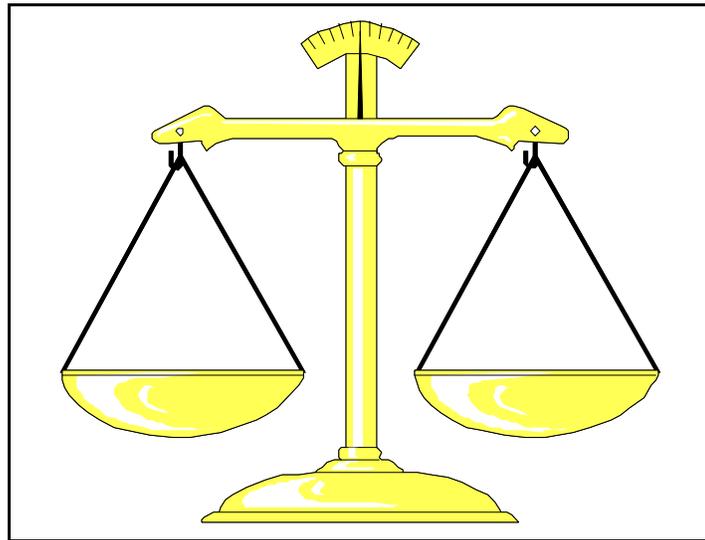


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT #3 ON PROPOSED LEGISLATION
PURSUANT TO N.C.G.S. 164-43***

***SUBMITTED TO THE 2009 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 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 June 10, 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 June 12, 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 323 – Prevent Theft of Scrap Metals [Ed.3]

STATUTE

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

DESCRIPTION

Subsection (d)(3) (first offense):

A person who

1. is a secondary metals recycler
2. purchases any central air conditioner evaporator coils or condensers, or catalytic converters
3. that are not attached to a vehicle.

PROPOSED OFFENSE CLASS

First offense, 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.

Proposed G.S. 66-11(d)(3) further provides that a secondary metals recycler may purchase such items from a company, contractor, or individual that is in the business of installing, replacing, maintaining, or removing these items, provided the secondary metals recycler is prohibited from paying cash or making payment of any kind for any central air conditioner evaporator coil or condenser in whole or in part or a catalytic converter that is not attached to a vehicle.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 – Prevent Theft of Scrap Metals [Ed.3] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (d)(3) (second and subsequent offenses):

A person who

1. is a secondary metals recycler
2. purchases any central air conditioner evaporator coils or condensers, or catalytic converters
3. that are not attached to a vehicle.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

Proposed G.S. 66-11(d)(3) further provides that a secondary metals recycler may purchase such items from a company, contractor, or individual that is in the business of installing, replacing, maintaining, or removing these items, provided the secondary metals recycler is prohibited from paying cash or making payment of any kind for any central air conditioner evaporator coil or condenser in whole or in part or a catalytic converter that is not attached to a vehicle.

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 OF REVIEW: 06/12/09

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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 – Prevent Theft of Scrap Metals [Ed.3] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (d)(4) (first offense):

A person who

1. is a secondary metals recycler
2. purchases a nonferrous metal property
3. not listed in subdivision (5) of this section
4. for any cash consideration greater than one hundred dollars per transaction.

PROPOSED OFFENSE CLASS

First offense, 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.

Proposed G.S. 66-11(d)(4) further provides that a secondary metals recycler may purchase other nonferrous metal property for an amount in excess of one hundred dollars if the payment is made by check, money order, or a cash card system that captures the photograph of the person selling the nonferrous metal if the secondary metals recycler maintains the photograph for 90 days.

The metals listed in subsection (d)(5) include: 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, including any made of stainless steel 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 railroad and marked and otherwise identified as such, or any historical marker or any grave marker or burial vase.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 – Prevent Theft of Scrap Metals [Ed.3] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (d)(4) (second and subsequent offenses):

A person who

1. is a secondary metals recycler
2. purchases a nonferrous metal property
3. not listed in subdivision (5) of this section
4. for any cash consideration greater than one hundred dollars per transaction.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, 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 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 OF REVIEW: 06/12/09

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 323 – Prevent Theft of Scrap Metals [Ed.3] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (d)(5) (first offense):

A person who

1. is a secondary metals recycler
2. purchases any of the statutorily prescribed regulated metals property,
3. except as provided by G.S. 66-11(g).

PROPOSED OFFENSE CLASS

First offense, 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.

Proposed G.S. 66-11(d)(5) provides the following list of regulated metals property: 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, including any made of stainless steel 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 railroad and marked and otherwise identified as such, or any historical marker or any grave marker or burial vase.

Proposed G.S. 66-11(g) states that this section does not apply to (1) purchases of regulated metals property from a manufacturing, industrial, government, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business; or (2) purchases of regulated metals property that involve only beverage containers.

The Legislative Review Subcommittee reviewed a similar provision in House Bill 323, Ed.1 on May 1, 2009, and found it to be consistent 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 OF REVIEW: 06/12/09

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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 – Prevent Theft of Scrap Metals [Ed.3] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (d)(5) (second and subsequent offenses):

A person who

1. is a secondary metals recycler
2. purchases any of the statutorily prescribed regulated metals property,
3. except as provided by G.S. 66-11(g).

PROPOSED OFFENSE CLASS

Second and subsequent offenses, 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 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 House Bill 323, Ed.1, reviewed by the Legislative Review Subcommittee in May 2009. The subcommittee found the classification to be inconsistent with the Offense Classification Criteria, with a note that the Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level, and increasing the offense class based on prior convictions is inconsistent with structured sentencing.

FINDINGS

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

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

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 OF REVIEW: 06/12/09

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 440 – The Nicholas Adkins School Bus Safety Act [Ed.3]

STATUTE

§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

DESCRIPTION

Subsection (g):

A person who

1. is a driver of a vehicle
2. and willfully
3. proceeds to move, pass, or attempt to pass
4. a school bus displaying its mechanical stop signal or red flashing lights, which is stopped for the purpose of receiving or discharging passengers
5. before the mechanical stop signal is withdrawn, the red flashing lights are turned off, and the school bus has begun to move,
6. striking and causing the death of any person.

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.

Currently, G.S. 20-217(g) provides that any person willfully violates subsection (a), proceeding to move, pass or attempt to pass a stopped school bus before the school bus has withdrawn the stop signal, turned off the red flashing lights and begun to move, is guilty of 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 OF REVIEW: 06/12/09

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 – Selling Motor Vehicle Registration Unlawful [Ed.2]

STATUTE

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

DESCRIPTION

Subsection (l):

A person

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

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.

House Bill 471, Ed. 1, was reviewed at the April 3, 2009 meeting of the Legislative Review Subcommittee. The Subcommittee found the bill 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 OF REVIEW: 06/12/09

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 [Ed.2]

STATUTE

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

DESCRIPTION

Subsection (a)(1)(h) (first offense):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles
3. solely for the purposes of dismantling or wrecking such motor vehicle for
 - a. the recovery of scrap metal, or
 - b. the sale of parts only,
4. and fails to maintain a record of all purchase transactions of motor vehicles, including
 - a. the name and address of the person from whom the motor vehicle is being purchased, and
 - b. the license plate number and state of issuance of the vehicle used to deliver the vehicle being sold.

PROPOSED OFFENSE CLASS

First offense, Class 1 misdemeanor (G.S. 20-62.1(c)).

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 substantially similar to a provision in House Bill 608, Ed. 1, reviewed by the Legislative Review Subcommittee in April 2009. The subcommittee found the provision to be consistent 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 OF REVIEW: 06/12/09

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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 [Ed.2] (cont'd)

STATUTE

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

DESCRIPTION

Subsection (a)(1)(h) (second and subsequent offenses):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles
3. solely for the purposes of dismantling or wrecking such motor vehicle for
 - a. the recovery of scrap metal, or
 - b. the sale of parts only,
4. and fails to maintain a record of all purchase transactions of motor vehicles, including
 - a. the name and address of the person from whom the motor vehicle is being purchased, and
 - b. the license plate number and state of issuance of the vehicle used to deliver the vehicle being sold.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, Class I felony (G.S. 20-62.1(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.

This provision is substantially similar to a provision in House Bill 608, Ed. 1, reviewed by the Legislative Review Subcommittee in April 2009. The subcommittee found the provision to be inconsistent with the Offense Classification Criteria and noted that 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 OF REVIEW: 06/12/09

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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 [Ed.2] (cont'd)

STATUTE

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

DESCRIPTION

Subsection (a)(1)(j) (first offense):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles
3. solely for the purposes of dismantling or wrecking such motor vehicle for
 - a. 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,
 - a. a report, as described below, filed with the Division of Motor Vehicles.

PROPOSED OFFENSE CLASS

First offense, Class 1 misdemeanor (G.S. 20-62.1(c)).

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.

Proposed G.S. 20-62.1(a)(1)(j) provides that an individual or entity engaged in the business of operating a salvage yard or secondary metals recycler shall file a report with the Division at a frequency not less than weekly. The report shall contain an inventory of all motor vehicles purchased, which shall include the vehicle identification number of each vehicle, the date on which each vehicle was obtained, the name of the person or entity from whom it was obtained, and a statement of whether the vehicle was or will be crushed or disposed of for sale or other purposes.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING 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 [Ed.2] (cont'd)

STATUTE

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

DESCRIPTION

Subsection (a)(1)(j) (second and subsequent offenses):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles
3. solely for the purposes of dismantling or wrecking such motor vehicle for
 - a. 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,
 - a. a report, as described below, filed with the Division of Motor Vehicles.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, Class I felony (G.S. 20-62.1(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.

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.

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NORTH CAROLINA SENTENCING 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 [Ed.2] (cont'd)

STATUTE

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

DESCRIPTION

Subsection (a)(1)(k) (first offense):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles
3. solely for the purposes of dismantling or wrecking such motor vehicle for
 - a. 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
 - a. a receipt for the purchase of the motor vehicle that his signed by all parties to the sale.

PROPOSED OFFENSE CLASS

First offense, Class 1 misdemeanor (G.S. 20-62.1(c)).

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 substantially similar to a provision in House Bill 608, Ed. 1, reviewed by the Legislative Review Subcommittee in April 2009. The subcommittee found the provision to be consistent 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 OF REVIEW: 06/12/09

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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 [Ed.2] (cont'd)

STATUTE

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

DESCRIPTION

Subsection (a)(1)(k) (second and subsequent offenses):

A person who

1. is a secondary metals recycler and a salvage yard,
2. purchases motor vehicles
3. solely for the purposes of dismantling or wrecking such motor vehicle for
 - a. 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
 - a. a receipt for the purchase of the motor vehicle that his signed by all parties to the sale.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, Class I felony (G.S. 20-62.1(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.

This provision is substantially similar to a provision in HB 608, Ed. 1, reviewed by the Legislative Review Subcommittee in April 2009. The subcommittee found the provision to be inconsistent with the Offense Classification Criteria, noting that 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 OF REVIEW: 06/12/09

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 – Paraphernalia Control Act [Ed.4]

STATUTE

§ 90-113.82. Glass tubes or splitters; restrictions on sales.

DESCRIPTION

Subsection (a):

A person who

1. is a retailer and
2. willfully and knowingly
3. offers glass tubes or splitters for retail sale by self-service.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 90-113.83(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.

“Glass tubes” are defined in G.S. 90-113.81(a) as an object which is a hollow glass cylinder, either open or closed at either end, is no less than two or more than seven inches in length, is no less than one-eighth inch or more than three-fourths inch in diameter, may be used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, and is sold individually, or in connection with another object such as a novelty holder, flower vase, or pen (list is illustrative, not exclusive).

A “splitter” is defined in G.S. 90-113.81(c) as a ring-shaped devise that allows insertion of a wrapped tobacco product, such as a cigar, so that it can be pulled through the device, and which cuts or slices the wrapping of the tobacco product along the product’s length as it is drawn through the device.

This provision is substantially similar to a provision in House Bill 722, Ed. 1, reviewed by the Legislative Review Subcommittee in April 2009. The subcommittee 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.

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NORTH CAROLINA SENTENCING 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 – Paraphernalia Control Act [Ed.4] (cont'd)

STATUTE

§ 90-113.82. Glass tubes or splitters; restrictions on sales.

DESCRIPTION

Subsection (b):

A person who:

1. is a retailer and
2. knowingly and willfully
3. transfers to any member of the public
4. a glass tube or splitter
5. without requiring the purchaser to
 - a. present identification that includes a photograph that is an accurate depiction of the person and that also includes the person's name and current address,
 - b. enter his/her name and current address on a record that the retailer shall maintain, and
 - c. sign his/her name, verifying by signature the glass tube or splitter will not be used as drug paraphernalia.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 90-113.83(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 provision is substantially similar to a provision in House Bill 722, Ed. 1, reviewed by the Legislative Review Subcommittee in April 2009. The subcommittee 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.

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NORTH CAROLINA SENTENCING 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 – Paraphernalia Control Act [Ed.4] (cont'd)

STATUTE

§ 90-113.82. Glass tubes or splitters; restrictions on sales.

DESCRIPTION

Subsection (b):

A person who:

1. knowingly makes a false statement or representation in fulfilling the requirements of G.S. 90-113.82(b).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 90-113.83(b)).

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING 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 – Paraphernalia Control Act [Ed.4] (cont'd)

STATUTE

§ 90-113.82. Glass tubes or splitters; restrictions on sales.

DESCRIPTION

Subsection (c):

A person who:

1. is a retailer where glass tubes are available for sale
2. willfully and knowingly
3. fails to maintain the record described in G.S. 113-82(b) for a period of two years from the date of each transaction.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 90-113.83(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 provision is substantially similar to a provision in House Bill 722, Ed. 1, reviewed by the Legislative Review Subcommittee in April 2009. The subcommittee 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.

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NORTH CAROLINA SENTENCING 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 – Paraphernalia Control Act [Ed.4] (cont’d)

STATUTE

§ 90-113.82. Glass tubes or splitters; restrictions on sales.

DESCRIPTION

Subsection (d):

A person who:

1. is a retailer where glass tubes are available for sale
2. willfully and knowingly
3. fails keep readily available, within 48 hours of the time of the transaction, for inspection by an authorized official, the required record.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 90-113.83(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.

“Authorized officials” are federal, State, or local law enforcement.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 – Paraphernalia Control Act [Ed.4] (cont'd)

STATUTE

§ 90-113.82. Glass tubes or splitters; restrictions on sales.

DESCRIPTION

Subsection (e):

A person who:

1. is a retailer where glass tubes are available for sale
2. willfully and knowingly
3. fails to train its agents and employees of the requirements of G.S. 90-113.82.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 90-113.83(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 provision is substantially similar to a provision in House Bill 722, Ed. 1, reviewed by the Legislative Review Subcommittee in April 2009. The subcommittee 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 OF REVIEW: 06/12/09

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 – Targeted Picketing [Ed.3]

STATUTE

§ 14-277.4. Targeted picketing of a residence.

DESCRIPTION

Subsection (c):

A person who

1. engages in targeted picketing
2. when the person knows or should know
3. that the manner in which he/she is picketing would cause, in a reasonable person, either:
 - a. fear for the person's safety or the safety of the person's immediate family or close personal associates, or
 - b. substantial emotional distress.

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. 14-277.3A(b)(4) defines substantial emotional distress as significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

This bill does not prohibit general picketing that proceeds through residential neighborhoods or past residences.

This provision is substantially similar to a provision in House Bill 885, Ed. 2, reviewed by the Legislative Review Subcommittee in May 2009. The subcommittee found the provision to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor, with a note that it would be consistent 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 OF REVIEW: 06/12/09

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 1218 – No Sludge Applied on Certain Public Spaces [Ed.1]

STATUTE

§ 130A-291.1. Septage management program; permit fees.

DESCRIPTION

A person who

1. is required to obtain a septage management permit from the Department of Environment and Natural Resources,
2. engages in the land application of septage, and
3. applies the septage on a public park, school grounds, or athletic field.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 130A-25(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.

“Septage” is defined as solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system (G.S. 130A-290(a)(32)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 1218 – No Sludge Applied on Certain Public Spaces [Ed.1]
(cont'd)

STATUTE

§ 143-215.1. Control of sources of water pollution; permits required.

DESCRIPTION

A person who

1. is required to obtain a permit under G.S. 143-215.1(d) for the land application of waste, when the waste is “sludge” as defined by G.S. 130A-290(34), and
2. negligently applies the sludge on a public park, school grounds, or athletic field.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 143-215.6B(f)).

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.

“Sludge” is any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects (G.S. 130A-290(a)(34)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 1218 – No Sludge Applied on Certain Public Spaces [Ed.1]
(cont'd)

STATUTE

§ 143-215.1. Control of sources of water pollution; permits required.

DESCRIPTION

A person who

1. is required to obtain a permit under G.S. 143-215.1(d) for the land application of waste, when the waste is “sludge” as defined by G.S. 130A-290(34), and
2. knowingly and willfully applies the sludge on a public park, school grounds, or athletic field.

PROPOSED OFFENSE CLASS

Class I felony (G.S. 143-215.6B(g)).

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.

“Sludge” is any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects (G.S. 130A-290(a)(34)).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 1218 – No Sludge Applied on Certain Public Spaces [Ed.1]
(cont'd)

STATUTE

§ 143-215.1. Control of sources of water pollution; permits required.

DESCRIPTION

A person who

1. is required to obtain a permit under G.S. 143-215.1(d) for the land application of waste, when the waste is “sludge” as defined by G.S. 130A-290(34), and
2. knowingly applies the sludge on a public park, school grounds, or athletic field
3. while knowing that the act places another person in imminent danger of death or serious bodily injury.

PROPOSED OFFENSE CLASS

Class C felony (G.S. 143-215.6B(h)).

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.

“Sludge” is any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects (G.S. 130A-290(a)(34)).

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

DATE OF REVIEW: 06/12/09

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 [Ed.2]

STATUTE

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

DESCRIPTION

A person who

1. was convicted of a Class B1, B2, C, or D felony committed at 13, 14, or 15 years of age
2. received an active sentence with a minimum term of at least 84 months, and
3. has served at least 84 months of the sentence.

PUNISHMENT RANGE

CURRENT: Release onto post-release supervision 9 months prior to the expiration of the person's maximum prison term less any accumulated earned time (G.S. 15A-1368.2(a)).

PROPOSED: Upon the person's filing of a petition for post-sentencing review, the superior court may reduce or suspend the sentence, conditioned upon the successful completion of a period of post-release supervision as ordered by the court.

ANALYSIS

The court determines the date of release and may impose a longer period of post-release supervision than is provided by G.S. 15A-1368.2.

If post-release supervision is revoked in response to a violation, the modified sentence is void and the person must serve the remainder of the maximum term of the original sentence.

The Sentencing Commission reviewed a similar provision in Edition 1 of HB 1242 on May 1, 2009, and found it to be inconsistent with G.S. 164-41. Edition 1 of the bill did not condition the modification of a sentence upon the successful completion of post-release supervision, did not authorize the court to impose a longer period of post-release supervision than required by G.S. 15A-1368.2, and did not provide that the modified sentence would be void if post-release supervision is revoked.

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 OF REVIEW: 06/12/2009

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 1255 – Sex Offenders/Permanent No Contact Order [Ed.2]

STATUTE

§ 15A-1340.50. Permanent no contact order prohibiting future contact by convicted sex offender with crime victim.

DESCRIPTION

A person who

1. knowingly violates
2. a permanent no contact order entered pursuant to Article 81D (Permanent No Contact Order Against Convicted Sex Offender) of G.S. Chapter 15A.

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 bill would allow the sentencing judge to enter an order permanently enjoining a defendant convicted of an offense requiring sex offender registration from having any contact with the victim.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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 [Ed.3]

STATUTE

§ 14-72.8. Larceny of motor vehicle parts.

DESCRIPTION

(First offense)

A person who

1. commits larceny
2. of a motor vehicle part valued at \$1,000 or less

PROPOSED OFFENSE CLASS

“[M]ay be punished” as a Class 1 misdemeanor.

ANALYSIS

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

Edition 1 of the bill provided that the offense “shall be punished” as a Class 1 misdemeanor. The Commission reviewed Edition 1 on May 1, 2009 and found it to be consistent 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 use of the permissive term “may” makes the classification of the offense ambiguous and, therefore, inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING 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 [Ed.3] (cont’d)

STATUTE

§ 14-72.8. Larceny of motor vehicle parts.

DESCRIPTION

(Second or subsequent offense)

A person who

1. commits larceny
2. of a motor vehicle part valued at \$1,000 or less

PROPOSED OFFENSE CLASS

“[M]ay be punished” as a 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.

Edition 1 of the bill provided that the offense “shall be punished” as a Class I felony. The Commission reviewed Edition 1 on May 1, 2009 and found it to be inconsistent with the Offense Classification Criteria for a Class I felony.

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 use of the permissive term “may” makes the classification of the offense ambiguous and, therefore, inconsistent with Structured Sentencing.

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 OF REVIEW: 06/12/09

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 1287 – Recycle Products Containing Mercury [Ed.4]

STATUTE

§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

DESCRIPTION

Subsection (m):

A person who

1. knowingly disposes of
2. mercury-containing
 - a. fluorescent lights, or
 - b. thermostats
3. in an unlined landfill.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 130A-25(a), 14-3(a)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 1287 – Recycle Products Containing Mercury [Ed.4] (cont'd)

STATUTE

§ 130A-310.61. Removal and recycling of mercury-containing products from structures to be demolished.

DESCRIPTION

A person who

1. is the
 - a. contractor responsible for the demolition of a building or structure, or
 - b. owner of the building or structure to be demolished
2. and fails to remove all mercury-containing fluorescent lights and thermostats from the building or structure
3. prior to the demolition.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 130A-25(a), 14-3(a)).

ANALYSIS

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

FINDINGS

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

DATE OF REVIEW: 06/12/09

IMPACT OF BILL ON NEXT PAGE

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

HB 1287: RECYCLE PRODUCTS CONTAINING MERCURY [v.2]

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

Section 1. Enacts new Part 7 (Management of Certain Products That Contain Mercury) of G.S. Chapter 130A (Public Health), Article 9 (Solid Waste Management).

G.S. 130A-310.60. Recycling required by State agencies.

Subsection (a) requires each State agency and political subdivision using State funds to establish a program to collect and recycle spent, mercury-containing fluorescent lights and thermostats which are generated by State offices. Subsection (b) requires each agency to submit a report to the Department of Administration and the Department of Environment and Natural Resources (DENR) on or before February 1, 2010, documenting its compliance with subsection (a). These Departments must compile the information and submit a joint report to the Environmental Review Commission by May 1, 2010; and DENR must include information about this program in its annual report to the Commission under G.S. 130A-309.06(c), regarding the status of solid waste management efforts in the State.

A person (including an individual, unit of local government, or State agency, *see* G.S. 130A-290(22)), who knowingly makes any false statement, representation, or certification in a report or document filed or required to be maintained under Article 9 is guilty of a Class 2 misdemeanor (per G.S. 130A-26.2, Penalty for false reporting under Article 9). Under G.S. 13A-310.60, agencies are required to report only once, by February 1, 2010, limiting the potential impact of this provision.

Effective upon becoming law.

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

G.S. 130A-310.61. Removal and recycling of mercury-containing products from structures to be demolished.

Section 130A-310.61 requires the contractor responsible for the demolition of a building or structure or the owner of the building or structure to be demolished to remove all mercury-containing fluorescent lights and thermostats prior to the demolition. Violation of any provision of Chapter 130A is a Class 1 misdemeanor pursuant to G.S. 130A-25(a) (and G.S. 14-3(a)). In FY 2007/08, there were 9 convictions under G.S. 130A-25.

Effective upon becoming law.

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

Section 2. Adds new subsection (m) to G.S. 130-309.10, Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited. Subsection (m) prohibits the knowing disposal of mercury-containing fluorescent lights and thermostats in an unlined sanitary landfill for the disposal of construction and demolition debris waste, or in any other unlined landfill. Violation is a Class 1 misdemeanor pursuant to G.S. 130A-25(a) (and 14-3(a)). In FY 2007/08, there were 9 convictions under G.S. 130A-25.

Effective December 1, 2009, and applies to offenses occurring on or after that date.

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 1317 – Sex Offender Registry Changes [Ed.2]

STATUTE

§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

DESCRIPTION

A person who

1. is required to register as a sex offender, and
2. willfully fails to notify the registering sheriff of
3. the establishment of a temporary residence.

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 person required to register as a sex offender 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 more than 30 total days in a calendar year. Notice must be given in person within 72 hours after the offender knows or should know that he or she will be maintaining the temporary residence (G.S. 14-208.9(a1)).

Edition 1 of the bill limited this provision to sexually violent predators and offenders subject to the most stringent of three tiers of registration requirements. The Commission reviewed Edition 1 on May 1, 2009 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 OF REVIEW: 06/12/09

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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 [Ed.2] (cont'd)

STATUTE

§ 14-208.11B. Failure to report termination of temporary residence.

DESCRIPTION

(First offense)

A person who

1. is required to register as a sex offender, and
2. willfully fails to notify 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 person required to register as a sex offender 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. 14-208.9(a1)).

Edition 1 of the bill limited this provision to sexually violent predators and offenders subject to the most stringent of three tiers of registration requirements. The Commission reviewed Edition 1 on May 1, 2009 and found it inconsistent with the Offense Classification Criteria for a Class A1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 [Ed.2] (cont'd)

STATUTE

§ 14-208.11B. Failure to report termination of temporary residence.

DESCRIPTION

(Second or subsequent offense)

A person who

1. is required to register as a sex offender, and
2. willfully fails to notify the registering sheriff
3. that the person has ceased to abide at a temporary residence.

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.

Edition 1 of the bill limited this provision to sexually violent predators and offenders subject to the most stringent of three tiers of registration requirements. The Commission reviewed Edition 1 on May 1, 2009 and found it inconsistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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 OF REVIEW: 06/12/09

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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 [Ed.2] (cont'd)

STATUTE

§ 14-208.16. Residential restrictions.

DESCRIPTION

A person who

1. is a registered sex offender, and
2. knowingly maintains a temporary residence
3. within 1,000 feet of the property on which any school or child care center is located.

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.

A "temporary residence" is a place where a person abides other than the person's reported residential address (G.S. 14-208.6(10)).

It is currently a Class G felony to knowingly reside within 1,000 feet of the property on which any school or child care center is located (G.S. 14-208.16).

Edition 1 of the bill limited this provision to sexually violent predators and offenders subject to the most stringent of three tiers of registration requirements. The Commission reviewed Edition 1 on May 1, 2009 and found it inconsistent with the Offense Classification Criteria for a Class G felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 [Ed.2] (cont'd)

STATUTE

§ 14-208.18. Sex offender unlawfully on premises.

DESCRIPTION

A person who

1. is required to register under the Sex Offender Registration Program, or its out-of-state equivalent,
2. committed
 - a. an offense in G.S. Chapter 14, Article 7A (Rape and Other Sex Offenses), or
 - b. an offense where the victim of the offense was under the age of 16 years at the time of the offense,
3. and is knowingly on any of the following premises:
 - a. an institution of higher education.
 - b. a gymnasium or fitness facility that allows minors to use the facility.
 - c. a county or state fair while the fair is being held.
 - d. a public library while activities or programs primarily intended for minors are being conducted.
 - e. a movie theatre showing a movie rated “G” or “PG” or
 - f. a location that is a school bus stop, while the place is being used as a school bus stop.

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.

It is currently a Class H felony under G.S. 14-208.18 for these offenders to knowingly be (1) on the premises of any place intended primarily for the use, care, or supervision of minors, (2) within 300 feet of any location intended primarily for the use, care, or supervision of minors located on premises that are not intended primarily for this purpose, or (3) at any place where minors gather for regularly scheduled educational, recreational or social programs. The Sentencing Commission reviewed this offense in HB 933 [v.2] in June, 2008, and found it to be inconsistent with the Offense Classification Criteria for a Class H felony, but noted that it would be consistent with a Class H felony if the offense was limited to being on the specified premises.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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 [Ed.2]

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. while engaged in an affray
2. uses a deadly weapon
3. resulting in the death of another.

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.

Edition 1 of the bill made it a Class C felony to engage in an affray in which a deadly weapon is used, resulting in another person's death. The Sentencing Commission reviewed Edition 1 of HB 1332 on May 1, 2009, and found the Offense Classification Criteria not to be 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 OF REVIEW: 06/12/09

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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 [Ed.2]
(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. while engaged in an affray
2. uses a deadly weapon
3. resulting in the serious bodily injury of another.

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.

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)).

Edition 1 of the bill made it a Class E felony to engage in an affray in which a deadly weapon is used, resulting in serious bodily injury to another person. The Sentencing Commission reviewed Edition 1 of HB 1332 on May 1, 2009, and found the offense to be consistent with the Offense Classification Criteria for a Class E felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1378 – Clean Marinas/Pumpout Stations [Ed.3]

STATUTE

§ 77-128. Vessel owner and operator required to keep log of pumpout dates.

DESCRIPTION

A person who

1. is the owner or operator
2. of a vessel having a marine sanitation device
3. and fails to maintain a record of
 - a. the date of each pumpout of the marine sanitation device and
 - b. the location of the pumpout facility
4. for a period of one year from the date of the pumpout.

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 OF REVIEW: 06/12/09

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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 1378 – Clean Marinas/Pumpout Stations [Ed.3] (cont'd)

STATUTE

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

DESCRIPTION

A person who

1. discharges
2. into coastal waters
3. 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.

In Edition 1 of HB 1378, the offense applied only to operators of a vessel. The Sentencing Commission reviewed Edition 1 on May 1, 2009, and found the offense to be consistent 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 OF REVIEW: 06/12/09

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1404 – Naturopathic Doctors Licensing Act [Ed.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).

The Sentencing Commission reviewed an identical provision in SB 1043 on April 3, 2009, and found it to be inconsistent 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.

DATE OF REVIEW: 06/12/09

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 1444 – Limited Hunting Privilege/Nonviolent Felons [Ed.2]

STATUTE

§ 14-415.51. Violations of this Article; penalties.

DESCRIPTION

Subsection (a): (Second or subsequent offense)

A person who

1. has been issued a valid limited hunting privilege permit and
 - a. carries a firearm without the permit in the person's possession
 - b. carries a firearm not described on the permit, or
 - c. fails to disclose to a law enforcement officer that the person holds a valid permit and is carrying a firearm, as required by G.S. 14-415.41.

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 first offense under subsection (a) is an infraction.

The bill would create a limited hunting privilege permit, allowing persons who were convicted of one non-violent felony and who otherwise meet the criteria in G.S. 14-415.42 to own and carry a rifle or shotgun solely for the purpose of hunting game or related hunting activities.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

BILL CONTINUED ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1444 – Limited Hunting Privilege/Nonviolent Felons [Ed.2]
(cont'd)

STATUTE

§ 14-415.51. Violations of this Article; penalties.

DESCRIPTION

Subsection (b):

A person who

1. makes a false affidavit, or knowingly swears or affirms falsely,
2. to any matter or thing required to be sworn or affirmed by Article 54C (Limited Hunting Privilege Permit).

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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 1583 – DOT Vegetation Removal Changes [Ed.1]

STATUTE

§ 136-133.1. Outdoor advertising selective vegetation removal.

DESCRIPTION

A 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 983 in April of 2009, and 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 OF REVIEW: 06/12/09

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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 1583 – DOT Vegetation Removal Changes [Ed.1] (cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(1):

A 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.

This Commission reviewed an identical provision in SB 983 in April of 2009, 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 OF REVIEW: 06/12/09

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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 1583 – DOT Vegetation Removal Changes [Ed.1] (cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(2):

A 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
 - c. 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.

This Commission reviewed an identical provision in SB 983 in April of 2009, 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 OF REVIEW: 06/12/09

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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 1583 – DOT Vegetation Removal Changes [Ed.1] (cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(3):

A 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.

This Commission reviewed an identical provision in SB 983 in April of 2009, 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 OF REVIEW: 06/12/09

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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 1583 – DOT Vegetation Removal Changes [Ed.1] (cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(4):

A 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
 - c. 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.

This Commission reviewed an identical provision in SB 983 in April of 2009, 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 OF REVIEW: 06/12/09

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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 1583 – DOT Vegetation Removal Changes [Ed.1] (cont'd)

STATUTE

§ 136-133.6. Unlawful destruction or illegal cutting.

DESCRIPTION

Subdivision (a)(5):

A 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
 - d. 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.

This Commission reviewed an identical provision in SB 983 in April of 2009, 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 OF REVIEW: 06/12/09

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 1606 – Adjust Prior Record Point Levels [Ed.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 SB 489 in April of 2009, HB 1445 in May of 2009, and found it to be consistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE OF REVIEW: 06/12/09

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 1607 – Adjust B1-E Felony Penalties [Ed.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 three months. An offender would be on post-release supervision for twelve months.

ANALYSIS

This Sentencing Commission reviewed an identical provision in SB 490 in April of 2009, and HB 1445 in May of 2009, and found it to be consistent with G.S. 164-41.

FINDINGS

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

DATE OF REVIEW: 06/12/09

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 167 – No Smoking/Cell Phones on Prison Grounds [Ed.2]

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 tobacco products or mobile phones to inmates.

DESCRIPTION

Subsection (c):

A person who

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

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.

On February 27, 2009, the Sentencing Commission reviewed Edition 1 of SB 167, 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, but noted that it would also be consistent with the 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 OF REVIEW: 06/12/09

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 167 – No Smoking/Cell Phones on Prison Grounds [Ed.2]
(cont'd)

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.~~ facilities; furnishing tobacco products or mobile phones to inmates.

DESCRIPTION

Subsection (d):

A person who

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

PROPOSED OFFENSE CLASS

Class 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.

On February 27, 2009, the Sentencing Commission reviewed Edition 1 of SB 167, 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, but noted that it would also be consistent with the 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 OF REVIEW: 06/12/09

IMPACT OF BILL ON NEXT PAGE

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

**SB 167: NO SMOKING/CELL PHONES ON PRISON GROUNDS [2]
JUDICIARY I COMMITTEE SUBSTITUTE ADOPTED 5/7/09**

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

SECTION 3. This section adds new subsections (c) and (d) to 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; furnishing tobacco products or mobile phones to inmates.

Subsection (c) makes it a Class 1 misdemeanor for a person to knowingly give or sell any tobacco product, as defined in G.S. 148-23.1(d)(2), to an inmate in the custody of the Department of Correction and on the premises of a correctional facility, or to knowingly give or sell any tobacco product to a person who is not an inmate for delivery to an inmate in the custody of the Department of Correction and on the premises of a correctional facility, other than for authorized religious purposes. Because this subsection 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 this proposed subsection. 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.

Subsection (d) makes it a Class 1 misdemeanor for a person to knowingly give or sell a mobile telephone or other wireless communication device, or a component of one of those devices, to an inmate in the custody of the Department of Correction, or to knowingly give or sell any such device or component to a person who is not an inmate for delivery to an inmate. Because this subsection 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 this proposed subsection. 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.

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.

Effective March 1, 2010, and applies to offenses committed 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 836 – Removal of Electronic Monitoring Device [Ed.2]/
SB 713 – Removal of Electronic Monitoring Device [Ed.3]

STATUTE

§ 14-226.3. Interference with electronic monitoring device.

DESCRIPTION

A person who

1. is required to comply with electronic monitoring as a result of a criminal conviction, and
2. knowingly and without authority does, or requests or solicits another to,
3. remove, destroy, or circumvent the operation of
4. an electronic monitoring device used to monitor a person
 - a. on house arrest or
 - b. wearing an electronic monitoring device as a condition of bond, pretrial release, probation, parole, or post-release supervision.

PROPOSED OFFENSE CLASS

One class lower than the most serious underlying offense.

If the most serious underlying felony is a Class I felony, the offense is a Class A1 misdemeanor.

ANALYSIS

On April 3, 2009, the Sentencing Commission reviewed Edition 1 of HB 836/SB 713, which classified the proposed offense as a Class E felony. The Commission found this provision to be inconsistent with the Offense Classification Criteria for a Class E felony.

Senate Bill 713 bill exempts persons who are subject to electronic monitoring under the Juvenile Code.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 836 – Removal of Electronic Monitoring Device [Ed.2]/
SB 713 – Removal of Electronic Monitoring Device [Ed.3]
(cont'd)

STATUTE

§ 14-226.3. Interference with electronic monitoring device.

DESCRIPTION

A person who

1. is required to comply with electronic monitoring as a condition of bond or pretrial release, and
2. knowingly and without authority does, or requests or solicits another to,
3. remove, destroy, or circumvent the operation of
4. an electronic monitoring device used to monitor a person
 - a. on house arrest or
 - b. wearing an electronic monitoring device as a condition of bond, pretrial release, probation, parole, or post-release supervision.

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.

On April 3, 2009, the Sentencing Commission reviewed Edition 1 of HB 836/SB 713, which classified the proposed offense as a Class E felony. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class E felony.

Senate Bill 713 exempts persons who are subject to electronic monitoring under the Juvenile Code.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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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 836 – Removal of Electronic Monitoring Device [Ed.2]/
SB 713 – Removal of Electronic Monitoring Device [Ed.3]
(cont'd)

STATUTE

§ 14-226.3. Interference with electronic monitoring device.

DESCRIPTION

A person who

1. is not required to comply with electronic monitoring as a result of a criminal conviction or as a condition of bond or pretrial release, and
2. knowingly and without authority does, or requests or solicits another to,
3. remove, destroy, or circumvent the operation of
4. an electronic monitoring device used to monitor a person
 - a. on house arrest or
 - b. wearing an electronic monitoring device as a condition of bond, pretrial release, probation, parole, or post-release supervision.

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.

On April 3, 2009, the Sentencing Commission reviewed Edition 1 of HB 836/SB 713, which classified the proposed offense as a Class E felony. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class E felony.

Senate Bill 713 exempts persons who are subject to electronic monitoring under the Juvenile Code.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/12/09

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 [Ed.3]

STATUTE

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

DESCRIPTION

A person who

1. knowingly and willfully, without being the bona fide owner thereof,
2. cuts down, injures, or removes
3. any tree or log on the property of another
4. causing damages in excess of \$1,000.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

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

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 \$1,000 or less.

The Commission reviewed Edition 1 of SB 909 on April 3, 2009, which would have made it a Class I felony to cause damages in excess of \$2,500. The Commission found this provision consistent with the Offense Classification Criteria for a Class I felony.

The bill exempts a lessee of property who removes a fallen tree or log that poses an imminent threat to persons or property.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE REVIEWED: 06/12/09

IMPACT ANALYSIS NOT REQUESTED YET