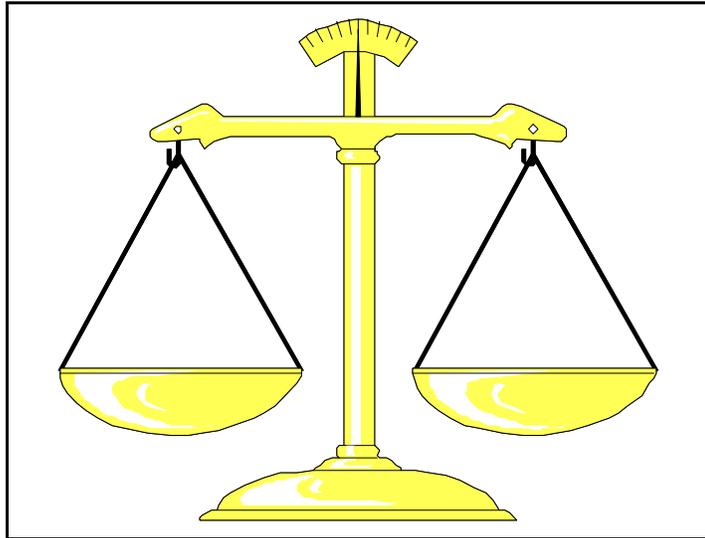


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2009 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
MAY 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 April 24, 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 pages 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 April 3, 2009 and May 1, 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.3]

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; furnishing mobile phones to inmates.

DESCRIPTION

Subsection (c):

Any person who

1. knowingly
2. gives or sells
3. a. a mobile telephone, or
b. a component of a mobile telephone,
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 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.

This bill is similar to HB 8, reviewed by the Commission in March, 2009, which classified the proposed offense as a Class I felony. The Commission found the provision to be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with 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 or serious injury to society as Class 1 misdemeanors.

DATE PREPARED: 03/27/09

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 8 -- PROHIBIT CELL PHONES IN PRISON [v.3]

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates a new offense. It amends G.S. 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, to add subsection (c). Subsection (c) makes it a Class A1 misdemeanor for a person to knowingly give or sell a mobile telephone or component of a mobile telephone to an inmate in the custody of the Department of Correction, or to knowingly give or sell any mobile telephone or component to a person who is not an inmate for delivery to an inmate.

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 convicted and sentenced under the proposed bill. In FY 2007/08, 28% of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class A1 convictions was 48 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

According to the Department of Correction, the Division of Prisons found 280 cell phones in CY 2008, with 216 from inmates, 42 from staff, 0 from visitors, and 22 from unknown origins. It is not known how many different individuals provided these cell phones.

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 134 – ASSAULT STATE OR LOCAL OFFICER OR
EMPLOYEE [v.1]

STATUTE

§ 14-33.3. Simple assault on an officer or employee of the State or any political subdivision of the State.

DESCRIPTION

Any person who

1. assaults
2. an officer or employee of the State or any political subdivision of the State,
3. when the officer or employee is discharging or attempting to discharge his or her official duties.

OFFENSE CLASS

CURRENT: Class A1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

The bill repeals the Class A1 misdemeanor assault on a governmental officer or employee (G.S. 14-33(c)(4)).

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 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: 03/27/09

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 291 – HAIR BRAIDER LICENSURE/COSMETIC ART
ACT [v.1]

STATUTE

§ 88B-22. Licenses required; criminal penalty.

DESCRIPTION

A person who

1. practices or attempts to practice
2. cosmetic art
3. for pay or reward in any form, either directly or indirectly,
4. without being licensed as a hair braider.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

This provision is identical to HB 1609 which the Commission reviewed in June, 2007. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 310 – MOPED REGISTRATION/LICENSING [v.1]

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (b):

A person who

1. operates a moped
2. on a public street or highway
3. that has a posted speed limit greater than the manufacturer's recommended speed for the moped being operated.

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.

(See also SB 318).

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: 03/27/09

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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 310 – MOPED REGISTRATION/LICENSING [v.1] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (c):

A person who

1. owns a moped
2. must register the vehicle with the Division
3. in the same manner as any other motor vehicle,
4. and the owner shall pay the same fees
5. as those paid for a motorcycle.

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.

(See also SB 135 and SB 318).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

On April 3, 2009, the Sentencing Commission found the offense to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor and consistent with the criteria for a Class 3 misdemeanor. Upon reconsideration of the offense in reviewing SB 135 on May 1, 2009, the Commission found it to be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

DATE PREPARED: 03/27/09

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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 310 – MOPED REGISTRATION/LICENSING [v.1] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (d):

A person who

1. operates a moped
2. on a public street or highway, or public vehicular area,
3. without having in full force and effect financial responsibility as required by statute.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 20-313(a)).

ANALYSIS

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

It is currently a Class 1 misdemeanor under G.S. 20-313(a) for the owner of a motor vehicle required to be registered in the State to operate or permit such vehicle to be operated in this State without having in full force and effect the required financial responsibility.

(See also SB 135 and SB 318).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

On April 3, 2009, the Sentencing Commission found the offense to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor and consistent with the criteria for a Class 3 misdemeanor. Upon reconsideration of the offense in reviewing SB 135 on May 1, 2009, the Commission found that it would be consistent with the criteria for a Class 2 misdemeanor.

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

DATE PREPARED: 03/27/09

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 323/SB 729 – PREVENT THEFT OF SCRAP METALS [v.1]

STATUTE

§ 66-11. Dealing in regulated metals property; penalties.

DESCRIPTION

Subsection (a1):

A person who

1. is a secondary metals recycler
2. and fails to issue a receipt
3. to the person delivering the regulated metals property
4. for all purchase transactions
5. in which the secondary metals recycler purchases regulated metals property.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 323/SB 729 – PREVENT THEFT OF SCRAP METALS [v.1]
(cont'd)

STATUTE

§ 66-11. Dealing in regulated metals property; penalties.

DESCRIPTION

Subsection (a1):

A person who

1. is a secondary metals recycler
2. and fails to issue a receipt
3. to the person delivering the regulated metals property
4. for all purchase transactions
5. in which the secondary metals recycler purchases regulated metals property.

PROPOSED OFFENSE CLASS

Class I felony for second and subsequent violations.

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 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: 03/27/09

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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 323/SB 729 – PREVENT THEFT OF SCRAP METALS [v.1]
(cont'd)

STATUTE

§ 66-11. Dealing in regulated metals property; penalties.

DESCRIPTION

Subsection (d)(1):

A person who

1. is a secondary metals recycler
2. and purchases regulated metals property
3. for any consideration other than check or money order
4. that is mailed to the address of the seller.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 323/SB 729 – PREVENT THEFT OF SCRAP METALS [v.1]
(cont'd)

STATUTE

§ 66-11. Dealing in regulated metals property; penalties.

DESCRIPTION

Subsection (d)(1):

A person who

1. is a secondary metals recycler
2. and purchases regulated metals property
3. for any consideration other than check or money order
4. that is mailed to the address of the seller.

PROPOSED OFFENSE CLASS

Class I felony for second and subsequent violations.

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 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: 03/27/09

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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 323/SB 729 – PREVENT THEFT OF SCRAP METALS [v.1]
(cont'd)

STATUTE

§ 66-11. Dealing in regulated metals property; penalties.

DESCRIPTION

Subsection (d)(3):

A person who

1. is a secondary metals recycler
2. and purchases any of the statutorily prescribed regulated metals property, unless written documentation is provided showing that the seller is the owner of the regulated metals property, or is the person authorized to sell the property on behalf of the owner.

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. 66-11(d)(3) provides the following list of regulated metals property: any catalytic converter, any regulated metal marked with the initials or other identification of a telephone, cable, electric, water, or other public utility, or any brewer, any utility access cover, any street light pole or fixture, any road or bridge guard rail, any highway or street sign, any water meter cover, any metal beer keg that is clearly marked as being the property of the beer manufacturer, any traffic directional or control sign, any traffic light signal, any regulated metal marked with the name of a government entity, any property owned by a telephone, cable electric, water, or other public utility and marked or otherwise identified as such, any unused and undamaged building construction or utility material consisting of copper, pipe, tubing, or wiring, any aluminum wire, any historical marker, or any grave marker or burial vase, or any air conditioner evaporator coil or condenser, in whole or in part.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 323/SB 729 – PREVENT THEFT OF SCRAP METALS [v.1]
(cont'd)

STATUTE

§ 66-11. Dealing in regulated metals property; penalties.

DESCRIPTION

Subsection (d)(3):

A person who

1. is a secondary metals recycler
2. and purchases any of the statutorily prescribed regulated metals property, unless written documentation is provided showing that the seller is the owner of the regulated metals property, or is the person authorized to sell the property on behalf of the owner.

PROPOSED OFFENSE CLASS

Class I felony for second and subsequent violations.

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

G.S. 66-11(d)(3) provides a list of regulated metals property.

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: 03/27/09

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 344/SB 32 – EMPLOYERS MUST USE FEDERAL E-VERIFY PROGRAM [v.1]

STATUTE

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

DESCRIPTION

Subsection (b):

A person who

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

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This provision is identical to a provision in HB 2610/SB 2002, which the Sentencing Commission reviewed in June 2008. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 456/SB 1042 – TECH. & ORG. CHANGES/CERTAIN
DHHS FACILITIES [v.1]

STATUTE

§ 131D-2.8. Penalties.

DESCRIPTION

Subsection (a):

A person (individual or corporation) who

1. establishes, conducts, manages, or operates
2. a facility subject to licensure under this section
3. without a license.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

Facilities subject to licensure under this section are defined in G.S. 131D-2.1, and include adult care homes, assisted living residences, family care homes, and multiunit assisted housing with services.

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 1 misdemeanor or a Class 2 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. The 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.

DATE PREPARED: 03/27/09

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 460/SB 460 – COMMERCIAL DOG BREEDERS [v.1]

STATUTE

§ 19A-29.1. License required for commercial breeder; penalty.

DESCRIPTION

Subsection (b):

A person who

1. is a commercial dog breeder, as defined by statute,
2. fails to obtain a license as provided for by statute.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, 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.

“Commercial breeder” is defined in as a person who, during any 12-month period, maintains 15 or more adult female dogs for the primary purpose of selling their offspring as companion animals (G.S.19A-23(5b)).

Subsection (7) of G.S. 19A-23 defines a “Dealer” as any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to another dealer, pet shop, or research facility. A “Dealer” who maintains at least 15 adult female dogs primarily for selling their offspring as companion animals would fall within the proposed definition of “commercial breeder.” It is currently a Class 2 misdemeanor under G.S. 19A-34 to act as a “dealer” without a license.

(See also HB 733).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 460/SB 460 – COMMERCIAL DOG BREEDERS [v.1]
(cont'd)

STATUTE

§ 19A-29.3. Penalties for commercial breeder failing to provide adequate care for animals; disposition of animals.

DESCRIPTION

A person who

1. is a commercial dog breeder, as defined by statute,
2. fails to adequately house, exercise, feed, water, provide adequate veterinary care, or otherwise meet the standards of care for the animals in the commercial breeder's custody or possession.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

“Commercial breeder” is defined in G.S. 19A-23(5b) as any person who, during any 12-month period, maintains 15 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

Under G.S. 19A-29.3, it is currently a Class 3 misdemeanor for any person subject to licensure to fail to adequately house, feed, and water animals in his possession or custody.

(See also HB 733).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 471/SB 461 – SELLING MOTOR VEHICLE REGISTRATIONS UNLAWFUL [v.1]

STATUTE

§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.

DESCRIPTION

A person who

1. is not authorized to possess or sell a temporary registration plate,
2. possesses, sells, transfers, or delivers,
3. a temporary plate
4. to any other 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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

IMPACT OF BILL ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 471: SELLING MOTOR VEHICLE REGISTRATIONS UNLAWFUL [v.1]

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates a new Class 1 misdemeanor by enacting subsection (l) in G.S. 20-79.1, Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates. It may also expand an existing Class 2 misdemeanor under G.S. 20-79.1(d) and 20-176(c).

SECTION 1. This section amends subsection (d) of G.S. 20-79.1, to make it unlawful for a dealer to "sell" temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle which the dealer has sold. Under G.S. 20-176(c), it is a Class 2 misdemeanor to violate any provision of General Statutes Chapter 20, Article 3, Part 5, including G.S. 20-79.1(d). Subsection G.S. 20-79.1(d) currently makes it unlawful (and thus a Class 2 misdemeanor) for a dealer to "issue, assign, transfer, or deliver" temporary plates or markers in this circumstance. The Sentencing Commission does not maintain statistical information on Class 2 misdemeanor traffic offenses. Therefore, it is not known how many convictions there are for this offense, how many active sentences are imposed for this offense, or the length of sentences imposed.

It is not known how many additional convictions may result from the potential broadening of the current statute.¹ In FY 2007/08, 20% of Class 2 misdemeanor convictions for non-traffic offenses resulted in active sentences. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

SECTION 2. This section enacts new subsection (l) in G.S. 20-79.1, making it a Class 1 misdemeanor for any person not authorized to possess or sell a temporary registration plate to possess, sell, transfer, or deliver a temporary registration plate to any other person.

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

In FY 2007/08, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

It is currently a Class 3 misdemeanor under G.S. 20-111(3) to give, lend, or borrow a license plate for the purpose of using the plate on a motor vehicle other than that for which issued. The Sentencing Commission does not maintain statistical information on Class 3 misdemeanor traffic offenses. Therefore, it is not known how many convictions there are for this offense, how many active sentences

¹ It is not clear that the addition of the term "sell" to this proscriptive list would expand the reach of subsection (d) to additional acts not already covered by the existing language.

are imposed for this offense, or the length of sentences imposed. It is also not known whether (or how many) of these convictions would become Class 1 misdemeanor convictions under the proposed bill. In FY 2007/08, 24% of Class 3 misdemeanor convictions and 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 3 convictions was 3 days and 30 days for Class 1 convictions. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, any convictions that would be reclassified to Class 1 misdemeanors under this proposed bill would not be expected to have a significant impact on the prison population. There is the potential for impact on local jail populations as a result of the increase in the average estimated time served for Class 1 convictions.

NORTH CAROLINA 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 570/SB 584 – AMEND PRIVATE PROTECTIVE SERVICES ACT [v.1]

STATUTE

§ 74C-17. Enforcement.

DESCRIPTION

A person who

1. being any person, firm, association, or corporation or their agents and employees,
2. violates any of the provision of Chapter 74C of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 74C-17).

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.

Chapter 74C of the General Statutes, the Private Protective Services Act, regulates the licensing of the private protective services profession.

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

DATE PREPARED: 03/27/09

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 608 – REQUIRE TITLE FOR SCRAPPED VEHICLES [v.1]

STATUTE

§ 20-62.1. Records for Scrap or Parts.

DESCRIPTION

Subsection (a)(1)(j):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles solely for the purposes of
 - a. dismantling or
 - b. wrecking such motor vehicle
3. a. for the recovery of scrap metal, or
 - b. for the sale of parts only, must
4. maintain a record of all purchase transactions of motor vehicles, which must include,
5. a photocopy or electric scan of the certificate of title issued by the Division of Motor Vehicles for the vehicle being purchased.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 608 – REQUIRE TITLE FOR SCRAPPED VEHICLES [v.1]
(cont'd)

STATUTE

§ 20-62.1. Records for Scrap or Parts.

DESCRIPTION

Subsection (a)(1)(j):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles solely for the purposes of
 - a. dismantling or
 - b. wrecking such motor vehicle
3. a. for the recovery of scrap metal, or
 - b. for the sale of parts only, must
4. maintain a record of all purchase transactions of motor vehicles, which must include,
5. a photocopy or electric scan of the certificate of title issued by the Division of Motor Vehicles for the vehicle being purchased.

PROPOSED OFFENSE CLASS

Class I felony for second and subsequent violations.

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 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: 03/27/09

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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 608 – REQUIRE TITLE FOR SCRAPPED VEHICLES [v.1]
(cont'd)

STATUTE

§ 20-62.1. Records for Scrap or Parts.

DESCRIPTION

Subsection (a)(1)(k):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles solely for the purposes of
 - a. dismantling or
 - b. wrecking such motor vehicle
3. a. for the recovery of scrap metal, or
 - b. for the sale of parts only, must
4. maintain a record of all purchase transactions of motor vehicles, which must include,
5. a receipt for the purchase of the motor vehicle with is signed by all parties to the sale and upon which the seller(s) shall be required to [p]lace a clear, un-smearred impression in ink of their index finger next to the seller's signature.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 608 – REQUIRE TITLE FOR SCRAPPED VEHICLES [v.1]
(cont'd)

STATUTE

§ 20-62.1. Records for Scrap or Parts.

DESCRIPTION

Subsection (a)(1)(k):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles solely for the purposes of
 - a. dismantling or
 - b. wrecking such motor vehicle
3. a. for the recovery of scrap metal, or
 - b. for the sale of parts only, must
4. maintain a record of all purchase transactions of motor vehicles, which must include,
5. a receipt for the purchase of the motor vehicle with is signed by all parties to the sale and upon which the seller(s) shall be required to [p]lace a clear, un-smearred impression in ink of their index finger next to the seller's signature.

PROPOSED OFFENSE CLASS

Class I felony for second and subsequent violations.

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 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: 03/27/09

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 616 – OFFENSE FOR PORTABLE TOILETS/PUMPER TRUCKS [v.2]

STATUTE

§ 14-86.2. Larceny, destruction, defacement, or vandalism of portable toilets or pumper trucks.

DESCRIPTION

A person who

1. a. steals
b. takes from its temporary location or from any person having the lawful custody thereof, or
c. destroys, defaces, or vandalizes,
2. a. a chemical or portable toilet, as defined in G.S.130A-290, or
b. a pumper truck that is operated by a permitted septage management firm.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 644 – MISDEMEANOR/NOT PRODUCE PUBLIC RECORDS [v.1]

STATUTE

§ 132-6. Inspection and examination of records.

DESCRIPTION

A person who

1. is a custodian of public records,
2. fails to permit any record in the custodian's custody to be inspected and examined,
3. at reasonable times and under reasonable supervision by any person, and
4. as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This provision is identical to a provision in HB 1439, which the Sentencing Commission reviewed in June 2007. The Commission found that provision to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 716/SB 829 – REGULATION OF APPRAISAL
MANAGEMENT COMPANIES [v.1]

STATUTE

§ 93E-2-10. Penalty; injunctive relief.

DESCRIPTION

Subsection (a):

A person who

1. violates the provisions of this Article (Article 2, Real Estate Appraisal Management Companies).

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 bill creates Article 2 of Chapter 93 of the General Statutes, which regulates real estate appraisal management companies.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 722 – REGULATE SALES OF GLASS VIALS [v.1]

STATUTE

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

DESCRIPTION

A person who

1. is a retailer where glass vials are available for sale,
2. offers glass vials for retail sale by self-service, or
3. fails to maintain a record of sale of glass vials, or
4. fails to require employees to be trained in the requirements of the sale of glass vials.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

This provision is substantially similar to a provision in HB 953 [v.3], which the Sentencing Commission reviewed in June 2007. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 722 – REGULATE SALES OF GLASS VIALS [v.1] (cont'd)

STATUTE

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

DESCRIPTION

A person who

1. is a retailer where glass vials are available for sale,
2. offers glass vials for retail sale by self-service, or
3. fails to maintain a record of sale of glass vials, or
4. fails to require employees to be trained in the requirements of the sale of glass vials.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for second violations.

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.

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

This provision is substantially similar to a provision in HB 953 [v.3], which the Sentencing Commission reviewed in June 2007. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

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: 03/27/09

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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 722 – REGULATE SALES OF GLASS VIALS [v.1] (cont'd)

STATUTE

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

DESCRIPTION

A person who

1. is a retailer where glass vials are available for sale,
2. offers glass vials for retail sale by self-service, or
3. fails to maintain a record of sale of glass vials, or
4. fails to require employees to be trained in the requirements of the sale of glass vials.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for third and subsequent violations.

ANALYSIS

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

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

This provision is substantially similar to a provision in HB 953 [v.3], which the Sentencing Commission reviewed in June 2007. The Commission found that provision to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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: 03/27/09

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 733 – REGULATE COMM. BREEDING/DOGS [v.1]

STATUTE

§ 19A-29.1. License required for commercial breeder; penalty.

DESCRIPTION

Subsection (b):

A person who

1. is a commercial dog breeder, as defined by statute,
2. fails to obtain a license as provided for by statute.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, 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.

“Commercial breeder” is defined in G.S. 19A-23(5b) as any person who, during any 12-month period, maintains 15 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

Some individuals who would qualify as commercial breeders are already subject to licensure as dealers. Subsection (7) of G.S. 19A-23 defines a “Dealer” as any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to another dealer, pet shop, or research facility. A “Dealer” who maintains at least 15 adult female dogs primarily for selling their offspring as companion animals would fall within the proposed definition of “commercial breeder.” It is currently a Class 2 misdemeanor under G.S. 19A-34 to act as a “dealer” without a license.

(See also HB 460/SB 460).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 733 – REGULATE COMM. BREEDING/DOGS [v.1]
(cont'd)

STATUTE

§ 19A-29.3. Penalties for commercial breeder failing to provide adequate care for animals; disposition of animals.

DESCRIPTION

A person who

1. is a commercial dog breeder, as defined by statute,
2. fails to adequately house, exercise, feed, water, provide adequate veterinary care, or otherwise meet the standards of care for the animals in the commercial breeder's custody or possession.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

A "commercial breeder" is defined in G.S. 19A-23(5b) as maintaining, during any 12-month period, 15 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

Under G.S. 19A-29.3, it is currently a Class 3 misdemeanor for any person subject to licensure to fail to adequately house, feed, and water animals in his possession or custody.

Existing animal cruelty laws also cover some of the acts addressed in the proposed bill. Animal cruelty offenses typically require a showing of intentional conduct and are classified more highly than the proposed Class 3 misdemeanor.

(See also HB 460/SB 460).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 746 – AMEND PROFESSIONAL COUNSELORS
ACT/FEEES [v.1]

STATUTE

§ 90-331. Unlawful use of title.

DESCRIPTION

A person who

1. is not licensed under this Article (Article 24 of Chapter 90 of the General Statutes),
2. and engages in the practice of counseling,
3. uses the titles, “Licensed Professional Counselor Associate,” “Licensed Professional Counselor,” or “Licensed Professional Counselor Supervisor,”
4. uses the letters, “LPCA,” “LPC,” or “LPCS,”
5. uses any facsimile or combination of these words or letters, abbreviations, or insignia, or
6. implies orally, in writing, or in any other way that the person is a licensed professional counselor.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 90-341).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 2 misdemeanor. The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

DATE PREPARED: 03/27/09

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 782 – SAFE ARTIFICIAL SLOPE CONSTRUCTION ACT
[v.1]

STATUTE

§ 113A-267. Enforcement and penalties.

DESCRIPTION

A person who

1. knowingly or willfully violates any provision of Article 19 (Safe Artificial Slope Construction) or any ordinance, rule, regulation, or order duly adopted or issued by the Sedimentation Control Commission or a local government, or
2. knowingly or willfully initiates a slope construction activity for which an artificial slope construction plan is required without an approved plan.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This provision is identical to a provision in HB 1756, which the Sentencing Commission reviewed in June 2007. The commission found that provision to be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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: HB 787 – INCREASE PENALTY/REMOVE SERIAL # FROM GUN [v.1]

STATUTE

§ 14-160.1. Alteration, destruction or removal of permanent identification marks from personal property.

DESCRIPTION

Subsection (c1):

A person who

1. alters, defaces, destroys or removes the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark from personal property that is a firearm with the intent to conceal or misrepresent the identity of said item, or
2. knowingly sells, buys or takes possession of personal property that is a firearm, not his own, on which the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark has been altered, defaced, destroyed or removed for the purpose of concealing or misrepresenting the identity of the firearm.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class H felony.

ANALYSIS

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

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

DATE PREPARED: 03/27/09

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 801 –TISSUE BANK ACCREDITATION [v.1]

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.

This provision is identical to a provision in HB 116, which the Sentencing Commission reviewed in March 2007. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class 3 misdemeanor.

FINDINGS

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

DATE PREPARED: 03/27/09

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 827 – UNATTENDED CHILDREN IN VEHICLES [v.1]

STATUTE

§ 14-318.5. Unlawful to leave an unattended child in a motor vehicle.

DESCRIPTION

Subsection (b):

Any person who

1. is a parent, legal guardian, or other person responsible for a child who is eight years old or younger,
2. leaves that child in a motor vehicle on any public street or in any public vehicular area
3. without the child being supervised in the motor vehicle by a person who is at least 14 years of age if:
 - a. the conditions within or in the immediate vicinity of the motor vehicle would cause a reasonable person to believe that the conditions may present a risk to the child's health or safety, or
 - b. the engine is running, or the keys are anywhere in the passenger compartment, and the child is not in the immediate proximity or line of sight of the parent, legal guardian, or person responsible for the child.

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.

Second and subsequent violations are a Class 2 misdemeanor, first-time violators are issued a warning citation.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 885 -- NO PICKETING/DISRUPT RESIDENTIAL
TRANQUILITY [v.2]

STATUTE

§ 14-277.6. Picketing a residence.

DESCRIPTION

A person who

1. assembles with another person
2. for the purpose of
3. engaging in picketing
4. directed at or focused
5. on a single residence
6. in a manner that disrupts the tranquility of that residence.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for first violation.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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: 04/24/09

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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 885 – NO PICKETING/DISRUPT RESIDENTIAL
TRANQUILITY [v.2] (cont'd)

STATUTE

§ 14-277.6. Picketing a residence.

DESCRIPTION

A person who

1. assembles with another person
2. for the purpose of
3. engaging in picketing directed at or focused on a single residence
4. in a manner that disrupts the tranquility of that residence.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for second violation within three years of the first.

ANALYSIS

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

The 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: 04/24/09

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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 885 – NO PICKETING/DISRUPT RESIDENTIAL
TRANQUILITY [v.2] (cont'd)

STATUTE

§ 14-277.6. Picketing a residence.

DESCRIPTION

A person who

1. assembles with another person
2. for the purpose of
3. engaging in picketing directed at or focused on a single residence
4. in a manner that disrupts the tranquility of that residence.

PROPOSED OFFENSE CLASS

Class I felony, for third and subsequent violations within three years of the second or most recent conviction.

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 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: 04/24/09

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 890 – UNBORN VICTIMS OF VIOLENCE ACT [v.1]

STATUTE

§ 14-23.2. Murder of an unborn child; penalty

DESCRIPTION

A person who

1. unlawfully causes the death of an unborn child
2. is guilty of murder of an unborn child, if he/she:
 - a. willfully and maliciously commits an act with the intent to cause the death of the unborn child;
 - b. commits an acting causing the death of the unborn child that is inherently dangerous to human or fetal life and is done so recklessly and wantonly that it reflects disregard of life; or
 - c. causes the death of the unborn child in perpetration or attempted perpetration of any of the criminal offenses found in G.S. 14-17 that would constitute a Class A felony if the person was killed during the perpetration or attempted perpetration.

PROPOSED OFFENSE CLASS

Class A felony, punishable by life without parole.

ANALYSIS

The Sentencing Commission reserved Class A for first-degree murder.

The criminal offenses found in G.S. 14-17, Murder in the first and second degree defined; punishment, include: a murder perpetrated by means of nuclear, biological, or chemical weapon of mass destruction, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditate killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon, all other kinds of murder including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium or cocaine or methamphetamine, or other substance, when the ingestion of such causes the death of the user.

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: 04/24/09

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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 890 – UNBORN VICTIMS OF VIOLENCE ACT [v.1]
(cont'd)

STATUTE

§ 14-23.3. Voluntary manslaughter of an unborn child; penalty.

DESCRIPTION

A person who

1. unlawfully causes the death of an unborn child
2. by an act that would be voluntary manslaughter if it resulted in the death of the mother.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

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

This is the offense of voluntary manslaughter as defined in the common law.

Voluntary manslaughter is classified as a Class D felony (G.S. 14-18).

G.S. 14-18.2, Injury to a pregnant woman, currently covers some of the acts considered in this statute. A person who, in the commission of a felony, causes injury to a woman, knowing the woman to be pregnant, which injury results in miscarriage or stillbirth of the child, is guilty of a felony that is one class higher than the felony committed. A person who is in the commission of a misdemeanor that is an act of domestic violence, causes injury to a woman, knowing the woman to be pregnant, which results in miscarriage or stillbirth is guilty of a misdemeanor one class higher than the misdemeanor committed (Class A1 misdemeanor is a Class I felony).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 04/24/09

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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 890 – UNBORN VICTIMS OF VIOLENCE ACT [v.1]
(cont'd)

STATUTE

§ 14-23.4. Involuntary manslaughter of an unborn child; penalty.

DESCRIPTION

A person who

1. unlawfully causes the death of an unborn child
2. by an act that would be involuntary manslaughter if it resulted in the death of the mother.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

This is the offense of voluntary manslaughter as defined in the common law.

Voluntary manslaughter is classified as a Class D felony (G.S. 14-18).

G.S. 14-18.2, Injury to a pregnant woman, currently covers some of the acts considered in this statute. A person who, in the commission of a felony, causes injury to a woman, knowing the woman to be pregnant, which injury results in miscarriage or stillbirth of the child, is guilty of a felony that is one class higher than the felony committed. A person who is in the commission of a misdemeanor that is an act of domestic violence, causes injury to a woman, knowing the woman to be pregnant, which results in miscarriage or stillbirth is guilty of a misdemeanor one class higher than the misdemeanor committed (Class A1 misdemeanor is a Class I felony).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE PREPARED: 04/24/09

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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 890 – UNBORN VICTIMS OF VIOLENCE ACT [v.1]
(cont'd)

STATUTE

§ 14-23.5. Assault inflicting serious bodily injury of an unborn child; penalty.

DESCRIPTION

A person who

1. unlawfully inflicts serious bodily harm
 - a. upon an unborn child
 - b. who is subsequently born alive
2. by committing a battery of the mother of the child.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

“Serious bodily harm” is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization, or causing the birth of the unborn child prior to 37 weeks gestation, if the child weighs 2500 grams or less at the time of birth.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class E felony. The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE PREPARED: 04/24/09

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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 890 – UNBORN VICTIMS OF VIOLENCE ACT [v.1]
(cont'd)

STATUTE

§ 14-23.6. Assault of an unborn child

DESCRIPTION

A person who

1. unlawfully commits
 - a. any assault,
 - b. assault and battery, or
 - c. affray,
2. on a pregnant woman.

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.

Assault on a female (G.S. 14-33(c)(2)), is a Class A1 misdemeanor.

Assault, assault and battery, or affray (G.S. 14-33), is a Class 2 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 918 – DESIGNATION OF COASTAL GAME FISH [v.1]

STATUTE

§ 113-192. Coastal Game Fish.

DESCRIPTION

Subsection (b):

A person who

1. takes coastal game fish in coastal fishing waters by a method other than hook-and-line;
2. buys, sells, barter or exchanges coastal game fish; or
3. possesses coastal game fish for the purpose of purchase, sale, barter, exchange, or for transport or shipment in commerce within the State or for export from the State.

PROPOSED OFFENSE CLASS

Class A1 misdemeanor (G.S. 113-187).

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.

Coastal game fish are defined in G.S. 113-192(a), and include: Red drum (*Sciaenops ocellatus*), and Spotted sea trout (*Cynoscion nebulosus*).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 922 – NC ILLEGAL IMMIGRATION PREVENTION ACT
[v.1]

STATUTE

§ 64-15. Knowingly making a false statement a felony.

DESCRIPTION

A person who

1. knowingly makes or files
2. a document, statement, or report that is
 - a. false
 - b. fictitious or
 - c. fraudulent
3. pursuant to G.S. Chapter 64, Article 2, Unauthorized Aliens and Public Contracts.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Article 2 of Chapter 64 of the General Statutes provides that no public agency shall enter into a contract for the physical performance of services within this State, unless the contractor agrees to either, (i) register and participate in the federal work authorization program, and require all its subcontractors to do the same; or (ii) employ only workers who possess a valid NC drivers license or identification card, are eligible to obtain such, or posses a valid drivers license or identification card from another state where the license requirements are at least as strict as North Carolina's.

(See also SB 337).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 922 – NC ILLEGAL IMMIGRATION PREVENTION ACT
[v.1] (cont'd)

STATUTE

§ 64-22. Knowingly employing unauthorized alien prohibited; penalties.

DESCRIPTION

Subsection (b):

A person who

1. knowingly
2. files
3. a false and frivolous complaint alleging that an employer knowingly
 - a. employs an unauthorized alien, or
 - b. contracts or subcontracts for labor performed by an unauthorized alien.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This provision is similar to a provision in HB 2610 and SB 1596 which the Sentencing Commission reviewed in June 2008. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

(See also SB 337).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 922 – NC ILLEGAL IMMIGRATION PREVENTION ACT
[v.1] (cont'd)

STATUTE

§ 84B-9. Violations; penalties.

DESCRIPTION

A person who

1. violates any provision of Chapter 84B of the General Statutes.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for first offenses.

ANALYSIS

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

This bill creates Chapter 84B of the General Statutes, the Immigration Assistance Registration Act; the new chapter establishes and enforces ethical standards for immigration assistance services provided by individuals who are not licensed attorneys.

This provision is identical to a provision in House Bill 1485, which the Sentencing Commission reviewed in June 2007. The Commission found that the provision was consistent with the Offense Classification Criteria as to the Class 2 misdemeanor. This provision is also identical to a provision in HB 55 which the Sentencing Commission reviewed in March, 2007. The Commission found that the provision was consistent with the Offense Classification Criteria as to the Class 2 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 922 – NC ILLEGAL IMMIGRATION PREVENTION ACT
[v.1] (cont'd)

STATUTE

§ 84B-9. Violations; penalties.

DESCRIPTION

A person who

1. violates any provision of Chapter 84B of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor, second and subsequent offenses.

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.

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

This bill creates Chapter 84B of the General Statutes, the Immigration Assistance Registration Act; the new chapter establishes and enforces ethical standards for immigration assistance services provided by individuals who are not licensed attorneys.

This provision is identical to a provision in House Bill 1485, which the Sentencing Commission reviewed in June 2007. The Commission found that the provision was inconsistent with the Offense Classification Criteria as to the Class 1 misdemeanor. This provision is also identical to a provision in HB 55 which the Sentencing Commission reviewed in March, 2007. The Commission found that the provision was inconsistent with the Offense Classification Criteria as to the Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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: 04/24/09

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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 922 – NC ILLEGAL IMMIGRATION PREVENTION ACT
[v.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (g):

A person who

1. knowingly and willfully makes
2. a false, fictitious, or fraudulent statement of representation
3. in an affidavit executed under subsection (e) of this section.

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. 135A-1(e) provides that verification of lawful presence in the United States by a State agency or political subdivision required to make verification shall be: (1) the applicant for public benefit must execute an affidavit that the applicant is a United States citizen or legal permanent resident, and is 18 or older; or (2) the applicant must execute an affidavit that the applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act and is 18 or older and lawfully present in the United States.

This provision is identical to a provision in House Bill 1485, which the Sentencing Commission reviewed in June 2007. The commission found the classification to be consistent with the Offense Classification Criteria. Also, this provision is similar to a provision in HB 55 which the Sentencing Commission reviewed in March, 2007. That provision was not classified and the Commission found that the provision was inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 922 – NC ILLEGAL IMMIGRATION PREVENTION ACT
[v.1] (cont'd)

STATUTE

§64-6. Unlawful transfer or concealment of an alien.

DESCRIPTION

Subsection (a):

A person who

1. a. knowingly, or
b. in reckless disregard of another person's unlawful arrival, entry, or remaining in the United States
2. does or attempts, solicits, or conspires to
3. transport or move
4. the other person
5. within North Carolina
6. with the intent to
 - a. further the person's unlawful entry into the United States, or
 - b. avoid apprehension or detection of that person's unlawful immigration status by state or federal authorities.

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 similar to a provision in Senate Bill 1596 which the Sentencing Commission reviewed in June 2008. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class G felony, but noted that it would be consistent with the criteria for Class H.

(See also SB 337).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 922 – NC ILLEGAL IMMIGRATION PREVENTION ACT
[v.1] (cont'd)

STATUTE

§64-6. Unlawful transfer or concealment of an alien.

DESCRIPTION

Subsection (b):

A person who

1. a. knowingly, or
b. in reckless disregard of another person's unlawful arrival, entry, or remaining in the United States
2. does, or solicits or conspires to,
3. conceal, harbor or shelter from detection
4. the other person
5. in any place, including any building or means of transportation,
6. with the intent to
 - a. further the person's unlawful entry into the United States, or
 - b. avoid apprehension or detection of that person's unlawful immigration status by authorities.

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 similar to a provision in Senate Bill 1596 which the Sentencing Commission reviewed in June 2008. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class G felony, but noted that it would be consistent with the criteria for Class H.

(See also SB 337).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 922 – NC ILLEGAL IMMIGRATION PREVENTION ACT
[v.1] (cont'd)

STATUTE

§ 14-113.20. Identity theft.

DESCRIPTION

A person who

1. knowingly obtains, possesses, or uses
2. identifying information of another person, living or dead,
3. with the intent to fraudulently represent that the person is the other person for the purpose of
 - a. making financial or credit transactions in the other person's name,
 - b. obtaining anything of value, benefit, or advantage,
 - c. avoiding legal consequences, or
 - d. obtaining employment.

PROPOSED OFFENSE CLASS

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

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies. The 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 reviewed an identical provision in Senate Bill 1596 n June, 2008, and found it to be inconsistent with the Offense Classification Criteria for a Class G felony, and inconsistent with the criteria for a Class F felony with respect to (i) and (ii) above.

(See also SB 337).

FINDINGS

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

DATE PREPARED: 04/24/09

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 938/SB 935 – AMEND MARRIAGE & FAMILY
LICENSURE LAWS/FEEES [v.1]

STATUTE

§ 90-270.48. Prohibited Acts.

DESCRIPTION

A person who

1. practices marriage or family therapy, or
2. holds himself/herself out to the public as a person who practices marriage or family therapy,
3. without being licensed as a marriage or family therapist, or a licensed marriage or family therapy associate.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 90-270.61).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 944 – DISCLOSURE BY APPOINTEES [v.2]

STATUTE

§ 163-278.23A. Disclosure of Contribution-Related Activity Involving Appointees to Positions in State Government.

DESCRIPTION

A person who

1. is an appointee, as defined by statute,
2. and does not, within five days after the date of his/her appointment, submit to the State Board of Elections, the required reports for contributions made and contributions resulting from fund-raising activities in the two years preceding the appointment.

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.

Appointee is defined in G.S. 163-278.23A(a)(1) as an individual subject to appointment, and who becomes an appointee on the date of appointment.

The required reports are found in G.S. 163-278.23A(b), and include: a list of contributions made by the appointee or a member of his/her immediate family to a relevant political committee who made the appointment, but a report is not required for contributions totaling less than \$1000, a list of contributions resulting from the appointee's fund-raising for a relevant political committee, but a report is not required for such totaling less than \$1000.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

IMPACT ANALYSIS ON NEXT PAGE

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
CONFIDENTIAL FISCAL NOTE**

HB 944: DISCLOSURE BY APPOINTEES. [v.2]

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

This bill creates a new Class 2 misdemeanor.

This bill creates a new statute, G.S. 163-278.23A, Disclosure of contribution-related activity involving appointees to positions in state government. This statute would require a person who is being appointed to the Governor's Cabinet, to the Supreme Court, the Court of Appeals, the superior court, the district court, or to any board or commission exercising executive powers, to file the following reports with the State Board of Elections:

1. A list of contributions made by the appointee or a member of the appointee's immediate family to a relevant political committee in the two years preceding the date of the appointment.
2. A list of contributions resulting from the appointee's fund-raising for a relevant political committee in the two years preceding the date of the appointment.

A report is not required if the total is less than \$1,000 for the period covered by the report.

Violation by an appointee of a duty imposed by this statute is a Class 2 misdemeanor.

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 convicted and sentenced under the proposed bill. In FY 2007/08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

This proposed bill becomes effective January 1, 2010, and applies to contributions made on or after that date.

NORTH CAROLINA 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 961 – PAY TO PLAY REGULATION [v.2]

STATUTE

§ 163-278.13D. Prohibition on contributions by entity affiliated with a vendor.

DESCRIPTION

A person who

1. is an entity affiliated with a vendor that has entered into a contract for supplies, materials, equipment, other tangible personal property, or services in excess of \$25,000 with any of the principal offices or departments found in G.S. 143A-11 and subject to Article 3 of Chapter 143, and
2. makes a contribution to a relevant political campaign
3. during the term of the contract.

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.

G.S. 143A-11, Principal Departments, includes: Office of the Governor, Office of the Lieutenant Governor, Department of the Secretary of State, Department of State Auditor, Department of State Treasurer, Department of Public Instruction, Department of Justice, Department of Agriculture and Consumer Services, Department of Labor, and Department of Insurance.

Article 3 of Chapter 143 outlines the powers and duties of the Department of the State Auditor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 961 – PAY TO PLAY REGULATION [v.2] (cont'd)

STATUTE

§ 163-278.13D. Prohibition on contributions by entity affiliated with a vendor.

DESCRIPTION

A person who

1. is a relevant political campaign, and
2. knowingly accepts a contribution during the term of a contract for supplies, materials, equipment, other tangible personal property, or services in excess of \$25,000 with any of the principal offices or departments found in G.S. 143A-11 and subject to Article 3 of Chapter 143.

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.

G.S. 143A-11, Principal Departments, includes: Office of the Governor, Office of the Lieutenant Governor, Department of the Secretary of State, Department of State Auditor, Department of State Treasurer, Department of Public Instruction, Department of Justice, Department of Agriculture and Consumer Services, Department of Labor, and Department of Insurance.

Article 3 of Chapter 143 outlines the powers and duties of the Department of the State Auditor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1098 – KILL SEARCH AND RESCUE ANIMAL [v.2]

STATUTE

§ 14-163.1. Assaulting a law enforcement animal, an assistance animal, or a search and rescue animal.

DESCRIPTION

Subsection (a1):

A person who

1. knows or has reason to know
2. that an animal is a search and rescue animal,
3. and willfully kills 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 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.

A search and rescue animal is defined in G.S. 14-163.1(a)(2a) as an animal that is trained and may be used to assist in a search and rescue operation.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1098 – KILL SEARCH AND RESCUE ANIMAL [v.2]
(cont'd)

STATUTE

§ 14-163.1. Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal.

DESCRIPTION

Subsection (b):

A person who

1. knows or has reason to know
2. that an animal is a search and rescue animal,
3. and willfully causes or attempts to cause
4. serious harm to the animal.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

A search and rescue animal is defined in G.S. 14-163.1(a)(2a) as an animal that is trained and may be used to assist in a search and rescue operation.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1098 – KILL SEARCH AND RESCUE ANIMAL [v.2]
(cont'd)

STATUTE

§ 14-163.1. Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal.

DESCRIPTION

Subsection (c):

A person who

1. knows or has reason to know
2. that an animal is a search and rescue animal,
3. and willfully causes or attempts to cause
4. harm to the animal.

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.

A search and rescue animal is defined in G.S. 14-163.1(a)(2a) as an animal that is trained and may be used to assist in a search and rescue operation.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1098 – KILL SEARCH AND RESCUE ANIMAL [v.2]
(cont'd)

STATUTE

§ 14-163.1. Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal.

DESCRIPTION

Subsection (d):

A person who

1. knows or has reason to know
2. that an animal is a search and rescue animal,
3. and willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or obstruct the animal
4. in the performance of its duty as a search and rescue 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 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.

A search and rescue animal is defined in G.S. 14-163.1(a)(2a) as an animal that is trained and may be used to assist in a search and rescue operation.

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: 04/24/09

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: HB 1105 – AMEND LAWS/REFRIGERATION
CONTRACTORS [v.1]

STATUTE

§ 87-61. Violations made misdemeanor; employees of licensees excepted.

DESCRIPTION

A person, firm or corporation who

1. a. engages in or
b. offers to engage in, or carry on
c. the business of refrigeration contracting,
d. without first having been licensed to engage in the business, or businesses,
e. as required by the provisions of Article 5 of Chapter 87 of the General Statutes (Refrigeration Contractors); or
2. a. holds a refrigeration license, and
b. who shall practice or offer to practice or carry on any type of refrigeration contracting not authorized by the license; or
3. a. shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or
b. who shall use an expired or revoked license, or
c. who shall violate any of the provisions of Article 5 of Chapter 87 of the General Statutes (Refrigeration Contractors).

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: Class 3 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1117 – SEX OFFENDER CAN’T DRIVE BUS WITH CHILDREN [v.1]

STATUTE

§ 20-27.1. Unlawful for sex offender to drive commercial passenger vehicle or school bus without appropriate commercial license or while disqualified.

DESCRIPTION

A person who

1. drives a commercial passenger vehicle or a school bus, and
2. does not have a valid commercial drivers license with a P or S endorsement
3. because that person was convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1117 – SEX OFFENDER CAN’T DRIVE BUS WITH CHILDREN [v.1] (cont’d)

STATUTE

§ 20-37.14A. Prohibit issuance or renewal of certain categories of commercial drivers licenses to sex offenders

DESCRIPTION

Subsection (c):

A person who

1. makes a false affidavit, or
2. knowingly swears or affirms falsely
3. to any matter or thing
4. required to be affirmed to or sworn, by the terms of this section.

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. 20-37.14A(b)(2) states that if the Division is unable to access either the statewide registry or all of the states’ information contained in the National Sex Offender Public Registry, but the applicant is otherwise qualified to obtain a commercial license with a P or S endorsement, then the Division shall issue the license, but shall first require the applicant to sign an affidavit stating that the applicant does not appear on either registry.

FINDINGS

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

DATE PREPARED: 04/24/09

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 1122 – NC COLON HYDROTHERAPY LICENSURE [v.1]

STATUTE

§ 90-712. License required: exemptions.

DESCRIPTION

A person who

1. engages in the practice of colon hydrotherapy,
2. uses the designation “Colon Hydrotherapist,” or
3. advertises using any title or description that implies licensure as a colon hydrotherapist,
4. without being licensed, pursuant to Article 42 of Chapter 90 of the General Statutes, as a colon hydrotherapist.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This bill creates Article 42 of Chapter 90 of the General Statutes, and provides the guidelines for licensure and practice as a Colon Hydrotherapist.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1135 – QUI TAM/LIABILITY FOR FALSE CLAIMS [v.1]

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (e):

A person who

1. in connection with the delivery of, or payment for,
2. healthcare benefits, items, or services valued at less than \$100,000,
3. provides medical assistance under the Medical Assistance Program and
4. knowingly and willfully executes or attempts to execute
5. a scheme or artifice to
 - a. defraud the Medical Assistance Program or
 - b. obtain, by false or fraudulent pretenses, representations or promises, any money or property owned by, or under the custody or control of the Medical Assistant Program.

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.

(See also SB 602).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1135 – QUI TAM/LIABILITY FOR FALSE CLAIMS [v.1]
(cont'd)

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (e):

A person who

1. in connection with the delivery of, or payment for,
2. healthcare benefits, items, or services valued at \$100,000 or more,
3. provides medical assistance under the Medical Assistance Program and
4. knowingly and willfully executes or attempts to execute
5. a scheme or artifice to
 - a. defraud the Medical Assistance Program or
 - b. obtain, by false or fraudulent pretenses, representations or promises, any money or property owned by, or under the custody or control of the Medical Assistant Program.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

(See also SB 602).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1135 – QUI TAM/LIABILITY FOR FALSE CLAIMS [v.1]
(cont'd)

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (f):

A person who

1. provides medical assistance under the Medical Assistance Program and
2. knowingly and willfully does, or attempts to,
3. obstruct, delay, or mislead
4. an investigation of a violation of this section by the Attorney General's Office.

PROPOSED OFFENSE CLASS

Class I felony (G.S. 108A-63(c)).

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 SB 602).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1135 – QUI TAM/LIABILITY FOR FALSE CLAIMS [v.1]
(cont'd)

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (g):

A person who

1. provides medical assistance under the Medical Assistance Program and
2. knowingly and willfully
3. with the intent to defraud
 - a. makes or causes to be made a false entry in, or
 - b. alters, destroys, or conceals
4. any record related to the provision of a benefit, item or service under this Part.

PROPOSED OFFENSE CLASS

No classification given.

ANALYSIS

The Sentencing Commission classified offenses based on the type and degree of harm which results or reasonably tends to result therefrom.

This statute does not assign an offense class to the offense or exempt the offense from structured sentencing. Section (c) provides that a violation of G.S. 108A-63 is a Class I felony, except as provided in subsections (e) and (g). Current Class I felonies include a provider's knowing and willful obstruction of the Attorney General's investigation of a violation of this section, and a provider's knowing and willful false statement or representation of a material fact in an application for payment under this Part (G.S. 108A-63(a), (f)).

(See also SB 602).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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: HB 1158 – INCREASE PENALTY/CONTINUING CRIMINAL ENTERPRISE [v.1]

STATUTE

§ 14-7.20. Continuing Criminal Enterprise.

DESCRIPTION

Subsection (a):

A person who

1. engages in a continuing criminal enterprise.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class C felony.

ANALYSIS

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

G.S. 14-7.20(c) defines engaging in a continuing criminal enterprise as violating any felony provision of Chapter 14 of the General Statutes, and are a continuing series of violations which are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, a supervisory position, or any other position of management; and from which the person obtains substantial income or resources.

A person guilty of a continuing criminal enterprise under G.S. 90-95.1, is a Class C felon.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The offense is inconsistent with the Offense Classification Criteria for a Class C felony because of the breadth of conduct covered. Some conduct covered in G.S. Chapter 14 is more serious than other conduct in that Chapter.

DATE PREPARED: 04/24/09

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 1190 – PRESERVATION OF DNA & BIOLOGICAL EVIDENCE [v.2]

STATUTE

§ 15A-268. Preservation of biological evidence

DESCRIPTION

Subsection (i)(1):

A person who

1. knowingly and intentionally
2. destroys, alters, conceals, or tampers
3. with evidence, for a noncapital crime, that is required to be preserved under this section,
4. with the intent to
 - a. impair the integrity of that evidence,
 - b. prevent that evidence from being subjected to DNA testing, or
 - c. prevent production or use of that evidence in an official proceeding.

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.

Altering, destroying or stealing evidence of criminal conduct (G.S. 14-221.1) is a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1190 – PRESERVATION OF DNA & BIOLOGICAL EVIDENCE [v.2] (cont'd)

STATUTE

§ 15A-268. Preservation of biological evidence.

DESCRIPTION

Subsection (i)(2):

A person who

1. knowingly and intentionally
2. destroys, alters, conceals, or tampers
3. with evidence, for a crime of first degree murder, that is required to be preserved under this section,
4. with the intent to
 - a. impair the integrity of that evidence,
 - b. prevent that evidence from being subjected to DNA testing, or
 - c. prevent production or use of that evidence in an official proceeding.

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.

Altering, destroying or stealing evidence of criminal conduct (G.S. 14-221.1) is a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1203 – FELONY MURDER [v.1]

STATUTE

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

DESCRIPTION

(Felony Murder)

A person who

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

PROPOSED OFFENSE CLASS

No class assigned; punishable by life imprisonment without parole.

ANALYSIS

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

This provision is identical to a provision in House Bill 787, which the Sentencing Commission reviewed in May 2007. The Commission found the Offense Classification Criteria to be 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: 04/24/09

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 1242 – YOUTHFUL OFFENDER/SENTENCE REVIEW
[v.1]

STATUTE

§ 15A-1480. Post-sentencing review for youthful offender.

DESCRIPTION

A person who

1. is a youthful offender who
2. is incarcerated and has served at least 84 months of an active sentence imposed for the conviction of a Class B1, B2, C, or D felony
3. and has successfully petitioned the court for a post-sentencing review,
4. and is placed on post-release supervision.

PUNISHMENT RANGE

CURRENT (if applicable): An active sentence that carries a minimum term of 84 months or more.

PROPOSED: A reduction in time served.

ANALYSIS

Notwithstanding G.S. 15A-1368.2, the calculation to determine the appropriate release from prison for the post-release supervision shall be based on the date of release from prison as determined by the court, rather than the youthful offender's maximum imposed prison term.

This section shall not apply to any youthful offender convicted of a Class A felony.

FINDINGS

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

DATE PREPARED: 04/24/09

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 1256 – LARCENY OF A MOTOR VEHICLE PART [v.1]

STATUTE

§ 14-72.8. Larceny of motor vehicle parts.

DESCRIPTION

A person who

1. commits larceny of a motor vehicle part valued at \$1000 or less.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor, first violation.

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.

Larceny of property valued at \$1000 or less is a Class 1 misdemeanor under G.S. 14-72(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: 04/24/09

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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 1256 – LARCENY OF A MOTOR VEHICLE PART [v.1]
(cont'd)

STATUTE

§ 14-72.8. Larceny of motor vehicle parts.

DESCRIPTION

A person who

1. commits larceny of a motor vehicle part valued at \$1000 or less.

PROPOSED OFFENSE CLASS

Class I felony, second and subsequent violations.

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 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: 04/24/09

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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 1256 – LARCENY OF A MOTOR VEHICLE PART [v.1]
(cont'd)

STATUTE

§ 14-72.8. Larceny of motor vehicle parts.

DESCRIPTION

A person who

1. commits larceny of a motor vehicle part valued at more than \$1000.

PROPOSED OFFENSE CLASS

Class H felony, first violation.

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.

Larceny of goods valued at more than \$1000 is a Class H felony under G.S. 14-72(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: 04/24/09

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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 1256 – LARCENY OF A MOTOR VEHICLE PART [v.1]
(cont'd)

STATUTE

§ 14-72.8. Larceny of motor vehicle parts.

DESCRIPTION

A person who

1. commits larceny of a motor vehicle part valued at more than \$1000.

PROPOSED OFFENSE CLASS

Class G felony, second and subsequent violations.

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 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: 04/24/09

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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1]

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(1):

A person who

1. falsifies his/her identity
2. in an internet chat room, an electronic mail message, or instant message
3. with the intent to intimidate or torment
4. a minor.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(2):

A person who

1. follows a minor
2. online or into an Internet chat room
3. with the intent to intimidate or torment
4. a minor.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(3):

A person who

1. builds a fake profile, a Web site, or
2. poses as minor in an Internet chat room, an electronic mail message, or an instant message
3. with the intent to intimidate or torment
4. a minor.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(4):

A person who

1. plants any statement, whether true or false,
2. tending to provoke or actually provoking
3. any third party
4. to stalk or harass
5. a minor.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(5):

A person who

1. posts a real or doctored image
2. on the Internet
3. with the intent to embarrass, intimidate, or torment
4. a minor or the minor's parent or guardian.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(6):

A person who

1. posts or encourages others to post
2. on the Internet
3. private, personal, or sexual information
4. pertaining to a minor
5. with the intent to intimidate or torment
6. the minor.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(7):

A person who

1. accesses, alters, or erases
2. any computer network, computer data, computer program, or computer software including breaking into a password protected account or stealing or otherwise accessing passwords,
3. with the intent to embarrass, intimidate, or torment
4. a minor or the minor's parent or guardian.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(8):

A person who

1. copies and disseminates, or causes to be made
2. an unauthorized copy
3. of any data pertaining to a minor
4. for the purpose of intimidating or tormenting
5. that minor.

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.

Data maybe in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(9):

A person who

1. uses a computer system
2. to repeatedly communicate insults to, or about,
3. a minor
4. with the intent to intimidate or torment
5. the minor or the minor's parent or guardian.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(10):

A person who

1. signs a minor up
2. for a pornographic Internet site.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1261 – PROTECT OUR KIDS/CYBER BULLYING
MISDEMEANOR [v.1] (cont'd)

STATUTE

§ 14-458.1. Cyber bullying; penalty.

DESCRIPTION

Subsection (a)(11):

A person who

1. signs a minor up
2. for electronic mailing lists
3. or to receive junk electronic messages and instant messages,
4. without authorization,
5. resulting in either:
 - a. costs to the minor or the minor's parent or guardian; or
 - b. intimidation or torment of the minor.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1265 – IDENTITY THEFT WARNING/EMPLOYMENT ASSISTANCE [v.1]

STATUTE

§ 75-67. Identity theft warning required prior to the provision of job placement assistance.

DESCRIPTION

A person who

1. assists or offers to assist
2. for consideration
3. another in finding employment
4. without first providing the job-seeker
5. with a standardized “Protect Yourself From Identity Theft” notice.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

The standardized notice must appear in a type size no smaller than nine point font, with information regarding North Carolina laws and the protections it provides from theft of sensitive personal information.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1276 – SHOOT AT LAW OFFICER/10 YEAR ACTIVE MINIMUM [v.1]

STATUTE

§ 14-34.10. Discharging a firearm at a law enforcement officer

DESCRIPTION

A person who

1. willfully or wantonly
2. discharges or attempts to discharge
3. a firearm
4. at a law enforcement officer
5. while the officer is in the performance of his/her duties.

PROPOSED OFFENSE CLASS

Class D felony, mandatory minimum active sentence of 120 months.

ANALYSIS

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

G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers, provides that any person who commits an assault with a firearm or other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, shall be guilty of a Class F felony, unless the conduct is covered under some other provision of law providing greater punishment.

G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility, provides that any person who commits an assault with a firearm on a law enforcement officer, while the officer is in the performance of his or her duties, is guilty of a Class C felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1277 – BAN SERVER-BASED VIDEO POKER [v.1]

STATUTE

§ 14-306. Slot machine or device defined.

DESCRIPTION

Subsection (e):

A person who

1. possesses
2. no more than five slot machines.

PROPOSED OFFENSE CLASS

Class I felony (G.S. 20-308).

ANALYSIS

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

It is a Class 2 misdemeanor to operate, or to keep in one's possession for the purpose of being operated, a slot machine or device (G.S. 14-303).

Under G.S. 14-306.1A and 14-309, it is a Class 1 misdemeanor to operate, allow to be operated, or keep in one's possession for the purpose of operation a slot machine. The second offense is a Class H felony, and the third or subsequent offense is a Class G felony (G.S. 14-309(b)). A violation that involves the operation of five or more slot machines is a Class G felony (G.S. 14-309(c)).

(See also SB 971).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1277 – BAN SERVER-BASED VIDEO POKER [v.1]
(cont'd)

STATUTE

§ 14-306. Slot machine or device defined.

DESCRIPTION

Subsection (e):

A person who

1. possesses
2. more than five slot machines.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 20-308).

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.

Under G.S. 14-303, it is a Class 2 misdemeanor to operate, or to keep in one's possession for the purpose of being operated, a slot machine or device.

Under G.S. 14-306.1A and 14-309, it is a Class 1 misdemeanor to operate, allow to be operated, or keep in one's possession for the purpose of operation a slot machine. The second offense is a Class H felony, and the third or subsequent offense is a Class G felony (G.S. 14-309(b)). A violation that involves the operation of five or more slot machines is a Class G felony (G.S. 14-309(c)).

(See also SB 971).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1277 – BAN SERVER-BASED VIDEO POKER [v.1]
(cont'd)

STATUTE

§ 14-306. Slot machine or device defined.

DESCRIPTION

Subsection (g):

A person who

1. manufactures, distributes, or possesses for the purpose of manufacture or distribution
2. a slot machine.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 20-308).

Each machine possessed, manufactured, or distributed is a separate offense.

ANALYSIS

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

(See also SB 971).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1285 – MOTOR VEHICLE REPAIR SHOP REGULATION
[v.1]

STATUTE

§ 20-422. License required; exemptions.

DESCRIPTION

A person who

1. operates a motor vehicle repair shop, or
2. engages in business as a collision repair estimator or collision repair technician
3. without being properly licensed under the provision of Article 18 of Chapter 20 of the General Statutes.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

Article 18 of Chapter 20 of the General Statutes is established by this bill, and regulates the licensing of motor vehicle repair shops.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1295 – REGULATE HUNTING FROM VESSEL [v.1]

STATUTE

§ 113-291.1. Manner of taking wild animals and wild birds.

DESCRIPTION

Subsection (c1):

A person who

1. discharges, or hunts with
2. a center-fire rifle or any firearm capable of firing a center-fire projectile
3. from a vessel floating on a river, creek, or other navigable body of water.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1307 – POSSESS PRESCRIPTION DRUGS/NOT DRUG
TRAFFICK. [v.1]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

A person who

1. possesses four grams or more of
2. a Schedule II controlled substance that is
 - a. a synthetic opioid of oxycodone hydrochloride combined with acetaminophen, and
 - b. a commercial drug product with FDA approval manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.

PUNISHMENT RANGE

CURRENT (if applicable):

Mandatory active sentence for trafficking in opium or heroin under G.S. 90-95(h)(4), as follows:

- 1) At least 4 but less than 14 grams – Class F felony sentenced to a minimum of 70 months and a maximum of 84 months of imprisonment and a fine of at least \$50,000;
- 2) At least 14 but less than 28 grams – Class E felony sentenced to a minimum of 90 months and a maximum of 117 months of imprisonment and fine of at least \$100,000;
- 3) Twenty-eight grams or more – Class C Felony sentenced to a minimum of 225 and a maximum of 279 months of imprisonment and a fine of at least \$500,000

PROPOSED:

Pursuant to the felony sentencing chart in G.S. 15A-1340.17, as follows:

- 1) Less than 250 tablets, capsules, or other dosage units – Class I felony;
- 2) At least 250 but less than 500 tablets, capsules, or other dosage units – Class G felony;
- 3) At least 500 but less than 1,000 tablets, capsules, or other dosage units – Class F felony;
- 4) One thousand or more tablets, capsules, or other dosage units – Class D felony.

ANALYSIS

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

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 04/24/09

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 1317 – SEX OFFENDER REGISTRY CHANGES [v.1]

STATUTE

§ 14-208.22A. Notification of temporary address; public record; failure to register temporary address or termination of temporary address.

DESCRIPTION

Subsection (d):

A person who

1. is a sexually violent predator or Tier III registrant (defined by statute), and
2. willfully fails to notify the registering sheriff of
3. the establishment of a temporary address.

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.

A sexually violent predator or Tier III registrant must notify the registering sheriff if he or she intends to maintain a temporary residence at one location for 5 or more calendar days within a 30-calendar-day period or for a total of more than 30 days in a calendar year. Notice must be given within 72 hours, once the offender knows or should know that he or she will be maintaining the temporary residence.

HB 1317 classifies sex offenses and sex offender registration requirements into three tiers, under criteria set by the federal Adam Walsh Act. A Tier III registrant has been (a) convicted of a Tier III offense, (b) convicted of a Tier I or II offense after having a conviction for a Tier II offense, or (c) convicted of a Tier I or II offense after having previously been required to register under the Tier II Sex Offender Public Registration and Protection Program. A sexually violent predator has been convicted of a Tier I, II, or III offense (other than an offense against a minor) and suffers from a condition making the person likely to engage in sexually violent offenses directed at strangers or a person with whom a relationship has been established or promoted primarily for the purpose of victimization (G.S. 14-208.6(6)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1317 – SEX OFFENDER REGISTRY CHANGES [v.1]
(cont'd)

STATUTE

§ 14-208.22A. Notification of temporary address; public record; failure to register temporary address or termination of temporary address.

DESCRIPTION

Subsection (e):

A person who

1. is a sexually violent predator or Tier III registrant (defined by statute), and
2. willfully fails to report to the registering sheriff
3. that the person has ceased to abide at a temporary residence.

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.

A sexually violent predator or Tier III registrant must notify the sheriff of the registering county, within 72 hours, that he or she has ceased to abide at the temporary residence (G.S. 14-208.22A(b)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1317 – SEX OFFENDER REGISTRY CHANGES [v.1]
(cont'd)

STATUTE

§ 14-208.22A. Notification of temporary address; public record; failure to register temporary address or termination of temporary address.

DESCRIPTION

Subsection (e) (second and subsequent offense):

A person who

1. is a sexually violent predator or Tier III registrant (defined by statute), and
2. willfully fails to report to the registering sheriff
3. that the person has ceased to abide at a temporary residence
4. after having a previous conviction for this offense

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

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: 04/24/09

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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 1317 – SEX OFFENDER REGISTRY CHANGES [v.1]
(cont'd)

STATUTE

§ 14-208.24B. Residential Restrictions.

DESCRIPTION

A person who

1. is registered, or is required to register,
2. under the Tier III Sex Offender and Sexually Violent Predator Registration Program, and
3. knowingly maintains a temporary residence
4. within 1000 feet of property on which is located any
 - a. public or nonpublic school, or
 - b. child care center.

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.

It is currently a Class G felony for any person subject to sex offender registration under Chapter 14, Article 27A (Sex Offender and Public Registration Protection Programs) to knowingly reside within 1,000 feet of property on which a school or child care center is located (G.S. 14-208.24B).

HB 1317 classifies sex offenses and sex offender registration requirements into three tiers, under criteria set by the federal Adam Walsh Act. A Tier III registrant has been (a) convicted of a Tier III offense, (b) convicted of a Tier I or II offense after having a conviction for a Tier II offense, or (c) convicted of a Tier I or II offense after having previously been required to register under the Tier II Sex Offender Public Registration and Protection Program.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1318 – NEW FELONY DEATH BY MOTOR VEHICLE
[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. is the owner-operator of a commercial motor vehicle,
2. unintentionally causes the death of another person by operating the vehicle, and
3. knows or should know
 - a. at the time of the death
 - b. that the vehicle was not in compliance with the Federal Motor Carrier Safety Regulations in 49 C.F.R. Subchapter B
4. if the death is proximately caused by the non-compliance with these regulations.

PROPOSED OFFENSE CLASS

Class E felony (G.S. 20-141.4(b)(2)).

ANALYSIS

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

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: 04/24/09

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: HB 1326 – AMEND SECOND DEGREE MURDER [v.1]

STATUTE

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

DESCRIPTION

A person who

1. kills another person
2. in the perpetration or attempted perpetration of an arson, rape, sexual offense, robbery, kidnapping, burglary, or other felony committed or attempted with a deadly weapon.

OFFENSE CLASS

CURRENT: Class A felony.

PROPOSED: Class B1 felony.

ANALYSIS

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

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

Second degree murder is a Class B2 felony (G.S. 14-17(c)).

(See also HB 1203).

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: 04/24/09

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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: HB 1326 – AMEND SECOND DEGREE MURDER [v.1]
(cont'd)

STATUTE

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

DESCRIPTION

New capital aggravating circumstances (12)-(15):

- (12) The capital felony was committed in the commission of or attempted commission of an act of political terrorism.
- (13) The capital felony was knowingly and intentionally committed against a law enforcement officer, employee of the Department of Correction, jailer, firefighter, judge or justice, prosecutor, or juror, while engaged in the performance of his or her official duties.
- (14) The murder was part of a course of conduct in which the defendant intentionally killed more than one person.
- (15) The defendant intentionally tortured the victim, in a gratuitous and depraved manner, during or immediately prior to the murder.

PUNISHMENT RANGE

CURRENT: Life imprisonment without parole.

PROPOSED: Finding of an 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.

“An act of political terrorism” is an act committed for the purpose of attacking the government of the United States or any political subdivision. "Torture" is the infliction of extreme physical pain against a victim who the defendant knew was conscious. "Gratuitous and depraved manner" is the infliction of pain beyond what necessarily accompanied the act of killing itself, or the choosing of a method of killing for the purpose of inflicting such pain.

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: 04/24/09

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 1328 – SAFE STORAGE OF FIREARMS [v.1]

STATUTE

§ 14-315.1. Storage of firearms to protect minors.

DESCRIPTION

Subsection (a):

A person who

1. stores or leaves a firearm
2. in a manner that the person knew, or should have known,
3. would enable an unsupervised minor to gain access to the firearm, and
4. a minor, without lawful permission of a parent or a person having charge of the minor,
 - a. possesses the firearm on educational property or at a school-sponsored activity in violation of G.S. 14-269.2(b), or
 - b. exhibits the firearm in a public place.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The provision does not apply if the firearm was kept unloaded and (1) in a locked box or container, with the ammunition stored separately, or (2) equipped with a mechanical lock or other safety device rendering the weapon inoperable by any person other than the owner or other lawfully authorized user.

(See also SB 664/SB 987).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1328 – SAFE STORAGE OF FIREARMS [v.1] (cont'd)

STATUTE

§ 14-315.1. Storage of firearms to protect minors.

DESCRIPTION

Subsection (a1):

A person who

1. stores or leaves a firearm
2. in a manner that the person knew, or should have known,
3. would enable an unsupervised minor to gain access to the firearm, and
4. a minor, without lawful permission of a parent or person having charge of the minor,
 - a. uses the firearm to cause personal injury or death, not in self-defense, or
 - b. uses the firearm in the commission of a crime.

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.

The provision does not apply if the firearm was kept unloaded and (1) in a locked box or container, with the ammunition stored separately, or (2) equipped with a mechanical lock or other safety device rendering the weapon inoperable by any person other than the owner or other lawfully authorized user.

(See also SB 664/SB 987).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1332 – CREATE CRIMINAL OFFENSE OF FELONY AFFRAY [v.1]

STATUTE

§ 14-34.10. Felonious affray with the use of a deadly weapon resulting in death or serious bodily injury.

DESCRIPTION

Subsection (a):

A person who

1. engages in
2. an affray in which a deadly weapon is used,
3. resulting in another person's death.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

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

Simple affray is a Class 2 misdemeanor (G.S. 14-33(a)).

Engaging in an affray using a deadly weapon is a Class A1 misdemeanor (G.S. 14-33(c)).

The unintentional killing of a person without malice by an unlawful act not amounting to a felony or naturally dangerous to human life, or by culpable negligence is a Class F felony (G.S. 14-18).

The intentional killing of a person in the heat of passion aroused by adequate provocation, in the exercise of self-defense using excessive force or where the defendant is the aggressor in bringing on the affray is a Class D felony (G.S. 14-18).

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: 04/24/09

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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 1332 – CREATE CRIMINAL OFFENSE OF FELONY
AFFRAY [v.1] (cont'd)

STATUTE

§ 14-34.10. Felonious affray with the use of a deadly weapon resulting in death or serious bodily injury.

DESCRIPTION

Subsection (b):

A person who

1. engages in
2. an affray in which a deadly weapon is used,
3. resulting in serious bodily injury to another person.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

Simple affray is a Class 2 misdemeanor (G.S. 14-33(a)).

Engaging in an affray using a deadly weapon or inflicting serious injury is a Class A1 misdemeanor (G.S. 14-33(c)).

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

Assault with a deadly weapon inflicting serious injury is a Class E felony (14-32(b)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1334 – CREATE CRIMINAL OFFENSE/HOME INVASION
[v.1]

STATUTE

§ 14-52.1. First- and second-degree home invasion.

DESCRIPTION

Subsection (a):

A person who

1. while possessing a firearm
2. breaks or enters
 - a. by force, and
 - b. with violence
3. an occupied
 - a. dwelling house of another, or
 - b. sleeping apartment in any building
4. at night
5. with the intent to commit a felony or larceny therein.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

First-degree burglary (the nighttime breaking and entering of an occupied dwelling house or sleeping apartment with the intent to commit a felony or larceny therein) is a Class D felony (G.S. 14-51, -52).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 1334 – CREATE CRIMINAL OFFENSE/HOME INVASION
[v.1] (cont'd)

STATUTE

§ 14-52.1. First- and second-degree home invasion.

DESCRIPTION

Subsection (a):

A person who

1. while possessing a firearm
2. breaks or enters
 - a. by force, and
 - b. with violence
3. an occupied
 - a. dwelling house of another, or
 - b. sleeping apartment in any building
4. with the intent to commit a felony or larceny therein.

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.

First-degree burglary (the nighttime breaking and entering of an occupied dwelling house or sleeping apartment with the intent to commit a felony or larceny therein) is a Class D felony (G.S. 14-51, -52).

Second-degree burglary (the nighttime breaking and entering of a dwelling house or sleeping apartment of another with the intent to commit a felony therein) is a Class G felony (G.S. 14-51, -52).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1344 – PROHIBIT TAKING OF MENHADEN FOR REDUCTION [v.1]

STATUTE

§ 113-169.6. Unlawful to take menhaden in State waters.

DESCRIPTION

Any person who

1. takes in any waters within the State’s jurisdiction
2. menhaden
3. for the purpose or reduction.

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.

“Reduction” includes conversion to fish meal, oil, and other components.

The taking of menhaden for use as bait is permitted.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/2009

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
CONFIDENTIAL FISCAL NOTE**

HB 1344: PROHIBIT TAKING OF MENHADEN FOR REDUCTION [V.1]

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

This bill creates a new offense. G.S. 113-169.6, Unlawful to take menhaden in State waters, would make it a Class 1 misdemeanor for any person to take menhaden for the purpose of reduction, including conversion to fish meal, oil, and other components, in any waters in the jurisdiction of the State, including the waters of the Atlantic Ocean within three nautical miles of the coastline. Taking of menhaden for use as bait for commercial or recreational purposes does not constitute a violation of this section.

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 convicted and sentenced under the proposed bill.

In FY 2007/08, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1345 – PROTECT OYSTER SANCTUARIES [v.1]

STATUTE

§ 113-211. Protection of oyster sanctuaries.

DESCRIPTION

A person who

1. engages in a commercial fishing operation
2. using commercial fishing equipment or gear
3. within 500 yards of an area designated as an oyster sanctuary by the Marine Fisheries Commission.

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.

"Commercial fishing operation" means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Marine Fisheries Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale (G.S. 113-168(1)).

(See also SB 885).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1360 – AMEND HABITUAL OFFENDER LAW [v.1]

STATUTE

§ 14-7.6. Sentencing of habitual felons.

DESCRIPTION

A person who

1. commits a Class C, D, E, F, or G felony
2. having been convicted of, or pled guilty to, in any state of federal court
 - a. three felony offenses of Class G or higher, or
 - b. their equivalent.

PUNISHMENT RANGE

CURRENT (if applicable):

Class C felony.

PROPOSED:

One class higher than the underlying felony.

ANALYSIS

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

Currently, an offender who commits any class of felony after three prior felony convictions of any class can be charged as an habitual felon and punished as a Class C felon. (G.S. 14-7.1, -7.2).

At least two of the prior felonies must have been committed after the offender's eighteenth birthday. The offender must have committed the second prior felony after being convicted of the first felony, and must have committed the third prior felony after being convicted of the second felony (G.S. 14-7.1).

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 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: 04/24/09

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 1362 – CHANGE LAW ON DRUG TRAFFICKING
CONVICTIONS [v.1]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

G.S. 90-95(h)(5) [mandatory sentences for drug trafficking]:

Mandatory sentence may be reduced and/or suspended if the defendant:

1. has no prior convictions that produced or threatened serious bodily harm,
2. has no prior felony convictions for the manufacture, sale, delivery, or possession of controlled substances, and
3. did not possess a firearm during commission of the offense.

PUNISHMENT RANGE

CURRENT: Mandatory sentence for drug trafficking may be reduced or suspended only in cases of “substantial assistance.”

PROPOSED: Mandatory sentence for drug trafficking may be reduced or suspended for substantial assistance or upon the findings described above.

ANALYSIS

Drug trafficking offenses are not punished under Structured Sentencing.

The Commission reviewed a similar provision in SB 727 in May of 2007, and found G.S. 164-41 to be not applicable.

(See also SB 1045).

FINDINGS

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

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

G.S. 164-41 is not applicable.

Drug trafficking offenses are not punished under Structured Sentencing.

DATE PREPARED: 04/24/2009

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 1378 – CLEAN MARINAS/PUMPOUT STATIONS [v.1]

STATUTE

§ 77-129. No discharge of treated or untreated sewage in coastal waterways.

DESCRIPTION

Any person who

1. operates a vessel and
2. discharges
3. into coastal waters
4. any treated or untreated sewage including effluent produced or held by a marine sanitation device.

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.

A “vessel” is any type of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water (G.S. 75A-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: 04/24/2009

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 1380 – MEDICAL MARIJUANA ACT [v.1]

STATUTE

§ 90-730. Registry identification cards; Department rules; duties.

DESCRIPTION

Subsection (k):

Any person who

1. breaches the confidentiality of
2. information obtained pursuant to G.S. Chapter 90, Article 72 (Medical Marijuana Act).

PROPOSED OFFENSE CLASS

A “crime” punishable by no more than 180 days in jail and a \$1,000 fine.

ANALYSIS

Generally, an offense punishable by more than 30 days but no more than six months of imprisonment is a Class 2 misdemeanor (G.S. 14-3(a)(2)).

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.

Article 72 requires a qualifying patient or designated caregiver to apply for a registry identification card from the Department of Health and Human Services, in order to use or assist in the use of medical marijuana. The names in the registry and other identifying information are confidential and exempt from the North Carolina Public Records Act.

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

DATE PREPARED: 04/24/2009

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 1397 – DEBT SETTling RESTRICTIONS [v.1]

STATUTE

§ 14-424. Engaging, etc., in business of debt adjusting a misdemeanor; unlawful debt settling practices a misdemeanor.

DESCRIPTION

Subsection (b):

A person who engages in “unlawful debt settling practices” (defined by statute).

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

“Unlawful debt settling practices” are the following: (1) making a representation regarding the ability to obtain a particular result with respect to reducing, settling or altering the terms of a debt; (2) charging a debtor a contingent fee; (3) soliciting or accepting a power of attorney from a debtor; and (4) entering into a debt settlement agreement before (a) providing written notice to the debtor about nonprofits that provide substantially similar services and (b) receiving a signed statement that the debtor has received counseling from a nonprofit or that such counseling was not available (G.S. 14-423(5), 14-426.1).

The bill defines “debt settler” as one who engages in, attempts to engage in, or offers to engage in the practice or business of debt adjusting (G.S. 14-423(1a)). It is currently a Class 2 misdemeanor to engage in, or offer or attempt to engage in, the business or practice of debt adjusting (G.S. 14-424(a)). The bill thus criminalizes being a “debt settler” irrespective of engagement in unlawful debt settling practices.

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 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: 04/24/2009

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 1401 – CHANGE PENALTY FOR MISD. DEATH BY VEHICLE [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

Subsections (a2), (b)(5):

A person who

1. unintentionally causes the death of another person
2. while engaged in the violation of a State law or local ordinance applying to
 - a. the operation or use of a vehicle or
 - b. the regulation of traffic,
3. other than impaired driving under G.S. 20-138.1, and
4. the violation is the proximate cause of the death.

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 person as Class A1 misdemeanors.

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: 04/24/09

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
CONFIDENTIAL FISCAL NOTE**

HB 1401: CHANGE PENALTY FOR MISD. DEATH BY VEHICLE [v.1]

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

This bill reclassifies G.S. 20-141.4(a2), Misdemeanor death by vehicle, from a Class 1 misdemeanor to a Class A1 misdemeanor (pursuant to G.S. 20-141.4(b)(5)). In FY 2007/08, there were 60 Class 1 convictions for misdemeanor death by vehicle.

In FY 2007/08, 28% of Class A1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 48 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 convictions for this offense that would be reclassified to Class A1 convictions under this proposed bill would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

NORTH CAROLINA 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 1406 – MAKE TERRORISM A CRIME [v.1]

STATUTE

§ 14-288.26. Acts of terrorism prohibited; penalty.

DESCRIPTION

Subsection (a):

A person who

1. does
 - a. commit
 - b. conspire to commit or
 - c. aid and abet the commission of
2. an act of terrorism
3. the base offense of which is a Class B1 or A felony.

PROPOSED OFFENSE CLASS

Class B1 felony.

This offense is separate from the base offense and shall not merge with other offenses.

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.

An “act of terrorism” is an act of violence (as defined in G.S. 14-7.7) committed with the intent to intimidate the civilian population at large or to influence, through intimidation, the conduct of the government of the United States, a state, a county, or a city (G.S. 14-288.25).

Absent a specific provision to the contrary, conspiracy to commit a felony is punished one class lower than the substantive offense (G.S. 14-2.4).

FINDINGS

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

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

Offense Classification Criteria are not applicable

DATE PREPARED: 04/24/09

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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 1406 – MAKE TERRORISM A CRIME [v.1] (cont'd)

STATUTE

§ 14-288.26. Acts of terrorism prohibited; penalty.

DESCRIPTION

Subsection (b):

A person who

1. does
 - a. commit
 - b. conspire to commit or
 - c. aid and abet the commission of
2. an act of terrorism
3. the base offense of which is a Class B2 felony or lesser offense.

PROPOSED OFFENSE CLASS

Class C felony.

This offense is separate from the base offense and shall not merge with other offenses.

ANALYSIS

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

An “act of terrorism” is an act of violence (as defined in G.S. 14-7.7) committed with the intent to intimidate the civilian population at large or to influence, through intimidation, the conduct of the government of the United States, a state, a county, or a city (G.S. 14-288.25).

Absent a specific provision to the contrary, conspiracy to commit a felony is punished one class lower than the substantive offense (G.S. 14-2.4).

FINDINGS

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

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

Offense Classification Criteria are not applicable

DATE PREPARED: 04/24/09

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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 1406 – MAKE TERRORISM A CRIME [v.1] (cont'd)

STATUTE

§ 14-288.26. Acts of terrorism prohibited; penalty.

DESCRIPTION

Subsection (c):

A person who

1. solicits, invites, recruits, encourages, or otherwise causes or attempts to cause
2. another person
3. to participate
4. in an act, or acts, of terrorism.

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

An “act of terrorism” is an act of violence (as defined in G.S. 14-7.7) committed with the intent to intimidate the civilian population at large or to influence, through intimidation, the conduct of the government of the United States, a state, a county, or a city (G.S. 14-288.25).

Absent a specific provision to the contrary, solicitation to commit a felony is punished two classes lower than the substantive offense (G.S. 14-2.6).

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 be consistent with the Offense Classification Criteria for 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: 04/24/09

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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 1406 – MAKE TERRORISM A CRIME [v.1] (cont'd)

STATUTE

§ 14-288.27. Aiding and abetting training for acts of terrorism prohibited; penalty.

DESCRIPTION

A person who

1. does
 - a. recklessly assist
 - b. provide land or other resources for, or
 - c. otherwise aid
2. the training of one or more persons intending to commit an act of terrorism,
3. the base offense of which is a Class B1 or A felony.

PROPOSED OFFENSE CLASS

Class B1 felony (G.S. 14-288.26(a)).

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.

An “act of terrorism” is an act of violence (as defined in G.S. 14-7.7) committed with the intent to intimidate the civilian population at large or to influence, through intimidation, the conduct of the government of the United States, a state, a county, or a city (G.S. 14-288.25).

FINDINGS

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

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

Offense Classification Criteria are not applicable

DATE PREPARED: 04/24/09

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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 1406 – MAKE TERRORISM A CRIME [v.1] (cont'd)

STATUTE

§ 14-288.27. Aiding and abetting training for acts of terrorism prohibited; penalty.

DESCRIPTION

A person who

1. does
 - a. recklessly assist
 - b. provide land or other resources for, or
 - c. otherwise aid
2. the training of one or more persons intending to commit an act of terrorism,
3. the base offense of which is a Class B2 felony or lesser offense.

PROPOSED OFFENSE CLASS

Class C felony (G.S. 14-288.26(b)).

ANALYSIS

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

An “act of terrorism” is an act of violence (as defined in G.S. 14-7.7) committed with the intent to intimidate the civilian population at large or to influence, through intimidation, the conduct of the government of the United States, a state, a county, or a city (G.S. 14-288.25).

FINDINGS

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

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

Offense Classification Criteria are not applicable

Note: As a matter of law, it is not possible to intend to commit the Class B2 felony of second degree murder.

DATE PREPARED: 04/24/09

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 1419 – BAT PROTECTION ACT [v.1]

STATUTE

§ 113-337. Unlawful acts; penalties.

DESCRIPTION

A person who

1. captures, injures, or kills a bat, disturbs a bat in its roost, deliberately disturbs a group of bats, or intentionally obstructs access to a bat roost,
2. without being a certified wildlife control agent engaging in authorized bat exclusion actions.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 04/24/09

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: HB 1445 – REFORM BILL OF 2009 [v.1]

STATUTE

§ 14-27.7A. Statutory rape or sexual offense of person who is 13, 14, or 15 years old.

DESCRIPTION

A defendant who

1. engages in
 - a. vaginal intercourse or
 - b. a sexual act
2. with another person who is
 - a. 13, 14, or 15 years old,
 - b. more than 4 years but less than 6 years younger than the defendant, and
 - c. not lawfully married to the defendant.

OFFENSE CLASS

CURRENT: Class C felony.

PROPOSED: Class F felony.

ANALYSIS

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

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 Commission reviewed an identical provision in HB 243 in April of 2003, and found it to be consistent with the Offense Classification Criteria for a Class F felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable

DATE PREPARED: 04/24/09

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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: HB 1445 – REFORM BILL OF 2009 [v.1] (cont'd)

STATUTE

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

DESCRIPTION

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

PUNISHMENT RANGE

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

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

ANALYSIS

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

This Sentencing Commission reviewed identical provisions in HB 264/SB 208 in April of 2003, in HB 1186 in May of 2005, in HB 806/SB 823 in May of 2007, and in SB 2068 in June of 2008. The Commission found the provision to be consistent with G.S. 164-41.

(See also SB 488).

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: 04/24/09

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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: HB 1445 – REFORM BILL OF 2009 [v.1] (cont'd)

STATUTE

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

DESCRIPTION

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

PUNISHMENT RANGE

CURRENT: Prior Record Levels

- Level I – 0 points.
- Level II – At least 1, but no more than 4 points.
- Level III – At least 5, but no more than 8 points.
- Level IV – At least 9, but no more than 14 points.
- Level V – At least 15, but no more than 18 points.
- Level VI – At least 19 points.

PROPOSED: Prior Record Levels

- Level I – Not more than 1 point.
- Level II – At least 2, but no more than 5 points.
- Level III – At least 6, but no more than 9 points.
- Level IV – At least 10, but no more than 13 points.
- Level V – At least 14, but no more than 17 points.
- Level VI – At least 18 points.

ANALYSIS

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

The Sentencing Commission reviewed an identical provision in HB 807/SB 935 May of 2007, and in SB 2067 in June of 2008, and found the provision to be consistent with G.S. 164-41.

(See also SB 489).

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: 04/24/09

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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: HB 1445 – REFORM BILL OF 2009 [v.1] (cont'd)

STATUTE

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

DESCRIPTION

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

PUNISHMENT RANGE

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

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

ANALYSIS

The Sentencing Commission reviewed an identical provision in HB 246/SB 209 in April of 2003, HB 1215 in May of 2005, HB 805/SB 933 in May of 2007, and in SB 2066 in June of 2008, and found the provision to be consistent with G.S. 164-41.

(See also SB 490).

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: 04/24/09

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 1451 – BICYCLE PROTECTION ACT [v.1]

STATUTE

§ 20-171.3E. Harassing or throwing object at person riding bicycle; penalties.

DESCRIPTION

A person who

1. harasses, taunts, or maliciously throws an object at or in the direction of,
2. any person riding a bicycle.

PROPOSED OFFENSE CLASS

Misdemeanor, punishable by a fine of at least \$250, imprisonment of no more than 30 days, or both in the discretion of the court.

ANALYSIS

Generally, an offense that is punishable by a maximum of 30 days of imprisonment or only a fine is a Class 3 misdemeanor (G.S. 14-3(a)(3)).

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The 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.

Note: There is a material distinction between a mere taunt and an assault.

DATE PREPARED: 04/24/09

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 1456 – DRUG FELON/NO LARGE DOGS [v.1]

STATUTE

§ 14-401.23. Size limitation on dogs that a drug felony may own or have on residential premises.

DESCRIPTION

A person who

1. has been convicted of a drug-related felony under G.S. 90-95, and
2. owns, has on the premises of his or her residence or dwelling, or has in a motor vehicle he or she is driving
3. a dog weighing more than 14 pounds
4. within six years of completing the sentence for the felony conviction under G.S. 90-95.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 1487 – PROHIBIT SELF-SERVICE DISPLAYS OF TOBACCO [v.1]

STATUTE

§ 14-313. Youth access to tobacco products.

DESCRIPTION

Subsection (b2):

Any person who

1. distributes
2. tobacco products
3. through a self-service display, other than
 - a. a display not containing cigarettes or smokeless tobacco and in a tobacco specialty store, or
 - b. a vending machine in an establishment authorized by G.S. 14-313(b1).

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.

It is a Class 2 misdemeanor to distribute tobacco products through a vending machine, except in an establishment open only to persons 18 years old or older, or in an establishment in which the vending machine is under the continuous control of the owner or licensee of the premises and operable only upon activation by the owner, licensee or employee prior to each purchase (G.S. 14-313(b1)).

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 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: 04/24/2009

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
CONFIDENTIAL FISCAL NOTE**

HB 1487: PROHIBIT SELF-SERVICE DISPLAYS FOR TOBACCO [v.1]

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

This bill amends G.S. 14-313, Youth access to tobacco products, to add subsection (b2), Self-service displays. This subsection makes it a Class 2 misdemeanor for a person to distribute tobacco products through a self-service display. The subsection excludes displays located in a tobacco specialty store that do not contain cigarettes or smokeless tobacco, and vending machines. The bill also adds definitions for “Cigarette,” “Self-service display,” “Smokeless tobacco,” and “Tobacco specialty store.”

Because 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 convicted and sentenced under the proposed bill. In FY 2007/08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for the proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

The bill is effective when it becomes law.

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 1503 – ETHEN'S LAW/INJURY TO PREGNANT WOMAN
[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. resulting 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

The Sentencing Commission reviewed an identical provision in SB 13 in March of 2009 and found it to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 04/24/09

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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: HB 1503 – ETHEN'S LAW/INJURY TO PREGNANT WOMAN
[v.1] (cont'd)

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. resulting 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.

The Sentencing Commission reviewed an identical provision in SB 13 in March of 2009 and found it to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 04/24/09

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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: HB 1503 – ETHEN'S LAW/INJURY TO PREGNANT WOMAN
[v.1] (cont'd)

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
5. after the woman's twentieth week of pregnancy,
6. resulting 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.

HB 1503 clarifies that a felony causing injury to a pregnant woman includes a felony resulting in the pregnant woman's death.

The Sentencing Commission reviewed an identical provision in SB 13 in March of 2009 and found it to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE PREPARED: 04/24/09

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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: HB 1503 – ETHEN'S LAW/INJURY TO PREGNANT WOMAN
[v.1] (cont'd)

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.

The Sentencing Commission reviewed an identical provision in SB 13 in March of 2009 and found G.S. 164-41 to be 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.

DATE PREPARED: 04/24/09

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1503/SB 13: ETHEN'S LAW/INJURY TO PREGNANT WOMAN

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends the existing one-class enhancement in G.S. 14-18.2 to create a separate offense that would be one class higher if the offender injured a pregnant woman in the commission of an offense if the injury occurs after the woman's twentieth week of pregnancy. It also amends an existing aggravating factor.

SECTION 1.

G.S. 14-18.2(b), Injury to pregnant woman; separate offense; punishment, currently increases the offense class of the underlying felony offense by one class if a person, while in the commission of a felony, causes injury to a pregnant woman, knowing the woman to be pregnant, and the injury results in a miscarriage or stillbirth by the woman. This Section would make it a separate offense that would be one class higher than the underlying felony offense if the injury occurs after the woman's twentieth week of pregnancy. If the offense is a Class A or B1 felony, the new offense would be a Class A felony. (The amendment does not require that the offenses run consecutively.) If the injury occurs up to and including the woman's twentieth week of pregnancy, it would remain a one-class enhancement. In FY 2007/08, there were no convictions that received this sentence enhancement.

This Section also adds felony offenses that result in the death of the pregnant woman. In FY 2007/08, there were 527 convictions for these types of offenses. It is not known how many of these offenses resulted in the death of a pregnant woman and a miscarriage or stillbirth by the woman.

There would be no impact if the injury occurs up to and including the woman's twentieth week of pregnancy, since it would remain a one-class enhancement. For injuries that occur after the woman's twentieth week of pregnancy, it is not possible to determine the number of convictions or the offense class for the convictions to which this bill could apply. The percentage of offenders receiving active sentences and the minimum sentence imposed vary greatly depending on felony offense class and prior record level. As a result, impact for this proposal cannot be determined. Since the punishment for the current sentence enhancement and the proposed separate offense are the same (one class higher than the underlying offense), the proposed separate offense would only have impact on the prison population when the sentence for the proposed separate offense would be served consecutive to the sentence for the underlying offense.

Subsection (c) currently increases the offense class by one class if a person, while in the commission of a misdemeanor that is an act of domestic violence as defined in G.S. Chapter 50B, causes injury to a pregnant woman, knowing the woman to be pregnant, and the injury results in a miscarriage or stillbirth by the woman. This Section would make it a separate

offense that would be one class higher than the underlying misdemeanor offense. If the offense was a Class A1 misdemeanor, the defendant is guilty of a Class I felony. (The amendment does not require that the offenses run consecutively.) This amendment does not include the twenty-week element. In FY 2007/08, there were no convictions that received this sentence enhancement.

It is not possible to determine the number of convictions or the offense class for the convictions to which this bill could apply. The percentage of offenders receiving active sentences and the sentence imposed vary depending on misdemeanor offense class and prior conviction level. In FY 2007/08, 22% of misdemeanor convictions resulted in active sentences, with an average estimated time served of 24 days. Since the punishment for the current sentence enhancement and the proposed separate offense are the same (one class higher than the underlying offense), the proposed separate offense would only have impact on the prison population when the sentence for the proposed separate offense would be served consecutive to the sentence for the underlying offense and the sentence length exceeds 90 days. However, convictions for misdemeanor offenses typically do not have a substantial impact on the prison population. Convictions for the proposed separate offense may have an impact on local jail populations, but the impact cannot be determined.

SECTION 2.

This Section amends G.S. 15A-1340.16(d)(11) to add “pregnant” to the list of victim vulnerability characteristics. It is not known how many sentences might be aggravated if this aggravating factor is broadened to include pregnant women. 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 2007/08, 3% (n=365) 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 numerous 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 1523 – S.A.F.E. MORTGAGE LICENSING ACT [v.1]

STATUTE

§ 53-244.112. Criminal penalties for unlicensed activity.

DESCRIPTION

A person who

1. either
 - a. engages in the mortgage business, or
 - b. acts as a mortgage loan originator
2. without a license from the North Carolina Commissioner of Banks.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

It is currently a Class 3 misdemeanor for a non-exempt person to act as, hold oneself out as, or directly or indirectly engage in the business of a mortgage servicer, a mortgage banker, or mortgage broker without a license (G.S. 53-243.02). The bill would repeal this provision.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/2009

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 1532 – REQUIRE LICENSE FOR FIRE ALARM CONTRACTING [v.1]

STATUTE

§ 87-48. Penalty for violation of Article; powers of Board to enjoin violation.

DESCRIPTION

A person who

1. engages or offers to engage in the business of
2. installing, maintaining, altering or repairing
3. a fire alarm
4. in North Carolina
5. without a license from the State Board of Examiners of Electrical and Fire Alarm Contractors.

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.

(See also SB 856).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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 9 – NO TEXTING WHILE DRIVING [v.3]/
SB 22 – BAN TEXTING WHILE DRIVING [v.2]

STATUTE

§ 20-137.4A. Unlawful use of mobile telephone for text messaging or electronic mail.

DESCRIPTION

Subsection (b):

A person who

1. operates a school bus on a public street or highway, or public vehicular area, and
2. uses a mobile telephone to
 - a. manually enter multiple letters or text as a means of communicating with another person, or
 - b. read an electronic mail or text message, other than a name or number stored in the device or caller identification information
3. while the bus is not lawfully parked or stopped.

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.

It is currently a Class 2 misdemeanor to operate a school bus on a public street, highway, or vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone (including electronic mail) while the bus is in motion (G.S. 20-137.4). Senate Bill 22 bill would exclude electronic mail and text messaging from the definition of “additional technology” for purposes of 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: 04/24/09

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.2]

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 18 years of age or older and
2. knowingly, with the intent to commit an unlawful sex act,
3. entices, advises, coerces, orders, or commands
4. by means of computer or any other device capable of electronic data storage or transmission
5. 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 5 years younger than the defendant
6. to meet with the defendant or any other person 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.

It is currently a Class H felony for a person 16 years of age or older to use a computer to solicit an unlawful sex act with a person who is, or is believed to be, a child less than 16 years of age and at least 3 years younger than the defendant.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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.2] (cont'd)

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 18 years of age or older and
2. knowingly, with the intent to commit an unlawful sex act,
3. entices, advises, coerces, orders, or commands
4. by means of a computer, or any other device capable of electronic data storage or transmission
5. 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 5 years younger than the defendant
6. to meet with the defendant or another person for the purpose of committing an unlawful sex act, and
7. the defendant, or person for whom the meeting was arranged, 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.

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 be consistent with the Offense Classification Criteria for a Class F felony, a Class H felony, or a Class I 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. The Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies. The Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

DATE PREPARED: 03/27/09

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 135 – OPERATION OF MOPEDS [v.2]

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (b):

A person who

1. operates a moped
2. with one or more passengers.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. § 20-35(a)).

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 04/24/09

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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 135 – OPERATION OF MOPEDS [v.2] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (c):

A person who

1. owns a moped intended to be operated upon any highway of North Carolina, and
2. operates the moped
3. before applying to the Division of Motor Vehicles for a. certificate of title, registration plate, and 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.

(See also HB 310 and SB 318).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

In reviewing HB 310 and SB 318 on April 3, 2008, the Sentencing Commission found the offense to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor and consistent with the criteria for a Class 3 misdemeanor. Upon reconsideration on May 1, 2009, the Commission found the offense to be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

DATE PREPARED: 04/24/09

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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 135 – OPERATION OF MOPEDS [v.2] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (c):

A person who

1. operates on a
 - a. a public street or highway, or
 - b. public vehicular area
2. a moped that
 - a. does not have a vehicle identification number, or
 - b. was not designed and manufactured for use on public highways.

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.

FINDINGS

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

DATE PREPARED: 04/24/09

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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 135 – OPERATION OF MOPEDS [v.2] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (d):

A person who

1. operates a moped
2. on a public street or highway, or public vehicular area,
3. without having in full force and effect financial responsibility as required by Articles 9A and 13.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 20-313(a))

ANALYSIS

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

It is currently a Class 1 misdemeanor under G.S. 20-313(a) for the owner of a motor vehicle required to be registered in the State to operate or permit such vehicle to be operated in this State without having in full force and effect the required financial responsibility.

(See also HB 310 and SB 318).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

In reviewing HB 310 and SB 318 on April 3, 2008, the Sentencing Commission found the offense to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor and consistent with the criteria for a Class 3 misdemeanor. Upon reconsideration on May 1, 2009, the Commission found the offense to be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

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

DATE PREPARED: 04/24/09

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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2]

STATUTE

§ 14-417. Regulation of ownership or use of venomous reptiles.

DESCRIPTION

Subsection (a):

A person who

1. transports
2. a venomous reptile
3. that is not housed in a sturdy and secure enclosure.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 14-422(a)).

ANALYSIS

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

This Article does not apply to the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

G.S. 14-417 currently makes it a Class 2 misdemeanor to own, possess, use, or traffic in any reptile of a poisonous nature whose venom is not removed, unless such reptile is at all times kept securely in a box, cage, or other safe container.

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 1 misdemeanor. 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.

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-417. Regulation of ownership or use of venomous reptiles.

DESCRIPTION

Subsection (c):

A person who

1. owns or possess
2. a venomous reptile that escapes, and
3. fails to immediately notify local law enforcement of the escape.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 14-422(a)).

ANALYSIS

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

This Article does not apply to the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

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 1 misdemeanor. 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.

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-417.1 Regulation of ownership or use of large constricting snakes.

DESCRIPTION

Subsection (b):

A person who

1. owns, possesses, uses, transports, or traffics in
2. any large constricting snake
3. that is not housed in a sturdy and secure enclosure.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 14-422(a)).

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.

G.S. 14-417.1 defines “large constricting snake” as a Reticulated Python, Burmese Python, African Rock Python, Amethystine Python, and Green Anaconda, or any of their subspecies or hybrids.

This Article does not apply to the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

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 1 misdemeanor. 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.

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-417.1. Regulation of ownership or use of large constricting snakes.

DESCRIPTION

Subsection (d):

A person who

1. owns or possess
2. a large constricting snake that escapes, and
3. fails to immediately notify local law enforcement of the escape.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 14-422(a)).

ANALYSIS

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

This Article does not apply to the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

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 1 misdemeanor. 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.

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-417.2. Regulation of ownership or use of crocodilians.

DESCRIPTION

Subsection (a):

A person who

1. owns, possesses, uses, transports, or traffics in
2. any crocodilian (other than an American Alligator)
3. that is not housed in a sturdy and secure enclosure.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 14-422(a)).

ANALYSIS

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

This Article does not apply to the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

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 1 misdemeanor. 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.

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-417.2. Regulation of ownership or use of crocodilians.

DESCRIPTION

Subsection (c):

A person who

1. owns or possess
2. any crocodilian (other than an American alligator) that escapes, and
3. fails to immediately notify local law enforcement of the escape.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 14-422(a)).

ANALYSIS

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

This Article does not apply to the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

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 1 misdemeanor. 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.

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-418. Prohibited handling of reptiles or suggesting or inducing others to handle.

DESCRIPTION

Subsection (a):

A person who

1. handles
2. any
 - a. venomous reptile,
 - b. large constricting snake, or
 - c. crocodylian (other than an American alligator)
3. in a manner intentionally or negligently exposing another person to unsafe contact with the reptile.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 14-422(a)).

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.

Safe and responsible handling of reptiles for purposes of animal husbandry, exhibition, training, transport, or education is permitted (G.S. 14-418(c)). This Article excludes the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

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 1 misdemeanor. 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.

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-418. Prohibited handling of reptiles or suggesting or inducing others to handle.

DESCRIPTION

Subsection (b):

A person who

1. intentionally or negligently
2. suggests, entices, invites, challenges, intimidates, exhorts, or otherwise induces or aids
3. another person
4. to handle, or expose himself in an unsafe manner to,
5. a venomous reptile, large constricting snake, or crocodylian (other than an American alligator)
6. in a manner intentionally or negligently exposing another person to unsafe contact with the reptile.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 14-422(a)).

ANALYSIS

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.

Safe and responsible handling of reptiles for purposes of animal husbandry, exhibition, training, transport, or education is permitted (G.S. 14-418(c)). This Article excludes the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

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 1 misdemeanor. 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.

DATE PREPARED: 03/31/09

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-422. Criminal penalties and civil remedies for violation.

DESCRIPTION

Subsection (b):

A person who

1. violates any provision of Chapter 14, Article 55 (Regulation of Certain Reptiles),
2. thereby causing a life threatening injury or death
3. to any person other than
 - a. the owner of a venomous reptile, large constricting snake, or crocodylian, or
 - b. the owner's agent, employee, or immediate family member.

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.

This provision excludes violations that could not have been avoided by the owner's exercise of due care or foresight, such as natural disasters or other acts of God or thefts of the reptile from the owner. This Article does not apply to the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

It is currently a Class 2 misdemeanor to violate any provision of this Article, irrespective of injury.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

A violation of this offense that causes death could constitute a homicide offense in certain cases.

DATE PREPARED: 03/31/09

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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 307 – REGULATE OWNERSHIP & USE OF CERTAIN REPTILES [v.2] (cont'd)

STATUTE

§ 14-422. Criminal penalties and civil remedies for violation.

DESCRIPTION

Subsection (c):

A person who

1. intentionally releases
2. into the wild
3. a non-native
 - a. venomous reptile
 - b. large constricting snake, or
 - c. crocodilian (other than an American Alligator).

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.

This Article does not apply to the possession, exhibition, or handling of reptiles by employees or agents of veterinarians, zoos, serpentariums, museums, laboratories, or educational or scientific institutions in the course of their work, or to Wildlife Damage control Agents in the course of work approved by the Wildlife Resources Commission (G.S. 14-421).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/31/09

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 318 – MOPEDS/LICENSE, REGISTRATION & FINANCIAL RESP. [v.1]

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (b):

A person who

1. is 16 years of age or older, and
2. operates a moped
3. on any public street or highway of the State
4. without being licensed as a driver by the Division of Motor Vehicles.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 20-35(a)).

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.

The Commission reviewed an identical provision in HB 238 in March, 2009. It found the provision to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor, but noted that it would be consistent with the criteria for Class 3.

(See also HB 310).

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: 03/27/09

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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 318 – MOPEDS/LICENSE, REGISTRATION & FINANCIAL RESP. [v.1] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (c):

A person who

1. owns
2. a moped intended to be operated upon any highway of North Carolina, and
3. operates the moped
4. before applying to the Division of Motor Vehicles for a certificate of title, registration plate, and 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.

(See also HB 310 and SB 135).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

On April 3, 2009, the Sentencing Commission found the offense to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor and consistent with the criteria for a Class 3 misdemeanor. Upon reconsideration of the offense in reviewing SB 135 on May 1, 2009, the Commission found it consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

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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 318 – MOPEDS/LICENSE, REGISTRATION & FINANCIAL RESP. [v.1] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (d):

A person who

1. operates a moped
2. on a public street or highway, or public vehicular area,
3. without having in full force and effect financial responsibility as required by Article 13.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 20-313(a)).

ANALYSIS

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

It is currently a Class 1 misdemeanor under G.S. 20-313(a) for the owner of a motor vehicle required to be registered in the State to operate or permit such vehicle to be operated in this State without having in full force and effect the required financial responsibility.

(See also HB 310 and SB 135).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

On April 3, 2009, the Sentencing Commission found the offense to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor and consistent with the criteria for a Class 3 misdemeanor. Upon reconsideration of the offense in reviewing SB 135 on May 1, 2009, the Commission found that it would be consistent with the Offense Classification Criteria for a Class 2 misdemeanor. The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property or significant injury to society as Class 2 misdemeanors.

DATE PREPARED: 03/27/09

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 337 – NC ILLEGAL IMMIGRATION REFORM ACT [v.1]

STATUTE

§ 64-15. Knowingly making a false statement a felony.

DESCRIPTION

A person who

1. knowingly
 - a. makes or
 - b. files
2. a document, statement, or report that is
 - a. false
 - b. fictitious or
 - c. fraudulent
3. pursuant to G.S. Chapter 64, Article 2, Unauthorized Aliens and Public Contracts.

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.

Article 2 requires all public agency contractors to certify that they (and their sub- and sub-sub-contractors) either (1) participate in the federal work authorization program, or (2) employ only persons who have a valid North Carolina driver's license or identification card or its equivalent from a comparable state.

(See also HB 922).

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

DATE PREPARED: 03/27/09

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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 337 – NC ILLEGAL IMMIGRATION REFORM ACT [v.1]
(cont'd)

STATUTE

§ 64-37. Violations.

DESCRIPTION

A person who

1. willfully
 - a. makes
 - b. aids or abets the making of, or
 - c. solicits or conspires to make
2. a false, fictitious, or fraudulent statement or representation
3. in any document
4. prepared or executed as part of the provision of immigration assistance services
5. in an immigration matter.

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.

(See also SB 398).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 337 – NC ILLEGAL IMMIGRATION REFORM ACT [v.1]
(cont'd)

STATUTE

§ 64-42. Verification procedure.

DESCRIPTION

A person who

1. knowingly and willfully
2. makes a false, fictitious, or fraudulent statement or representation
3. that the person is 18 years of age or older and a citizen of, or lawfully present in, the United States
4. in an affidavit executed as part of an application for public benefits.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

This provision is substantively identical to a provision in SB 1596 which the Sentencing Commission reviewed in June 2008, and similar to a provision in SB 573 which the Sentencing Commission reviewed in March, 2007, and HB 1485 which the Sentencing Commission reviewed in June, 2007, except that it was classified as a Class I felony. The Commission found that provision to be inconsistent with the offense classification Criteria for a Class H felony, and consistent with the criteria for Class I.

G.S. 108A-39. Fraudulent misrepresentation (public assistance), and G.S. 108A-53. Fraudulent misrepresentation (food stamps): \$400 or less, Class 1 misdemeanor; More than \$400, Class I felony.

(See also SB 398).

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

DATE PREPARED: 03/27/09

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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 337 – NC ILLEGAL IMMIGRATION REFORM ACT [v.1]
(cont'd)

STATUTE

§ 64-6. Unlawful transfer or concealment of an alien.

DESCRIPTION

Subsection (a)

A person who

1. knowingly, or in reckless disregard of another person's unlawful arrival, entry, or remaining in the United States,
2. does, or attempts, solicits or conspires to, transport or move the other person
3. within North Carolina
4. with the intent to
 - a. further the person's unlawful entry into the United States, or
 - b. avoid apprehension or detection of that person's unlawful immigration status by state or federal authorities.

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 similar to a provision in SB 1596 which the Sentencing Commission reviewed in June 2008. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class G felony, but noted that it would be consistent with the criteria for Class H.

(See also HB 922).

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 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: 03/27/09

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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 337 – NC ILLEGAL IMMIGRATION REFORM ACT [v.1]
(cont'd)

STATUTE

§ 64-6. Unlawful transfer or concealment of an alien.

DESCRIPTION

Subsection (b)

A person who

1. knowingly or in reckless disregard of another person's unlawful arrival, entry, or remaining in the United States
2. does, or solicits or conspires to, conceal, harbor or shelter from detection
3. the other person
4. in any place, including any building or means of transportation,
5. with the intent to
 - a. further the person's unlawful entry into the United States, or
 - b. avoid apprehension or detection of that person's unlawful immigration status by authorities.

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 similar to a provision in SB 1596 which the Sentencing Commission reviewed in June 2008. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class G felony, but noted that it would be consistent with the criteria for Class H.

(See also HB 922).

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 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: 03/27/09

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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 337 – NC ILLEGAL IMMIGRATION REFORM ACT [v.1]
(cont'd)

STATUTE

§ 14-113.20. Identity theft.

DESCRIPTION

A person who

1. knowingly
2. obtains, possesses, or uses
3. identifying information of another person, living or dead,
4. with the intent to fraudulently represent that the person is the other person
5. for the purpose of obtaining employment.

PROPOSED OFFENSE CLASS

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

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies. The 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 reviewed an identical provision in SB 1596 in June, 2008, and found it to be inconsistent with the Offense Classification Criteria for a Class G felony, and for a Class F felony with respect to (i) and (ii) above.

(See also HB 922).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

These offenses would be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in loss occasioned by the taking of property or by breach of trust, formal or informal, as Class H felonies.

DATE PREPARED: 03/27/09

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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 337 – NC ILLEGAL IMMIGRATION REFORM ACT [v.1]
(cont'd)

STATUTE

§ 64-22. Knowingly employing unauthorized alien prohibited; penalties.

DESCRIPTION

Subsection (b):

A person who

1. knowingly
2. files
3. a false and frivolous complaint alleging that an employer knowingly
 - a. employs an unauthorized alien, or
 - b. contracts or subcontracts for labor performed by an unauthorized alien.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This provision is similar to a provision in HB 2610 and SB 1596 which the Sentencing Commission reviewed in June 2008. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

(See also HB 922).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 348 – MODERNIZE PRECIOUS METALS PERMITTING
[v.1]

STATUTE

§ 66-166. Exemption from permits; record keeping under an exemption.

DESCRIPTION

A merchant who

1. deals in precious metals,
2. is granted an exemption from the permit required to purchase precious metals from the public, and
3. fails to maintain a contemporaneous record of each precious metals purchase, including
 - a. a description of the specific item or items purchased and
 - b. the date of the transaction
4. in book or electronic form.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 66-172).

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 398 – SECURITY AND IMMIGRATION COMPLIANCE [v.1]

STATUTE

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

DESCRIPTION

Subsection (g):

A person who

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

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The Sentencing Commission reviewed a similar provision in HB 2809, SB 1223, and SB 1627 in June of 2006, and HB 55 in April of 2007. The provision made the offense punishable by a fine of not more than \$1,000 and/or imprisonment for one to five years. In June of 2006, the Commission found the provision to be inconsistent with the Offense Classification Criteria and noted that it would be consistent with the criteria for a Class F felony. In April of 2007, the Commission found the provision inconsistent with the Offense Classification Criteria and noted that it would be consistent with the criteria for Class I.

G.S. 108A-39. Fraudulent misrepresentation (public assistance), and G.S. 108A-53. Fraudulent misrepresentation (food stamps): \$400 or less, Class 1 misdemeanor; More than \$400, Class I felony.

(See also SB 337).

FINDINGS

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

DATE PREPARED: 03/27/09

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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 398 – SECURITY AND IMMIGRATION COMPLIANCE
[v.1] (cont'd)

STATUTE

§ 84B-9. Violations; penalties.

DESCRIPTION

A person who violates any provision of the proposed Chapter 84B, Immigration Assistance Registration Act, which establishes and enforces ethical standards for immigration assistance services provided by individuals who are not licensed attorneys.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This provision is identical to a provision in HB 55 which the Sentencing Commission reviewed in June 2008. The Commission found the provision to be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

(See also SB 337).

FINDINGS

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

DATE PREPARED: 03/27/09

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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 398 – SECURITY AND IMMIGRATION COMPLIANCE
[v.1] (cont'd)

STATUTE

§ 84B-9. Violations; penalties.

DESCRIPTION

A person who

1. violates any provision of the proposed Chapter 84B, Immigration Assistance Registration Act,
2. within five years of a prior conviction for the same offense.

(The Act establishes and enforces ethical standards for immigration assistance services provided by individuals who are not licensed attorneys.)

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.

This provision is identical to a provision in HB 55 which the Sentencing Commission reviewed in June, 2008. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor, noting that the Structured Sentencing chart takes a defendant's prior record into account through the Prior Conviction 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 Conviction Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing.

DATE PREPARED: 03/27/09

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 431 – AMEND ARMED ROBBERY/APPARENT FIREARM
[v.1]**

STATUTE

§ 14-87. Robbery with firearms or other dangerous weapons; robbery with apparent firearm.

DESCRIPTION

A person who,

1. possesses, uses, or threatens to use
2. any article that a reasonable person would believe to be a firearm
3. under circumstances that a reasonable person would believe endangered his or her life, and
4. unlawfully takes, attempts to take, or aids or abets another in taking
5. personal property from
 - a. another person, or
 - b. any place where there is a person in attendance.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

Robbery or attempted robbery with a firearm is a Class D felony (G.S. 14-87).

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 Commission reviewed an identical provision in HB 344/SB 222 in March, 2007, and found it to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 3/27/09

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 449 – REPEAT OFFENDERS/FALSE PRETENSES [v.1]

STATUTE

§ 14-100. Obtaining property by false pretenses.

DESCRIPTION

Subsection (a1):

A person who

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

OFFENSE CLASS

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

PROPOSED: Class H felony if the value of the money, etc., is less than \$20,000;
Class G felony if the value of the money, etc., is \$20,000 or more but less than \$40,000;
Class F felony if the value of the money, etc., is \$40,000 or more but less than 60,000;
Class E felony if the value of the money, etc., is \$60,000 or more but less than \$80,000;
Class D felony if the value of the money, etc., is \$80,000 or more but less than \$100,000;
Class C felony if the value of the money, etc., is \$100,000 or more.

(See also SB 710).

OFFENSE CLASS

PROPOSED: Class G felony if the value of the money, etc., is \$20,000 or more but less than \$40,000.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

OFFENSE CLASS

PROPOSED: Class F felony if the value of the money, etc., is \$40,000 or more but less than 60,000

ANALYSIS

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

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class E felony if the value of the money, etc., is \$60,000 or more but less than \$80,000.

ANALYSIS

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

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class D felony if the value of the money, etc., is \$80,000 or more but less than \$100,000.

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.

FINDINGS

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

DATE PREPARED: 03/27/09

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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 449 – REPEAT OFFENDERS/FALSE PRETENSES [v.1]
(cont'd)

STATUTE

§ 14-100. Obtaining property by false pretenses.

DESCRIPTION

Subsection (a2):

A person who

1. is convicted of obtaining property by false pretenses and
2. has at least one prior conviction for this offense.

PUNISHMENT RANGE

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

PROPOSED: Enhance the minimum sentence for the offense by 60 months; assign a maximum sentence that corresponds to the enhanced minimum under G.S. 15A-1340.17(e) and (e1).

ANALYSIS

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

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: 03/27/09

IMPACT ANALYSIS NOT REQUESTED YET

180 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 476 – CREATE TITLING CATEGORIES-
REPLICA/STREET ROD [v.1]

STATUTE

§ 20-53.2. Failure to disclose status of specially constructed or inoperable vehicles shall be a misdemeanor.

DESCRIPTION

A person who

1. transfers a motor vehicle
2. with knowledge that the vehicle is or was
 - a. a specially constructed vehicle, or
 - b. an inoperable vehicle
3. without disclosing this fact in writing to the transferee prior to the transfer.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 20-176(c)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, 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.

“Specially Constructed Vehicles” include replica vehicles, street rod vehicles, modified vehicles, and custom-built vehicles under G.S. 20-4.01(43).

Proposed G.S. 20-4.01(15a) defines “inoperable vehicle” as a motor vehicle that is mechanically unfit or unsafe to be operated or moved on a public street, highway, or public vehicular area.

(See also HB 861/SB 820)

FINDINGS

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

DATE PREPARED: 03/27/09

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 488 – ESTABLISH PROPORTIONATE SENTENCE LENGTHS [v.1]

STATUTE

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

DESCRIPTION

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

PUNISHMENT RANGE

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

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

ANALYSIS

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

This bill is identical to HB 264/SB 208 which the Sentencing Commission reviewed in April, 2003, and HB 1186 reviewed in May, 2005, and HB 806/SB 823 reviewed in June, 2007, and SB 2068 reviewed in June, 2008. The Commission found the provision to be consistent with G.S. 164-41.

(See also HB 1445).

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: 03/27/09

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 489 – EVEN OUT PRIOR CRIMINAL RECORD POINTS
[v.1]

STATUTE

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

DESCRIPTION

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

PUNISHMENT RANGE

CURRENT: Prior Record Levels

Level I – 0 points.

Level II – At least 1, but no more than 4 points.

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

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

Level V – At least 15, but no more than 18 points.

Level VI – At least 19 points.

PROPOSED: Prior Record Levels

Level I – Not more than 1 point.

Level II – At least 2, but no more than 5 points.

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

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

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

Level VI – At least 18 points.

ANALYSIS

The Sentencing Commission reviewed an identical provision in HB 807/SB 935 in June of 2007, and in SB 2067 in June of 2008. The Commission found the provision to be consistent with G.S. 164-41.

(See also HB 1445).

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: 03/27/09

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 490 – ADJUST B1-E FELONY PENALTIES [v.1]

STATUTE

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

DESCRIPTION

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

PUNISHMENT RANGE

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

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

ANALYSIS

This bill is identical to HB 246/SB 209 which the Sentencing Commission reviewed in April, 2003, and HB 1215 reviewed in May, 2005, and HB 805/SB 933 reviewed in June, 2007, and SB 2066 reviewed in June, 2008. The Commission found the provision to be consistent with G.S. 164-41.

(See also HB 1445).

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: 03/27/09

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 515/SB 739 – PROHIBIT PENNING OF WILDLIFE [v.1]

STATUTE

§ 113-292. Authority of the Wildlife Resources Commission in regulation of inland fishing and the introduction of exotic species.

DESCRIPTION

A person who

1. releases or places
2. live foxes or coyotes
3. in an enclosed area where the animals are intentionally confined
4. for the purpose of
 - a. field trials or
 - b. the training of dogs.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor (G.S. 113-135(a)).

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 03/27/09

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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 515/SB 739 – PROHIBIT PENNING OF WILDLIFE [v.1]
(cont'd)

STATUTE

§ 113-292. Authority of the Wildlife Resources Commission in regulation of inland fishing and the introduction of exotic species.

DESCRIPTION

A person who

1. releases or places
2. live foxes or coyotes
3. in an enclosed area where the animals are intentionally confined for the purpose of field trials or the training of dogs, and
4. has a prior conviction for this offense.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 113-135(b)).

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.

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

DATE PREPARED: 03/27/09

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 762/SB 516 – COMMUNITY ASSOCIATION MANAGERS LICENSURE [v.1]
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STATUTE

§ 93A-101. Violation a misdemeanor.

DESCRIPTION

A person who violates any provision of the North Carolina Community Association Managers Licensure Act (G.S. Chapter 93A, Article 6).

(Acting as a community association manager without a license; lack of coverage by a fidelity bond or insurance policy; failure to display license.)

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

The Commission reviewed a substantially similar provision in HB 1535/SB 1315 in June, 2007, and found it to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS

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

DATE PREPARED: 03/27/09

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 527 – AMEND SECOND DEGREE RAPE & SEXUAL OFFENSE [v.1]

STATUTE

§ 14-27.3. Second-degree rape.

DESCRIPTION

A person who

1. is in a position of authority over another person,
2. engages in vaginal intercourse with the other person, and
3. uses the position of authority to influence the other person to submit to the act.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

Consent is not a defense to this charge.

A “position of authority” is that occupied by parent, guardian, relative, household member, teacher, employer, custodian, or any other person who, by reason of his or her position, is able to exercise significant influence over a person. (G.S. 14-27.1(3a)).

Vaginal intercourse with a minor by a defendant who has assumed the position of parent in the minor’s home is a Class E felony (G.S. 14-27.7(a)).

It is a Class G felony for a teacher, coach, or other school personnel to engage in vaginal intercourse with a student who is at least four years younger than the defendant (G.S. 14-27.7(b)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 527 – AMEND SECOND DEGREE RAPE & SEXUAL OFFENSE [v.1] (cont'd)

STATUTE

§ 14-27.5. Second-degree sexual offense.

DESCRIPTION

A person who

1. is in a position of authority over another person,
2. engages in a sexual act with the other person, and
3. uses the position of authority to influence the other person to submit to the act.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

Consent is not a defense to this charge.

A “position of authority” is that occupied by parent, guardian, relative, household member, teacher, employer, custodian, or any other person who, by reason of his or her position, is able to exercise significant influence over a person. (G.S. 14-27.1(3a)).

A sexual act with a minor by a defendant who has assumed the position of parent in the minor’s home is a Class E felony (G.S. 14-27.7(a)).

It is a Class G felony for a teacher, coach, or other school personnel to engage in a sexual act with a student who is at least four years younger than the defendant (G.S. 14-27.7(b)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 590 – KOSHER OR HALAL LABEL/AUTHORIZING ENTITY INFO. [v.1]

STATUTE

§ 14-401.23. Labeling as kosher and halal.

DESCRIPTION

Subsection (g):

A person who

1. knowingly
 - a. labels any repackaged food or food product or display, or
 - b. offers for sale any unwrapped food or food product
2. representing the food or food product as kosher or halal
3. without indicating the person or entity authorizing the designation by providing
 - a. the name or symbol of the authority, or
 - b. a phone number or Web site to access the information.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 03/27/09

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 602 – MEDICAID FALSE CLAIMS/QUI TAM ACTIONS [v.1]

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (e):

A person who

1. provides medical assistance under the Medical Assistance Program and
2. knowingly and willfully executes or attempts to execute
3. a scheme or artifice to
 - a. defraud the Medical Assistance Program or
 - b. obtain, by false or fraudulent pretenses, representations or promises, any money or property owned by, or under the custody or control of the Medical Assistant Program
4. in connection with the delivery of, or payment for,
5. health care benefits, items, or services valued at less than \$100,000.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

(See also HB 1135).

FINDINGS

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

DATE PREPARED: 03/27/09

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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 602 – MEDICAID FALSE CLAIMS/QUI TAM ACTIONS
[v.1] (cont'd)

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (e):

A person who

1. provides medical assistance under the Medical Assistance Program and
2. knowingly and willfully executes or attempts to execute
3. a scheme or artifice to
 - a. defraud the Medical Assistance Program or
 - b. obtain, by false or fraudulent pretenses, representations or promises, any money or property owned by, or under the custody or control of the Medical Assistant Program
4. in connection with the delivery of, or payment for,
5. health care benefits, items, or services valued at \$100,000 or more.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

(See also HB 1135).

FINDINGS

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

DATE PREPARED: 03/27/09

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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 602 – MEDICAID FALSE CLAIMS/QUI TAM ACTIONS
[v.1] (cont'd)

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (f):

A person who

1. provides medical assistance under the Medical Assistance Program and
2. knowingly and willfully does, or attempts to,
3. obstruct, delay, or mislead
4. an investigation of a violation of this section by the Attorney General's Office.

PROPOSED OFFENSE CLASS

Class I felony (G.S. 108A-63(c))

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 1135).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 602 – MEDICAID FALSE CLAIMS/QUI TAM ACTIONS
[v.1] (cont'd)

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (g):

A person who

1. provides medical assistance under the Medical Assistance Program and
2. knowingly and willfully
3. with the intent to defraud
 - a. makes or causes to be made a false entry in, or
 - b. alters, destroys, or conceals
4. any record related to the provision of a benefit, item or service under this Part.

PROPOSED OFFENSE CLASS

No classification given.

ANALYSIS

The Sentencing Commission classified offenses based on the type and degree of harm which results or reasonably tends to result therefrom.

This statute does not classify this offense. Section (c) provides that a violation of G.S. 108A-63 is a Class I felony, except as provided in subsections (e) and (g). Current Class I felonies include a provider's knowing and willful obstruction of the Attorney General's investigation of a violation of this section, and a provider's knowing and willful false statement or representation of a material fact in an application for payment under this Part (G.S. 108A-63(a), (f)).

(See also HB 1135).

FINDINGS

- Bill is **consistent** with 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 I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE PREPARED: 03/27/09

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 619 – PEDORTHIST LICENSURE [v.1]

STATUTE

§ 90-202.23. License required.

DESCRIPTION

Any person who

1. practices or offers to practice pedorthics, or
2. uses the title ‘Licensed Pedorthist,’ the letters ‘LP’ or otherwise indicates or implies that he or she is a licensed pedorthist
3. without a current license.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 90-202.31(a)).

ANALYSIS

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

“Pedorthics” is the design, manufacture, modification, or fit of custom shoes, orthoses, and pedorthic devices to prevent or alleviate foot problems, pursuant to a physician’s prescription.

The Sentencing Commission reviewed an identical provision in SB 1410 in June, 2007, and found it inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/2009

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 642 – REQUIRE OFF-ROAD VEHICLES TO BE REGISTERED [v.1]

STATUTE

§ 20-63.2. Off-Road Vehicle Registrations.

DESCRIPTION

A person who

1. owns
2. an all-terrain vehicle
 - 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, registration plate, and registration card.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (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.

The Sentencing Commission reviewed a similar provision in SB 45 in March, 2009, and found it to be inconsistent with the criteria for a Class 2 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 664/SB 987 – SAFE STORAGE OF FIREARMS [v.1]

STATUTE

§ 14-315.1. Storage of firearms to protect minors.

DESCRIPTION

Subsection (a):

A person who

1. stores or leaves a firearm
2. in a manner that the person knew, or should have known,
3. would enable an unsupervised minor to gain access to the firearm, and
4. a minor, without lawful permission of a parent or a person having charge of the minor,
 - a. possesses the firearm on educational property or at a school-sponsored activity in violation of G.S. 14-269.2(b), or
 - b. exhibits the firearm in a public place.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The provision does not apply if the firearm was kept unloaded and (1) in a locked box or container, with the ammunition stored separately, or (2) equipped with a mechanical lock or other safety device rendering the weapon inoperable by any person other than the owner or other lawfully authorized user.

It is a Class 1 misdemeanor for an owner or possessor of a firearm who resides with a minor to store or leave the firearm in a condition that it can be discharged and in a manner that the person knows or should know would enable a minor to access the firearm, if the minor possesses the firearm in violation of G.S. 14-269.2(b), or exhibits it in an public place in a careless, angry or threatening manner.

(See also HB 1328).

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 664/SB 987 – SAFE STORAGE OF FIREARMS [v.1]
(cont'd)

STATUTE

§ 14-315.1. Storage of firearms to protect minors.

DESCRIPTION

Subsection (a1):

A person who

1. stores or leaves a firearm
2. in a manner that the person knew, or should have known,
3. would enable an unsupervised minor to gain access to the firearm, and
4. a minor, without lawful permission of a parent or person having charge of the minor,
 - a. uses the firearm to cause personal injury or death, not in self-defense, or
 - b. uses the firearm in the commission of a crime.

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.

The provision exempts unloaded firearms (1) in a locked box or container, with the ammunition stored separately, or (2) equipped with a lock or safety device rendering the weapon inoperable.

Currently, it is a Class 1 misdemeanor for an owner or possessor of a firearm who resides with a minor to store or leave the firearm in a condition that it can be discharged and in a manner that the person knows or should know would enable an unsupervised minor to access the firearm, if the minor causes personal injury or death with the firearm not in self defense, or uses it in the commission of a crime.

(See also HB 1328).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

IMPACT ANALYSIS NOT REQUESTED YET

198 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 674 – AMEND RABIES LAWS [v.1]

STATUTE

§ 130A-185. Vaccination of all dogs, cats, and ferrets.

DESCRIPTION

A person who

1. owns a ferret over four months of age, and
2. fails to have the ferret vaccinated against rabies.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 130A-25).

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.

It is currently a Class 1 misdemeanor to fail to vaccinate a dog or cat over four months of age for rabies.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 674 – AMEND RABIES LAWS [v.1] (cont'd)

STATUTE

§ 130A-196. Confinement of all biting dogs, cats, and ferrets; notice to local health director; reports by physicians; certain dogs exempt.

DESCRIPTION

A person who

1. is
 - a. the owner or possessor of a ferret that bites a person
 - b. a person bitten by a ferret, or
 - c. the parent, guardian, or person standing *in loco parentis* of a person bitten by a ferret
2. and fails to immediately notify the local health director.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 130A-25).

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.

It is a Class 1 misdemeanor to fail to immediately notify the local health director of a dog or cat bite.

FINDINGS

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

DATE PREPARED: 03/27/09

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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 674 – AMEND RABIES LAWS [v.1] (cont'd)

STATUTE

§ 130A-196. Confinement of all biting dogs, cats, and ferrets; notice to local health director; reports by physicians; certain dogs exempt.

DESCRIPTION

A person who

1. owns a ferret that has bitten a person, and
2. fails to confine the animal as instructed by the local health director.

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, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

It is a Class 2 misdemeanor to fail confine a biting dog or cat as instructed by the local health director.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 674 – AMEND RABIES LAWS [v.1] (cont'd)

STATUTE

§ 130A-196. Confinement of all biting dogs, cats, and ferrets; notice to local health director; reports by physicians; certain dogs exempt.

DESCRIPTION

A person who

1. is a veterinarian,
2. has knowledge of any mammal biting a person, and
3. fails to report to the local health director, if known,
 - a. the name, age, and sex of the person bitten
 - b. the type and whereabouts of the biting mammal.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 130A-25).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 674 – AMEND RABIES LAWS [v.1] (cont'd)

STATUTE

§ 130A-198. Confinement.

DESCRIPTION

A person who

1. owns or possesses a ferret suspected of having rabies
2. and fails to
 - a. immediately contact the local health director or Animal Control Officer, and
 - b. securely confine the animal for 10 days in a place designated by the local health director.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 130A-25).

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.

It is a Class 1 misdemeanor for the owner or possessor of a dog or cat suspected of rabies to violate this provision.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 680 – INCREASE PENALTIES FOR DRUG TRAFFICKING
[v.1]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (h):

Trafficking in a controlled substance by sale, manufacture, delivery, transport, or possession.

OFFENSE CLASS

CURRENT: Class H, G, F, E, D, or C felony, based on the weight or dosage units of the trafficked substance (G.S. 90-95(h)).

PROPOSED: One class higher than the current offense classification.

A Class C felony is increased to a Class “B” felony.

ANALYSIS

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

Trafficking offenses are subject to mandatory active sentences as follows:

Class H: 25 months minimum to 30 months maximum;

Class G: 35 months minimum to 42 months maximum;

Class F: 70 months minimum to 84 months maximum;

Class E: 90 months minimum to 117 months maximum;

Class D: 175 months minimum to 219 months maximum;

Class C: 225 months minimum to 279 months maximum;

Proposed Class B: 310 months minimum to 358 months maximum.

Structured Sentencing contains Classes B1 and B2, but no Class B.

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: 03/27/09

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 626/SB 695 – RESTRAINING OF DOGS [v.1]

STATUTE

§ 14-362.3. Restraining of dogs in a cruel manner.

DESCRIPTION

Subsection (a):

A person who

1. knowingly
2. restrains a dog,
3. using a chain or wire grossly in excess of the size or weight necessary to restrain the dog safely.

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.

It is currently a Class 1 misdemeanor to maliciously restrain a dog with a chain or wire grossly in excess of the size necessary to restrain the dog safely.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 626/SB 695 – RESTRAINING OF DOGS [v.1] (cont'd)

STATUTE

§ 14-362.3. Restraining of dogs in a cruel manner.

DESCRIPTION

Subsection (b):

A person who

1. knowingly
2. tethers, fastens, chains, ties, or restrains, or causes such restraining of,
3. a dog
4. to a stationary object
5. for more than 3 hours in a 24-hour period.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 626/SB 695 – RESTRAINING OF DOGS [v.1] (cont'd)

STATUTE

§ 14-362.3. Restraining of dogs in a cruel manner.

DESCRIPTION

Subsection (b):

A person who

1. knowingly
2. tethers, fastens, chains, ties, or restrains, or causes such restraining of,
3. a dog
4. to a stationary object
5. with a tethering device that is
 - a. less than 15 feet in length, or
 - b. not attached in a manner to prevent strangulation, injury, or entanglement with objects other than the stationary object to which it is attached.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 626/SB 695 – RESTRAINING OF DOGS [v.1] (cont'd)

STATUTE

§ 14-362.3. Restraining of dogs in a cruel manner.

DESCRIPTION

Subsection (c):

A person who

1. knowingly
 - a. attaches
 - b. causes the attachment of
2. a chain, wire, or other tethering device
3. to a choke-type of pronged collar on a dog.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 626/SB 695 – RESTRAINING OF DOGS [v.1] (cont'd)

STATUTE

§ 14-362.3. Restraining of dogs in a cruel manner.

DESCRIPTION

Subsection (d):

A person who

1. knowingly
2. attaches
3. a chain, wire, or other tethering device
4. to a dog
5. in a manner not allowing access to water and adequate shelter.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 709 – HOME IMPROVEMENT FRAUD [v.1]

STATUTE

§ 14-104.1. Home improvement fraud; penalties.

DESCRIPTION

Subsection (c)(1):

A person who

1. is a contractor, or an agent or employee thereof, and
2. either
 - a. uses a deception, false pretense, or false promise, or
 - b. intentionally damages the property of a person
3. to cause or induce a person to enter into a contract for home improvements.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 709 – HOME IMPROVEMENT FRAUD [v.1] (cont'd)

STATUTE

§ 14-104.1. Home improvement fraud; penalties.

DESCRIPTION

Subsection (c)(2):

A person who

1. is a contractor, or an agent or employee thereof, and
2. either
 - a. uses a deception, false pretense, or false promise, or
 - b. intentionally damages the property of a person
3. to cause or induce a person to enter into a contract for home improvements, and
4. has one prior conviction for this offense.

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 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: 03/27/09

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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 709 – HOME IMPROVEMENT FRAUD [v.1] (cont'd)

STATUTE

§ 14-104.1. Home improvement fraud; penalties.

DESCRIPTION

Subsection (c)(3):

A person who

1. is a contractor, or an agent or employee thereof, and
2. either
 - a. uses a deception, false pretense, or false promise, or
 - b. intentionally damages the property of a person
3. to cause or induce a person to enter into a contract for home improvements, and
4. has two or more prior convictions for this offense.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

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: 03/27/09

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 710 – FALSE PRETENSES/INCREASE SOME PENALTIES
[v.1]

STATUTE

§ 14-100. Obtaining property by false pretenses.

DESCRIPTION

Subsection (a1):

A person who

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

OFFENSE CLASS

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

PROPOSED: Class H felony if the value of the money, etc., is less than \$5,000;
Class G felony if the value of the money, etc., is \$5,000 or more but less than 25,000;
Class F felony if the value of the money, etc., is \$25,000 or more but less than \$50,000;
Class E felony if the value of the money, etc., is \$50,000 or more but less than \$100,000;
Class C felony if the value of the money, etc., is \$100,000 or more.

(See also SB 449).

OFFENSE CLASS

PROPOSED: Class G felony if the value of the money, etc., is \$5,000 or more but less than \$25,000.

ANALYSIS

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

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class F felony if the value of the money, etc., is \$25,000 or more but less than \$50,000.

ANALYSIS

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

FINDINGS

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

OFFENSE CLASS

PROPOSED: Class E felony if the value of the money, etc., is \$50,000 or more but less than \$100,000.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 03/27/09

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 836/SB 713 – REMOVAL OF ELECTRONIC MONITORING DEVICE [v.1]
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STATUTE

§ 14-226.3. Interference with electronic monitoring device.

DESCRIPTION

A person who

1. knowingly and without authority
 - a. does or
 - b. requests or solicits another to
2. remove, destroy, or circumvent the operation of
3. an electronic monitoring device used to monitor a person
 - a. on house arrest or
 - b. wearing an electronic monitoring devise as a condition of bond, pretrial release, probation, or parole.

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.

Tampering with a satellite based sex-offender monitoring device is a Class E felony under G.S. 14-208.44(b).

Unless otherwise stated, solicitation of a felony is punished two classes lower than the substantive offense under G.S. 14-2.6(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: 03/27/09

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 764 – REAL ESTATE/SETTLEMENT AGENT
EMBEZZLEMENT [v.1]

STATUTE

§ 45A-8. Embezzlement of closing funds by settlement agent.

DESCRIPTION

A person who

1. serves as settlement agent in a residential real estate transaction
2. and
 - a. embezzles
 - b. fraudulently or knowingly and willfully misapplies or converts to his or her own use
 - c. takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his or her own use
3. closing funds or any portion thereof
 - a. valued at less than \$100,000 and
 - b. not representing the settlement agent's fees and expenses,
4. regardless of whether the funds have been proved to belong to a specific party.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 14-90).

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 offense of embezzlement under G.S. 14-90 requires proof that the property belongs to a person or corporation, unincorporated association or organization.

FINDINGS

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

DATE PREPARED: 03/27/09

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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 764 – REAL ESTATE/SETTLEMENT AGENT
EMBEZZLEMENT [v.1] (cont'd)

STATUTE

§ 45A-8. Embezzlement of closing funds by settlement agent.

DESCRIPTION

A person who

1. serves as settlement agent in a residential real estate transaction
2. and
 - a. embezzles
 - b. fraudulently or knowingly and willfully misapplies or converts to his or her own use
 - c. takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his or her own use
3. closing funds or any portion thereof
 - a. valued at \$100,000 or more, and
 - b. not representing the settlement agent's fees and expenses,
4. regardless of whether the funds have been proved to belong to a specific party.

PROPOSED OFFENSE CLASS

Class C felony (G.S. 14-90).

ANALYSIS

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

The offense of embezzlement under G.S. 14-90 requires proof that the property belongs to a person or corporation, unincorporated association or organization.

FINDINGS

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

DATE PREPARED: 03/27/09

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 803 – PROTECT THIRD-PARTY PURCHASERS FOR VALUE [v.1]

STATUTE

§ 44A-24. False statement a ~~misdemeanor~~ felony.

DESCRIPTION

A person who

1. receives payment or other thing of value from
 - a. an obligor for an improvement to real property, or
 - b. a purchaser for a conveyance of real property with improvements
2. and knowingly furnishes to
 - a. the obligor or purchaser, or
 - b. a lender who obtains a security interest in the realty.
3. a false written statement
4. of the sums due, or claimed to be due, for labor or material furnished at the site of the improvement(s).

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class H felony.

ANALYSIS

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

IMPACT ANALYSIS NOT REQUESTED YET

218 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 813 – LARCENY OF METALS/INCREASE PENALTY [v.1]

STATUTE

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

DESCRIPTION

A person who

1. commits larceny of
2. any ferrous or nonferrous metal(s) affixed to or part of any real property.

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.

Unless otherwise provided, larceny of property is a Class 1 misdemeanor if the value of the property is \$1,000 or less, and a Class H felony otherwise. (G.S. 14-72(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: 03/27/09

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 861/SB 820 – CREATE TITLING CATEGORIES [v.1]

STATUTE

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

DESCRIPTION

A person who

1. transfers a motor vehicle
2. knowing that it is a specially constructed vehicle
3. without disclosing this fact to the transferee in writing prior to the transfer.

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.

“Specially Constructed Vehicles” include replica vehicles, street rod vehicles, modified vehicles, and custom-built vehicles under G.S. 20-4.01(43).

The Commission reviewed an identical provision in SB 2010 in June, 2008, and found it to be consistent with the Offense Classification Criteria.

(See also SB 476).

FINDINGS

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

DATE PREPARED: 03/27/09

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 882/SB 826 – MOTOR VEHICLE INSPECTION
PROGRAM CHANGES [v.1]

STATUTE

§ 20-183.8H. Penalties for violation of rules promulgated by the Division for the inspection program.

DESCRIPTION

A person who

1. violates
2. any rule
 - a. promulgated by the Division of Motor Vehicles
 - b. implementing the vehicle safety and emissions inspection program under Article 3A (Safety and Emissions Inspection Program),
3. unless a different penalty is prescribed by law.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 834 – REWRITE SANITARIAN EXAMINERS LAWS/FEEES
[v.1]

STATUTE

§ 90A-52. Practice without certificate unlawful.

DESCRIPTION

A person who

1. either
 - a. practices as an environmental health specialist or environmental health specialist intern in North Carolina, or
 - b. uses the title “Registered Environmental Health Specialist” or “Registered Environmental Health Specialist Intern”
2. without a certificate of registration from the Board of Environmental Health Specialist Examiners.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 90A-66).

ANALYSIS

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

The offense currently applies to sanitarians and sanitarian interns (G.S. 90A-52).

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

DATE PREPARED: 03/27/09

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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 834 – REWRITE SANITARIAN EXAMINERS LAWS/FEEES
[v.1] (cont'd)

STATUTE

§ 90A-52. Practice without certificate unlawful.

DESCRIPTION

A person who

1. either
 - a. offers services as, or
 - b. uses, assumes or advertises in any way a title or description tending to convey the impression that the person is
2. a registered environmental health specialist or registered environmental health specialist intern
3. without holding a current certificate of registration issued by the Board.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 90A-66).

ANALYSIS

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

The offense currently applies to sanitarians and sanitarian interns (G.S. 90A-52).

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

DATE PREPARED: 03/27/09

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 856 – REQUIRE LICENSE FOR FIRE ALARM
CONTRACTING [v.1]

STATUTE

§ 87-48. Penalty for violation of Article; powers of Board to enjoin violation.

DESCRIPTION

A person who

1. engages or offers to engage in the business of
2. installing, maintaining, altering or repairing
3. a fire alarm
4. in North Carolina
5. without a license from the State Board of Examiners of Electrical and Fire Alarm Contractors.

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.

(See also HB 1532).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 860 – SCHOOL TRUST FUND/PROPRIETARY SCHOOLS
[v.1]

STATUTE

§ 87-48. Penalty for violation of Article; powers of Board to enjoin violation.

DESCRIPTION

A person who

1. opens and conducts
 - a. a proprietary business, technical, or trade school, or
 - b. a correspondence school
2. without first paying an assessment into the Student Protection Fund.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

Each day the school is open and operated is a separate offense.

ANALYSIS

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

It is currently a Class 3 misdemeanor to open and conduct a proprietary or correspondence school without having obtained the license and executed the bond required by statute.

FINDINGS

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

DATE PREPARED: 03/27/09

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 885 – PROTECT OYSTER SANCTUARIES [v.1]

STATUTE

§ 113-211. Protection of oyster sanctuaries.

DESCRIPTION

A person who

1. either
 - a. engages or participates in, or
 - b. is in charge of
2. a commercial fishing operation as defined in G.S. 113-168
3. that uses commercial fishing equipment or gear
4. within 100 yards of an area designated as an oyster sanctuary by the Marine Fisheries Commission.

PROPOSED OFFENSE CLASS

Class A1 misdemeanor (G.S. 113-187).

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.

"Commercial fishing operation" means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Marine Fisheries Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale (G.S. 113-168(1)).

(See also HB 1345).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 895 – RESTORE CIGARETTE TAX STAMPS [v.1]

STATUTE

§ 105-113.34A. Forging or counterfeiting stamps.

DESCRIPTION

(Forging tax stamps)

A person who

1. commits, causes, or procures,
2. the false or fraudulent making, forging, altering, or counterfeiting
3. of a stamp prepared or prescribed by the Secretary of Revenue under Chapter 105, Article 2A (Tobacco Products Tax).

PROPOSED OFFENSE CLASS

Felony, punishable by a fine of no more than \$2,000, imprisonment of no more than five years, or both, in the discretion of the court.

ANALYSIS

The proposed bill does not assign an offense class to the offense, but it does not exempt the offense from structured sentencing either. Pursuant to G.S. 15A-1340.17(a), a “felony for which there is no classification” is a Class I felony.

The Sentencing Commission reviewed an identical provision in HB 1475/SB 1411 in June, 2007. The Commission found the provision to be inconsistent with the Offense Classification Criteria but noted that it would be consistent with the criteria for 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: 03/27/09

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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 895 – RESTORE CIGARETTE TAX STAMPS [v.1] (cont'd)

STATUTE

§ 105-113.34A. Forging or counterfeiting stamps.

DESCRIPTION

(Uttering forged tax stamps)

A person who

1. knowingly and willfully
2. utters, publishes, passes, or tenders as true
3. any false, altered, forged, or counterfeited stamps
4. for the purpose of evading the tax levied by Chapter 105, Article 2A (Tobacco Products Tax).

PROPOSED OFFENSE CLASS

Felony, punishable by a fine of no more than \$2,000, imprisonment of no more than five years, or both, in the discretion of the court.

ANALYSIS

The proposed bill does not assign an offense class to the offense, but it does not exempt the offense from structured sentencing either. Pursuant to G.S. 15A-1340.17(a), a “felony for which there is no classification” is a Class I felony.

The Sentencing Commission reviewed an identical provision in HB 1475/SB 1411 in June, 2007. The Commission found the provision to be inconsistent with the Offense Classification Criteria but noted that it would be consistent with the criteria for 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: 03/27/09

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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 895 – RESTORE CIGARETTE TAX STAMPS [v.1] (cont'd)

STATUTE

§ 105-113.34A. Forging or counterfeiting stamps.

DESCRIPTION

(Possessing, securing, or manufacturing stamp or impression device)

A person who

1. possesses, secures, manufactures, or causes to be secured or manufactured
2. a stamp or counterfeit impression device
3. not prescribed or authorized by the Secretary of Revenue.

PROPOSED OFFENSE CLASS

Felony, punishable by a fine of no more than \$2,000, imprisonment of no more than five years, or both, in the discretion of the court.

ANALYSIS

The proposed bill does not assign an offense class to the offense, but it does not exempt the offense from structured sentencing either. Pursuant to G.S. 15A-1340.17(a), a “felony for which there is no classification” is a Class I felony.

The Sentencing Commission reviewed an identical provision in HB 1475/SB 1411 in June, 2007. The Commission found the provision to be inconsistent with the Offense Classification Criteria but noted that it would be consistent with the criteria for 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: 03/27/09

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 913 – CLARIFY MOTOR VEHICLE FRANCHISE LAWS
[v.1]

STATUTE

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

DESCRIPTION

A person who

1. is a
 - a. motor vehicle manufacturer, factory branch, distributor, or distributor branch, or
 - b. representative, officer, or agent thereof
2. and prevents or refuses to approve
3. the relocation or addition of another franchise to a dealership facility
4. after the Commissioner of Motor Vehicles has determined that the prevention or refusal to approve is unreasonable under the circumstances.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 20-308).

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 03/27/09

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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 913 – CLARIFY MOTOR VEHICLE FRANCHISE LAWS
[v.1] (cont'd)

STATUTE

§ 20-305.1. Automobile dealer warranty obligations.

DESCRIPTION

Subsection (b3):

A person who

1. is a manufacturer and
2. takes or threatens adverse action, or otherwise discriminates,
3. against a dealer located in this State
4. because the dealer sold or leased a motor vehicle to a customer who
 - a. exported the vehicle to a foreign country, or
 - b. resold the vehicle to a third party
5. unless the dealer had actual knowledge of the customer's intention prior to the transaction.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 20-308).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 913 – CLARIFY MOTOR VEHICLE FRANCHISE LAWS
[v.1] (cont'd)

STATUTE

§ 20-305.1. Automobile dealer warranty obligations.

DESCRIPTION

Subsections (b), (f1):

A person who

1. is a component parts manufacturer and
2. fails to
 - a. perform any of its warranty obligations,
 - b. fully compensate a dealer licensed in this State for warranty parts
 - c. indemnify and hold harmless its franchised dealers licensed in this State against any judgment or settlement arising out of or relating to the alleged defective negligent manufacture, assembly or design of the manufacturer's component parts
3. or otherwise recovers any of the costs of compensating its dealers in this State for warranty parts and service, by reducing the amount due to the dealer, or by a charge, surcharge, or other imposition.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 20-308).

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.

It is currently a Class 1 misdemeanor for a motor vehicle manufacturer to engage in this conduct toward its licensed dealers in this State.

A "component parts manufacturer" manufactures or assembles and directly warrants to the consumer any new part of a motor vehicle which is not warranted by the vehicle manufacturer (G.S. 20-305.1(f1)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

IMPACT ANALYSIS NOT REQUESTED YET

232 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 926 – MISBRANDING OF BOTTLED NC SPRING WATER [v.1]

STATUTE

§ 106-122. Certain acts prohibited.

DESCRIPTION

A person who

1. bottles
2. for sale as a beverage
3. any water that is,
 - a. adulterated or
 - b. misbranded.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-124).

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.

Water is “misbranded” if it is represented to be “North Carolina natural spring water” and offered for sale as a beverage but is not collected from a North Carolina natural spring, as detailed in G.S. 106-130(16).

It is a Class 2 misdemeanor to manufacture or sell, or to deliver, hold or offer for sale, any adulterated or misbranded food (G.S. 106-122(1), 106-124). “Food” is defined to include “[a]rticles used for . . . drink for man or other animals” (G.S. 106-121(8)). Senate Bill 926 amends the definition of “food” to specify the inclusion of “water that is bottled and offered for sale as a beverage.”

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 934 – 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 Commission reviewed an identical provision in HB 108 in March, 2003, in HB 423 in March, 2005, and in HB 129 in March, 2009. The Commission found the provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 971 – CLOSE SWEEPSTAKES LOOPHOLE [v.1]

STATUTE

§ 14-306. Slot machine or device defined.

DESCRIPTION

Subsection (e):

A person who

1. possesses
2. no more than five slot machines.

PROPOSED OFFENSE CLASS

Class I felony (G.S. 20-308).

ANALYSIS

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

It is a Class 2 misdemeanor to operate, or to keep in one's possession for the purpose of being operated, a slot machine or device (G.S. 14-303).

Under G.S. 14-306.1A and 14-309, it is a Class 1 misdemeanor to operate, allow to be operated, or keep in one's possession for the purpose of operation a slot machine. The second offense is a Class H felony, and the third or subsequent offense is a Class G felony (G.S. 14-309(b)). A violation that involves the operation of five or more slot machines is a Class G felony (G.S. 14-309(c)).

(See also HB 1277).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 971 – CLOSE SWEEPSTAKES LOOPHOLE [v.1] (cont'd)

STATUTE

§ 14-306. Slot machine or device defined.

DESCRIPTION

Subsection (e):

A person who

1. possesses
2. more than five slot machines.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 20-308).

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.

Under G.S. 14-303, it is a Class 2 misdemeanor to operate, or to keep in one's possession for the purpose of being operated, a slot machine or device.

Under G.S. 14-306.1A and 14-309, it is a Class I misdemeanor to operate, allow to be operated, or keep in one's possession for the purpose of operation a slot machine. The second offense is a Class H felony, and the third or subsequent offense is a Class G felony (G.S. 14-309(b)). A violation that involves the operation of five or more slot machines is a Class G felony (G.S. 14-309(c)).

(See also HB 1277).

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

DATE PREPARED: 03/27/09

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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 971 – CLOSE SWEEPSTAKES LOOPHOLE [v.1] (cont'd)

STATUTE

§ 14-306. Slot machine or device defined.

DESCRIPTION

Subsection (g):

A person who

1. manufactures, distributes, or possesses for the purpose of manufacture or distribution
2. a slot machine.

PROPOSED OFFENSE CLASS

Class H felony.

Each machine possessed, manufactured, or distributed is a separate offense.

ANALYSIS

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

(See also HB 1277).

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

DATE PREPARED: 03/27/09

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 983 – DOT VEGETATION REMOVAL CHANGES [v.1]

STATUTE

§ 136-133.1. Outdoor advertising selective vegetation removal.

DESCRIPTION

Any person who

1. cuts, trims, or otherwise removes
2. vegetation that is
 - a. in front of, or adjacent to, outdoor advertising, and
 - b. within the limits of the highway right-of-way
3. in order to enhance the visibility of outdoor advertising
4. without a permit from the Department of Transportation.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 136-135).

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.

This Commission reviewed an identical provision in SB 150 in March of 2007, and found it to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 983 – DOT VEGETATION REMOVAL CHANGES [v.1]
(cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(1):

Any person who

1. is either
 - a. an outdoor advertising permit holder, or
 - b. the owner of the commercial, institutional, industrial or office facility, or the private property owner
2. and receives written notice
 - a. of the unauthorized destruction of vegetation
 - b. from the Division of Highways
3. who fails, within 30 days,
4. to submit a report
 - a. by a licensed landscape architect or certified arborist
 - b. containing a tree inventory of existing trees, shrubs, or groundcover impacted.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 983 – DOT VEGETATION REMOVAL CHANGES [v.1]
(cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(2):

Any person who

1. is either
 - a. an outdoor advertising permit holder, or
 - b. the owner of the commercial, institutional, industrial or office facility, or the private property owner
2. and receives written notice
 - a. of the unauthorized destruction of vegetation
 - b. from the Division of Highways
3. who fails, within 30 days,
4. to
 - a. contact the Department of Agriculture and Consumer Pesticide Safety Section, and
 - b. include a copy of the agency's report and findings
5. if unauthorized pesticides appear to have been applied.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 983 – DOT VEGETATION REMOVAL CHANGES [v.1]
(cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(3):

Any person who

1. is either
 - a. an outdoor advertising permit holder, or
 - b. the owner of the commercial, institutional, industrial or office facility, or the private property owner
2. and receives written notice
 - a. of the unauthorized destruction of vegetation
 - b. from the Division of Highways
3. who fails, within 30 days, to
 - a. obtain a copy of the police report, and
 - b. obtain and complete a State Bureau of Investigation's State Property Incident Report.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 983 – DOT VEGETATION REMOVAL CHANGES [v.1]
(cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(4):

Any person who

1. is
 - a. the owner of an outdoor advertising sign,
 - b. the owner of the property on which an outdoor advertising sign is located, or
 - c. the individual, business, or organization whose advertisement appears on the sign face,
2. and receives written notice
 - a. of the unauthorized destruction of vegetation
 - b. from the Division of Highways
3. who fails, within 30 days,
4. to submit a notarized affidavit
 - a. admitting or denying responsibility for, or knowledge of, the incident, and
 - b. disclosing any agents' or assigns' knowledge thereof.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 983 – DOT VEGETATION REMOVAL CHANGES [v.1]
(cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(5):

Any person who

1. either
 - a. owns a business located in a commercial, industrial, institutional or office facility, or on private property, or
 - b. owns a commercial, industrial, institutional or office facility, or private property
2. and receives written notice
 - a. of the unauthorized destruction of vegetation
 - b. from the Division of Highways
3. who fails, within 30 days,
4. to submit a notarized affidavit
 - a. admitting or denying responsibility for, or knowledge of, the incident, and
 - b. disclosing any agents' or assigns' knowledge thereof.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 990 – INCREASE PENALTY/TIMBER THEFT [v.1]

STATUTE

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

DESCRIPTION

A person who

1. knowingly and willfully,
2. without being the bona fide owner thereof,
3. cuts down, injures, or removes
4. any tree or log on the property of another
5. causing damages in excess of \$2,500.

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.

This offense is currently a Class 1 misdemeanor, regardless of the amount of damages. The bill retains the Class 1 misdemeanor for acts causing damages of \$2,500 or less.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 994 – ESTABLISH STATE ATHLETICS COMMISSION
[v.1]

STATUTE

§ 143-659.4. Unauthorized matches prohibited.

DESCRIPTION

A person who

1. promotes, conducts, or engages in
2. any unarmed combat match, other than professional wrestling,
3. except as authorized by Article 68A of G.S. Chapter 143.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 143-659.9(b)).

ANALYSIS

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

This provision is identical to G.S. 143-653 in Article 68, Regulation of Boxing, repealed by SB 994.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 994 – ESTABLISH STATE ATHLETICS COMMISSION
[v.1] (cont'd)

STATUTE

§ 143-659.5. Licensing and permitting.

DESCRIPTION

Subsection (a):

A person who

1. acts in this State
2. as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper or second
3. without a license from the North Carolina State Athletics Commission.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 143-659.9(b)).

ANALYSIS

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

This provision is identical to a provision in G.S. 143-654(a), repealed by SB 994, which requires licensing by the Department of Crime Control and Public Safety, Alcohol Law Enforcement Division.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 994 – ESTABLISH STATE ATHLETICS COMMISSION
[v.1] (cont'd)

STATUTE

§ 143-659.5. Licensing and permitting.

DESCRIPTION

Subsection (a):

A person who

1. is a promoter and
2. presents in this State
3. a match, other than a sanctioned amateur match,
4. without a permit from the North Carolina State Athletics Commission.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 143-659.9(b)).

ANALYSIS

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

This provision is identical to a provision in G.S. 143-654(a), repealed by SB 994, which requires a permit from the Department of Crime Control and Public Safety, Alcohol Law Enforcement Division.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 1036 – ASSAULT ON LAW ENFORCEMENT & EM
WORKER/FELONY [v.1]

STATUTE

§ 14.33. Simple assault on law enforcement officer.

DESCRIPTION

A person who

1. in the course of committing an
 - a. assault
 - b. assault and battery, or
 - c. affray
2. assaults a law enforcement officer
3. while the officer is discharging or attempting to discharge official duties.

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.

Assaulting an officer or employee of the State or any political subdivision who is discharging or attempting to discharge official duties is a Class A1 misdemeanor (G.S. 14-33(c)(4)).

Assaulting a company police officer or campus police officer in the performance of the officer's official duties is a Class A1 misdemeanor (G.S. 14-33(c)(8)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 1036 – ASSAULT ON LAW ENFORCEMENT & EM
WORKER/FELONY [v.1] (cont'd)

STATUTE

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician.

DESCRIPTION

Subsection (a):

A person who

1. commit an assault or affray upon
2. a. an emergency medical technician
b. a medical responder
c. an emergency department nurse or physician, or
d. a firefighter
3. while the person is discharging or attempting to discharge official duties.

OFFENSE CLASS

CURRENT: Class A1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

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

FINDINGS

Bill is **consistent** with 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 H felony. 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.

Note: Structured Sentencing authorizes an active punishment for a Class A1 misdemeanor, regardless of the offender's Prior Conviction Level. Structured Sentencing does not authorize an active punishment for a Class I felony in Prior Record Level I, II, or III.

DATE PREPARED: 03/27/09

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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 1036 – ASSAULT ON LAW ENFORCEMENT & EM
WORKER/FELONY [v.1] (cont'd)

STATUTE

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician.

DESCRIPTION

Subsection (b):

A person who

1. commit an assault or affray
 - a. inflicting serious bodily injury, or
 - b. using a deadly weapon other than a firearm
2. upon
 - a. an emergency medical technician
 - b. a medical responder
 - c. an emergency department nurse or physician, or
 - d. a firefighter
3. while the person is discharging or attempting to discharge official duties.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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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 1036 – ASSAULT ON LAW ENFORCEMENT & EM
WORKER/FELONY [v.1] (cont'd)

STATUTE

§ 14-288.9. Assault on emergency personnel; punishment.

DESCRIPTION

Subsection (c):

A person who

1. commits an assault
2. upon any emergency personnel
3. in an area
 - a. where a declared state of emergency exists or
 - b. within the immediate vicinity of an actual or imminent riot.

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 significant injury to person 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.

“Emergency personnel” includes law enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, and other persons providing essential services during the emergency.

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 H felony. 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.

DATE PREPARED: 03/27/09

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 1043 – NATUROPATHIC DOCTORS LICENSING ACT
[v.1]

STATUTE

§ 90-805. License required; exemptions.

DESCRIPTION

A person who

1. without a license
 - a. practices or offers to practice as a naturopathic doctor,
 - b. performs naturopathic medicine, or
 - c. uses any card, title, or abbreviation to indicate that the person is a naturopathic doctor.

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.

Naturopathic medicine is a system that employs natural therapies and diagnostic techniques for the promotion, maintenance, and restoration of health and the prevention of disease (G.S. 90-803).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/27/09

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 1045 – AMEND SENTENCING/DRUG VIOLATIONS [v.1]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

G.S. 90-95(h)(5) [mandatory sentences for drug trafficking]:

Mandatory sentence may be reduced and/or suspended, if the defendant:

1. has no prior convictions that produced or threatened serious bodily harm
2. has no prior felony convictions for the manufacture, sale, delivery, or possession of controlled substances, and
3. did not possess a firearm during commission of the offense.

PUNISHMENT RANGE

CURRENT: Mandatory sentence for drug trafficking may be reduced and/or suspended only in cases of “substantial assistance.”

PROPOSED: Mandatory sentence for drug trafficking may be reduced and/or suspended for substantial assistance or upon the findings described above.

ANALYSIS

Drug trafficking offenses are not punished under Structured Sentencing.

The Commission reviewed a similar provision in SB 727 in May of 2007, and found that G.S. 164-41 was inapplicable.

(See also HB 1362).

FINDINGS

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

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

G.S. 164-41 is not applicable.

Drug trafficking offenses are not punished under Structured Sentencing.

DATE PREPARED: 03/27/2009

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 1056 – REQUIRE FIREARMS CERTIFICATION/BAIL
BONDSMAN [v.1]

STATUTE

§ 58-71-51. Armed licensee required to have firearm registration permit; firearms training; liability insurance.

DESCRIPTION

Any person who

1. acts as a bail bondsman and
2. carries a firearm in the performance of his or her duties
3. without first
 - a. meeting the qualifications of this section, and
 - b. obtaining a firearm registration permit issued by the Commissioner of Insurance.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 58-71-185).

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.

Qualifications for a registration permit include the following: (1) satisfactory completion of an approved training course; (2) compliance with all rules adopted to implement this section; (3) being mentally and physically capable of handling a firearm within the guidelines set forth by the Commissioner of Insurance and the Attorney General; and (4) submission of evidence of a liability insurance policy as prescribed by statute (G.S. 58-71-51).

FINDINGS

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

DATE PREPARED: 04/24/2009

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 926/SB 1087 – CONTINUOUS ALCOHOL MONITORING SYSTEMS [v.1]

STATUTE

§ 15A-1340.11. Definitions

DESCRIPTION

Subsection (6): Intermediate punishment.

PUNISHMENT RANGE

CURRENT:

A sentence of supervised probation that includes at least one of the following conditions:

1. Special probation.
2. Assignment to a residential program.
3. House arrest with electronic monitoring.
4. Intensive probation.
5. Assignment to a day reporting center.
6. Assignment to a drug treatment court program.

PROPOSED:

7. Abstinence from alcohol consumption as verified by continuous alcohol monitoring system approved by the Department of Correction.

ANALYSIS

Under G.S. 15A-1340.11(2), a community punishment may not include any of the conditions of an intermediate punishment listed in subsection (6).

The bill also allows the court to impose continuous alcohol monitoring as a special condition of probation, if a substance abuse assessment identifies alcohol dependency or chronic abuse, or if the offender has two or more convictions for an alcohol-related offense (G.S. 15A-1343(b1)(2c)).

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: 04/24/09

IMPACT ANALYSIS NOT REQUESTED YET