causes to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, frame, or other device, or
b. paints, enamels, embosses, stamps, prints, perforates, or alters or adds to or cuts off
3. any part or portion of a registration plate or the figures or letters thereon, including the State name.

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 the Offense Classification Criteria.

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

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 129 – HABITUAL MISDEMEANOR LARCENY/FELONY
[V.1]

STATUTE

§ 14-86.2. Habitual misdemeanor larceny.

DESCRIPTION

A person who

1. is 18 years of age or older
2. commits misdemeanor larceny under G.S. 14-72(a)
3. and has been convicted of five or more prior misdemeanor larceny convictions.

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.

The proposed statute limits prior convictions used to establish the offense to one per session of district court or week of superior court. The proposed statute excludes convictions for this offense from being used for habitual felon purposes.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

This provision is identical to HB 108 which the Commission reviewed in March, 2003, and HB 423 which the Commission reviewed in March, 2005. The Commission found those provisions to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 137 – CAPITAL PROCEDURE/SEVERE MENTAL DISABILITY [V.1]

STATUTE

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

DESCRIPTION

A person who

1. commits first degree murder and
2. has a severe mental disability (as defined by statute) at the time of the commission of the criminal offense.

PUNISHMENT RANGE

CURRENT (if applicable): Death or life imprisonment without parole.

PROPOSED: Life imprisonment without parole.

ANALYSIS

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

"Severe mental disability" is defined as any mental disability or defect that significantly impairs a person's capacity to do any of the following: (i) appreciate the nature, consequences, or wrongfulness of the person's conduct; (ii) exercise rational judgment in relation to conduct; or (iii) conform the person's conduct to the requirements of the law. A mental disability manifested primarily by repeated criminal conduct or attributable solely to the acute effects of alcohol or other drugs does not, standing alone, constitute a severe mental disability for purposes of this section.

This provision is identical to a provision in HB 553/SB 1075 which the Sentencing Commission reviewed in June 2007. The Commission found that G.S. 164-41 was not applicable.

FINDINGS

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

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

G.S. 164-41 is not applicable.

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

DATE PREPARED: 2/20/09

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 194/CREATE CRIME OF SMUGGLING HUMAN BEINGS
[V. 1]

STATUTE

§ 14-43.14 Smuggling of human beings for profit or commercial purpose.

DESCRIPTION

A person who:

1. intentionally engages
2. in the smuggling of human beings (as defined by statute)
3. for profit or commercial purpose.

PROPOSED OFFENSE CLASS

Class D Felony

ANALYSIS

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

“Smuggling of human beings” is defined as the transportation, or procurement of transportation, by a person or entity that knows or has reason to know that the person or persons transported, or to be transported, are not United States citizens, permanent resident aliens, or persons who are otherwise lawfully present in the United States.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 207/SAFER COMMUNITIES ACT [V. 1]

STATUTE

§ 14-3 Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity based upon ethnicity, gender, age, sexual orientation, or disability; punishment of felony committed with animosity based upon ethnicity, gender, age, sexual orientation, or disability.

DESCRIPTION

Subsection (c):

A person who

1. commits a misdemeanor
2. because of the victim's real or perceived race, color, religion, nationality, gender, sexual orientation, disability, age, or country of origin.

PUNISHMENT RANGE

CURRENT (if applicable): Class A1, 1, 2, or 3 misdemeanor.

PROPOSED: If the person committed a Class 2 or 3 misdemeanor, they are guilty of a Class 1 misdemeanor; if the person committed a Class 1 or A1 misdemeanor, they are guilty of a Class I felony.

ANALYSIS

The provision adds "real or perceived" and "gender, sexual orientation, disability, age" to the existing enhancement.

This provision is identical to a provision in Senate Bill 736 which the Sentencing Commission reviewed in April 2003, Senate Bill 485 which the Sentencing Commission reviewed in March 2005, and House Bill 1322 which the Sentencing Commission reviewed in May 2005 and House Bill 1631, which the Sentencing Commission reviewed in June 2007. The Commission found those provisions to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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 238/REQUIRE LICENSE FOR MOPED [V. 1]

STATUTE

§ 20-10.1 Mopeds

DESCRIPTION

Subsection (b):

A person who

1. is 16 years old or older
2. operates a moped (as defined by statute)
3. on a public street or highway
4. without being licensed as a driver pursuant to G.S. 20-7.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor

ANALYSIS

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

Driving Without a License is currently a Class 2 misdemeanor under G.S. 20-7.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor. The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

DATE PREPARED: 2/20/09

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 9 – AMEND PEEPING TOM LAW [V.1]

STATUTE

§ 14-202. Secretly peeping into room occupied by another person.

DESCRIPTION

Subsection (a):

A person who

1. is a private detective or private investigator as defined in G.S. 74C-3(a)(8)
 - a. legally engaged in the discharge of official duties within the profession and
 - b. not engaging in activities for an improper purpose
2. peeps secretly into any room occupied by another person.

PROPOSED OFFENSE CLASS

Class 1 Misdemeanor

ANALYSIS

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

G.S. 14-202 currently exempts private detectives and private investigators who are legally engaged in the discharge of their official duties and are not engaging in activities for an improper purpose.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 9 – AMEND PEEPING TOM LAW [v.1]

STATUTE

§ 14-202. Secretly peeping into room occupied by another person.

DESCRIPTION

Subsections (a), (i):

A person who

1. has a prior conviction for a Class 1 misdemeanor under this section
2. is a private detective or private investigator as defined in G.S. 74C-3(a)(8)
 - a. legally engaged in the discharge of official duties within the profession and
 - b. not engaging in activities for an improper purpose
3. peeps secretly into any room occupied by another person.

PROPOSED OFFENSE CLASS

Class A1 Misdemeanor

ANALYSIS

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

G.S. 14-202 currently exempts private detectives and private investigators who are legally engaged in the discharge of their official duties and are not engaging in activities for an improper purpose.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 9 – AMEND PEEPING TOM LAW [v.1]

STATUTE

§ 14-202. Secretly peeping into room occupied by another person.

DESCRIPTION

Subsection (c):

A person who

1. is a private detective or private investigator as defined in G.S. 74C-3(a)(8)
 - a. legally engaged in the discharge of official duties within the profession and
 - b. not engaging in activities for an improper purpose
2. secretly peeps into any room
3. while in possession of any device which may be used to create a photographic image

PROPOSED OFFENSE CLASS

Class A1 Misdemeanor

ANALYSIS

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

G.S. 14-202 currently exempts private detectives and private investigators who are legally engaged in the discharge of their official duties and are not engaging in activities for an improper purpose.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 9 – AMEND PEEPING TOM LAW [v.1]

STATUTE

§ 14-202. Secretly peeping into room occupied by another person.

DESCRIPTION

Subsections (c), (i):

A person who

1. is a private detective or private investigator as defined in G.S. 74C-3(a)(8)
 - a. legally engaged in the discharge of official duties within the profession and
 - b. not engaging in activities for an improper purpose
2. secretly peeps into any room
3. while in possession of any device which may be used to create a photographic image and
4. has at least one prior conviction for this offense.

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.

G.S. 14-202 currently exempts private detectives and private investigators who are legally engaged in the discharge of their official duties and are not engaging in activities for an improper purpose.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 9 – AMEND PEEPING TOM LAW [v.1]

STATUTE

§ 14-202. Secretly peeping into room occupied by another person.

DESCRIPTION

Subsection (g):

A person who

1. is a private detective or private investigator as defined in G.S. 74C-3(a)(8)
 - a. legally engaged in the discharge of official duties within the profession and
 - b. not engaging in activities for an improper purpose
2. knowingly possesses a photographic image
3. that the person knows or has reason to believe was obtained in violation of this statute.

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.

G.S. 14-202 currently exempts private detectives and private investigators who are legally engaged in the discharge of their official duties and are not engaging in activities for an improper purpose.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 9 – AMEND PEEPING TOM LAW [v.1]

STATUTE

§ 14-202. Secretly peeping into room occupied by another person.

DESCRIPTION

Subsections (g), (i):

A person who

1. has a prior felony conviction under this section
2. is a private detective or private investigator as defined in G.S. 74C-3(a)(8)
 - a. legally engaged in the discharge of official duties within the profession and
 - b. not engaging in activities for an improper purpose
3. knowingly possesses a photographic image
4. that the person knows or has reason to believe was obtained in violation of this statute.

PROPOSED OFFENSE CLASS

Class H Felony

ANALYSIS

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

G.S. 14-202 currently exempts private detectives and private investigators who are legally engaged in the discharge of their official duties and are not engaging in activities for an improper purpose.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 9 – AMEND PEEPING TOM LAW [v.1]

STATUTE

§ 14-202. Secretly peeping into room occupied by another person.

DESCRIPTION

Subsection (h):

A person who

1. is a private detective or private investigator as defined in G.S. 74C-3(a)(8)
 - a. legally engaged in the discharge of official duties within the profession and
 - b. not engaging in activities for an improper purpose
2. disseminates or allows the dissemination of photographic images
3. that the person knows or should have known were obtained in violation of this statute
4. if the dissemination is without the consent of the person in the photographic image

PROPOSED OFFENSE CLASS

Class H Felony

ANALYSIS

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

G.S. 14-202 currently exempts private detectives and private investigators who are legally engaged in the discharge of their official duties and are not engaging in activities for an improper purpose.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 9 – AMEND PEEPING TOM LAW [v.1]

STATUTE

§ 14-202. Secretly peeping into room occupied by another person.

DESCRIPTION

Subsections (h), (i):

A person who

1. has at least one prior felony conviction under this section
2. is a private detective or private investigator as defined in G.S. 74C-3(a)(8)
 - a. legally engaged in the discharge of official duties within the profession and
 - b. not engaging in activities for an improper purpose
3. disseminates or allows the dissemination of photographic images
4. that the person knows or should have known were obtained in violation of this statute
5. if the dissemination is without the consent of the person in the photographic image

PROPOSED OFFENSE CLASS

Class G Felony

ANALYSIS

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

G.S. 14-202 currently exempts private detectives and private investigators who are legally engaged in the discharge of their official duties and are not engaging in activities for an improper purpose.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 13 – INJURY TO PREGNANT WOMAN/PENALTY [V.1]

STATUTE

§ 14-18.2. Injury to pregnant woman.

DESCRIPTION

Subsection (c):

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. knowing the woman to be pregnant
4. which results in a miscarriage or stillbirth by the woman.

PUNISHMENT RANGE

CURRENT: One class higher than the misdemeanor committed.

PROPOSED: A separate offense, one class higher than the underlying misdemeanor.

ANALYSIS

(See also SB 26).

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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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 13 – INJURY TO PREGNANT WOMAN/PENALTY [v.1]

STATUTE

§ 14-18.2. Injury to pregnant woman.

DESCRIPTION

Subsection (c):

A person who

1. in the commission of a Class A1 misdemeanor that is an act of domestic violence as defined in Chapter 50B of the General Statutes
2. causes injury to a woman
3. knowing the woman to be pregnant
4. which results in a miscarriage or stillbirth by the woman.

PUNISHMENT RANGE

CURRENT: Enhances the Class A1 misdemeanor to a Class I felony.

PROPOSED: A separate 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 separate offense cannot be used as the underlying felony for the charge of felony murder.

(See also SB 26)

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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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 13 – INJURY TO PREGNANT WOMAN/PENALTY [v.1]

STATUTE

§ 14-18.2. Injury to pregnant woman.

DESCRIPTION

Subsection (b):

A person who

1. in the commission of a felony
2. causes injury, including death,
3. to a woman
4. knowing the woman to be pregnant
4. after the woman’s twentieth week of pregnancy
5. which results in a miscarriage or stillbirth by the woman.

PUNISHMENT RANGE

CURRENT: One class higher than the felony committed.

PROPOSED: A separate offense, one class higher than the underlying felony. If the underlying felony offense is Class A or Class B1, the separate offense is a class A felony.

ANALYSIS

Currently, this conduct at any time during the woman’s pregnancy results in a one-class enhancement to the underlying felony.

SB 13 clarifies that a felony causing injury to a pregnant woman includes a felony resulting in the pregnant woman’s death.

The separate offense cannot be used as the underlying felony for the charge of felony murder.

(See also SB 26)

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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24 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 13 – INJURY TO PREGNANT WOMAN/PENALTY [V.1]

STATUTE

§ 15A-1340.16. Aggravated and mitigated sentences.

DESCRIPTION

A person who

1. commits a felony offense and
2. the victim was pregnant.

PUNISHMENT RANGE

CURRENT: Sentenced from the presumptive range.

PROPOSED: Sentenced from the aggravated range.

ANALYSIS

Structured sentencing allows for aggravated sentences.

(See also SB 26)

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 26 – INJURY TO PREGNANT WOMAN/ADDITIONAL OFFENSE [V.1]

STATUTE

§ 14-18.2. Injury to pregnant woman.

DESCRIPTION

Subsection (c):

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. knowing the woman to be pregnant
4. which results in a miscarriage or stillbirth by the woman.

PUNISHMENT RANGE

CURRENT: One class higher than the misdemeanor committed.

PROPOSED: A separate offense, one class higher than the underlying misdemeanor.

ANALYSIS

(See also SB 13)

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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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 26 – INJURY TO PREGNANT WOMAN/ADDITIONAL OFFENSE [V.1]

STATUTE

§ 14-18.2. Injury to pregnant woman.

DESCRIPTION

Subsection (c):

A person who

1. in the commission of a Class A1 misdemeanor that is an act of domestic violence as defined in Chapter 50B of the General Statutes
2. causes injury to a woman
3. knowing the woman to be pregnant
4. which results in a miscarriage or stillbirth by the woman.

PUNISHMENT RANGE

CURRENT: Enhances the Class A1 misdemeanor to a Class I felony

PROPOSED: A Class I felony, separate from the underlying Class A1 misdemeanor.

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 separate offense cannot be used as the underlying felony for the charge of felony murder.

(See also SB 13)

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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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 26 – INJURY TO PREGNANT WOMAN/ADDITIONAL OFFENSE [V.1]

STATUTE

§ 14-18.2. Injury to pregnant woman.

DESCRIPTION

Subsection (b):

A person who

1. in the commission of a felony
2. causes injury, including death,
3. to a pregnant woman
4. knowing the woman to be pregnant
5. which results in a miscarriage or stillbirth by the woman.

PUNISHMENT RANGE

CURRENT: One class higher than the felony committed.

PROPOSED: A separate offense, one class higher than the underlying felony. If the underlying felony offense is Class A or Class B1, the separate offense is a class A felony.

ANALYSIS

The bill clarifies that a felony causing injury to a pregnant woman includes a felony resulting in the pregnant woman's death.

The separate offense cannot be used as the underlying felony for the charge of felony murder.

(See also SB 13)

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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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 26 – INJURY TO PREGNANT WOMAN/ADDITIONAL OFFENSE [V.1]

STATUTE

§ 15A-1340.16. Aggravated and mitigated sentences.

DESCRIPTION

A person who

1. commits a felony offense and
2. the victim was pregnant.

PUNISHMENT RANGE

CURRENT: Sentenced from the presumptive range.

PROPOSED: Sentenced from the aggravated range.

ANALYSIS

Structured sentencing allows for aggravated sentences.

(See also SB 13)

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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 45 – OFF-ROAD VEHICLE TRUST FUND [V.1]

STATUTE

§ 20-63.2. Off-Road Vehicle Registrations.

DESCRIPTION

A person who

1. owns
2. an all-terrain vehicle or motorcycle that is
 - a. intended to be operated in this State for off-road use only
 - b. not specifically exempted from registration by G.S. 20-51, and
 - c. not used solely for agricultural purposes
3. operates the vehicle
4. before applying to the Division of Motor Vehicles for
 - a. certificate of title,
 - b. registration plate, and
 - c. registration card.

PROPOSED OFFENSE CLASS

Class 2 Misdemeanor (pursuant to G.S. 20-176)

ANALYSIS

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

Under G.S. 20-50(a), it is currently a Class 2 misdemeanor for the owner of a vehicle intended for operation on any highway of the State to operate the vehicle before applying for a certificate of title, registration plate, and registration card.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

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 46 – INTERNET LIBEL /CIVIL AND CRIM. OFFENSE
[V.1]

STATUTE

§ 14-47.1. Communicating libelous or slanderous material through an electronic medium.

DESCRIPTION

A person who

1. communicates
2. a false, defamatory statement that is
 - a. libelous or
 - b. slanderous
3. by a transmission through an electronic medium
4. originating, viewed, or received in North Carolina.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor

ANALYSIS

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

Communicating libelous matter to a newspaper or other periodical for publication is a Class 2 misdemeanor under G.S. 14-47.

Common law libel is a misdemeanor that would appear to be classified as Class 1 under G.S. 14-3(a).

Proposed G.S. 90-10(b) requires the prosecutor to give the person suspected of communicating the libelous or slanderous material at least five days to correct the libelous or slanderous material before bringing a criminal action under G.S. 14-47.1.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

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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 46 – INTERNET LIBEL /CIVIL AND CRIM. OFFENSE
[V.1]

STATUTE

§ 99-10. Libel and slander transmitted through an electronic medium.

DESCRIPTION

A person who

1. communicates
2. a false, defamatory statement that is
 - a. libelous or
 - b. slanderous
3. by a transmission through an electronic medium
4. originating, viewed, or received in North Carolina.

PUNISHMENT RANGE

CURRENT (if applicable): Class 2 misdemeanor.

PROPOSED: Notwithstanding G.S. 15A-1340.23, a fine of one penny plus costs and no more, if:

1. the material was communicated in good faith, the falsity of the material was due to an honest mistake of the facts, the material was communicated without prior knowledge or approval of the person who administers the facilities for the electronic medium, or if there were reasonable grounds to believe that the communications were true, and
2. within 10 days after the request for an apology and correction a full and fair correction, apology, and retraction was added to the proper location in the electronic medium in a position and type as prominent as the alleged libelous or slanderous material.

ANALYSIS

Under G.S. 15A-1340.23(c), punishment is based on offense class and prior conviction level.

Under G.S. 15A-1340.23(b), a misdemeanor other than an individual may be sentenced to a fine only.

Under G.S. 15A-1340.23(b), if a community punishment is authorized by G.S. 15A-1340.23(c), the judgment may consist of a fine only.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 2/20/09

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 65 – AMEND COMPUTER SOLICITATION OF CHILD
[V.1]

STATUTE

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

DESCRIPTION

Subsection (c)(1):

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 device capable of electronic data storage or transmission, other than a computer
6. a person who is, or who is believed by the defendant to be,
 - a. a child less than 16 years of age and
 - b. at least 3 years younger than the defendant
7. to meet with the defendant or any other person
8. for the purpose of committing an unlawful sex act.

PROPOSED OFFENSE CLASS

Class H felony

ANALYSIS

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

Use of a computer for this purpose is currently a Class H felony.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 65 – AMEND COMPUTER SOLICITATION OF CHILD
[V.1]

STATUTE

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

DESCRIPTION

Subsection (c)(2):

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 device capable of electronic data storage or transmission, other than a computer
6. a person who is, or who is believed by the defendant to be,
 - a. a child less than 16 years of age and
 - b. at least 3 years younger than the defendant
7. to meet with the defendant or any other person
8. for the purpose of committing an unlawful sex act and
9. the defendant, or a person for whom the defendant was arranging the meeting, actually appears at the meeting location.

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.

Use of a computer for this purpose is currently a Class G felony.

FINDINGS

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

DATE PREPARED: 02/20/09

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 74 -- INCREASE PENALTY/2ND DEGREE MURDER
[V.1]

STATUTE

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

DESCRIPTION

A person who commits second degree murder, which is

1. the killing
2. of another human being
3. with malice.

SOURCE: Jessica Smith, North Carolina Crimes (6th Edition 2007).

OFFENSE CLASS

CURRENT: Class B2 felony.

PROPOSED: Class B1 felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 2/20/09

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 94 – FELONY TO ASSAULT PROBATION/PAROLE OFFICER [V.1]

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (a):

A person who

1. either
 - a. assaults or
 - b. makes a violent attack upon the residence, office, temporary accommodation or means of transport of
2. a probation or parole officer
3. in a manner likely to endanger the officer.

PROPOSED OFFENSE CLASS

Class I felony

ANALYSIS

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

This conduct toward an executive, legislative, or court officer is currently a Class I felony.

Assault on a state employee is currently a Class A1 misdemeanor under G.S. 14-33(c).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 94 – FELONY TO ASSAULT PROBATION/PAROLE OFFICER [V.1]

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (a):

A person who

1. either
 - a. assaults or
 - b. makes a violent attack upon the residence, office, temporary accommodation or means of transport of
2. a probation or parole officer
3. in a manner likely to endanger the officer and
4. uses a deadly weapon.

PROPOSED OFFENSE CLASS

Class F felony

ANALYSIS

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

This conduct toward an executive, legislative, or court officer is currently a Class F felony.

Assault with a firearm upon a law enforcement, probation, or parole officer is currently a Class E felony under G.S. 14-34.5(a).

Assault with a firearm or other deadly weapon upon a governmental officer or employee is currently a Class F felony under G.S. 14-34.2.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 94 – FELONY TO ASSAULT PROBATION/PAROLE OFFICER [V.1]
--------------------------------	--

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (a):

A person who

1. either
 - a. assaults or
 - b. makes a violent attack upon the residence, office, temporary accommodation or means of transport of
2. a probation or parole officer
3. in a manner likely to endanger the officer and
4. inflicts serious bodily injury.

PROPOSED OFFENSE CLASS

Class F felony

ANALYSIS

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

This conduct toward an executive, legislative, or court officer is currently a Class F felony.

Assault of a law enforcement, probation, or parole officer inflicting serious bodily injury is currently a Class F felony under G.S. 14-34.7(a).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 94 – FELONY TO ASSAULT PROBATION/PAROLE OFFICER [V.1]
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STATUTE

§ 14-16.7. Threats against executive, legislative, or court officers.

DESCRIPTION

Subsection (a):

A person who

1. knowingly and willfully
2. makes any threat to
 - a. inflict serious bodily injury upon or
 - b. kill
3. a probation or parole officer.

PROPOSED OFFENSE CLASS

Class I felony

ANALYSIS

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

This conduct toward an executive, legislative, or court officer is currently a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 94 – FELONY TO ASSAULT PROBATION/PAROLE OFFICER [V.1]

STATUTE

§ 14-16.7. Threats against executive, legislative, or court officers.

DESCRIPTION

Subsection (b):

A person who

1. knowingly and willfully
2. deposits for conveyance in the mail any
 - a. letter,
 - b. writing, or
 - c. document
3. threatening to
 - a. inflict serious bodily injury upon or
 - b. kill
4. a probation or parole officer.

PROPOSED OFFENSE CLASS

Class I felony

ANALYSIS

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

This conduct toward an executive, legislative, or court officer is currently a Class I felony.

FINDINGS

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

DATE PREPARED: 02/20/09

IMPACT ANALYSIS NOT REQUESTED YET

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

BILL NUMBER/SHORT TITLE: SB 131 -- PENALTY FOR DWI CONVICTION/BAC .20 OR HIGHER [V.1]

STATUTE

§ G.S. 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

DESCRIPTION

A person who

1. is convicted of impaired driving
2. had an alcohol concentration of .20 or higher.

PUNISHMENT RANGE

CURRENT (if applicable): In accordance with G.S. 20-179.

PROPOSED: Imprisonment for a mandatory period of 24 hours, consecutive to any other penalty imposed under this section.

ANALYSIS

Driving While Impaired offenses are not classified under Structured Sentencing.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Driving While Impaired offenses are not classified under Structured Sentencing.

DATE PREPARED: 2/20/09

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 138 – SALVIA DIVINORUM SCHEDULE I [V.1]

STATUTE

§ 90-89. Schedule I controlled substances.

DESCRIPTION

Classifies *Salvia divinorum* and Salvinorin A as Schedule I controlled substances.

PROPOSED OFFENSE CLASS

Sale of a Schedule I controlled substance is a Class G felony under G.S. 90-95(a)(1), (b)(1).

Manufacture, delivery, or possession with intent to manufacture, sell or deliver a Schedule I controlled substance is a Class H felony under G.S. 90-95(a)(1), (b)(1).

Creation, sale, delivery, or possession with intent to sell or deliver a counterfeit Schedule I controlled substance is a Class I felony under G.S. 90-95(a)(2), (c).

Possession of a Schedule I controlled substance is a Class I felony under G.S. 90-95 (a)(3), (d)(1).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 02/20/09

IMPACT ANALYSIS NOT REQUESTED YET

42 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 140 – AMEND DOMESTIC CRIM. TRESPASS [V.1]

STATUTE

§ 14-134.3. Domestic criminal trespass.

DESCRIPTION

A person who

1. is subject to a valid protective order enforceable under Chapter 50B of the General Statutes
2. enters after being forbidden, or remains at after being ordered to leave by a lawful occupant
3. property
 - a. operated as a safe house or haven for victims of domestic violence
 - b. where the party protected by the order is residing
4. without a judicial order or written separation agreement authorizing the person to enter the premises for the purpose of visiting with minor children.

PROPOSED OFFENSE CLASS

Class H felony

ANALYSIS

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

The proposed offense is similar to that in SB 83 reviewed in April 2007. The Commission determined that the Bill was consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 02/20/09

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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 140 – AMEND DOMESTIC CRIM. TRESPASS [v.1]

STATUTE

§ 15A-2000(e). Capital offenses; plea of guilty.

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 where the protected party was residing.

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

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

The Sentencing Commission reviewed a similar provision in SB 83 in April 2007, and found that G.S. 164-41 was not applicable.

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.

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

DATE PREPARED: 2/20/09

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 158 -- MODIFY FELONY DEATH BY VEHICLE
PENALTY [V.1]

STATUTE

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

DESCRIPTION

Subsection (a1):

A person who

1. unintentionally causes the death of another person,
2. while engaged in the offense of impaired driving under G.S. 20 138.1 or G.S. 20 138.2, and
3. the commission of the impaired driving offense is the proximate cause of the death.

OFFENSE CLASS

CURRENT: Class E felony

PROPOSED: Class D felony

ANALYSIS

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

This bill repeals the current Class D felony of aggravated felony death by vehicle under G.S. 20-141.4(a5), (b)(1).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 2/20/09

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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 158 -- MODIFY FELONY DEATH BY VEHICLE
PENALTY [V.1]

STATUTE

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

DESCRIPTION

Subsection (a3):

A person who

1. unintentionally causes serious injury to another person,
2. while engaged in the offense of impaired driving under G.S. 20 138.1 or G.S. 20 138.2, and
3. the commission of the impaired driving offense is the proximate cause of the serious injury.

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 serious personal injury as Class E 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 bill repeals the current Class E felony of aggravated felony serious injury by vehicle under G.S. 20-141.4(a4), (b)(3).

The Sentencing Commission reviewed this offense in SB 61 in April 2005 and found it to be consistent with the Offense Classification Criteria for Class E.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

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 164 – UNAUTHORIZED PRACTICE OF
MEDICINE/FELONY [V.1]

STATUTE

§ 90-18. Practicing without license; penalties.

DESCRIPTION

A person who

1. is not an out-of-state practitioner and
2. performs any act
3. constituting the practice of medicine or surgery, or any of the branches thereof,
4. without first being duly licensed and registered in North Carolina.

OFFENSE CLASS

CURRENT: Class 1 Misdemeanor

PROPOSED: Class I felony

ANALYSIS

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

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

It is currently a Class I felony for an out-of-state practitioner to commit this offense.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 2/20/09

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 167 – NO SMOKING/CELL PHONES ON PRISON
GROUNDS [V.1]**

STATUTE

§ 148-23.1. Smoking prohibited in State correctional facilities.

DESCRIPTION

A person who

1. knowingly
 - a. gives or
 - b. sells
2. any tobacco product,
3. to
 - a. an inmate in the custody of the Department of Correction, or
 - b. a person who is not an inmate for delivery to an inmate
4. other than for authorized religious purposes.

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.

Offense Classification Criteria are not applicable

DATE PREPARED: 2/20/09

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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 167 – NO SMOKING/CELL PHONES ON PRISON
GROUNDS [V.1]

STATUTE

§ 148-23.1. Smoking prohibited in State correctional facilities.

DESCRIPTION

A person who

1. knowingly
 - a. gives or
 - b. sells
2. any
 - a. mobile telephone,
 - b. other wireless communications device, or
 - c. a component of one of those devices
3. to
 - a. an inmate in the custody of the Department of Correction, or
 - b. a person who is not an inmate for delivery to an inmate

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.

(See also HB 08)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The offense would also be consistent with the Offense Classification Criteria for a Class 1 misdemeanor. The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

DATE PREPARED: 2/20/09

IMPACT ANALYSIS NOT REQUESTED YET

