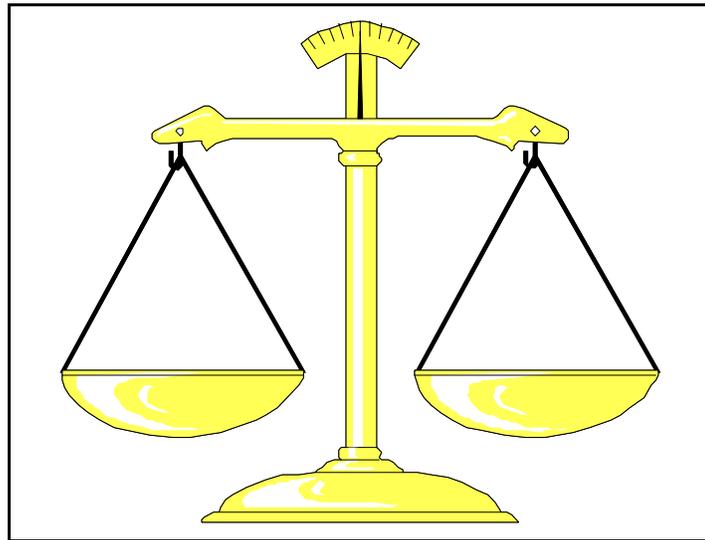


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2010 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 2010***

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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 04, 2010. 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, 2010.

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 04, 2010.

The fact that the Commission found a bill to be either consistent or inconsistent with the structured sentencing offense classification criteria does not imply either support for or opposition to the bill. In this report, the Commission has taken no position on the merits of any bill other than those specifically proposed by the Commission.

THE OFFENSE CLASSIFICATION CRITERIA

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

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

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

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

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

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

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

The Commission then reviewed the most frequently convicted misdemeanor offenses and recommended reclassifying some of them based on a comparison of the elements of the crimes to the criteria. The Commission also decided that it would use the misdemeanor offense classification criteria for the

classification of all new misdemeanor offenses and the reclassification of existing misdemeanor offenses proposed in the future. This report includes a comparison of offenses proposed in this session to the misdemeanor offense classification criteria.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • Reserved for First Degree Murder

[Reasonably tends to result or does result in:]

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

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

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

- E** • Serious personal injury

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

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

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

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

- M** • All other misdemeanors

* Personal injury includes both physical and mental injury.

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

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

MISDEMEANOR OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

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

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

* Personal injury includes both physical and mental injury.

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

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1690 [Ed.1]/SB 254 [Ed.2] – Susie’s Law

STATUTE

§ 14-360. Cruelty to animals; construction of section.

DESCRIPTION

Subsection (a1):

A person who

1. maliciously
 - a. kills or
 - b. causes or procures to be killed
2. any animal
3. by intentional deprivation of necessary sustenance.

OFFENSE CLASS

CURRENT: Class A1 misdemeanor.

PROPOSED: Class H felony.

ANALYSIS

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

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/04/10

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1690 [Ed.1]/SB 254 [Ed.2] – Susie’s Law (cont’d)

STATUTE

§ 14-360. Cruelty to animals; construction of section.

DESCRIPTION

Subsection (b):

A person who

1. maliciously
 - a. tortures, mutilates, maims, cruelly beats, disfigures, poisons or kills, or
 - b. causes or procures such an act upon
2. any animal.

OFFENSE CLASS

CURRENT: Class I felony

PROPOSED: Class H felony.

ANALYSIS

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

The 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: 06/04/10

IMPACT OF BILL ON NEXT PAGE

- 2 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 ADVISOR COMMISSION

HB 1690 [Ed.1]/SB 254 [Ed.2] – SUSIE’S LAW

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. 14-360 to raise the classification for two existing offenses.

SECTION 1.

This Section amends G.S. 14-360(a1) to make it a Class H felony for a person to maliciously kill, or cause or procure to be killed, any animal by intentional deprivation of necessary sustenance. It is currently a Class A1 misdemeanor. In FY 2008/09, there was one Class A1 misdemeanor conviction under G.S. 14-360(a1). Given the small number of convictions for this offense, it is unlikely that the proposed reclassification of the Class A1 misdemeanor offense would result in substantial impact to the prison population. In FY 2008/09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class A1 convictions per year that would become Class H convictions under the proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 2.

This Section amends G.S. 14-360(b) to make it a Class H felony for a person to maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, any animal. It is currently a Class I felony. In FY 2008/09, there were 11 Class I felony convictions under G.S. 14-360(b). Due to the small number of convictions, a more detailed impact projection using the Structured Sentencing Simulation Model would not be reliable. Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 17% for Class I) and longer average estimated time served (11 months compared to 7 months for Class I). If, for example, there were eleven Class I felony convictions that were reclassified as Class H felony convictions, this would result in the need for three additional prison beds the first year and four additional prison beds the second year.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1724/SB 1199 – NC Biotechnology and Agriscience School
[Ed.1]

STATUTE

§ 115C-229I. Criminal history record checks.

DESCRIPTION

Subsection (h):

A person who

1. applies for employment at the North Carolina School of Biotechnology and Agriscience and
2. willfully furnishes, supplies, or otherwise gives
3. false information
 - a. on an employment application
 - b. that is the basis for a criminal history record check under this section.

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.

Subsection (b) requires the Board of Directors of the North Carolina School of Biotechnology and Agriscience to adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history.

The North Carolina School of Biotechnology and Agriscience will be located at the Vernon G. James Research and Extension Center at the North Carolina Department of Agriculture's Tidewater Research Station in Washington County, North Carolina.

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: 06/04/10

BILL CONTINUED ON NEXT PAGE

- 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 1724/SB 1199 – NC Biotechnology and Agriscience School
[Ed.1] (cont'd)

STATUTE

§ 115C-229F. Board of Directors; powers and duties.

DESCRIPTION

Subsection (5):

A person who

1. aids or abets
2. a student's unlawful absence
3. from the North Carolina School of Biotechnology and Agriscience.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/04/10

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1729/SB 1132 – Motor Vehicle Law Changes [Ed.2]

STATUTE

§ 20-79.2. Transporter plates.

DESCRIPTION

Subsection (b2):

A person, dealer, or business who

1. sells, rents, leases, or otherwise provides
2. a transporter plate
3. to another person or business
4. in exchange for money or other thing of value.

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: 06/04/10

BILL CONTINUED ON NEXT PAGE

6 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1729/SB 1132 – Motor Vehicle Law Changes [Ed.2]

STATUTE

§ 20-79.2. Transporter plates.

DESCRIPTION

Subsection (e):

A person who

1. owns a motor vehicle that is required to be registered in North Carolina
2. operates, or permits the operation of, the vehicle
3. on a highway in the state
4. using a transporter plate
5. without proof of financial responsibility that complies with Chapter 20, Article 9A (Motor Vehicle Safety and Financial Responsibility Act of 1953).

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (pursuant to G.S. 20-279.31(d)).

ANALYSIS

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

Note: It is also a Class 1 misdemeanor under Chapter 20, Article 13 (Vehicle Financial Responsibility Act of 1957) for the owner of a motor vehicle required to be registered in North Carolina to operate or permit such vehicle to be operated in the state without having in full force and effect the required financial responsibility. G.S. 20-313(a). Article 13 states, “The provisions of Article 9A . . . which pertain to the method of giving and maintaining proof of financial responsibility . . . shall apply to filing and maintaining proof of financial responsibility required by this Article.” G.S. 20-314

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: 06/04/10

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 1855 – Clarify Legislative Confidentiality [Ed.1]

STATUTE

§ 120-134. Penalty.

DESCRIPTION

1. A person other than a
 - a. legislative, executive or judicial branch employee,
 - b. public officer, or
 - c. legislative employee who is a law student extern
2. who willfully violates a provision of G.S. Chapter 120, Article 17 (Confidentiality of Legislative Communications).

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: 06/04/10

IMPACT ANALYSIS NOT REQUESTED YET

- 8 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 1866/SB 1136 – Regulate Towing from Private Lots [Ed.1]

STATUTE

§ 20-219.2. Removal of unauthorized vehicles from private lots.

DESCRIPTION

Subsection (a1):

A person who

1. removes a vehicle pursuant to this section
2. from a privately owned or leased parking space
3. and transports the vehicle for storage
4. more than 15 miles from the place of removal.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor

ANALYSIS

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

This bill adds conduct to an existing offense.

G.S. 20-219.2(b) provides that any person violating any provision of this section shall be guilty of a Class 3 misdemeanor and upon conviction shall be only fined not more than ten dollars in the discretion of the court.

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: 06/04/10

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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 1866/SB 1136 – Regulate Towing from Private Lots [Ed.1]
(cont'd)

STATUTE

§ 20-219.2. Removal of unauthorized vehicles from private lots.

DESCRIPTION

Subsection (a2):

A person or a company that

1. a. tows or stores a vehicle pursuant to this section and
b. charges fees for the services rendered
2. charges any fee exceeding the fee for other service calls the person or company provides for the same service, labor, and conditions.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor

ANALYSIS

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

This bill adds conduct to an existing offense.

G.S. 20-219.2(b) provides that any person violating any provision of this section shall be guilty of a Class 3 misdemeanor and upon conviction shall be only fined not more than ten dollars in the discretion of the court.

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: 06/04/10

IMPACT ANALYSIS NOT REQUESTED YET

10 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1870 – Safe Artificial Slope Construction Act [Ed.1]

STATUTE

§ 113A-268. Enforcement and penalties.

DESCRIPTION

Subsection (b):

A person who knowingly or willfully

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

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This provision is identical to a provision in HB 1756, which the Sentencing Commission reviewed in June 2007, and HB 782, reviewed in April 2009. The Commission found these provisions to be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/04/10

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]

STATUTE

§ 105-113.8A. Stamps required on packages of cigarettes.

DESCRIPTION

Subsection (a):

A person who

1. holds cigarettes for sale or use in this State
2. and does not mark each package of cigarettes with a heat transfer stamp that indicates whether the package of cigarettes is taxable or nontaxable under this Article.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.8A(a) further provides that a package of cigarettes that is subject to tax must be marked by a tax-paid stamp and a package of cigarettes that is not subject to tax must be marked by a tax-exempt stamp.

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of 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: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.8A. Stamps required on packages of cigarettes.

DESCRIPTION

Subsection (b):

A person who

1. is not a licensed distributor
2. and who receives or possesses a package of unstamped cigarettes
3. or places a stamp on a package of cigarettes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of 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: 06/04/10

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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 1979/SB 1197 – Reinstated Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.8A. Stamps required on packages of cigarettes.

DESCRIPTION

Subsection (b):

A person who

1. is a licensed distributor of cigarettes
2. and receives a package of unstamped cigarettes
3. and does not place a stamp on the package within 48 hours of its receipt.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.8A(b) further provides that the requirement to place a stamp on a package of cigarettes within 48 hours of its receipt by a licensed distributor is exclusive of Saturdays, Sundays and legal holidays. A licensed distributor may obtain a cigarette stamp from the Secretary or Revenue or, with the approval of the Secretary, from the producer of the stamps.

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of 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: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.8A. Stamps required on packages of cigarettes.

DESCRIPTION

Subsection (b):

A person who

1. is a licensed distributor of cigarettes
2. and does not place a stamp on a package of cigarettes in a manner that ensures the stamp will be torn or mutilated if a person tries to remove the stamp from the package.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of 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: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.9. Out-of-state shipments.

DESCRIPTION

A person who

1. is a licensed distributor of cigarettes engaged in interstate business
2. and who, without approval from the Secretary of Revenue,
3. sets aside packages of cigarettes needed to conduct interstate business
4. without stamping the packages as required.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

G.S. 105-113.9 further provides that “Interstate business” as used in this section, refers to the sale of packages of cigarettes to a nonresident that the distributor delivers to the business location of the nonresident purchaser in another state or the sale, to a nonresident, of packages of cigarettes which the distributor delivers to another licensed distributor for subsequent sale outside of the State.

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: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.10. In-state shipments of manufacturers and other distributors.

DESCRIPTION

A person who

1. is not a licensed distributor of cigarettes
2. and who ships an unstamped package of cigarettes
3. into this State
4. or between locations in this State.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of 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: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.10. In-state shipments of manufacturers and other distributors.

DESCRIPTION

A person who

1. is a licensed distributor of cigarettes
2. and who ships unstamped cigarettes
3. in a circumstance not specifically permitted by this section.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

G.S. 105-113.10 provides that a licensed distributor may ship a package of unstamped cigarettes only in certain circumstances: to a facility the distributor owns, to another licensed distributor, to a person in a transaction that is not subject to the federal excise tax on cigarettes, or to an agency or an instrumentality of the United States.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.18. Payment of tax; reports.

DESCRIPTION

Subsection (1):

A person who

1. is a licensed distributor of cigarettes
2. and does not file a monthly report
3. within 20 days after the end of the month covered by the report
4. with the Secretary of Revenue.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

G.S. 105-113.18 provides that all reports must be in the form required by the Secretary and contain the information required by the Secretary.

G.S. 105-113.18(1) provides that the monthly reports must cover sales and other activities occurring in a calendar month and must include the following information: the number of cigarettes on hand on the first and last days of the month, the number of tax-paid and tax-exempt cigarette stamps obtained during the month, the number of tax-paid and tax-exempt cigarette stamps placed on packages of cigarettes during the month, and the number of packages of cigarettes the distributor transferred without charge after placing a tax-paid stamp on the packages.

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: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.18. Payment of tax; reports.

DESCRIPTION

Subsection (2):

A person who

1. is not a licensed distributor of cigarettes
2. and who acquires a package of unstamped cigarettes
3. for sale, use, or consumption
4. subject to the tax imposed by this part
5. and does not file a report with the Secretary of Revenue
6. within 96 hours after receiving the package of cigarettes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

G.S. 105-113.18 provides that all reports must be in the form required by the Secretary and contain the information required by the Secretary.

G.S. 105-113.18(2) provides that the required report must state the number of cigarettes acquired and the amount of tax due.

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: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.18. Payment of tax; reports.

DESCRIPTION

Subsection (3):

A person who

1. is not a licensed distributor of cigarettes
2. and who transports cigarettes
3. upon the public highways, roads, or streets of this State
4. and who does not, upon notice from the Secretary of Revenue
5. file a report containing the information required by the Secretary.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

G.S. 105-113.18 provides that all reports must be in the form required by the Secretary and contain the information required by the Secretary.

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: 06/04/10

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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 1979/SB 1197 – Reinstatement Cigarette Tax Stamps [Ed.1]
(cont'd)

STATUTE

§ 105-113.27. Restrictions and presumption concerning cigarettes.

DESCRIPTION

Subsection (a):

A person who

1. is a licensed distributor of cigarettes
2. and who sells, borrows, loans or exchanges
3. unstamped cigarettes
4. to, from, or with
5. other licensed distributors
6. except as otherwise provided in this Article.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-113.33)

ANALYSIS

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

G.S. 105-113.33 provides that any person who violates a provision of this Article for which no other punishment is specifically prescribed is guilty of 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: 06/04/10

BILL CONTINUED ON NEXT PAGE

22 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 1979/SB 1197 – Reinstate Cigarette Tax Stamps
[Ed.1](cont'd)

STATUTE

§ 105-113.33. Criminal Penalties.

DESCRIPTION

A person who

1. forges a stamp required under this Article
2. or who knowingly places a forged stamp on a package of cigarettes.

PROPOSED OFFENSE CLASS

Class H felony

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/04/10

IMPACT ANALYSIS NOT REQUESTED YET

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 2005/SB 1422 – Sex Offender Registry/Name Changes [Ed.1]

STATUTE

§ 14-208.7. Registration.

DESCRIPTION

Subsection (b)(1a):

A person who

1. is required to register as a sex offender
2. and who provides a registration form that does not include:
 - a. a statement indicating the person's name at the time of the conviction for the offense that requires registration,
 - b. what alias, if any, the person was using at the time of the conviction of that offense, and
 - c. the name of the person as it appears on the judgment imposing the sentence on the person for the conviction of the offense.

PROPOSED OFFENSE CLASS

Class F felony (pursuant to G.S. 14-208.11)

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.

G.S. 14-208.7(b) provides a list of items that are required to be included on all sex offender registration forms. Some of these items include: the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number and home address, the type of offense for which the person was convicted, the date of conviction, the sentence imposed, a current photograph of the person, the person's fingerprints, a statement indicating whether the person is a student or expects to enroll as a student, a statement indicating whether the person is employed or expects to be employed at an institution of higher education, and any online identifier that the person uses or intends to use.

G.S. 14-208.11 provides that a person required by this Article to register as a sex offender and who willfully fails to follow any of the requirements laid out by this section is guilty of 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: 06/04/10

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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 2005/SB 1422 – Sex Offender Registry/Name Changes [Ed.1]
(cont'd)

STATUTE

§ 14-208.9. Change of address; change of academic status or educational employment status; change of online identifier; change of name.

DESCRIPTION

Subsection (f):

A person who

1. is required to register as a sex offender,
2. and changes his or her name pursuant to Chapter 101 of the General Statutes
3. a. and does not,
 - b. within 10 days,
 - c. report the name change,
 - d. in person,
 - e. to the sheriff of the county with which the person is registered.

PROPOSED OFFENSE CLASS

Class F felony (pursuant to G.S. 14-208.11)

ANALYSIS

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

The sheriff is required to immediately forward any name change information to the Division of Criminal Statistics.

G.S. 14-208.11 provides that a person required by this Article to register as a sex offender and who willfully fails to follow any of the requirements laid out by this section is guilty of 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: 06/04/10

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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 2005/SB 1422 – Sex Offender Registry/Name Changes [Ed.1]
(cont'd)

STATUTE

§ 14-208.9A. Verification of registration information

DESCRIPTION

Subsection (a)(3)c:

A person who

1. is required to register as a sex offender,
2. and verify his or her information semiannually,
3. and does not indicate on his or her verification form whether he or she still uses or intends to use the name under which he or she registered and which was last reported to the sherriff.

PROPOSED OFFENSE CLASS

Class F felony (pursuant to G.S. 14-208.11)

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.

G.S. 14-208.9A provides that the information in the county registry shall be verified semiannually, on the anniversary of the person's initial registration date and six months after that date, for each registrant. The verification form shall be signed by the registrant and shall indicate whether he or she still resides at the last reported address, and whether the person still uses or intends to sue any online identifiers last reported. Any changes to this information must be included on the verification form.

G.S. 14-208.11 provides that a person required by this Article to register as a sex offender and who willfully fails to follow any of the requirements laid out by this section is guilty of 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: 06/04/10

IMPACT ANALYSIS NOT YET REQUESTED

NORTH CAROLINA 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 2008/SB 1403 – Modify Renewable Energy Property Credit
[Ed.1]

STATUTE

§ 105-129.16A. Credit for investing in renewable energy property.

DESCRIPTION

Subsection (f):

A person who

1. is a pass-through entity and its owner
2. a. and who does not include with their tax returns
b. a statement of the allocation made by the pass-through entity and
c. the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15,
3. for every taxable year in which an allocated credit is claimed.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-236(a)(9))

ANALYSIS

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

G.S. 105-129.16A(f) further provides that a pass-through entity that qualifies for the credit provided in this section may allocate the credit among its owners in its discretion as long as an owner's adjusted basis in the pass-through entity at the end of the taxable year is at least 40% of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly.

G.S. 105-131.8, Tax Credits, provides the way in which the tax credits and payments of share holders of S corporations distributed and paid, and G.S. 105-269.15, Income tax credits of partnerships, outlines the way in which tax credits of partners in a partnership are distributed and paid.

G.S. 105-236(a)(9) provides that any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of 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: 06/04/10

BILL CONTINUED ON NEXT PAGE

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 2008/SB 1403 – Modify Renewable Energy Property Credit
[Ed.1](cont'd)

STATUTE

§ 105-129.16A. Credit for investing in renewable energy property.

DESCRIPTION

Subsection (i):

A person who

1. is a taxpayer or an owner of a pass-through entity
2. and fails to pay the taxes and interest due
3. 30 days after the date the credit is forfeited.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 105-236(a)(9))

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 bill adds conduct to an existing offense.

G.S. 105-129.16A(a) provides that if a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to 35% of the cost of the property.

G.S. 105-236(a)(9) provides that any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of 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: 06/04/10

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 2023 – Corporate/Union Money in Campaigns [Ed.1]

STATUTE

§ 163-278.27. Criminal penalties; duty to report and prosecute.

DESCRIPTION

Subsection (a):

An entity, other than an individual or individuals, that

1. makes an independent expenditure that exceeds \$750 per calendar year
2. without complying with G.S. 163-278.19C, Independent expenditures.

An “independent expenditure” is made to support or oppose one or more candidates without consultation or coordination with the candidate supported (or whose opponent the expenditure opposes).

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

Section 163-278.19C contains four applicable provisions:

- (b) An entity must obtain authorization from a majority of its board of directors or similar leadership body before making an independent expenditure or disbursing treasury funds for this purpose;
- (c) A foreign national (*i.e.*, not a U.S. citizen or lawful permanent resident) may not make an independent expenditure that advocates the nomination, election, or defeat of any candidate or the passage or defeat of any ballot issue;
- (e) An entity making a independent expenditure may not engage or retain an advertising firm or consultant that has been engaged or retained within the six prior months by a candidate, candidate’s committee, or referendum committee that is benefited by the independent expenditure; and
- (f) An entity must report an independent expenditure to the State Board of Election within 48 hours, updated within 48 hours of each additional \$750 benefitting the same candidate or ballot issue.

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: 06/04/10

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 2027 – Car Theft to Steal Motor Parts [Ed.1]

STATUTE

§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.

DESCRIPTION

Subsection (b):

A person who

1. commits larceny of
2. a motor vehicle
3. with the intent to violate
 - a. G.S. 14-72.7, Chop shop activity, or
 - b. G.S. 14-72.8, Felony larceny of motor vehicle parts.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Unless specified, larceny of property is a Class 1 misdemeanor if the value of the property is \$1,000 or less, and a Class H felony otherwise. G.S. 14-72(a). The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to property or serious injury to society as Class 1 misdemeanors.

Violation of G.S. 14-72.7 is a Class H felony.

Violation of G.S. 14-72.8 is a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/04/10

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 1383 – Safer Streets/DNA Initiatives [Ed.1]

STATUTE

§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.

DESCRIPTION

Subsection (a):

A person who

1. by virtue of employment or official position,
2. has possession of or access to
3. individually identifiable DNA information contained in the State DNA Database or Databank,
4. and willfully discloses it
5. in any manner
6. to any person or agency not entitled to receive it.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor

PROPOSED: Class A1 misdemeanor

ANALYSIS

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

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

G.S.15A-266.9(e) provides the authorized purposes for which DNA records and samples may be released.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE REVIEWED: 06/04/10

BILL CONTINUED ON NEXT PAGE

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 1383 – Safer Streets/DNA Initiatives [Ed.1](cont'd)

STATUTE

§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.

DESCRIPTION

Subsection (b):

A person who

1. without authorization,
2. willfully obtains
3. individually identifiable DNA information from the State DNA Database or Databank.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor

PROPOSED: Class A1 misdemeanor

ANALYSIS

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE REVIEWED: 06/04/10

BILL CONTINUED ON NEXT PAGE

32 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: SB 1383 – Safer Streets/DNA Initiatives [Ed.1](cont'd)

STATUTE

§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.

DESCRIPTION

Subsection (c):

A person who

1. knowingly or intentionally
2. tampers or attempts to tamper
3. with
 - a. any DNA sample,
 - b. the result of any forensic analysis of a DNA sample collected pursuant to this Article,
 - c. or the DNA sample collection container.

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.

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: 06/04/10

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: SB 1393 – Enhance Protection of Victims & Witnesses [Ed.1]

STATUTE

§ 14-226. Intimidating or interfering with witnesses.

DESCRIPTION

Subsection (a):

A person who

1. by threats, menaces, or in any other manner
2. a. intimidates or attempts to intimidate any person who is summoned or is acting as a witness in any of the courts of this State, or
b. prevents or deters, or attempts to prevent or deter any person who is summoned or is acting as such witness from attendance upon such court.

OFFENSE CLASS

CURRENT: Class H felony

PROPOSED: Class C felony

ANALYSIS

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

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

A draft of this bill was reviewed at the March 26, 2010 meeting of the Sentencing Commission. The Commission found a proposed sliding scale provision to be inconsistent with the Offense Classification Criteria, with a note that the bill would be consistent with the Criteria for a Class C felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 06/04/10

IMPACT ANALYSIS NOT REQUESTED YET

34 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.