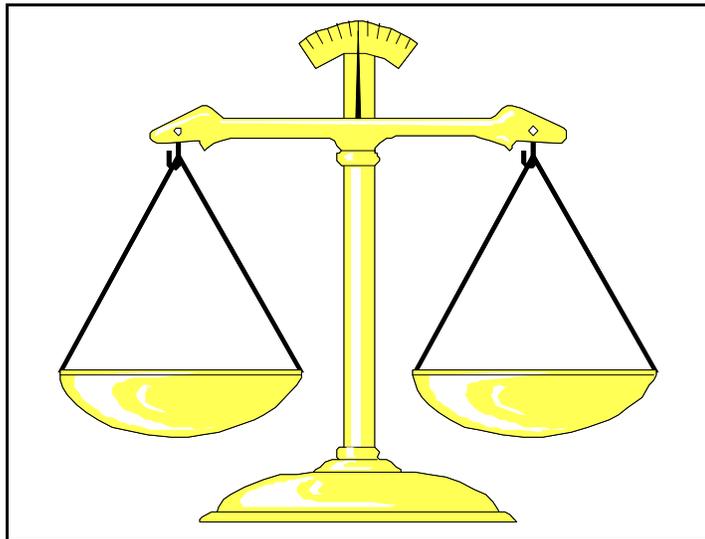


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2011 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
APRIL 2011***

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION**

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

This report by the Sentencing Commission includes all bills introduced or amended through April 6, 2011. 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 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, 2011.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on March 18, 2011 and April 8, 2011.

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 12 – Make Synthetic Cannabinoids Illegal [Ed.1]

STATUTE

§ 90-89. Schedule I controlled substances.

DESCRIPTION

Classifies synthetic cannabinoids as Schedule I controlled substances.

PROPOSED OFFENSE CLASS

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

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

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

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

ANALYSIS

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

Marijuana and tetrahydrocannabinols are Schedule VI controlled substances. G.S. 90-94.

See also SB 9.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA 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 12 – Make Synthetic Cannabinoids Illegal [Ed.1] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subpart (h)(2a):

A person who

1. sells, manufactures, delivers, transports, or possesses
2. more than 35 grams of a synthetic cannabinoid.

PROPOSED OFFENSE CLASS

Class F felony.

The sentence shall be an active prison term of 70 months minimum and 84 months maximum and a fine of not less than \$50,000.

ANALYSIS

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

See also SB 9.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 12: MAKE SYNTHETIC CANNABINOIDS ILLEGAL [Ed.1]

PREPARED: FEBRUARY 2, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill adds “synthetic cannabinoids” to the list of Schedule I controlled substances in G.S. 90-89, thereby expanding all current offenses that involve Schedule I drugs. (Currently, synthetic cannabinoids are not regulated by North Carolina law.) This bill also creates the new Class F felony of trafficking in synthetic cannabinoids in G.S. 90-95(h).

SECTION 1. This bill amends G.S. 90-89, Schedule I controlled substances, by adding subsection (6), Synthetic cannabinoids. Subsection (6) includes nine subparts, (a)-(i), providing detailed chemical descriptions of the substances that would qualify as synthetic cannabinoids. The addition of synthetic cannabinoids to Schedule I expands the reach of all existing offenses involving Schedule I controlled substances in G.S. 90-95, Violations; penalties, and elsewhere. These offenses are set forth by offense classification below:

Class 1 Misdemeanors

It is a Class 1 misdemeanor under subsection (b) of G.S. 90-108, Prohibited acts; penalties, to engage in the following conduct:

- (1) for a person other than a licensed practitioner to misrepresent himself as a licensed practitioner to a lawful manufacturer, distributor, or dispenser of controlled substances in order to secure or attempt to secure a controlled substance;
- (2) for a person subject to registration requirements or a practitioner to distribute or dispense Schedule controlled substance in violation of G.S. 90-105, Order forms;
- (3) for a registrant to manufacture, distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (4) for a person to omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act;
- (5) for a person to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Controlled Substances Act;
- (6) for a person to refuse any entry onto any premises or inspection authorized by the Controlled Substances Act;
- (7) to knowingly keep or maintain a building, vehicle, or any place whatsoever which is resorted to by users of unlawful controlled substances for the purpose of using such substances, or which is used for the keeping or selling thereof ;
- (8) for a practitioner or registrant under the Controlled Substances Act to distribute a controlled substance included in Schedule I or II in the course of his legitimate business, except pursuant to an order form as required by G.S. 90-105, Order forms;
- (9) to use in the course of manufacturing or distributing a controlled substance a fictitious, suspended, or revoked registration number;
- (10) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery,

deception or subterfuge;

- (11) to furnish false or fraudulent material information, or to omit same, from any application, report, or document required under the Controlled Substances Act;
- (12) to make, distribute, or possess any thing designed to print or reproduce an identifying mark upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
- (13) to obtain controlled substances through the use of legal prescriptions obtained by knowing and willful misrepresentation to, or intentional withholding of information from, one or more practitioners (not applicable to Schedule I);
- (14) for an employee of a registrant or practitioner who is authorized to possess or has access to controlled substances by virtue of his employment, to embezzle or fraudulently and willfully misapply or divert to his or any other unauthorized or illegal use any controlled substance coming into his possession or care.

Because G.S. 90-108 primarily concerns prescription drugs, many of these offenses will not apply to synthetic cannabinoids. However, where an offense does apply to Schedule I drugs, the proposed bill would expand its reach.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class 1 misdemeanor.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions that occur as a result of the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Class I Felonies

It is a Class I felony under subsection (b) of G.S. 90-108, Prohibited acts; penalties, to engage in the following conduct, to engage in any of the following conduct prohibited in subsection (a), if the violation is alleged and proved to have been committed *intentionally*:

- (1) for a person other than a licensed practitioner to misrepresent himself as a licensed practitioner to a lawful manufacturer, distributor, or dispenser of controlled substances in order to secure or attempt to secure a controlled substance;
- (2) for a person subject to registration requirements or a practitioner to distribute or dispense Schedule controlled substance in violation of G.S. 90-105, Order forms;
- (3) for a registrant to manufacture, distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (4) for a person to omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act;
- (5) for a person to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Controlled Substances Act;
- (6) for a person to refuse any entry onto any premises or inspection authorized by the Controlled Substances Act;
- (7) to knowingly keep or maintain a building, vehicle, or any place whatsoever which is resorted to by users of unlawful controlled substances for the purpose of using such substances, or which is used for the keeping or selling thereof;
- (8) for a practitioner or registrant under the Controlled Substances Act to distribute a controlled

- substance included in Schedule I or II in the course of his legitimate business, except pursuant to an order form as required by G.S. 90-105, Order forms;
- (9) to use in the course of manufacturing or distributing a controlled substance a fictitious, suspended, or revoked registration number;
 - (10) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
 - (11) to furnish false or fraudulent material information, or to omit same, from any application, report, or document required under the Controlled Substances Act;
 - (12) to make, distribute, or possess any thing designed to print or reproduce an identifying mark upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
 - (13) to obtain controlled substances through the use of legal prescriptions obtained by knowing and willful misrepresentation to, or intentional withholding of information from, one or more practitioners (not applicable to Schedule I);
 - (14) for an employee of a registrant or practitioner who is authorized to possess or has access to controlled substances by virtue of his employment, to embezzle or fraudulently and willfully misapply or divert to his or any other unauthorized or illegal use any controlled substance coming into his possession or care;

Because G.S. 90-108 primarily concerns prescription drugs, many of these offenses will not apply to synthetic cannabinoids. However, where an offense does apply to Schedule I drugs, the proposed bill would expand its reach.

As listed above under Class 1 Misdemeanors, violations of G.S. 90-108(a)(1)-(14) are punished Class 1 misdemeanors unless the criminal pleading alleges that they were committed intentionally. However, subpart (e)(1) of G.S. 90-95, Violations; penalties, makes it a Class I felony to engage in any of these Class 1 misdemeanors after having a prior conviction under the Controlled Substances Act (G.S. 90-86 through 90-113.8) or a similar federal or state law. Subsection (b) of 90-108 also makes it Class I felony to violate subpart 90-108(a)(7) if the person fortifies the structure with the intent to impede law enforcement entry (by barricading windows and doors).

Under G.S. 90-95(d)(1), it is a Class I felony to possess a Schedule I controlled substance as proscribed by G.S. 90-95(a)(3).

Under G.S. 90-95(c), it is a Class I felony to create, sell or deliver, or possess with intent to sell or deliver a counterfeit Schedule I controlled substance as proscribed by G.S. 90-95(a)(2).

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit either of the offenses set forth above is guilty of a Class I felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten additional Class I convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Class H Felonies

Under G.S. 90-95(b)(1), it is a Class H felony to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance as proscribed by G.S. 90-95(a)(1).

Under G.S. 90-95(e)(9), it is a Class H felony to possess a controlled substance (as proscribed by subpart (a)(3)) on the premises of a penal institution or local confinement facility.

Under G.S. 90-95(d1)(1), it is a class H felony to (a) possess an immediate precursor chemical with intent to manufacture a controlled substance, or (b) possess or distribute an immediate precursor chemical knowing or having reasonable cause to believe that it will be used to manufacture a controlled substance.

Under subsection (a) of 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, it is a class H felony to give or sell a Schedule I-VI controlled substance to an inmate, or to combine, confederate, conspire, aid, abet, solicit, urge, investigate, counsel, advise, encourage or attempt to procure, or procure another or others to do so.

Under G.S. 14-410.16, Contaminate food or drink to render one mentally incapacitated or physically helpless, it is a Class H felony (a) to knowingly contaminate an edible or potable substance with any controlled substance that would render a person incapacitated or helpless with the intent of causing this result, or (b) to knowingly manufacture, sell, deliver, or possess any controlled substance for this purpose of committing this act. Note: It is unclear whether synthetic cannabinoids would induce the effect required for this offense

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class H felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H convictions per year as a result of the proposed broadening of the current statute, 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.

Class G Felonies

Under subpart (a)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class G felony for a person 18 to 20 years of age to hire or intentionally employ a minor more than 13 years of age to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.

Under G.S. 90-95(b)(1), it is a Class G felony to sell a Schedule I controlled substance as proscribed by G.S. 90-95(a)(1).

Under G.S. 90-95.7, Participation in a drug violation by a minor, it is a Class G felony for a person 21 years of age or older to purchase or receive a controlled substance from a minor 13 years of age or younger who possesses, sells, or delivers the substance in violation of G.S. 90-95(a)(1).

Under subsection (c) of G.S. 14-410.16, Contaminate food or drink to render one mentally incapacitated or physically helpless, it is a Class G felony to knowingly, with the intent to commit a rape or sexual offense, (a) contaminate an edible or potable substance with any controlled substance that would render a person incapacitated or helpless with the intent of causing this result, or (b) manufacture, sell, deliver, or possess any controlled substance for this purpose of committing this act. Note: It is unclear whether synthetic cannabinoids would induce the effect required for this offense.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class G felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. If, for example, there were two additional Class G convictions per year as a result of the proposed broadening of the current statute, 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.

Class F Felonies

Under subpart (a)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class F felony for a person 18 to 20 years of age to hire or intentionally employ a minor 13 years of age or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.

Under subpart (a)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class F felony for a person 18 to 20 years of age to hire or intentionally employ a minor more than 13 years of age to sell a Schedule I controlled substance.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit either of the offenses set forth above is guilty of a Class F felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 54% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the current statute, 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.

Class E Felonies

Under subpart (b)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class E felony for a person 21 years of age or older to hire or intentionally employ a minor more than 13 years of age to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.

Under subpart (a)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class E felony for a person 18 to 20 years of age to hire or intentionally employ a minor 13 years of age or younger to sell a Schedule I controlled substance.

Under G.S. 90-95(e)(8), it is a Class E felony for a person 21 years of age or older to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance (as proscribed by subpart (a)(1)) on property used for a child care center or an elementary or secondary school, or within 1,000 feet of the boundary of realty used for these purposes.¹

Under G.S. 90-95(e)(10), it is a class E felony for a person 21 years of age or older to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance (as proscribed by subpart (a)(1)) on property that is a public park or within 1,000 feet of the boundary of realty that is a public park.²

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class E felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 51% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two additional Class E convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Class D Felonies

Under subpart (b)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class D felony for a person 21 years of age or older to hire or intentionally employ a minor more than 13 years of age to sell a Schedule I controlled substance.

Under subpart (b)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class D felony for a person 21 years of age or older to hire or intentionally employ a minor 13 years of age or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.

Under G.S. 90-95(e)(5), it is a Class D felony for a person 18 years of age or older to sell or deliver a controlled substance (as proscribed by subpart (a)(1)) to a person under 16 but more than 13 years old, or to a pregnant female.³

Under G.S. 90-95.6, Promoting drug sales by a minor, it is a Class D felony for a person 21 years of age or older to entice, force, encourage, or otherwise facilitate a minor, or to supervise, support, advise, or protect a minor in violating G.S. 90-95(a)(1) by the manufacture, sale, delivery, or possession with intent to manufacture, sell, or deliver a controlled substance.⁴

¹ It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

² It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

³ It is assumed that the additional age-based offenses in G.S. 90-95.4(a) and (b) do not apply to this offense.

⁴ It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class D felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class D offense was 63 months. If, for example, there was one additional Class D conviction per year as a result of the proposed broadening of the current statute, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Class C Felonies

Under subpart (b)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class C felony for a person 21 years of age or older to hire or intentionally employ a minor 13 years of age or younger to sell a Schedule I controlled substance.

Under G.S. 90-95(e)(5), it is a Class C felony for a person 18 or older to sell or deliver a controlled substance (as proscribed by subpart (a)(1)) to a person 13 years of age or younger.⁵

Under G.S. 90-95.1, Continuing criminal enterprise, it is a Class C felony commit any felony under the Controlled Substances Act (G.S. Chapter 90, Article 5), if the violation is part of a continuing series of violations (a) which are undertaken in concert with five or more other people over whom the person serves as organizer, supervisor, or manager, and (b) from which the person obtains substantial income or resources.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class C felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class C offense was 82 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

SECTION 2. This section adds subpart (h)(2a) to G.S. 90-95, Violations; penalties, to create the offense of “trafficking in synthetic cannabinoids,” a Class F felony punished by an active prison term of

⁵ It is assumed that the additional age-based offenses in G.S. 90-95.4(a) and (b) do not apply to this offense.

70 months to 84 months and a fine of at least \$50,000. The offense is defined as the sale, manufacture, delivery, transport, or possession of more than 35 grams of synthetic cannabinoids.

Impact: Under G.S. 90-95(i), conspiring to traffic in synthetic cannabinoids would also be a Class F felony punished by 70 months to 84 months of active prison time and a fine of no less than \$50,000.⁶ If, for example, there was one Class F conviction per year for the proposed offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Technical Note: Marijuana and tetrahydrocannabinols are classified as Schedule VI controlled substances under G.S. 90-94. The classification of synthetic cannabinoids under Schedule I will result in greater penalties for certain offenses involving synthetic cannabinoids than for equivalent offenses involving marijuana and tetrahydrocannabinols.

⁶Subpart G.S. 90-95(h)(5) allows the judge in a drug trafficking case to suspend the sentence and impose probation or impose a prison term less than the prescribed minimum upon a finding that the defendant rendered “substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals.”

NORTH CAROLINA 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 13 – Ban Mephedrone [Ed.1]

STATUTE

§ 90-89. Schedule I controlled substances.

DESCRIPTION

Classifies mephedrone (4-methylmethcathinone) as a Schedule I controlled substance.

PROPOSED OFFENSE CLASS

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

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

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

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

ANALYSIS

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

See also SB 7.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 13: BAN MEPHEDRONE [Ed.1]

PREPARED: FEBRUARY 2, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill expands the scope of existing non-trafficking controlled substance offenses by adding mephedrone to the list of Schedule I controlled substances in G.S. 90-89.

SECTION 1. This bill amends G.S. 90-89, Schedule I controlled substances, by adding subsection (5)(h), 4-methylmethcathinone. The addition of mephedrone to Schedule I expands the reach of all existing offenses involving Schedule I controlled substances in G.S. 90-95, Violations; penalties, and elsewhere. These offenses are set forth by felony classification below:

Class 1 Misdemeanors

It is a Class 1 misdemeanor under subsection (b) of G.S. 90-108, Prohibited acts; penalties, to engage in the following conduct:

- (1) for a person other than a licensed practitioner to misrepresent himself as a licensed practitioner to a lawful manufacturer, distributor, or dispenser of controlled substances in order to secure or attempt to secure a controlled substance;
- (2) for a person subject to registration requirements or a practitioner to distribute or dispense Schedule controlled substance in violation of G.S. 90-105, Order forms;
- (3) for a registrant to manufacture, distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (4) for a person to omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act;
- (5) for a person to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Controlled Substances Act;
- (6) for a person to refuse any entry onto any premises or inspection authorized by the Controlled Substances Act;
- (7) to knowingly keep or maintain a building, vehicle, or any place whatsoever which is resorted to by users of unlawful controlled substances for the purpose of using such substances, or which is used for the keeping or selling thereof ;
- (8) for a practitioner or registrant under the Controlled Substances Act to distribute a controlled substance included in Schedule I or II in the course of his legitimate business, except pursuant to an order form as required by G.S. 90-105, Order forms;
- (9) to use in the course of manufacturing or distributing a controlled substance a fictitious, suspended, or revoked registration number;
- (10) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
- (11) to furnish false or fraudulent material information, or to omit same, from any application, report, or document required under the Controlled Substances Act;
- (12) to make, distribute, or possess any thing designed to print or reproduce an identifying mark upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
- (13) to obtain controlled substances through the use of legal prescriptions obtained by knowing and willful misrepresentation to, or intentional withholding of information from, one or more

practitioners (not applicable to Schedule I);

- (14) for an employee of a registrant or practitioner who is authorized to possess or has access to controlled substances by virtue of his employment, to embezzle or fraudulently and willfully misapply or divert to his or any other unauthorized or illegal use any controlled substance coming into his possession or care.

Because G.S. 90-108 primarily concerns prescription drugs, many of these offenses will not apply to synthetic mephedrone. However, where an offense does apply to Schedule I drugs, the proposed bill would expand its reach.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class 1 misdemeanor.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions that occur as a result of the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Class I Felonies

It is a Class I felony under subsection (b) of G.S. 90-108, Prohibited acts; penalties, to engage in the following conduct, to engage in any of the following conduct prohibited in subsection (a), if the violation is alleged and proved to have been committed *intentionally*:

- (1) for a person other than a licensed practitioner to misrepresent himself as a licensed practitioner to a lawful manufacturer, distributor, or dispenser of controlled substances in order to secure or attempt to secure a controlled substance;
- (2) for a person subject to registration requirements or a practitioner to distribute or dispense Schedule controlled substance in violation of G.S. 90-105, Order forms;
- (3) for a registrant to manufacture, distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (4) for a person to omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act;
- (5) for a person to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Controlled Substances Act;
- (6) for a person to refuse any entry onto any premises or inspection authorized by the Controlled Substances Act;
- (7) to knowingly keep or maintain a building, vehicle, or any place whatsoever which is resorted to by users of unlawful controlled substances for the purpose of using such substances, or which is used for the keeping or selling thereof;
- (8) for a practitioner or registrant under the Controlled Substances Act to distribute a controlled substance included in Schedule I or II in the course of his legitimate business, except pursuant to an order form as required by G.S. 90-105, Order forms;
- (9) to use in the course of manufacturing or distributing a controlled substance a fictitious, suspended, or revoked registration number;
- (10) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery,

- deception or subterfuge;
- (11) to furnish false or fraudulent material information, or to omit same, from any application, report, or document required under the Controlled Substances Act;
 - (12) to make, distribute, or possess any thing designed to print or reproduce an identifying mark upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
 - (13) to obtain controlled substances through the use of legal prescriptions obtained by knowing and willful misrepresentation to, or intentional withholding of information from, one or more practitioners (not applicable to Schedule I);
 - (14) for an employee of a registrant or practitioner who is authorized to possess or has access to controlled substances by virtue of his employment, to embezzle or fraudulently and willfully misapply or divert to his or any other unauthorized or illegal use any controlled substance coming into his possession or care;

Because G.S. 90-108 primarily concerns prescription drugs, many of these offenses will not apply to mephedrone. However, where an offense does apply to Schedule I drugs, the proposed bill would expand its reach.

As listed above under Class 1 Misdemeanors, violations of G.S. 90-108(a)(1)-(14) are punished Class 1 misdemeanors unless the criminal pleading alleges that they were committed intentionally. However, subpart (e)(1) of G.S. 90-95, Violations; penalties, makes it a Class I felony to engage in any of these Class 1 misdemeanors after having a prior conviction under the Controlled Substances Act (G.S. 90-86 through 90-113.8) or a similar federal or state law. Subsection (b) of 90-108 also makes it Class I felony to violate subpart 90-108(a)(7) if the person fortifies the structure with the intent to impede law enforcement entry (by barricading windows and doors).

Under G.S. 90-95(d)(1), it is a Class I felony to possess a Schedule I controlled substance as proscribed by G.S. 90-95(a)(3).

Under G.S. 90-95(c), it is a Class I felony to create, sell or deliver, or possess with intent to sell or deliver a counterfeit Schedule I controlled substance as proscribed by G.S. 90-95(a)(2).

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit either of the offenses set forth above is guilty of a Class I felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten additional Class I convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Class H Felonies

Under G.S. 90-95(b)(1), it is a Class H felony to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance as proscribed by G.S. 90-95(a)(1).

Under G.S. 90-95(e)(9), it is a Class H felony to possess a controlled substance (as proscribed by subpart (a)(3)) on the premises of a penal institution or local confinement facility.

Under G.S. 90-95(d1)(1), it is a class H felony to (a) possess an immediate precursor chemical with intent to manufacture a controlled substance, or (b) possess or distribute an immediate precursor chemical knowing or having reasonable cause to believe that it will be used to manufacture a controlled substance.

Under subsection (a) of 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, it is a class H felony to give or sell a Schedule I-VI controlled substance to an inmate, or to combine, confederate, conspire, aid, abet, solicit, urge, investigate, counsel, advise, encourage or attempt to procure, or procure another or others to do so.

Under G.S. 14-410.16, Contaminate food or drink to render one mentally incapacitated or physically helpless, it is a Class H felony (a) to knowingly contaminate an edible or potable substance with any controlled substance that would render a person incapacitated or helpless with the intent of causing this result, or (b) to knowingly manufacture, sell, deliver, or possess any controlled substance for this purpose of committing this act. Note: It is unclear whether mephedrone would induce the effect required for this offense.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class H felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H convictions per year as a result of the proposed broadening of the current statute, 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.

Class G Felonies

Under subpart (a)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class G felony for a person 18 to 20 years of age to hire or intentionally employ a minor more than 13 years of age to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.

Under G.S. 90-95(b)(1), it is a Class G felony to sell a Schedule I controlled substance as proscribed by G.S. 90-95(a)(1)

Under G.S. 90-95.7, Participation in a drug violation by a minor, it is a Class G felony for a person 21 years of age or older to purchase or receive a controlled substance from a minor 13 years of age or younger who possesses, sells, or delivers the substance in violation of G.S. 90-95(a)(1).

Under subsection (c) of G.S. 14-410.16, Contaminate food or drink to render one mentally incapacitated or physically helpless, it is a Class G felony to knowingly, with the intent to commit a rape or sexual offense, (a) contaminate an edible or potable substance with any controlled substance that would render a person incapacitated or helpless with the intent of causing this result, or (b) manufacture, sell, deliver,

or possess any controlled substance for this purpose of committing this act. Note: It is unclear whether mephedrone would induce the effect required for this offense.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class G felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. If, for example, there were two additional Class G convictions per year as a result of the proposed broadening of the current statute, 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.

Class F Felonies

Under subpart (a)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class F felony for a person 18 to 20 years of age to hire or intentionally employ a minor 13 years of age or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.

Under subpart (a)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class F felony for a person 18 to 20 years of age to hire or intentionally employ a minor more than 13 years of age to sell a Schedule I controlled substance.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit either of the offenses set forth above is guilty of a Class F felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 54% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the current statute, 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.

Class E Felonies

Under subpart (b)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class E felony for a person 21 years of age or older to hire or intentionally employ a minor more than 13 years of age to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.

Under subpart (a)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class E felony for a person 18 to 20 years of age to hire or intentionally employ a minor 13 years of age or younger to sell a Schedule I controlled substance.

Under G.S. 90-95(e)(8), it is a Class E felony for a person 21 years of age or older to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance (as proscribed by

subpart (a)(1)) on property used for a child care center or an elementary or secondary school, or within 1,000 feet of the boundary of realty used for these purposes.¹

Under G.S. 90-95(e)(10), it is a class E felony for a person 21 years of age or older to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance (as proscribed by subpart (a)(1)) on property that is a public park or within 1,000 feet of the boundary of realty that is a public park.²

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class E felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 51% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two additional Class E convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Class D Felonies

Under subpart (b)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class D felony for a person 21 years of age or older to hire or intentionally employ a minor more than 13 years of age to sell a Schedule I controlled substance.

Under subpart (b)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class D felony for a person 21 years of age or older to hire or intentionally employ a minor 13 years of age or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I controlled substance.

Under G.S. 90-95(e)(5), it is a Class D felony for a person 18 years of age or older to sell or deliver a controlled substance (as proscribed by subpart (a)(1)) to a person under 16 but more than 13 years old, or to a pregnant female.³

Under G.S. 90-95.6, Promoting drug sales by a minor, it is a Class D felony for a person 21 years of age or older to entice, force, encourage, or otherwise facilitate a minor, or to supervise, support, advise, or protect a minor in violating G.S. 90-95(a)(1) by the manufacture, sale, delivery, or possession with intent to manufacture, sell, or deliver a controlled substance.⁴

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class D felony.

¹ It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

² It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

³ It is assumed that the additional age-based offenses in G.S. 90-95.4(a) and (b) do not apply to this offense.

⁴ It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class D offense was 63 months. If, for example, there was one additional Class D conviction per year as a result of the proposed broadening of the current statute, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Class C Felonies

Under subpart (b)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class C felony for a person 21 years of age or older to hire or intentionally employ a minor 13 years of age or younger to sell a Schedule I controlled substance.

Under G.S. 90-95(e)(5), it is a Class C felony for a person 18 years of age or older to sell or deliver a controlled substance (as proscribed by subpart (a)(1)) to a person 13 years of age or younger.⁵

Under G.S. 90-95.1, Continuing criminal enterprise, it is a Class C felony commit any felony under the Controlled Substances Act (G.S. Chapter 90, Article 5), if the violation is part of a continuing series of violations (a) which are undertaken in concert with five or more other people over whom the person serves as organizer, supervisor, or manager, and (b) from which the person obtains substantial income or resources.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class C felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class C offense was 82 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

⁵ It is assumed that the additional age-based offenses in G.S. 90-95.4(a) and (b) do not apply to this offense.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 28 – DHHS To Provide Law Enforcement Information [Ed.1]

STATUTE

§ 15A-306. Department of Health and Human Services to provide personal identification information for service recipients to law enforcement for investigative purposes.

DESCRIPTION

A law enforcement officer who

1. requests information from DHHS or any of its divisions
2. on an individual who is not the subject of a documented official investigation.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

G.S. 15A-306 authorizes law enforcement to obtain “personal identification information” about a DHHS service recipient for investigative purposes. This information is limited to a service recipient’s full name, date of birth, social security number, past and present addresses and phone numbers on file, and the names, addresses, and phone numbers of any immediate family members, if known.

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: 04/08/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 28 – DHHS to Provide Law Enforcement Information [Ed.1]
(cont'd)

STATUTE

§ 15A-306. Department of Health and Human Services to provide personal identification information for service recipients to law enforcement for investigative purposes.

DESCRIPTION

A law enforcement officer who

1. requests information about an individual from DHHS or any of its divisions and
2. misuses or maliciously uses the information for personal gain.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

G.S. 15A-306 authorizes law enforcement to obtain “personal identification information” about a DHHS service recipient for investigative purposes. This information is limited to a service recipient’s full name, date of birth, social security number, past and present addresses and phone numbers on file, and the names, addresses, and phone numbers of any immediate family members, if known.

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: 04/08/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 28 – DHHS to Provide Law Enforcement Information [Ed.1]
(cont'd)

STATUTE

§ 15A-306. Department of Health and Human Services to provide personal identification information for service recipients to law enforcement for investigative purposes.

DESCRIPTION

A person who

1. is an employee of DHHS or any of its divisions and
2. fails to comply with a formal written request from a law enforcement officer or agency
 - a. for personal identification information about a service recipient or immediate family member
 - b. made to further an official investigation or locate a fugitive.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

The violator shall pay a fine of not less than \$200.

ANALYSIS

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

“Personal identification information” is limited to the recipient’s full name, date of birth, social security number, any past and present addresses and phone numbers on file, and the names, addresses, and phone numbers of any immediate family members, if known.

It is an affirmative defense that federal law bars release of the requested information.

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: 04/08/11

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 49/SB 86 – Laura’s Law [Ed.3]

STATUTE

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

DESCRIPTION

A person who

1. commits the offense of driving while impaired (DWI)
2. with three or more grossly aggravating factors.

PUNISHMENT RANGE

CURRENT: Level I punishment – A prison term of not less than 30 days minimum and not more than 24 months maximum, suspended only on the condition that the offender serve at least 30 days of special probation. May also include a fine of up to \$4,000.

PROPOSED: Aggravated Level I punishment – A prison term of not less than 12 months minimum and not more than 36 months maximum, with no parole, suspended only on the condition that the offender serve at least 120 days of special probation. May also include a fine of up to \$10,000.

ANALYSIS

Driving While Impaired offenses are not classified under Structured Sentencing.

Grossly aggravating factors include: (1) having another DWI conviction within seven years of the instant offense; (2) driving while license revoked due to a DWI conviction; (3) serious injury to another person caused by the impaired driving; and (4) having a child under 16 in the vehicle.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Driving While Impaired offenses are not classified under Structured Sentencing.

DATE OF REVIEW: 03/18/11

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 54 – Habitual Misdemeanor Larceny [Ed.2]

STATUTE

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

DESCRIPTION

A person who

1. commits larceny
2. after being convicted at least seven times
 - a. in separate weeks of district court and/or sessions of superior court,
 - b. in North Carolina or any other jurisdiction,
 - c. without waiving counsel
3. of any
 - a. misdemeanor or felony larceny offense,
 - b. offense deemed or punishable as larceny, or
 - c. substantially similar offense.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Except as otherwise provided, larceny of property valued at \leq \$1,000 is a Class 1 misdemeanor. G.S. 14-72(a).

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

This Commission reviewed similar provisions (requiring 5 or more prior larceny convictions) in HB 108 in March 2003, in HB 423 in March 2005, and in HB 129/SB 934 in April 2009. The Commission found each provision to be consistent with the Offense Classification Criteria.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/08/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 54: HABITUAL MISDEMEANOR LARCENY [Ed.2]

PREPARED: MARCH 8, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The proposed bill creates a new Class H felony by amending G.S. 14-72, Larceny of property; receiving stolen goods or possessing stolen goods, to add subsection (b)(6).

New subsection (b)(6) of G.S. 14-72 would provide that if larceny is committed after the defendant has been convicted at least seven times in this State or another jurisdiction for any offense of larceny, or any offense deemed or punishable as larceny, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies or a combination thereof, the offender shall be guilty of a Class H felony. G.S. 14-72(a) states that larceny as provided in 14-72(b) is a Class H felony.

Under the proposed section, each misdemeanor larceny conviction must be obtained in a separate session of court, and convictions obtained where the defendant waived counsel shall not be included in the seven prior convictions. Regarding whether convictions must be obtained in separate sessions of court, the bill does not mention felony larceny convictions; for purposes of this analysis, it is assumed to include felony larceny.

The Sentencing Commission has no data to indicate what proportion of offenders would be convicted as Class H offenders under Article 2D of Chapter 14 of the N.C.G.S.¹ Therefore, it is not known how many offenders might be sentenced under this bill.

During FY 2009/10, there were 22,411 misdemeanor larceny convictions, which includes convictions for aid and abet larceny (97), misdemeanor larceny (16,756), larceny by changing price tag (82), shoplifting by concealment of goods (4,067), attempted larceny (298), unauthorized use of motor vehicle (1,005), larceny of motor vehicle (24), and larceny of motor fuel (82). In addition, there were 77 Class I felony larceny convictions, which includes convictions for attempted larceny (75) and larceny from a construction site (2).

Of the 22,411 offenders with misdemeanor convictions, 5,555 had five or more prior convictions (Prior Conviction Level III). It is not possible to determine accurately the number of offenders with seven or more prior convictions because common practice in many jurisdictions is to stop searching for additional convictions once five prior convictions have been located.² As a result, five prior convictions are typically recorded in the database to satisfy the requirements for assignment to Prior Conviction Level III. It is, therefore, unknown how many individuals have more than five prior convictions.

¹ While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses used to calculate the number of prior record/conviction points, nor does it contain information on when these prior convictions occurred.

² For example, of the 22,411 offenders with misdemeanor larceny convictions, 23.6% (5,284) had five prior convictions, 0.3% (67) had six prior convictions, and 0.2% (44) had seven prior convictions recorded in the AOC database.

In FY 2009/10, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, three convictions moved from a Class I misdemeanor to a Class H felony, 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.

It is possible to estimate the number of misdemeanor offenders with seven or more prior convictions based on examination of the distribution of offenders with zero to four prior convictions. In this group, there is a 47% average decrease in the number of offenders from one prior conviction point to the next. Using this approach, 5,165 of the 22,411 offenders are estimated to have seven or more prior convictions. Based on available data, it is not possible to determine how many of these prior convictions are for either misdemeanor or felony larceny. The following scenarios were prepared to illustrate the potential impact based on this estimate:

If it is assumed that 258 offenders (or about five percent of the 5,165 misdemeanor convictions described above) would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 84 prison beds the first year and 168 prison beds the second year.

If it is assumed that 517 offenders (or about ten percent of the 5,165 misdemeanor convictions described above) would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 168 prison beds the first year and 336 prison beds the second year.

If it is assumed that 2,583 offenders (or about half of the 5,165 misdemeanor convictions described above) would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 837 prison beds the first year and 1,681 prison beds the second year.

If it is assumed that all of the 5,165 misdemeanor offenders (described above) would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 1,674 prison beds the first year and 3,360 prison beds the second year.

Of the 77 offenders with a felony Class I larceny conviction, 28 had seven or more prior record points.³ Impact on the prison population will also occur if Class I convictions become Class H convictions under the proposed statute because of the higher rate of active sentences (17% for Class I compared to 36% for Class H) and longer average estimated time served (7 months for Class I compared to 11 months for Class H). If, for example, there were ten Class I felony convictions that were reclassified as Class H felony convictions, this would result in the need for two additional prison beds the first year and four additional prison beds the second year.

If, for example, all 28 of the Class I felony convictions with seven or more prior convictions (described above) would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for six prison beds the first year and nine prison beds the second year.

³ While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses used to calculate the number of prior record/conviction points, nor does it contain information on when these prior convictions occurred.

NORTH CAROLINA 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 65 – North Carolina Farmers Freedom Protection Act [Ed.1]

STATUTE

§ [None provided]

DESCRIPTION

A person who

1. is a public employee at the federal, State, or local level and
2. enforces a provision of federal statutes
3. on foodstuffs or produce in intrastate commerce
4. within North Carolina.

PROPOSED OFFENSE CLASS

Class 1A misdemeanor.

ANALYSIS

Structured Sentencing has no 1A misdemeanor offense classification.

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

See also HB 240, HB 241.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Note: Structured Sentencing has no 1A misdemeanor offense classification. This offense is inconsistent with the Offense Classification Criteria for a Class A1 misdemeanor.

DATE OF REVIEW: 04/08/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 65: NORTH CAROLINA FARMERS FREEDOM PROTECTION ACT [Ed.1]

PREPARED: FEBRUARY 10, 2011

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

The proposed bill creates a new Class A1 misdemeanor offense by enacting the “North Carolina Farmers Freedom Protection Act, “ and within it providing for the prohibition of enforcement of certain federal statutes.

Section 5. This section provides that it shall be a Class A1 misdemeanor for public employees employed at the federal, State, or local levels to, within North Carolina, enforce the provisions of the federal statutes upon foodstuffs and produce in intrastate commerce.

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 2009/10, 32% of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class A1 convictions was 46 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.

Technical note: As no 1A misdemeanor classification exists in North Carolina, this fiscal note was prepared under the assumption that it was the intention of the sponsor to create a Class A1 misdemeanor, and “Class A1 misdemeanor” was used in place of “Class 1A misdemeanor” throughout.

NORTH CAROLINA 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 113 – Motorcycle Safety Act [Ed.1]

STATUTE

§ 20-154. Signals on starting, stopping or turning.

DESCRIPTION

Subsection (a1):

The driver of a vehicle upon a highway or public vehicular area

1. who
 - a. starts, stops, or turns from a direct line
 - i. without giving a signal plainly visible to the driver of any vehicle that may be affected, or
 - ii. without giving a clearly audible signal by sounding the horn to any pedestrian who may be affected, or
 - b. backs the vehicle unsafely or in a manner interfering with traffic
2. causing a motorcycle operator to
 - a. change travel lanes, or
 - b. leave the portion of the street or highway designated as travel lanes.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

Violation shall require payment of a fine of not less than \$200.

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.

Failing to signal or improper backing in violation of G.S. 20-154(a) is an infraction. G.S. 20-176(a).

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: 04/08/11

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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 113 – Motorcycle Safety Act [Ed.1] (cont'd)

STATUTE

§ 20-154. Signals on starting, stopping or turning.

DESCRIPTION

Subsection (a1):

The driver of a vehicle upon a highway or public vehicular area

1. who
 - a. starts, stops, or turns from a direct line
 - i. without giving a signal plainly visible to the driver of any vehicle that may be affected, or
 - ii. without giving a clearly audible signal by sounding the horn to any pedestrian who may be affected, or
 - b. backs the vehicle unsafely or in a manner interfering with traffic
2. resulting in a crash
3. causing property damage or personal injury to a motorcycle operator or passenger.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

Violation shall require payment of a fine of not less than \$500.

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.

Failing to signal or improper backing in violation of G.S. 20-154(a) is an infraction. G.S. 20-176(a).

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: 04/08/11

IMPACT ANALYSIS 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 or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 113: MOTORCYCLE SAFETY ACT [Ed.1]

PREPARED: FEBRUARY 24, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The proposed bill creates two new offenses. A new Class 2 misdemeanor and a new Class 1 misdemeanor are created by adding subsection (a1) to existing G.S. 20-154, Signals on starting, stopping or turning.

Existing subsection (a) of G.S. 20-154 provides that the driver of any vehicle upon a highway or public vehicular area before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement. The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

New subsection (a1) provides that a violation of existing subsection (a) shall be a Class 2 misdemeanor if such violation causes a motorcycle operator to change travel lanes or leave the travel lane of any public street or highway.

Since the proposed subsection (a1) creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this subsection on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed subsection. In FY 2009/10, 25% 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.

Further, subsection (a1) provides that a violation of existing subsection (a) shall be a Class 1 misdemeanor should such violation result in a crash causing property damage or personal injury to a motorcycle operator or passenger.

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this subsection on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed subsection. In FY 2009/10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 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.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2009/10 Structured Sentencing Simulation Data

NORTH CAROLINA 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 119 – Amend Environmental Laws 2011 [Ed.1]

STATUTE

§ 13A-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 (f3):

A person who

1. holds a permit for
 - a. mixed beverages, or
 - b. on-premises malt beverages, fortified wine, or fortified wine
2. and knowingly disposes of beverage containers that are required to be recycled G.S. 18B-1006.1
 - a. in a landfill or
 - b. by incineration in an incinerator for which a permit is required.

PROPOSED OFFENSE CLASS

Misdemeanor (G.S. 130A-25(a)).

Unclassified misdemeanors with no prescribed punishments are deemed to be Class 1. G.S. 14-3.

ANALYSIS

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

The provision applies to all recyclable containers of beverages sold at retail. G.S. 18B-1006.1.

It is currently a misdemeanor for any person knowingly to dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in a landfill or by incineration in an incinerator for which a permit is required. G.S. 130A-309.10(f)(9), (f1)(6).

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: 04/08/11

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 149 – Terrorism/State Offense [Ed.2]

STATUTE

§ 14-50.2. Terrorism.

DESCRIPTION

Subdivision (c)(1):

A person who

1. commits a Class A or B1 felony act of violence
2. with the intent to
 - a. intimidate the civilian population at large, or an identifiable group thereof, or
 - b. influence through intimidation the conduct or activities of the government of the United States, a state, or any unit of local government.

PROPOSED OFFENSE CLASS

Class B1 felony.

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

ANALYSIS

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

An “act of violence” includes (1) murder or manslaughter; (2) a felony in G.S. Chapter 14 that includes an assault or use of violence or force against a person; and (3) a felony that includes the threat or use of an explosive or incendiary device, or of a nuclear, biological, or chemical weapon of mass destruction.

All existing Class A and B1 felonies qualify as acts of violence under G.S. 14-50.2.

The Sentencing Commission reviewed a similar offense on April 24, 2009 in HB 1406, which applied to a person who commits, conspires to commit, or aids and abets the commission of a Class A or B1 felony act of violence with terroristic intent. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class B1 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: 04/08/11

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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 149 – Terrorism/State Offense [Ed.2] (cont'd)

STATUTE

§ 14-50.2. Terrorism.

DESCRIPTION

Subdivision (c)(1):

A person who

1. commits a Class B2 through I felony act of violence
2. with the intent to
 - a. intimidate the civilian population at large, or an identifiable group thereof, or
 - b. influence through intimidation the conduct or activities of the government of the United States, a state, or any unit of local government.

PROPOSED OFFENSE CLASS

One class higher than the underlying felony act of violence.

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

ANALYSIS

An “act of violence” includes (1) murder or manslaughter; (2) a felony in G.S. Chapter 14 that includes an assault or use of violence or force against a person; and (3) a felony that includes the threat or use of an explosive or incendiary device, or of a nuclear, biological, or chemical weapon of mass destruction.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Due to the range of offense classes involved in the underlying offense (Classes B2 through I), the proposed offense could result in new offense classifications that are inconsistent with the Offense Classification Criteria.

DATE OF REVIEW: 04/08/11

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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 149 – Terrorism/State Offense [Ed.2] (cont'd)

STATUTE

§ 14-50.2. Terrorism.

DESCRIPTION

Subdivision (c)(2):

A person who

1. engages in a continuing enterprise under G.S. 14-7.20
2. with the intent to
 - a. intimidate the civilian population at large, or an identifiable group thereof, or
 - b. influence through intimidation the conduct or activities of the government of the United States, a state, or any unit of local government.

PROPOSED OFFENSE CLASS

Class D felony.

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

ANALYSIS

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

G.S. 14-7.20 defines a “continuing criminal enterprise” as a violation of any felony provision in G.S. Chapter 14, when the violation is part of a continuing series of Chapter 14 violations by the person together with 5 or more other persons over whom the person occupies a position of organizer, supervisor, or manager, and from which the person obtains substantial income or resources.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The proposed offense would be consistent with the Offense Classification Criteria for a Class C or a Class F felony.

DATE OF REVIEW: 04/08/11

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA 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 149 – Terrorism/State Offense [Ed.2] (cont'd)

STATUTE

§ 14-50.2. Terrorism.

DESCRIPTION

Subsection (d):

A person who

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

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

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

The term “act of terrorism” means committing an “act of violence” or engaging in a continuing criminal enterprise under G.S. 14-7.20 with the intent to intimidate the civilian population at large or an identifiable group thereof, or to influence through intimidation the conduct of the government of the United States, a state, a county, or a city.

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

The Sentencing Commission reviewed a similar offense in HB 1406 on April 24, 2009, found it inconsistent with the Offense Classification Criteria for a Class D felony, but noted that the offense 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 proposed offense would be consistent with the Offense Classification Criteria for a Class C or a Class F felony.

DATE OF REVIEW: 04/08/11

IMPACT ANALYSIS 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 or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 149: TERRORISM/STATE OFFENSE [Ed.2]

PREPARED: APRIL 6, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates the offense of terrorism, a companionate felony offense that potentially applies to a number of existing felony offenses. It also creates a Class D felony offense for soliciting or otherwise attempting to cause another person's participation in an act of terrorism. Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of the bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill.

SECTION 1. Enacts new G.S. 14-50.2, Terrorism, as a single statute within new Article 2D, Terrorism, in G.S. Chapter 14 (Criminal Law). Subsection (a) defines terms as follows:

- “Act of violence” – Includes the following: (1) first- or second-degree murder, and voluntary or involuntary manslaughter; (2) any felony in G.S. Chapter 14 (Criminal Law) that includes an assault or use of violence of force against another person; (3) any felony that includes either the threat or use of an explosive or incendiary device; and (4) any offense that includes the threat or use of a nuclear, biological, or chemical weapon of mass destruction.
- “Continuing criminal enterprise” – Per subsection (c) of G.S. 14-7.20, Continuing criminal enterprise, a violation of any felony provision of G.S. Chapter 14, when the violation is part of a continuing series of Chapter 14 violations undertaken by the person with 5 or more others over whom the person occupies a position of organizer, supervisor, or manager, and from which the person obtains substantial income or resources.

Subsection (b) of G.S. 14-50.2 makes a person guilty of the offense of “terrorism” if the person commits an act of violence or engages in a continuing criminal enterprise (CCE) with the intent (1) to intimidate the civilian population at large, or an identifiable group of the civilian population, or (2) to influence, through intimidation, the conduct or activities of the government of the United States or any state or locality.

Subsection (c) of G.S. 14-50.2 makes terrorism a separate, companionate offense to the underlying act of violence or CCE. The offense of terrorism is generally classified one class higher¹ than the underlying act of violence. However, terrorism is classified as a Class B1 felony when the underlying act of violence is a Class A or B1 felony. If the underlying act is a CCE, the terrorism offense is a Class D felony.

¹ The bill does not specify how the “one class higher” provision applies when the act of violence is a Class B2 felony or a Class C felony. It is assumed that a Class B2 felony act of violence yields a Class B1 felony terrorism offense, and that a Class C felony act of violence yields a Class B2 felony terrorism offense.

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

Under the definition of “act of violence” in G.S. 14-50.2(a), all Class A through B2 felonies as well as certain felonies from Class C through I would potentially support the new offense of terrorism (given the requisite *mens rea*). Therefore, G.S. 14-50.2(c) in effect creates a new offense of terrorism for each felony Class between B1 and H, as follows:

Class B1 Terrorism. Every felony within Class A, B1, or B2 committed with terroristic intent would support a separate Class B1 felony terrorism offense. The proposed offense thus creates a pool of potential offenders who commit Class A, B1, or B2 felony with terroristic intent.

There were 82 Class A, 127 Class B1, and 292 Class B2 felonies in FY 2009/10. However, it is not known how many of these offenders would qualify for the additional Class B1 felony; as a result, the impact of this proposed change cannot be determined. Under Structured Sentencing, with the exception of extraordinary mitigation, offenders convicted of Class B1-D offenses are required to receive an active sentence; a period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

When the offense class for the proposed offense would be the same as (if the base offense is a Class B1 felony), or one class lower (if the base offense is a Class A felony), convictions for the proposed offense would only have impact on the prison population when the sentence for the proposed offense would be served consecutive to the sentence for the base offense. Given the length of sentences for Class A (life without parole or death) and Class B1 (an average estimated time served of 235 months) convictions, any impact resulting from consecutive sentences would be long-term (*i.e.*, outside the ten-year projection period).

When the offense class for the proposed offense would be one class higher (if the base offense is a Class B2 felony), convictions for the proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class B2 felony (an average estimated time served of 184 months) compared to a Class B1 felony (an average estimated time served of 235 months); however, impact would be outside the ten-year projection period based on the sentence lengths for Class B1 and Class B2 felonies.

Class B2 Terrorism. The Class C felonies that would support a Class B2 felony terrorism offense if committed with terroristic intent include (1) those within G.S. Chapter 14 that include an assault or use of violence or force against another person, and (2) those including either the threat or use of an explosive or incendiary device.² There were 430 convictions for Class C felonies in FY 2009/10.³ However, it is not known how many of these convictions would qualify as acts of violence under G.S. 14-50.2(a) or were committed with the terroristic intent required to support the additional Class B2

²Currently, no Class C felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense’s status as an “act of violence” under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.*, G.S. 143-215.94X(c)(1).

³This number excludes habitual felon convictions in which the underlying felony offense was a Class F through I felony.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2009/10 Structured Sentencing Simulation Data.

felony. Under Structured Sentencing, with the exception of extraordinary mitigation, offenders convicted of Class B1-D offenses are required to receive an active sentence; a period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class B2 felony (an average estimated time served of 184 months) compared to a Class C felony (an average estimated time served of 88 months⁴). Impact on the prison population would begin in year 8 of the projection period and would continue outside the ten-year projection period.

In addition, there were 27 Class C drug trafficking convictions in FY 2009/10.⁵ It is not known how many of these offenders, if any, would qualify for the additional Class B2 felony. The proposed offense would have impact on the prison population when the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class B2 felony (an average estimated time served of 184 months) compared to a Class C drug trafficking felony (an average estimated time served of 162 months). For Class C drug trafficking convictions, the long-term impact on the prison population would occur outside the ten-year projections period. A period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

Class C Terrorism. The Class D felonies that would support a Class C felony terrorism offense if committed with terroristic intent include (1) those within G.S. Chapter 14 that include an assault or use of violence of force against another person, (2) those including either the threat or use of an explosive or incendiary device; and (3) those including the threatened use of a nuclear, biological, or chemical weapon of mass destruction.⁶ There were 963 convictions for Class D felonies in FY 2009/10. It is not known how many of these convictions would qualify as acts of violence under G.S. 14-50.2(a) or were committed with the terroristic intent required to support the additional Class C felony. Under Structured Sentencing, with the exception of extraordinary mitigation, offenders convicted of Class B1-D offenses are required to receive an active sentence; a period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class C felony (an average estimated time served of 88 months⁷) compared to a Class D felony (an average estimated time served of 63 months). Impact on the prison population would begin in year 6 of the projection period and would continue outside the ten-year projection period.

In addition, there were 28 Class D drug trafficking convictions in FY 2009/10.⁸ It is not known how many of these offenders, if any, would qualify for the additional Class C felony. The proposed offense

⁴ Ibid.

⁵ Drug trafficking offenses are subject to mandatory active sentences based on offense class, unless a finding of substantial assistance is made according to G.S. 90-95(h).

⁶ Currently, no Class D felonies include as an element the actual use of a nuclear, biological or chemical weapon or mass destruction, as contemplated under G.S. 14-50.2(a). *See* G.S. 14-288.23, -288.24. It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.,* 14-88.

⁷ This average excludes habitual felon convictions in which the underlying felony offense was a Class F through I felony.

⁸ Drug trafficking offenses are subject to mandatory active sentences based on offense class, unless a finding of substantial assistance is made according to G.S. 90-95(h).

would have impact on the prison population when the sentence for the proposed offense would be served consecutive to the sentence for the base offense. For Class D drug trafficking convictions (with an average estimated time served of 119 months) that are consecutive to the additional Class C felony sentence (with an average estimated time served of 88 months⁹), the impact on the prison population would begin in year 10 of the projection period and would continue outside the ten-year projection period. A period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

Class D Terrorism. The Class E felonies that would support a Class D felony terrorism offense if committed with terroristic intent include (1) those within G.S. Chapter 14 that include an assault or use of violence of force against another person, and (2) those including either the threat or use of an explosive or incendiary device.¹⁰ There were 1,425 convictions for Class E felonies in FY 2009/10. It is not known how many of these convictions would qualify as acts of violence under G.S. 14-50.2(a) or were committed with the terroristic intent required to support the additional Class E felony. Under Structured Sentencing, with the exception of extraordinary mitigation, offenders convicted of Class B1-D offenses are required to receive an active sentence; a period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

Since an active sentence is not required for all Class E felony convictions (51% received an active sentence in FY 2009/10), additional impact would occur for any Class E convictions that would now receive an active sentence as required for all Class D convictions (with the exception of extraordinary mitigation). The proposed offense also would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class D felony (an average estimated time served of 63 months) compared to a Class E felony (an average estimated time served of 27 months). Impact on the prison population would begin in year 3 of the projection period.

All persons who engage in a CCE under G.S. 14-7.20 with the requisite terroristic intent would also qualify for Class D felony terrorism. The Administrative Office of the Courts does not have an offense code for this CCE offense.¹¹ The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In addition, there were 39 Class E drug trafficking convictions in FY 2009/10.¹² It is not known how many of these offenders, if any, would qualify for the additional Class D felony. The proposed offense would have impact on the prison population when the sentence for the proposed offense would be served consecutive to the sentence for the base offense. For Class E drug trafficking convictions (with an average estimated time served of 76 months) that are consecutive to the additional Class D felony sentence (with an average estimated time served of 63 months), the impact on the prison population

⁹This average excludes habitual felon convictions in which the underlying felony offense was Class F through I.

¹⁰Currently, no Class E felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.*, G.S. 14-32.2(b)(2).

¹¹The AOC does have an offense code for the continuing criminal enterprise offense in G.S. 90-95.1, Continuing Criminal Enterprise, which applies to controlled substance offenses. However, because the bill does not include G.S. 90-95.1 in the definition of CCE G.S. 14-50.2(a), it is assumed that these offenses are not included. (There were no convictions under 90-95.1 in FY 2009/10.)

¹²Drug trafficking offenses are subject to mandatory active sentences based on offense class, unless a finding of substantial assistance is made according to G.S. 90-95(h).

would begin in year 7 of the projection period and would continue outside the ten-year projection period. A period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

Class E Terrorism. The Class F felonies that would support a Class E felony terrorism offense if committed with terroristic intent include (1) those within G.S. Chapter 14 that include an assault or use of violence or force against another person, and (2) those including either the threat or use of an explosive or incendiary device.¹³ There were 2,285 convictions for Class F felonies in FY 2009/10. It is not known how many of these convictions would qualify as an act of violence under G.S. 14-50.2(a) or were committed with the terroristic intent required to support the additional Class E felony.

Impact on the prison population will occur if Class F convictions are accompanied by Class E terrorism convictions under the proposed statute because of a higher rate of active sentences and longer average estimated time served for Class E felonies.¹⁴ The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class E felony (an average estimated time served of 27 months) compared to a Class F felony (an average estimated time served of 18 months). Impact on the prison population would begin in year 2 of the projection period and would continue outside the ten-year projection period. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Class F Terrorism. The Class G felonies that would support Class F felony terrorism offense if committed with terroristic intent include those (1) within G.S. Chapter 14 that include an assault or use of violence or force against another; and (2) that include either the threat or use of an explosive or incendiary device.¹⁵ There were 3,831 convictions for Class G felonies in FY 2009/10. It is not known how many of these convictions would qualify as an act of violence under G.S. 14-50.2(a), or were committed with the terroristic intent required to support the additional Class F felony.

Impact on the prison population will occur if Class G convictions are accompanied by Class F terrorism convictions under the proposed statute because of the higher rate of active sentences (54% for Class F compared to 42% for Class G) and longer average estimated time served (15 months compared to 18 months for Class F). The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class F felony (an average estimated time served of 18 months) compared to a Class G felony (an average estimated time served of 15 months). Impact on the prison population would begin in year 2 of the projection period and would continue outside the ten-year projection period.

¹³Currently, no Class F felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.*, G.S. 14-288.8

¹⁴Due to certain Class F offenses, Class F convictions actually resulted in higher active sentence rates with longer average estimated time served than Class E convictions in FY 2009/10. This is an anomaly. Historically, as the severity of the offense class increases, the active rates and estimated time served increases.

¹⁵Currently, no Class G felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.*, G.S. 14-69.1, -69.2.

Class G Terrorism. The Class H felonies that would support a Class G felony terrorism offense if committed with terroristic intent include those (1) within G.S. Chapter 14 that include an assault or use of violence or force against another person; (2) that include either the threat or use of an explosive or incendiary device.¹⁶ There were 12,531 convictions for Class H felonies in FY 2009/10. It is not known how many of these convictions would qualify as an act of violence under G.S. 14-50.2(a), or were committed with the terroristic intent required to support the additional Class G felony.

Impact on the prison population will occur if Class H convictions are accompanied by Class G terrorism convictions under the proposed statute because of the higher rate of active sentences (42% for Class G compared to 36% for Class H) and longer average estimated time served (11 months compared to 15 months for Class G). The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class G felony (an average estimated time served of 15 months) compared to a Class H felony (an average estimated time served of 11 months). Impact on the prison population would begin in year 1 of the projection period and would continue throughout the ten-year projection period.

Note: Article 4A (Prohibited Secret Societies and Activities) of G.S. Chapter 14 contains three Class H felonies that involve an act intended to intimidate individuals or groups: (1) G.S. 14-12.12, Placing burning or flaming cross on property of another or on public street or highway or on any public place; (2) G.S. 14-12.13, Placing exhibit with intention of intimidating, etc., another; and (3) G.S. 14-12.14, Placing exhibit while wearing mask, hood, or other disguise. *See* G.S. 14-12.15. However, based on the essential elements of these offenses, none would appear to qualify as an “act of violence” supporting a terrorism offense under the proposed bill. Even the offense of cross-burning as defined in G.S. 14-12.12(b) does not necessarily involve “the threat or use of an explosive or incendiary device” as contemplated by G.S. 14-50.2(a). Rather, it prohibits the placement of “any manner of exhibit in which a burning or flaming cross real *or simulated*, is a whole or part.” (emphasis added). Because the offense covers simulated cross-burnings, the threat or use of an incendiary device is a *sine qua non* of this offense. Moreover, none of these Article 4A offenses has been assigned an offense code by the Administrative Office of the Courts. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Class H Terrorism. The Class I felonies that would support a Class G felony terrorism offense if committed with terroristic intent include those (1) within G.S. Chapter 14 that include an assault or use of violence or force against another person; (2) that include either the threat or use of an explosive or incendiary device.¹⁷ There were 7,555 convictions for Class I felonies in FY 2009/10. It is not known how many of these convictions would qualify as an act of violence under G.S. 14-50.2(a), or were committed with the terroristic intent required to support the additional Class H felony.

Impact on the prison population will occur if Class I convictions are accompanied by Class H terrorism convictions under the proposed statute because of the higher rate of active sentences (36% for Class H compared to 17% for Class I) and longer average estimated time served (7 months compared to 11

¹⁶No Class H felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense’s status as an “act of violence” under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.,* G.S. 14-69.1, -69.2.

¹⁷No Class I felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense’s status as an “act of violence” under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.,* G.S. 14-163.

months for Class H). The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class H felony (an average estimated time served of 11 months) compared to a Class I felony (an average estimated time served of 7 months). Impact on the prison population would begin in year 1 of the projection period and would continue throughout the ten-year projection period.

II. Subsection (d) of G.S. 14-50.2 makes it a Class D felony to solicit, invite, recruit, encourage, or otherwise cause or attempt to cause another person to participate in one or more acts of terrorism. This is a stand-alone offense which does not require the actual commission of a companionate act of violence. Accordingly, subsection (d) lacks the language of subsection (c) providing that the offense is separate from the underlying offense.

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 for soliciting, inviting, recruiting, encouraging or otherwise causing or attempting to cause another person to participate in a qualifying act of violence for the purpose of intimidating the civilian population or influencing government conduct or activities through intimidation. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class D offense was 63 months. A nine-month period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies.

Generally, solicitation of a felony is punished two classes lower than the substantive offense (G.S. 14-2.6). The total number of persons convicted of solicitation to commit a felony qualifying as an act of violence under G.S. 14-50.2. It is also not known what portion of these offenders would meet the additional *mens rea* requirement under the statute.

NORTH CAROLINA 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 215 – Unborn Victims Of Violence Act/Ethen’s Law [Ed.3]

STATUTE

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

DESCRIPTION

A person who

1. unlawfully
2. causes the death of an unborn child by
 - a. willfully and maliciously committing an act with intent to cause death to the unborn child;
 - b. committing an act that is inherently dangerous to human or fetal life and is done so recklessly and wantonly that it reflects disregard of life; or
 - c. perpetrating or attempting to perpetrate any arson, rape or sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon, including a nuclear, biological, or chemical weapon of mass destruction.

PROPOSED OFFENSE CLASS

Class A felony.

Punishment shall be life imprisonment without parole.

ANALYSIS

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

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

The offense shall be separate from any other crime committed as part of the same conduct.

See also SB 353.

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: 04/08/11

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 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 215 – Unborn Victims of Violence Act/Ethen’s Law [Ed.3]
(cont’d)

STATUTE

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

DESCRIPTION

A person who

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

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

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

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

The offense shall be separate from any other crime committed as part of the same conduct.

See also SB 353.

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: 04/08/11

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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 215 – Unborn Victims of Violence Act/Ethen’s Law [Ed.3]
(cont’d)

STATUTE

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

DESCRIPTION

A person who

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

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

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

The offense shall be separate from any other crime committed as part of the same conduct.

Involuntary manslaughter is a Class F felony under G.S. 14-18.

See also SB 353.

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: 04/08/11

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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 215 – Unborn Victims of Violence Act/Ethen’s Law [Ed.3]
(cont’d)

STATUTE

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

DESCRIPTION

A person who

1. by battery of a pregnant woman
2. unlawfully inflicts serious bodily harm
3. upon an unborn child who is subsequently born alive.

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.

Subsection (b) defines “serious bodily harm” as bodily injury (1) creating a substantial risk of death, (2) causing serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or (3) resulting in prolonged hospitalization, or (4) causing the birth of the unborn child prior to 37 weeks gestation if the child weighs 2,500 grams or less at the time of birth.

The offense shall be separate from any other crime committed as part of the same conduct.

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

See also SB 353.

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: 04/08/11

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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 215 – Unborn Victims of Violence Act/Ethen’s Law [Ed.3]
(cont’d)

STATUTE

§ 14-23.6. Battery on an unborn child; penalty.

DESCRIPTION

A person who

1. commits a battery
2. upon a pregnant woman.

PROPOSED OFFENSE CLASS

Class A1 misdemeanor.

ANALYSIS

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

This offense is a lesser-included offense of G.S. 14-23.5, Assault inflicting serious bodily injury on an unborn child.

The offense shall be separate from any other crime committed as part of the same conduct.

Battery is a Class2 misdemeanor. G.S. 14-33(a).

Battery of a female by an adult male is a Class A1 misdemeanor. G.S. 14-33(c)(2).

Battery of a child under the age of 12 years is a Class A1 misdemeanor. G.S. 14-33(c)(3).

See also SB 353.

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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 226 – Prohibit Sweepstakes Devices [Ed.1]

STATUTE

§ 14-306.4A. All electronic machines or devices for sweepstakes unlawful.

DESCRIPTION

A person who

1. is a sweepstakes sponsor or promoter, or employee, partner, affiliate, subsidiary or contractor thereof, and
2. owns, leases, or otherwise possesses
3. an electronic machine or device
 - a. intended for use by sweepstakes' entrants
 - b. as part of any action or activity relating to the conduct of a sweepstakes.

PROPOSED OFFENSE CLASS

First offense: 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.

The offense does not apply to an electronic machine or device which is used solely by sweepstakes promoters or their agents, and not by entrants or customers.

Violation is a lesser included offense of G.S. 14-306.4, which prohibits operation or placing into operation of an electronic machine or device (1) to conduct a sweepstakes through use of an entertaining display, or (2) to promote a sweepstakes that is conducted through use of an entertaining display. A first offense under G.S. 14-306.4 is a Class 1 misdemeanor.

See also SB 3.

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: 04/08/11

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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 226 – Prohibit Sweepstakes Devices [Ed.1] (cont'd)

STATUTE

§ 14-306.4A. All electronic machines or devices for sweepstakes unlawful.

DESCRIPTION

A person who

1. is a sweepstakes sponsor or promoter, or employee, partner, affiliate, subsidiary or contractor thereof, and
2. owns, leases, or otherwise possesses
3. an electronic machine or device
 - a. intended for use by sweepstakes' entrants
 - b. as part of any action or activity relating to the conduct of a sweepstakes.

PROPOSED OFFENSE CLASS

Second offense: 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.

Violation is a lesser included offense of G.S. 14-306.4, which prohibits operation or placing into operation of an electronic machine or device (1) to conduct a sweepstakes through use of an entertaining display, or (2) to promote a sweepstakes that is conducted through use of an entertaining display. A second offense under G.S. 14-306.4 is a Class H felony.

Structured Sentencing accounts for an offender's prior criminal conduct through the (felony) prior record level or (misdemeanor) prior conviction level.

See also SB 3.

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: 04/08/11

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 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 226 – Prohibit Sweepstakes Devices (cont'd)

STATUTE

§ 14-306.4A. All electronic machines or devices for sweepstakes unlawful.

DESCRIPTION

A person who

1. is a sweepstakes sponsor or promoter, or employee, partner, affiliate, subsidiary or contractor thereof, and
2. owns, leases, or otherwise possesses
3. an electronic machine or device
 - a. intended for use by sweepstakes' entrants
 - b. as part of any action or activity relating to the conduct of a sweepstakes.

PROPOSED OFFENSE CLASS

Third or subsequent offense: 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

Violation is a lesser included offense of G.S. 14-306.4, which prohibits operation or placing into operation of an electronic machine or device (1) to conduct a sweepstakes through use of an entertaining display, or (2) to promote a sweepstakes that is conducted through use of an entertaining display. A third or subsequent offense under G.S. 14-306.4 is a Class G felony.

Structured Sentencing accounts for an offender's prior criminal conduct through the (felony) prior record level or (misdemeanor) prior conviction level.

See also SB 3.

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: 04/08/11

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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 226 – Prohibit Sweepstakes Devices [Ed.1] (cont'd)

STATUTE

§ 14-306.4A. All electronic machines or devices for sweepstakes unlawful.

DESCRIPTION

A person who

1. is a sweepstakes sponsor or promoter, or employee, partner, affiliate, subsidiary or contractor thereof, and
2. possesses
3. five or more electronic machines or devices
 - a. intended for use by sweepstakes' entrants
 - b. as part of any action or activity relating to the conduct of a sweepstakes.

PROPOSED OFFENSE CLASS

Class G felony. (G.S. 14-309(c)).

ANALYSIS

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

It is currently a Class G felony under G.S. 14-309(b)-(c): (1) to operate, allow to be operated, place into operation, or keep in one's possession for the purpose of operation five or more video gaming machines barred by G.S. 14-306.1A, or (2) to possess five or more game terminals with a display simulating a game ordinarily played on a slot machine or video gaming machine, for the purpose of promoting, operating, or conducting a server-based electronic game promotion, as barred by G.S. 14-306.3.

See also SB 3.

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: 04/08/11

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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 226 – Prohibit Sweepstakes Devices (cont'd)

STATUTE

§ 14-306.4. Electronic machines and devices for sweepstakes prohibited.

DESCRIPTION

A person who

1. operates or places into operation
2. five or more electronic machines or devices to
 - a. conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize.
 - b. promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

PROPOSED OFFENSE CLASS

Class G felony. (G.S. 14-309(c)).

ANALYSIS

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

It is currently a Class G felony under G.S. 14-309(b)-(c): (1) to operate, allow to be operated, place into operation, or keep in one's possession for the purpose of operation five or more video gaming machines barred by G.S. 14-306.1A, or (2) to possess five or more game terminals with a display simulating a game ordinarily played on a slot machine or video gaming machine for the purpose of promoting, operating, or conducting a server-based electronic game promotion, as barred by G.S. 14-306.3.

See also SB 3.

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: 04/08/11

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 228 – Video Lottery Entertainment [Ed.1]

STATUTE

§ 18D-401. Unlawful acts affecting video lottery.

DESCRIPTION

Subsection (b):

A person who

1. intentionally
2. manipulates the outcome, payoff, or operation of a video lottery terminal
3. by physical tampering or any other means.

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: 04/08/11

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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 228 – Video Lottery Entertainment [Ed.1] (cont'd)

STATUTE

§ 18D-401. Unlawful acts affecting video lottery.

DESCRIPTION

Subsection (c):

A person who

1. owns a video lottery terminal and
2. falsely reports or fails to report the amount of monies due to the State Lottery Commission.

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: 04/08/11

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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 228 – Video Lottery Entertainment [Ed.1] (cont'd)

STATUTE

§ 18D-401. Unlawful acts affecting video lottery.

DESCRIPTION

Subsection (d):

A person who

1. is a video lottery retailer or operator and
2. intentionally pays a prize in an amount less than the specified prize won.

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: 04/08/11

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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 228 – Video Lottery Entertainment [Ed.1] (cont'd)

STATUTE

§ 18D-400. Inspection of premises, records, activities.

DESCRIPTION

Subsection (b):

A person who

1. resists or obstructs
2. a lawful inspection by
 - a. a State Lottery Commission employee or
 - b. an Alcohol Law Enforcement agent
3. of a premises for which a video lottery license or permit has been issued.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

It is a Class 2 misdemeanor to resist, delay, or obstruct a public officer in the discharge or attempted discharge of an official duty. G.S. 14-223.

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: 04/08/11

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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 228 – Video Lottery Entertainment [Ed.1] (cont'd)

STATUTE

§ 18D-401. Unlawful acts affecting video lottery.

DESCRIPTION

Subsection (a):

A person who

1. tampers with
2. a video lottery terminal
3. with the intent to interfere with its proper operation.

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: 04/08/11

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 240 – Intrastate Commerce Act [Ed.1]

STATUTE

§ 66-394. Penalties.

DESCRIPTION

Subsection (a):

A person who

1. is an official, agent, or employee of the U.S. government, or any employee of a corporation providing services to the U.S. government, and
2. enforces or attempts to enforce
3. any act, order, law, statute, rule, or regulation of the government of the United States
4. upon any
 - a. goods grown, manufactured, or made in North Carolina, or
 - b. services performed in North Carolina
5. which are sold, maintained, or retained within North Carolina.

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, or in significant societal injury as Class H felonies.

The provision is effective only if Section 5 of Article I of the North Carolina Constitution is amended so that it does not conflict with this act.

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: 04/08/11

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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 240 – Intrastate Commerce Act [Ed.1] (cont'd)

STATUTE

§ 66-394. Penalties.

DESCRIPTION

Subsection (b):

A person who

1. is an officer or employee of the State of North Carolina or any city or county and
2. enforces or attempts to enforce
3. any act, order, law, statute, rule, or regulation of the government of the United States
4. upon any
 - a. goods grown, manufactured, or made in North Carolina, or
 - b. services performed in North Carolina
5. which are sold, maintained, or retained in North Carolina.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

This offense is effective only if Section 5 of Article I of the North Carolina Constitution is amended so that it does not conflict with this act.

See also HB 65, HB 241.

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: 04/08/11

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 241 – North Carolina Firearms Freedom Act [Ed.1]

STATUTE

§ [None provided]

DESCRIPTION

A person who

1. is a public employee employed at the federal, State, or local level and
2. enforces the provisions of the federal statutes
 - a. upon firearms and produce
 - b. in intrastate commerce
3. within North Carolina.

PROPOSED OFFENSE CLASS

Class 1A misdemeanor.

ANALYSIS

Structured Sentencing has no 1A misdemeanor offense classification.

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

This offense is effective only if Section 5 of Article I of the North Carolina Constitution is amended so that it does not conflict with this act.

See also HB 65, HB 240.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Note: Structured Sentencing has no 1A misdemeanor offense classification. This offense is inconsistent with the Offense Classification Criteria for a Class A1 misdemeanor.

DATE OF REVIEW: 04/08/11

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 261 – Intrastate Motor Carrier Markings [Ed.2]

STATUTE

§ 20-101. Certain business vehicles to be marked.

DESCRIPTION

A person who

1. uses in intrastate commerce
2. an intrastate motor carrier motor vehicle that
 - a. is required to have an identification number under rules adopted by the Department of Crime Control and Public Safety, but
 - b. lacks the motor carrier's identification number
 - i. preceded by the letters "USDOT" and followed by the letters "NC"
 - ii. printed on each side of the vehicle
 - iii. in letters at least 3" in height.

PROPOSED OFFENSE CLASS

Misdemeanor (G.S. 20-176(a)).

An unclassified misdemeanor with no prescribed punishment is deemed to be Class 1 (G.S. 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.

The offense excludes vehicles subject to federal motor carrier safety regulations in 49 C.F.R. Part 390.

It is currently a Class 1 misdemeanor to use in intrastate commerce a motor vehicle with a gross vehicle weight rating of more than 10,000 pounds without having the name of the owner printed on each side of the vehicle in letters at least 3" in height. G.S. 20-101(a), -176(a).

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: 04/08/11

IMACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 311 – Household Goods Carriers/Id Markings [Ed.1]

STATUTE

§ 20-398. Household goods carriers; marking of identification of vehicles.

DESCRIPTION

A motor carrier, or any officer, employee, agent, or representative thereof who

1. operates a motor vehicle upon a North Carolina highway, public street, or public vehicular area
2. for intrastate transportation of household goods for compensation
3. without displaying in characters at least 3 inches high
 - a. the name or trade name and the North Carolina number assigned by the NC Utilities Commission displayed on both sides of vehicle, and
 - b. the North Carolina number assigned to the vehicle on its rear left upper quadrant
4. printed on the vehicle or on durable placards fastened thereto.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

The offense does not apply to motor carriers engaged only in interstate commerce.

If the carrier is engaged in both intrastate and interstate commerce, and is marked as required by the Federal Motor Carrier Safety Administration, the carrier need only print the carrier’s North Carolina number in a conspicuous place near his or her name in a size consistent with FMCSA regulations.

If the vehicle is rented or under a non-permanent lease, the words “Operated by” must also appear above or preceding the name of the carrier.

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: 04/08/11

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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 311 – Household Goods Carriers/ID Markings [Ed.1] (cont'd)

STATUTE

§ 62-280.1. False representation of household goods carrier certificate unlawful

DESCRIPTION

A person who

1. is not certified to operate as a motor carrier of household goods and
2. in any manner represents, indicates, or implies that the person holds a certificate or is authorized to operate as a carrier of household goods in North Carolina
 - a. orally,
 - b. in writing, or
 - c. by using any words, letters, abbreviations, or insignia in connection with the person's name or place of business.

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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 324 – Amend Possession Of Marijuana [Ed.1]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Possession of marijuana.

OFFENSE CLASS

CURRENT: ≤ ½ ounce: Class 3 misdemeanor.
> ½ ounce but ≤ 1 ½ ounces: Class 1 misdemeanor.
> 1 ½ ounces: Class I felony.

PROPOSED: < 1 ounce: Infraction.
≥ 1 ounce but < 1 ½ ounces: Class 3 misdemeanor.
≥ 1 ½ ounces but < 2 ounces: Class 1 misdemeanor.
≥ 2 ounces: Class I felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]

STATUTE

§ 14-43.14. Smuggling of human beings.

DESCRIPTION

A person who

1. intentionally engages in
2. the smuggling of human beings
3. for profit or commercial purpose.

PROPOSED OFFENSE CLASS

Class F felony.

Each violation is a separate offense and shall not merge with any other offense.

ANALYSIS

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

“Smuggling of human beings” is the transportation, procurement of transportation, or use of property or real property by a person or entity that knows or has reason to know that the person transported or to be transported is not lawfully present in the United States or has attempted to enter, entered, or remained in the United States unlawfully. It includes provision of services (such as travel arrangement services or money transmission services) or property (such as provision of a weapon, a vehicle or other means of transportation, or false identification) that facilitates transportation. G.S. 14-43.10(a)(6).

The Sentencing Commission reviewed a similar provision in HB 194 in March 2009, and found it to inconsistent with the Offense Classification Criteria for a Class D 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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(Cont'd)

STATUTE

§ 14-43.14. Smuggling of human beings.

DESCRIPTION

A person who

1. intentionally engages in
2. the smuggling of human beings
3. involving
 - a. a minor who is not accompanied by a family member over 18 years of age, or
 - b. use of a deadly weapon or dangerous instrument
4. for profit or commercial purpose.

PROPOSED OFFENSE CLASS

Class C felony.

Each violation is a separate offense and shall not merge with any other offense.

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.

“Smuggling of human beings” is the transportation, procurement of transportation, or use of property or real property by a person or entity that knows or has reason to know that the person transported or to be transported is not lawfully present in the United States or has attempted to enter, entered, or remained in the United States unlawfully. It includes provision of services (such as travel arrangement services or money transmission services) or property (such as provision of a weapon, a vehicle or other means of transportation, or false identification) that facilitates transportation. G.S. 14-43.10(a)(6).

“Family member” is a parent, grandparent, sibling, or any other person who is related by consanguinity or affinity to the second degree.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-16. Unlawful transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

A person who

1. while in violation of a criminal statute or otherwise committing a crime
2. attempts to or does transport or move
 - a. in this State
 - b. in a means of transportation
3. ten or more aliens
4. in furtherance of their unlawful presence in the United States
5. while knowing or recklessly disregarding that they have come to, have entered, or remain in the United States illegally.

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.

The offense does not apply to child protective services workers or child welfare services workers, or to emergency medical services personnel, or personnel providing ambulance or rescue squad services, while acting in their official capacity.

The Sentencing Commission reviewed a similar provision (not requiring 10 or more aliens) in SB 1596 in June 2008 and SB 337 in April 2009, found it to be inconsistent with the Offense Classification Criteria for a Class G felony, but noted that it would be consistent with the criteria for Class H.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-16. Unlawful transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

A person who

1. while in violation of a criminal statute or otherwise committing a crime
2. attempts to or does
 - a. conceal, harbor, or shield from detection
 - b. in any place in this State (including a building or means of transportation)
3. ten or more aliens
4. while knowing or recklessly disregarding that they have come to, have entered, or remain in the United States illegally.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

This offense does not apply to child protective services workers or child welfare services workers, or to emergency medical services personnel, or personnel providing ambulance or rescue squad services, while acting in their official capacity.

The Sentencing Commission reviewed a similar provision (not requiring 10 or more aliens) in SB 1596 in June 2008 and SB 337 in April 2009, found it to be inconsistent with the Offense Classification Criteria for a Class G felony, but noted that it would be consistent with the criteria for Class H.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-16. Unlawful transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

A person who

1. while in violation of a criminal statute or otherwise committing a crime
2. encourages or induces
3. to come to or reside in this State
4. ten or more aliens
5. knowing or recklessly disregarding that their coming to, entering, or residing in North Carolina is or will be unlawful.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

This offense does not apply to child protective services workers or child welfare services workers, or to emergency medical services personnel, or personnel providing ambulance or rescue squad services, while acting in their official capacity.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-15. Willful failure to complete or carry an alien registration document.

DESCRIPTION

A person who

1. is an alien 18 years of age or older and
2. fails to carry and have in possession
3. a certificate of alien registration or alien registration card issued pursuant to 8 U.S.C. § 1304.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

The maximum prison sentence is 20 days for first offense and 30 days for any subsequent offense. The maximum fine is \$100.

ANALYSIS

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

The offense does not apply to a person who maintains authorization from the federal government to remain in the United States.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/18/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-15. Willful failure to complete or carry an alien registration document.

DESCRIPTION

A person who

1. is an alien required under 8 U.S.C. § 1306(a)
 - a. to apply for registration or
 - b. to be fingerprinted in the United States
2. and willfully fails or refuses to do so.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

The maximum prison sentence is 20 days for first offense and 30 days for any subsequent offense. The maximum fine is \$100.

ANALYSIS

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

The offense does not apply to a person who maintains authorization from the federal government to remain in the United States.

FINDINGS

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

DATE OF REVIEW: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-15. Willful failure to complete or carry an alien registration document.

DESCRIPTION

A person who

1. is a parent or legal guardian
2. required to apply for registration of an alien under 8 U.S.C. § 1306(a)
3. and willfully fails or refuses to do so.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

The maximum prison sentence is 20 days for first offense and 30 days for any subsequent offense. The maximum fine is \$100.

ANALYSIS

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

The offense does not apply to a person who maintains authorization from the federal government to remain in the United States.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-16. Unlawful transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

A person who

1. while in violation of a criminal statute or otherwise committing a crime
2. attempts to or does transport or move
 - a. in this State
 - b. in a means of transportation
3. an alien
4. in furtherance of the alien's illegal presence in the United States
5. while knowing or recklessly disregarding that the alien has come to, has entered, or remains in the United States illegally.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

This offense does not apply to child protective services workers or child welfare services workers, or to emergency medical services personnel, or personnel providing ambulance or rescue squad services, while acting in their official capacity.

The Sentencing Commission reviewed a similar provision in SB 1596 in June 2008 and SB 337 in April 2009, and found it to be inconsistent with the Offense Classification Criteria for a Class G felony. The Commission noted that the provision would be consistent with the criteria for Class H.

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: 04/08/11

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 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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-16. Unlawful transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

A person who

1. while in violation of a criminal statute or otherwise committing a crime
2. attempts to or does
 - a. conceal, harbor, or shield from detection
 - b. in any place in this State (including a building or means of transportation)
3. an alien
4. while knowing or recklessly disregarding that the alien has come to, has entered, or remains in the United States illegally.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

This offense does not apply to child protective services workers or child welfare services workers, or to emergency medical services personnel, or personnel providing ambulance or rescue squad services, while acting in their official capacity.

The Sentencing Commission reviewed a similar provision in SB 1596 in June 2008 and SB 337 in April 2009, and found it to be inconsistent with the Offense Classification Criteria for a Class G felony. The Commission noted that the provision would be consistent with the criteria for Class H.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-16. Unlawful transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

A person who

1. while in violation of a criminal statute or otherwise committing a crime
2. encourages or induces
3. an alien
4. to come to or reside in this State
5. knowing, or recklessly disregarding, that the alien's coming to, entering, or residing in North Carolina is or will be unlawful.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

This offense does not apply to child protective services workers or child welfare services workers, or to emergency medical services personnel, or personnel providing ambulance or rescue squad services, while acting in their official capacity.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-15. Willful failure to complete or carry an alien registration document.

DESCRIPTION

A person who

1. knowingly files with the Attorney General
2. a false or frivolous complaint
3. alleging an employer's violation of G.S. 64-26, Knowingly employing unauthorized alien prohibited.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

The Sentencing Commission reviewed similar provisions in HB 2610/SB 2002 and SB 1596 in June 2008, and in HB 344/SB 32 and SB 337 in April 2009, and found them 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.

This offense is consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-46. Verification of eligibility for federal public benefits.

DESCRIPTION

A person who

1. is an employee of an agency of this State or its political subdivision that administers a federal public benefit and
2. discovers a violation of federal immigration law
3. and fails to report it.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

See also SB 205.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-46. Verification of eligibility for federal public benefits.

DESCRIPTION

A person who

1. supervises an employee of an agency of this State or its political subdivision that administers a federal public benefit
2. knows of the employee's failure to report a violation of federal immigration law
3. and fails to direct the employee to make the 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.

See also SB 205.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-47. Verification of eligibility for State or local public benefits.

DESCRIPTION

A person who

1. is employed by an agency of this State or its political subdivision that administers a State or local public benefit
2. discovers a violation of federal immigration law
3. and fails to report it.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

See also SB 205.

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: 04/08/11

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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 343 – Support Law Enforcement/Safe Neighborhoods [Ed.1]
(cont'd)

STATUTE

§ 64-47. Verification of eligibility for State or local public benefits.

DESCRIPTION

A person who

1. supervises an employee of an agency of this State or its political subdivision that administers a State or local public benefit
2. knows of the employee's failure to report a violation of federal immigration law
3. and fails to direct the employee to make a 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.

See also SB 205.

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: 04/08/11

IMACT 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 348 – Offenders/No Access To Personnel Records [Ed.1]

STATUTE

§ 126-28.1. Penalty for providing offenders access to personnel files.

DESCRIPTION

A public official or employee who

1. knowingly and willingly provides
 - a. access to, or
 - b. custody or possession of
2. any portion of a public employee record
3. to a person
 - a. in the custody of, or under supervision by, the Department of Correction, or
 - b. in the custody of a local confinement facility.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

The offender shall be fined up to \$500.

ANALYSIS

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

G.S. 126-23(c) allows any person to inspect, examine, or copy the personnel file of any employee of a State department, agency, institution, commission and bureau during regular business hours. Subsection (d) bars access to these personnel records by persons who are under DOC custody or supervision or confined in local confinement facilities.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 1 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 348 – Offenders/No Access to Personnel Records [Ed.1]
(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; furnishing tobacco products or mobile phones to inmates.

DESCRIPTION

Subsection (f):

A person who

1. knowingly gives
2. public employee records obtained under G.S. 126-23
3. to persons
 - a. in the custody of, or under supervision by, the Department of Correction, or
 - b. in the custody of a local confinement facility.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 126-23(c) allows any person to inspect, examine, or copy the personnel file of any employee of a department, agency, institution, commission and bureau of the State during regular business hours. Subsection (d) bars access to these personnel records by persons who are under DOC custody or supervision or confined in local confinement facilities.

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: 04/08/11

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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 348 – Offenders/No Access to Personnel Records [Ed.1]
(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; furnishing tobacco products or mobile phones to inmates.

DESCRIPTION

Subsection (f):

A person who

1. knowingly gives or sells
2. public employee records obtained under G.S. 126-23
3. to another person
4. for delivery to persons
 - a. in the custody of, or under supervision by, the Department of Correction, or
 - b. in the custody of a local confinement facility.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 126-23(c) allows any person to inspect, examine, or copy the personnel file of any employee of a department, agency, institution, commission and bureau of the State during regular business hours. Subsection (d) bars access to these personnel records by persons who are under DOC custody or supervision or confined in local confinement facilities.

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: 04/08/11

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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 348 – Offenders/No Access to Personnel Records [Ed.1]
(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; furnishing tobacco products or mobile phones to inmates.

DESCRIPTION

Subsection (g):

A person who

1. is in the custody of
 - a. or under supervision by the Department of Correction, or
 - b. a local confinement facility
2. and possesses
3. public employee records that the person is prohibited from obtaining under G.S. 126-23(d).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 126-23(c) allows any person to inspect, examine, or copy the personnel file of any employee of a department, agency, institution, commission and bureau of the State during regular business hours. Subsection (d) bars access to these personnel records by persons who are under DOC custody or supervision or confined in local confinement facilities.

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: 04/08/11

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 351 – Restore Confidence In Government [Ed.1]

STATUTE

§ 163-82.25A. Piece payment in voter registration drives prohibited.

DESCRIPTION

A person who

1. employs or contracts with
2. another person to
 - a. register voters or
 - b. assist or encourage voters to fill out voter registration forms
3. and pays that person per voter registration application completed.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/08/11

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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 351 – Restore Confidence in Government [Ed.1] (cont'd)

STATUTE

§ 163-82.25A. Piece payment in voter registration drives prohibited.

DESCRIPTION

A person who

1. accepts payment
 - a. to register voters or
 - b. to assist or encourage voters to fill out voter registration forms
2. based on each voter registration application completed.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE OF REVIEW: 04/08/11

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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 351 – Restore Confidence in Government [Ed.1] (cont'd)

STATUTE

§ 163-274. Certain acts declared misdemeanors.

DESCRIPTION

A person who

1. in connection with any primary or election in this State
2. pays or accepts payment per voter registration application completed in violation of G.S. 163-82.25A.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

DATE OF REVIEW: 04/08/11

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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 351 – Restore Confidence in Government [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

An entity that:

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

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

“Relevant political campaign” is a candidate for the office with authority to award the contract, the officer holding the office with authority to award the contract, or a political committee controlled by a candidate for or officer holding the office with authority to award the contract.

“Principal offices and departments” are the Offices of the Governor and Lieutenant Governor and the Departments of the Secretary of State, State Auditor, State Treasurer, Public Instruction, Justice, Agriculture and Consumer Services, Labor, and Insurance. G.S. 143A-11.

The Sentencing Commission reviewed an identical provision in HB 961 in May 2009 and found it 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: 04/08/11

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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 351 – Restore Confidence in Government [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

A person who

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

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.

“Relevant political campaign” is a candidate for the office with authority to award the contract, the officer holding the office with authority to award the contract, or a political committee controlled by a candidate for or officer holding the office with authority to award the contract.

“Principal offices and departments” are the Offices of the Governor and Lieutenant Governor and the Departments of the Secretary of State, State Auditor, State Treasurer, Public Instruction, Justice, Agriculture and Consumer Services, Labor, and Insurance. G.S. 143A-11.

The Sentencing Commission reviewed an identical provision in HB 961 in May 2009 and found it 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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 395 – Strengthen Prohibition On Cockfighting [Ed.1]

STATUTE

§ 14-362. Cockfighting.

DESCRIPTION

Subsection (a):

A person who

1. instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from
2. an exhibition featuring the fighting of any bird.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

G.S. 14-362(a) currently applies only to exhibitions featuring the fighting of a cock.

Engaging in similar conduct with a bird other than a cock is currently a Class 2 misdemeanor for the first offense, and a Class I felony for a second or subsequent offense within three years. G.S. 14-362.1.

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: 04/08/11

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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 395 – Strengthen Prohibition on Cockfighting [Ed.1] (cont'd)

STATUTE

§ 14-362. Cockfighting.

DESCRIPTION

Subsection (b):

A person who

1. owns, breeds, possesses, sells, or trains
2. a rooster, gamecock, or other fighting bird
3. with the intent that the bird be used in an exhibition featuring
 - a. the baiting of that bird or
 - b. the fighting of that bird with another bird or with another animal.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

It is currently a Class 2 misdemeanor to own, possess, or train any animal other than a cock or dog with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal. G.S. 14-362.1(b).

The bill defines "fighting bird" as any bird, battlecock, cock, or rooster that is intentionally bred or trained for use in, or that actually is used in, a cockfight.

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: 04/08/11

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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 395 – Strengthen Prohibition on Cockfighting [Ed.1] (cont'd)

STATUTE

§ 14-362. Cockfighting.

DESCRIPTION

Subsection (c):

A person who

1. manufactures, possesses, promotes, buys, sells, or transports
2. any
 - a. gaff, slasher, or other sharp implement designed to be attached in place of the natural spur of a fighting bird,
 - b. device intended to enhance an animal's fighting ability, or
 - c. device intended for use in an exhibition of animal fighting.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

The bill defines "gaff" as an artificial steel spur, designed for attachment to the leg of a fighting bird in replacement of the bird's natural spurs, consisting of a needle-like spike and of various lengths, also referred to as a "bayonette," "jagger," or "skeleton."

The bill defines "slasher" as a steel weapon resembling a curved knife blade designed for attachment to the foot of a fighting bird.

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: 04/08/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 395: STRENGTHEN PROHIBITION ON COCKFIGHTING [Ed.1]

PREPARED: MARCH 28, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The bill would expand an existing Class I felony and enact two new Class I felonies related to cockfighting.

(a) Amends subsection (a) of G.S. 14-362, Cockfighting, to expand the range of birds covered by the existing Class I felony of cockfighting. The expansion would make G.S. 14-362(a) apply to certain conduct now covered by subsection (a) of G.S. 14-362.1, Animal fights and baiting, other than cock fights, dog fights and dog baiting.

The current Class I felony in G.S. 14-362(a) covers exhibitions that feature the fighting of a “cock.” There were five convictions for cockfighting under G.S. 14-362(a) during FY 2009/10.

The proposed bill would amend G.S. 14-362(a) to include exhibitions that feature the fighting of “a rooster, gamecock, or other fighting bird.”¹ Under G.S. 14-362.1(a), it is currently a Class 2 misdemeanor to engage in the conduct barred by G.S. 14-362(a) with an animal other than a cock or a dog. (A second or subsequent violation within three years of a conviction is a Class I felony under G.S. 14-362.1(d)). The proposed bill’s addition of fighting birds other than cocks to G.S. 14-362(a) would thus reclassify acts involving these birds from the Class 2 misdemeanor in G.S. 14-362.1(a) (first offense) to the Class I felony in 14-362(a).

In FY 2009/10, there were no Class 2 misdemeanor convictions for animal fighting under G.S. 14-362.1(a).² In FY 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, ten Class 2 misdemeanor convictions were to become Class I felony 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 three additional prison beds the second year.

(b) Adds subsection (b) to G.S. 14-362 to make it a Class I felony to own, breed, possess, sell, or train a rooster, gamecock, or other fighting bird with the intent that the bird be used in an exhibition featuring the baiting or that bird or the fighting of that bird with another bird or animal. This proposed bill would create a new offense for acts involving a cock.

Since the proposed bill creates a new offense, G.S. 14-362(b), the Sentencing Commission has no 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 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of

¹The bill defines “fighting bird” as a bird, battlecock, cock, or rooster that is intentionally bred or trained for use in, or that is actually used in, a cockfight.

²The AOC offense code includes all misdemeanor violations of G.S. 14-362.1(a)-(c).

active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Under G.S. 14-362.1(b), it is currently Class 2 misdemeanor to own, possess, or train an animal, other than a cock or a dog, with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal. Therefore, for acts that involve a fighting bird other than a cock, the proposed bill would reclassify offenses from the Class 2 misdemeanor in G.S. 362.1(b) to the new Class I felony in G.S. 14-362(b).

In FY 2009/10, there were no Class 2 misdemeanor convictions under G.S. 14-362.1.³ In FY 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, ten Class 2 misdemeanor convictions were to become Class I felony 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 three additional prison beds the second year.

(c) Adds subsection (c) to G.S. 14-362 to make it a new Class I felony to manufacture, possess, promote, buy, sell, or transport (1) a gaff, slasher, or other sharp implement designed to be attached in place of the natural spur of a rooster, gamecock, or other fighting bird, or (2) any device intended to enhance an animal's fighting ability or for use in an exhibition of animal fighting.

Since the proposed bill creates a new offense, G.S. 14-362(c), the Sentencing Commission has no 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 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

³The AOC offense code includes all misdemeanor violations of G.S. 14-362.1(a)-(c).

NORTH CAROLINA 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 429 – Establish Music Therapy Practice [Ed.1]

STATUTE

§ 90-270.88. License required; exemptions.

DESCRIPTION

A person who

1. on or after January 1, 2012
 - a. practices or offers to practice music therapy, or
 - b. uses the title 'Music Therapist-Board Certified/Licensed' or 'Licensed Music Therapist,' use the letters 'MT-BC/L' or 'LMT,' or any other title or abbreviation that would otherwise indicate or imply that the person is a licensed music therapist
2. without a current license under Article 18E (Music Therapy).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 90-270.96).

Each act of unlawful practice shall constitute a distinct and separate offense.

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.

“Music therapy” is the clinical, evidence-based use of music interventions within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program. It includes (i) assessment of a client's emotional, physical, and spiritual health, social functioning, communication abilities, and cognitive skills through the client's history and the observation and interaction of the client in music and nonmusic settings; (ii) development and implementation of needs-based treatment plans using music interventions including performance, improvisation, receptive music listening, song writing, lyric discussion, music and imagery, learning through music, and movement to music; and (iii) evaluation and documentation of the client's response to treatment. G.S. 90-270.87(4).

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: 04/08/11

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 432 – Swine In Transport/Regulate Feral Swine [Ed.1]

STATUTE

§ 113-291.12. Unlawful to remove live feral swine from traps.

DESCRIPTION

A person who

1. removes
2. a live feral swine
3. from a trap.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 113-294(s)).

ANALYSIS

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

The bill defines “feral swine” as free-ranging mammals of the species *Sus scrofa*.

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: 04/08/11

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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 432 – Swine in Transport/Regulate Feral Swine [Ed.1]
(cont'd)

STATUTE

§ 113-291.12. Unlawful to remove live feral swine from traps.

DESCRIPTION

A person who

1. transports
2. a live feral swine
3. after removing it from a trap.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

The bill defines “feral swine” as free-ranging mammals of the species *Sus scrofa*.

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: 04/08/11

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 451 – DWLR Penalties Increased/Vehicle Seizures. [Ed.1]

STATUTE

§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.

DESCRIPTION

A person who

1. drives any motor vehicle
2. upon the highways of the State
3. while the person's driver's license is revoked
4. having two or more prior convictions for driving while license revoked under subsection (a).

PROPOSED OFFENSE CLASS

Class I felony.

The offender shall be sentenced to a minimum active prison term of not less than 6 months. If the court suspends the sentence, the offender must be placed on supervised probation with a special condition of house arrest with electronic monitoring for a period of at least 90 days.

ANALYSIS

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

Under Structured Sentencing, a Class I felon in Prior Record Level I must receive a community punishment, which may not include an active sentence or house arrest with electronic monitoring as a special condition of probation. G.S. 15A-1340.11(2), (6); 15A-1340.17(c). A Class I felon in Prior Record Level I, II or III may not receive an active sentence. G.S. 15A-1340.17(c).

Driving while license revoked is a Class 1 misdemeanor under G.S. 20-28(a).

Structured Sentencing takes account of a misdemeanor's prior convictions through the Prior Conviction Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/08/11

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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6a):

A person who

1. disturbs or removes
2. galax or venus flytrap
3. from another's land
4. without written permission
 - a. from the owner,
 - b. dated, and
 - c. valid for no more than 180 days.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 113-294(s)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]
(cont'd)

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6b):

A person who

1. buys galax
2. outside of a buying season as provided by the NC Plant Conservation Board
3. without obtaining the required documents from the seller.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]
(cont'd)

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6c):

A person who

1. buys a venus flytrap
2. outside of a buying season as provided by the NC Plant Conservation Board
3. without obtaining the required documents from the seller.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]
(cont'd)

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6d):

A person who

1. buys
2. more than five pounds of galax
3. for resale or trade
4. without holding a currently valid dealer permit.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]
(cont'd)

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6e):

A person who

1. buys
2. more than five pounds of venus flytrap
3. for resale or trade
4. without holding a currently valid dealer permit.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]
(cont'd)

STATUTE

§ 106-202.21A. Galax dealer permits.

DESCRIPTION

Subsection (a):

A person who

1. either
 - a. acts in the capacity of a dealer of galax (*Galax aphylla*), or
 - b. engages or offers to engage in the business of dealing in more than 5 pounds of galax
2. without holding a currently valid dealer permit.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]
(cont'd)

STATUTE

§ 106-202.21A. Galax dealer permits.

DESCRIPTION

Subsection (d):

A person who

1. is a galax dealer and
2. fails to notify the NC Plant Conservation Board
3. within 30 days
4. of a change of address or business location.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]
(cont'd)

STATUTE

§ 106-202.21B. Venus flytrap dealer permits.

DESCRIPTION

Subsection (a):

A person who

1. either

a. acts in the capacity of a dealer of venus flytrap (*Dionaea muscipula*), or

b. engages or offers to engage in the business of dealing in more than 5 pounds of venus flytrap

2. without holding a currently valid dealer permit.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.1]
(cont'd)

STATUTE

§ 106-202.21B. Venus flytrap dealer permits.

DESCRIPTION

Subsection (d):

A person who

1. is a venus flytrap dealer and
2. fails to notify the NC Plant Conservation Board
3. within 30 days
4. of a change of address or business location.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 04/08/11

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 489 – Mechanics Lien And Bond Law Changes [Ed.1]

STATUTE

§ 44A-24. False statement a misdemeanor.

DESCRIPTION

A person who

1. knowingly signs or directs another to sign
2. a false written statement of sums due or claimed to be due
 - a. to a contractor, subcontractor, or person receiving payment from an obligor
 - b. for labor or material furnished at the site of improvements to realty
3. which is furnished to the obligor, a purchaser of the realty, a lender who obtains a security interest in the realty, or to a title insurance company at the site of improvements to real property.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

Currently, it is a Class 1 misdemeanor for a contractor or person receiving payment from an obligor for an improvement to real property, or from a purchaser for a conveyance of real property with improvements, to knowingly furnish to such obligor or purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to the real property. G.S. 44A-24.

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: 04/08/11

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 494 – Continuous Alcohol Monitoring Law Changes [Ed.1]

STATUTE

§ 15A-1340.11. Definitions.

DESCRIPTION

A person sentenced to an intermediate punishment.

PUNISHMENT CHANGE

Adds the following intermediate punishment in G.S. 15A-1340.11(6):

- (g) Abstinence from alcohol consumption and compliance with recommended treatment, as verified by a continuous alcohol monitoring system approved by the Department of Correction when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

ANALYSIS

The current Intermediate punishments authorized by G.S. 15A-1340.11(6) are as follows:

- (a) Special probation (*i.e.*, split sentence);
- (b) Assignment to a residential treatment center;
- (c) House arrest with electronic monitoring;
- (d) Intensive supervision;
- (e) Assignment to a day reporting center; and
- (f) Assignment to a drug treatment court program.

Under G.S. 15A-1340.11(2), an offender who is sentenced to a community punishment may not receive any intermediate punishment set forth in G.S. 15A-1340.11(6).

The bill also adds the following to the special conditions of probation authorized by G.S. 15A-1343(b1): “(2c) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.”

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: 04/08/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 494 – Continuous Alcohol Monitoring Law Changes [Ed.1]
(cont'd)

STATUTE

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

DESCRIPTION

Subsection (g):
Level One punishment (DWI).

PUNISHMENT RANGE

CURRENT: Minimum 30 days of imprisonment (active or as a condition of special probation).

PROPOSED: Minimum 10 days of imprisonment if the court imposes at least 120 days of continuous alcohol monitoring as a condition of special probation.

ANALYSIS

A defendant convicted of driving while impaired with two or more grossly aggravating factors must receive a Level One punishment. G.S. 20-179(c).

Driving While Impaired offenses are not classified under Structured Sentencing.

FINDINGS

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

Driving While Impaired offenses are not punished under Structured Sentencing.

DATE OF REVIEW: 04/08/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 494 – Continuous Alcohol Monitoring Law Changes [Ed.1]
(cont'd)

STATUTE

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

DESCRIPTION

Subsection (h):
Level Two punishment (DWI).

PUNISHMENT RANGE

CURRENT: Minimum 7 days of imprisonment (active or as a condition of special probation).

PROPOSED: Suspended sentence if the defendant has abstained from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system approved by the Department of Correction.

ANALYSIS

A defendant convicted of driving while impaired with one grossly aggravating factors must receive a Level Two punishment. G.S. 20-179(c).

Driving While Impaired offenses are not classified under Structured Sentencing.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Driving While Impaired offenses are not punished under Structured Sentencing.

DATE OF REVIEW: 04/08/11

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 512 – Rendering Act Amendments [Ed.1]

STATUTE

§ 14-79.2. Larceny of waste kitchen grease.

DESCRIPTION

A person who

1. either
 - a. takes and carries away, or
 - b. aids in taking and carrying away
2. waste kitchen grease in a container bearing
 - a. the name of the container's owner and
 - b. notice that unauthorized removal is prohibited without the owner's written consent .

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.

Larceny of property with a value of \$1,000 or less is a Class 1 misdemeanor. G.S. 14-72(a).

Larceny of motor fuel with a value of \$1,000 or less is a Class 1 misdemeanor. G.S. 14-72.5.

Larceny of ungathered crops, ginseng, pine needles, pine straw, horses, mules, swine, or cattle is a Class H felony. G.S. 14-78, -79, 79.1, -81.

Larceny of property with a value exceeding \$1,000 is a Class H felony. G.S. 14-72(a).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/08/11

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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 512 – Rendering Act Amendments [Ed.1] (cont'd)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subsection (d):

A person who

1. is
 - a. conducting rendering operations, or
 - b. collecting raw material
2. and collects or transports waste kitchen grease
3. without
 - a. having in possession proof of compliance with the licensure requirements of Article 14A (Licensing and Regulation of Rendering Plants, Rendering Operations, and Waste Kitchen Grease Collection and Processing), and
 - b. conspicuously displaying the licensee's name and the license number in letters not less than three inches high on any vehicle used for the transportation of waste kitchen grease.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

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 section does not apply to a farmer who collects waste kitchen grease for a use related to the farm.

The criminal enforcement provision in G.S. 106-168.15 does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, for storing or processing waste kitchen grease at a waste kitchen grease operation, or acting as a collector of waste kitchen grease.

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: 04/08/11

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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 512 – Rendering Act Amendments [Ed.1] (cont'd)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subdivision (e)(1):

A person who

1. is
 - a. conducting rendering operations, or
 - b. collecting raw material
2. and sells or offers for sale
3. waste kitchen grease
4. to any person unlicensed under Article 14A (Licensing and Regulation of Rendering Plants, Rendering Operations, and Waste Kitchen Grease Collection and Processing)
5. knowing the person would transport or process it in violation of the Article.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

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 section does not apply to a farmer who collects waste kitchen grease for a use related to the farm.

The criminal enforcement provision in G.S. 106-168.15 does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, for storing or processing waste kitchen grease at a waste kitchen grease operation, or acting as a collector of waste kitchen grease.

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: 04/08/11

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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 512 – Rendering Act Amendments [Ed.1] (cont'd)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subdivision (e)(2):

A person who

1. is
 - a. conducting rendering operations, or
 - b. collecting raw material
2. and steals, misappropriates, contaminates, or damages
 - a. any waste kitchen grease container, or
 - b. grease therein.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

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 section does not apply to a farmer who collects waste kitchen grease for a use related to the farm.

The criminal enforcement provision in G.S. 106-168.15 does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, for storing or processing waste kitchen grease at a waste kitchen grease operation, or acting as a collector of waste kitchen grease.

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: 04/08/11

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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 512 – Rendering Act Amendments [Ed.1] (cont’d)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subdivision (e)(3):

A person who

1. is
 - a. conducting rendering operations, or
 - b. collecting raw material
2. and
 - a. takes or possesses waste kitchen grease from a collector that is not licensed under this section (unless otherwise allowed under Article 14A), or
 - b. knowingly takes possession of waste kitchen grease that has been stolen.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

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 section does not apply to a farmer who collects waste kitchen grease for a use related to the farm.

The criminal enforcement provision in G.S. 106-168.15 does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, for storing or processing waste kitchen grease at a waste kitchen grease operation, or acting as a collector of waste kitchen grease.

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: 04/08/11

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 577 – Medical Cannabis Act [Ed.1]

STATUTE

§ 90-730.4. Prohibitions, restrictions, and limitations on medical use of cannabis.

DESCRIPTION

A person who

1. fraudulently represents
2. any fact or circumstance relating to the medical use of cannabis
3. to a law enforcement official
4. to avoid arrest or prosecution.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

The offense is punishable by a fine of five hundred dollars (\$500.00).

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/08/11

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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 577 – Medical Cannabis Act [Ed.1] (cont'd)

STATUTE

§ 90-730.5. Registry identification cards for qualified patients and designated caregivers.

DESCRIPTION

Any person who

1. breaches the confidentiality of
2. information obtained pursuant to this section.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

A fine for this offense shall not exceed \$1,000.

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.

Section 90-730.5 directs the North Carolina Department of Health and Human Services to issue a registry identification card to any qualified patient or designated caregiver meeting the statutory requirements for use of medical marijuana. The Department shall maintain a confidential list of persons to whom it has issued registry identification cards. Individual names and other identifying information on the list are confidential and not subject to disclosure except as provided. Applications and supporting information submitted by qualified patients are confidential and protected under the federal Health Insurance Portability and Accountability Act of 1996.

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: 04/08/11

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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 577 – Medical Cannabis Act [Ed.1] (cont'd)

STATUTE

§ 90-730.6. Regulated medical cannabis supply system.

DESCRIPTION

Any person who

1. breaches the confidentiality
2. of information obtained pursuant subsection (c), (d), or (e) of this section.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

A fine for this offense shall not exceed \$1,000.

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.

Subsections 90-730.6(c)-(e) provide for the application and licensure of (1) medical cannabis centers, (2) producers of medical cannabis, and (3) producers of cannabis-infused products by the North Carolina Department of Agriculture and Consumer Services.

Department employees may notify law enforcement officers about falsified or fraudulent information submitted to the Department by any person in support of an application for a license authorized by subsection (c), (d), or (e). G.S. 90-730.6(q).

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: 04/08/11

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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.1]

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a):

A person who

1. is a convicted felon and
2. purchases, owns, possess, or has in his custody, care, or control
3. any
 - a. ammunition or
 - b. electric weapon or device.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

It is a Class G felony for a convicted felon to purchase, own, possess, or have in his custody, care, or control any firearm or weapon of mass death and destruction. G.S. 14-415.1.

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: 04/08/11

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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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.1]
(cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a):

A person who

1. is a convicted felon and
2. carries a concealed weapon.

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.

For purposes of the offense, "concealed weapon" includes a tear gas gun or a chemical weapon or device

It is a Class G felony for a convicted felon to purchase, own, possess, or have in his custody, care, or control any firearm or weapon of mass death and destruction. G.S. 14-415.1.

Carrying a concealed weapon is a Class 2 misdemeanor. G.S. 14-269(a), (c).

Carrying a concealed pistol or gun is a Class 2 misdemeanor for the first offense, and a Class I felony for a second or subsequent offense. G.S. 14-249(a1), (c).

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: 04/08/11

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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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.1]
(cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a2):

A person who

1. is a convicted felon and
 - a. purchases, owns, possesses, or has in his custody, care, or control any firearm, weapon of mass death and destruction, ammunition, or electric weapon or device, or
 - b. carries a concealed weapon
2. and discharges the proscribed weapon.

PROPOSED OFFENSE CLASS

Class E felony.

This offense does not apply if the act is subject to greater punishment under another provision of law.

ANALYSIS

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

Discharging a firearm into occupied property is a Class E felony. G.S. 14-34.1(a).

Discharging a firearm into an occupied dwelling or vehicle in operation is a Class D felony. G.S. 14-34.1(b).

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: 04/08/11

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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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.1]
(cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a3):

A person who

1. is a convicted felon and
 - a. purchases, owns, possesses, or have in his custody, care, or control any firearm, weapon of mass death and destruction, ammunition, or electric weapon or device, or
 - b. carries a concealed weapon
2. resulting in serious injury to a person.

PROPOSED OFFENSE CLASS

Class D felony.

This offense does not apply if the act is subject to greater punishment under another provision of law.

ANALYSIS

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

Assault with a deadly weapon inflicting serious injury is a Class E felony. G.S. 14-32.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class E felony.

DATE OF REVIEW: 04/08/11

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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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.1]
(cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a4):

A person who

1. is a convicted felon and
 - a. purchases, owns, possesses, or have in his custody, care, or control any firearm, weapon of mass death and destruction, ammunition, or electric weapon or device,
 - b. or carries a concealed weapon
2. resulting in serious bodily injury to a person.

PROPOSED OFFENSE CLASS

Class C felony.

This offense does not apply if the act is subject to greater punishment under another provision of law.

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.

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. G.S. 14-32.

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: 04/08/11

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 610 – Hog Lagoon Phase Out/Livestock Treatment [Ed.1]

STATUTE

§ 106-549.99. Minimum standards to prevent the inhumane treatment of certain farm animals.

DESCRIPTION

A person who

1. is a farm owner or operator and
2. violates a minimum humane standard for cows, poultry, or swine adopted by the Board of Agriculture under this section.

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.

Under G.S. 106-549.99(a), the Board of Agriculture must establish minimum humane standards that, at a minimum, do all of the following:

- (1) Prohibit a farm owner or operator from tethering or confining any calf raised for veal, egg-laying hen, or swine during pregnancy, on a farm, for the majority of any day, in a manner that prevents the animal from lying down, standing up, fully extending its limbs, or turning around freely;
- (2) Require a farm owner or operator to ensure that all on-farm killing of cows or swine be performed in a humane manner using methods explicitly deemed "acceptable" by the American Veterinary Medical Association (not to include strangulation); and
- (3) Prohibit a farm owner or operator from engaging in the transport, sale, or receipt, for use in the human food supply, of any cow or calf too sick or injured to stand and walk.

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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 636 – Amend Financial Transaction Card Theft [Ed.1]

STATUTE

§ 14-113.9. Financial transaction card theft.

DESCRIPTION

A person who

1. commits financial transaction card theft under G.S. 14-113.9(a)
2. involving a financial transaction card other than a credit card.

OFFENSE CLASS

CURRENT: Class 2 misdemeanor (G.S. 14-113.17(a)).

PROPOSED: Class I felony (G.S. 14-113.17(b)).

ANALYSIS

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

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

Financial credit card (FTC) theft involving a credit card is currently a Class I felony. G.S. 14-113.9(b).

The offense includes, *inter alia*:: (1) taking, obtaining, or withholding another person's FTC with the intent to use it; (2) knowingly receiving another person's FTC with the intent to use or sell it or to transfer it to a person other than the issuer or cardholder; (3) retaining possession of an FTC knowing that it has been lost, mislaid or delivered by mistake, with intent to use or sell the FTC or to transfer it to a person other than the issuer or cardholder; (4) not being the issuer, selling an FTC; (5) buying an FTC from a person other than the issuer; (6) using a scanner to access, read, obtain, memorize, or store information encoded on another person's FTC with the intent to defraud; or (7) receiving the encoded information from another person's FTC with the intent to defraud.

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: 04/08/11

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 639 – Clinical Exercise Physiologist Licensure [Ed.1]

STATUTE

§ 90-557. Violation a misdemeanor.

DESCRIPTION

A person who

1. violates
2. any provision of the North Carolina Clinical Exercise Physiologist Licensing Act.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

Each act of such unlawful practice shall constitute a distinct and separate offense.

ANALYSIS

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

The Act provides that, on or after October 1, 2012, no person shall practice or offer to practice clinical exercise physiology, or use any title or abbreviation to indicate or imply that the person is a licensed clinical exercise physiologist unless that person is currently licensed as provided under G.S. Chapter 90, Article 34A (Clinical Exercise Physiology). G.S. 90-548(a).

It is a Class 1 misdemeanor to practice chiropractic or physical therapy without a license. G.S. 90-147, 90-270.35.

The Act also prohibits a licensed clinical exercise physiologist certified in Advanced Cardiac Life Support (ACLS) to possess for dispensing, or to dispense, ACLS prescription drugs without authorization and a written prescription from a practitioner licensed in the State to prescribe the drug. G.S. 90-549(b).

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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1]

STATUTE

§ 15A-1340.11. Definitions.

DESCRIPTION

Subsection (2):

A person sentenced to a community punishment.

PUNISHMENT RANGE

CURRENT: A sentence that does not include active incarceration, an intermediate punishment, or any of the following conditions of probation: special probation (*i.e.*, split sentence), assignment to a residential program, day reporting center or drug treatment court program, house arrest with electronic monitoring, or intensive supervision.

PROPOSED: A sentence that does not include active incarceration or assignment to a drug treatment court program but may include house arrest with electronic monitoring, special probation (*i.e.*, split sentence), community service, substance abuse assessment, monitoring or treatment, participation in an educational or vocational skills development program, satellite-based monitoring (for qualifying sex offenders), or submission to up to six days per month of confinement in a local confinement facility.

ANALYSIS

The bill changes the definitions of “community punishment” and “intermediate punishment” under Structured Sentencing. Other than assignment to a drug treatment court, the authorized conditions of probation are the same for community and intermediate punishments.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 15A-1340.11. Definitions.

DESCRIPTION

Subsection (6):

A person sentenced to an intermediate punishment:

PUNISHMENT RANGE

CURRENT: Supervised probation with at least one of the following conditions: special probation (*i.e.*, split sentence), assignment to a residential program, day reporting center or drug treatment court program, house arrest with electronic monitoring, or intensive supervision.

PROPOSED: Supervised probation. The court may also impose drug treatment court and/or one or more of the following: house arrest with electronic monitoring, special probation (*i.e.*, split sentence), community service, substance abuse assessment, monitoring or treatment, participation in an educational or vocational skills development program, satellite-based monitoring (for qualifying sex offenders), or submission to up to six days per month of confinement in a local confinement facility.

ANALYSIS

The bill changes the definitions of “community punishment” and “intermediate punishment” under Structured Sentencing. Other than assignment to a drug treatment court, the authorized conditions of probation are the same for community and intermediate punishments.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 15A-1344. Response to violations; alteration and revocation.

DESCRIPTION

Subsections (a), (d2):

A person who violates any condition of probation other than the following:

1. Commit no criminal offense in any jurisdiction, G.S. 15A-1343(b)(1), or
2. Not to abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer, G.S. 15A-1343(b)(3a).

PUNISHMENT RANGE

CURRENT: Continue, extend, or modify the conditions of probation, impose special probation (*i.e.*, split sentence), or revoke probation and activate the suspended sentence. (G.S. 15A-1344(d)).

PROPOSED: Continue, extend, or modify the conditions of probation, impose special probation (*i.e.*, split sentence), or impose a 90-day period of confinement pursuant to G.S. 15A-1344(d2).

ANALYSIS

If the time remaining on the defendant's maximum imposed sentence is less than 90 days, the term of confinement shall be the remaining period of the sentence. G.S. 15A-1344(d2).

Confinement shall be credited against the defendant's sentence pursuant to G.S. 15-196.1. It is unclear whether a defendant is eligible to receive earned time credit against the maximum imposed sentence as provided in G.S. 15A-1340.13(d) during the 90-day period of confinement.

The court shall only revoke probation for a violation of G.S. 15A-1343(b)(1) (new crime) or G.S. 15A-1343(b)(3a) (absconding supervision). G.S. 15A-1344(a).

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 15A-1368.2. Post-release supervision eligibility and procedure.

DESCRIPTION

A person sentenced to an active punishment for a Class B1 through E felony:

PUNISHMENT RANGE

CURRENT: Release onto 9 months of post-release supervision on the date equivalent to the maximum prison term less 9 months (less any earned time credits awarded).

PROPOSED: Release onto 12 months of post-release supervision on the date equivalent to the maximum prison term less 12 months (less any earned time credits awarded).

ANALYSIS

The maximum sentence for Class B1 through E felonies currently includes 9 months for post-release supervision. The bill increases the maximum sentence for Class B1 through E felonies by 3 months. G.S. 15A-1340.17(e).

The bill maintains the 5-year period of post-release supervision for convictions resulting in registration as a sex offender under G.S. Chapter 14, Article 27A (Sex Offender Registration Programs).

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE PREPARED: 04/06/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 15A-1368.2. Post-release supervision eligibility and procedure.

DESCRIPTION

A person sentenced an active punishment for a Class F through I felony:

PUNISHMENT RANGE

CURRENT: Release without post-release supervision on the date equivalent to the maximum prison term less any earned time credits awarded pursuant to G.S. 15A-1340.13(d).

PROPOSED: Release onto 9 months of post-release supervision on the date equivalent to the maximum prison term (less any earned time credits awarded) less 9 months.

ANALYSIS

The bill increases the maximum sentence for Class F through I felonies by 9 months. G.S. 15A-1340.17(e).

The bill imposes a 5-year period of post-release supervision for Class F through I felony convictions resulting in sex offender registration under G.S. Chapter 14, Article 27A (Sex Offender Registration Programs).

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 15A-1368.3. Incidents of post-release supervision.

DESCRIPTION

Subsections (c):

A person who

1. is convicted of an offense that does not require registration as a sex offender, and
2. violates the conditions of post-release supervision other than by
 - a. committing a new crime, or
 - b. absconding.

PUNISHMENT RANGE

CURRENT: Continuation on supervision with or without modified conditions, or revocation and re-imprisonment for a period up to the time remaining on the maximum imposed sentence.

PROPOSED: Continuation on supervision with or without modified conditions, or re-imprisonment for three months.

ANALYSIS

A supervisee may be returned to prison on each of two subsequent violations, after which supervisees who were Class B1 through E felons may be returned to prison up to the time remaining on their maximum imposed sentences.

Supervisees who were convicted of an offense requiring sex offender registration are subject to revocation and return to prison up to the time remaining on their maximum imposed sentences.

The prisoner is eligible to receive earned time credit against the maximum imposed sentence as provided in G.S. 15A-1340.13(d) for time served in prison after the revocation.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE OF REVIEW: 04/08/11

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 14-7.26. Habitual breaking and entering status offender.

DESCRIPTION

A person who

1. is at least 18 years old
2. commits a “breaking and entering” offense
3. having at least one prior conviction for a felony breaking and entering offense in any U.S. state or federal court.

PROPOSED OFFENSE CLASS

Class E felony. (G.S. 14-7.31).

ANALYSIS

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

The term “breaking and entering” includes the felonies of first and second degree burglary (G.S. 14-51), breaking out of a dwelling house (G.S. 14-53), breaking or entering buildings generally (G.S. 14-54(a)), breaking or entering a place of religious worship (G.S. 14-54.1), any substantially equivalent offense that has been repealed or superseded, and any substantially equivalent offense from another jurisdiction. G.S. 14-7.25(1).

The second breaking and entering offense must have been committed after the defendant’s conviction of the first offense. G.S. 14-7.26.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C felony or for a Class F felony.

DATE OF REVIEW: 04/08/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 14-7.6. Sentencing of habitual felons.

DESCRIPTION

A person convicted of a felony offense as an habitual felon.

PUNISHMENT RANGE

CURRENT: Sentenced as a Class C felon.

PROPOSED: Sentenced one to four felony classes higher than the principal felony – but no higher than Class C – in the discretion of the trial court.

ANALYSIS

The habitual felon indictment shall identify the felony class that is being requested by the prosecutor for sentencing. G.S. 14-7.3. The trial court may consider the prosecutor's sentencing request but is not bound thereby. G.S. 14-7.6

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: 04/0811

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 15A-1340.18. Advanced Supervised Release.

DESCRIPTION

A person who

1. receives a non-mitigated active sentence from the following cells of the felony punishment chart:
 - a. Class D felony, Prior Record Level I, II, or III;
 - b. Class E felony, Prior Record Level I, II, III, or IV;
 - c. Class F felony, Prior Record Level I, II, III, IV, or V; or
 - d. Class G or H felony, any Prior Record Level
2. and completes a court-ordered risk reduction incentive.

PUNISHMENT RANGE

CURRENT: Release after serving the maximum term imposed by the court, less any earned time credits awarded by the Department of Correction (DOC) down to, but not below, the minimum term.

PROPOSED: Release on Advanced Supervised Release (ASR) after serving the shortest minimum term authorized in the mitigated range for the offense class and prior record level.

ANALYSIS

Absent objection by the prosecutor, the court has the discretion to include one or more risk reduction incentives in the defendant's sentence.

Risk reduction incentives are treatment, education, and rehabilitative programs designed by DOC to reduce the defendant's likelihood of reoffending.

At sentencing, the defendant shall be notified that if the defendant completes the risk reduction incentives, he or she will be released on the ASR date. If DOC determines that the defendant is unable to complete the incentives through no fault of the defendant, it shall release the defendant at the ASR date.

A defendant who fails to complete the risk reduction incentives, or who violates DOC rules or regulations after completion but prior to the ASR date, shall be released based on the original sentence.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE OF REVIEW: 04/08/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.1] (cont'd)

STATUTE

§ 15A-1340.18. Advanced Supervised Release.

DESCRIPTION

A person who

1. receives a mitigated active sentence from the following cells of the felony punishment chart:
 - a. Class D felony, Prior Record Level I, II, or III;
 - b. Class E felony, Prior Record Level I, II, III, or IV;
 - c. Class F felony, Prior Record Level I, II, III, IV, or V; or
 - d. Class G or H felony, any Prior Record Level
2. and completes a court-ordered risk reduction incentive.

PUNISHMENT RANGE

CURRENT: Release after serving the maximum term imposed by the court, less any earned time credits awarded by the Department of Correction (DOC) down to, but not below, the minimum term.

PROPOSED: Release on Advanced Supervised Release (ASR) after serving 80% of the minimum sentence imposed by the court.

ANALYSIS

Absent objection by the prosecutor, the court has the discretion to include one or more risk reduction incentives in the defendant's sentence.

Risk reduction incentives are treatment, education, and rehabilitative programs designed by DOC to reduce the defendant's likelihood of reoffending.

At sentencing, the defendant shall be notified that if the defendant completes the risk reduction incentives, he or she will be released on the ASR date. If DOC determines that the defendant is unable to complete the incentives through not fault of the defendant, it shall release the defendant at the ASR date.

A defendant who fails to complete the risk reduction incentives, or who violates DOC rules or regulations after completion but prior to the ASR date, shall be released based on the original sentence.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE OF REVIEW: 04/08/11

IMPACT ANALYSIS NOT AVAILABLE YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 650 – Amend Various Gun Laws [Ed.1]

STATUTE

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

DESCRIPTION

Subsection (b):

A person who

1. knowingly possesses or carries
2. any firearm
3. on educational property or to a school-sponsored curricular or extracurricular activity.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class 1 misdemeanor.

ANALYSIS

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

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

The current Class I felony does not require that the person act “knowingly.” G.S. 14-269.2(b).

The offense does not apply if the person has a valid concealed handgun permit and the firearm is in a closed compartment or container in the person's locked vehicle or securely affixed to the vehicle.

Unlawfully carrying a concealed pistol or gun is a Class 2 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. G.S. 14-269(c).

Unlawfully carrying a gun, rifle, or pistol into an assembly where admission is charged or an establishment where alcohol is sold and consumed is a Class 1 misdemeanor. G.S. 14-269.3.

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: 04/08/11

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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 650 – Amend Various Gun Laws [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (d):

A person who

1. possesses or carries
2. on educational property.
3. a BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class 2 misdemeanor.

ANALYSIS

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

The 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.

Subsection (d) exempts (1) instructional supplies, (2) unaltered nail files, (3) razor blades solely for personal shaving, and (4) clips and tools used solely for preparation of food, instruction, and maintenance.

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

BILL NUMBER/SHORT TITLE: HB 650 – Amend Various Gun Laws [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (e):

A person who

1. causes, encourages, or aids
2. a person under 18 years of age
3. to possesses or carry
4. on educational property.
5. a BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class 2 misdemeanor.

ANALYSIS

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

The 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.

Subsection (e) exempts the same items as G.S. 14-269.2(d).

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: 04/08/11

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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 650 – Amend Various Gun Laws [Ed.1] (cont'd)

STATUTE

§ 14-269.4. Weapons on State property and in courthouses.

DESCRIPTION

A person who

1. willfully and intentionally
2. possesses or carries
3. any deadly weapon (not solely used for instructional or officially sanctioned ceremonial purposes)
4. inside
 - a. any building housing any court of the General Court of Justice or
 - b. the State Capital Building, Executive Mansion, or Western Residence of the Governor, or on the grounds thereof.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The current Class 1 misdemeanor offense in G.S. 14-269.4 does not require that the possession or carrying of the deadly weapon on the proscribed property be done “willfully and intentionally.”

The new offense does not apply if the person has a valid concealed handgun permit and the firearm is in a closed compartment or container in the person's locked vehicle or securely affixed to the 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: 04/08/11

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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 650 – Amend Various Gun Laws [Ed.1] (cont'd)

STATUTE

§ 14-269.7. Prohibitions on handguns for minors.

DESCRIPTION

A person who

1. is a minor and
2. willfully and intentionally
3. possesses or carries
4. a handgun.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

The current Class 2 misdemeanor offense in G.S. 14-269.7 does not require that the minor's possession or carrying of the handgun be done "willfully and intentionally."

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: 04/08/11

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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 650 – Amend Various Gun Laws [Ed.1] (cont'd)

STATUTE

§ 14-269.8. Purchase or possession of firearms by person subject to domestic violence order prohibited.

DESCRIPTION

A person who

1. having been ordered not to do so in
 - a. an emergency or *ex parte* protective order under G.S. 50B-3.1, or
 - b. any successive order entered pursuant to G.S. Chapter 50B (Domestic Violence)
2. does (or attempts to) possess, purchase or receive
3. a firearm, machine gun, ammunition, or permits to carry concealed firearms
4. while the firearm prohibition is in effect.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class 1 misdemeanor.

ANALYSIS

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

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

The current Class H felony in G.S. 14-269.8 does not expressly require that any successive domestic violence protective order entered against the person reiterate the firearm prohibition contained in the initial emergency or *ex parte* protective order entered pursuant to G.S. 50-3.1.

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

BILL NUMBER/SHORT TITLE: HB 650 – Amend Various Gun Laws [Ed.1] (cont'd)

STATUTE

§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.

DESCRIPTION

A person who

1. having been ordered not to do so in
 - a. an emergency or *ex parte* protective order under G.S. 50B-3.1, or
 - b. any successive order entered pursuant to G.S. Chapter 50B (Domestic Violence)
2. does (or attempts to) possess, purchase or receive
3. a firearm, machine gun, ammunition, or permits to carry concealed firearms
4. while the firearm prohibition is in effect.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class 1 misdemeanor.

ANALYSIS

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

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

The current Class H felony in G.S. 50B-3.1(j) does not expressly require that any successive domestic violence protective order entered against the person reiterate the firearm prohibition contained in the initial emergency or *ex parte* protective order.

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: 04/08/11

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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 650 – Amend Various Gun Laws [Ed.1] (cont'd)

STATUTE

§ 14-277.1. Communicating threats.

DESCRIPTION

A person who

1. without lawful authority or justification
2. willfully threatens
 - a. to physically injure the person or that person's child, sibling, spouse, or dependent, or
 - b. to damage the property of another
3. communicates the threat to the other person in a manner and under circumstances causing a reasonable person to believe that the threat is likely to be carried out; and
4. makes the threatened person believe that the threat will be carried out.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

The offense of communication threats does not currently provide for justification. G.S. 14-277.1(a)

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: 04/08/11

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 426/SB 2 – Chamberlin’s Law [Ed.1]

STATUTE

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

DESCRIPTION

Subsection (b1):

A person who

1. pleads guilty or nolo contendere
2. or is found guilty
3. under G.S. 14-360(b)
4. and who the court
 - a. prohibits having custody of any animals for any period of time,
 - b. or imposes any other reasonable restriction on animal custody as necessary for the protection of the animals,
5. and who violates any prohibition or restriction imposed by the sentencing court.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 14-360(b) provides that if any person shall maliciously (or intentionally) 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, he shall be guilty of a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/08/11

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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 426/SB 2 – Chamberlin’s Law [Ed.1] (cont’d)

STATUTE

§ 14-362.4. Failing to provide adequate shelter to dogs.

DESCRIPTION

A person who

1. owns or has custody of a dog
2. and intentionally
3. fails to provide the dog
4. with adequate shelter.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 14-362.4(a) defines “adequate shelter” as, at a minimum, an artificial shelter with a waterproof roof that reasonably may be expected to protect a dog from physical suffering or impairment of health due to exposure to the elements of adverse weather. A metal or plastic barrel is not adequate shelter.

G.S. 14-361.1, Abandonment of animals, provides that any person being the owner or possessor, or having charge or custody of an animal, who willfully and without justifiable excuse abandons the animal is guilty of a Class 2 misdemeanor.

G.S. 14-362.3, Restraining dogs in a cruel manner, provides that a person who maliciously restrains a dog using a chain or wire grossly in excess of the size necessary to restrain the dog safely 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.

This offense would be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

DATE OF REVIEW: 04/08/11

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 3 – Broaden Sweepstakes Law [Ed.1]

STATUTE

§ 14-306.4A. Electronic machines and devices for sweepstakes unlawful.

DESCRIPTION

Subsection (b):

A person who

1. operates
2. or places into operation
3. an electronic machine or device
4. to conduct or promote
5. a sweepstakes.

PROPOSED OFFENSE CLASS

First offense: Class 2 misdemeanor.

ANALYSIS

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

The 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.

The definitions found in G.S. 14-306.4(a)(1) (electronic machine or device), (a)(2) (enter/entry), (a)(4) (prize), and (a)(5) (sweepstakes) apply to this section.

Violation is a lesser included offense of G.S. 14-306.4, which prohibits operation or placing into operation of an electronic machine or device (1) to conduct a sweepstakes through use of an entertaining display, or (2) to promote a sweepstakes that is conducted through use of an entertaining display. A first offense under G.S. 14-306.4 is a Class 1 misdemeanor.

See also HB 226.

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: 04/08/11

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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 3 – Broaden Sweepstakes Law [Ed.1] (cont'd)

STATUTE

§ 14-306.4A. Electronic machines and devices for sweepstakes unlawful.

DESCRIPTION

Subsection (b):

A person who

1. operates
2. or places into operation
3. an electronic machine or device
4. to conduct or promote
5. a sweepstakes.

PROPOSED OFFENSE CLASS

Second offense: Class H felony.

ANALYSIS

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

The 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.

The definitions found in G.S. 14-306.4(a)(1) (electronic machine or device), (a)(2) (enter/entry), (a)(4) (prize), and (a)(5) (sweepstakes) apply to this section.

Violation is a lesser included offense of G.S. 14-306.4, which prohibits operation or placing into operation of an electronic machine or device (1) to conduct a sweepstakes through use of an entertaining display, or (2) to promote a sweepstakes that is conducted through use of an entertaining display. A second offense under G.S. 14-306.4 is a Class H felony.

See also HB 226.

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: 04/08/11

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 3 – Broaden Sweepstakes Law [Ed.1] (cont'd)

STATUTE

§ 14-306.4A. Electronic machines and devices for sweepstakes unlawful.

DESCRIPTION

Subsection (b):

Any person who

1. operates
2. or places into operation
3. an electronic machine or device
4. to conduct or promote
5. a sweepstakes.

PROPOSED OFFENSE CLASS

Third or subsequent offense: 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.

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.

The definitions found in G.S. 14-306.4(a)(1) (electronic machine or device), (a)(2) (enter/entry), (a)(4) (prize), and (a)(5) (sweepstakes) apply to this section.

Violation is a lesser included offense of G.S. 14-306.4, which prohibits operation or placing into operation of an electronic machine or device (1) to conduct a sweepstakes through use of an entertaining display, or (2) to promote a sweepstakes that is conducted through use of an entertaining display. A third or subsequent offense under G.S. 14-306.4 is a Class G felony.

See also HB 226.

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: 04/08/11

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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 3 – Broaden Sweepstakes Law [Ed.1] (cont'd)

STATUTE

§ 14-306.4A. Electronic machines and devices for sweepstakes unlawful.

DESCRIPTION

Subsection (f)(2):

A person who

1. operates
2. or places into operation
3. five or more
4. electronic machines or devices
5. to conduct or promote
6. a sweepstakes.

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.

The definitions found in G.S. 14-306.4(a)(1) (electronic machine or device), (a)(2) (enter/entry), (a)(4) (prize), and (a)(5) (sweepstakes) apply to this section.

It is currently a Class G felony under G.S. 14-309(b)-(c): (1) to operate, allow to be operated, place into operation, or keep in one's possession for the purpose of operation five or more video gaming machines barred by G.S. 14-306.1A, or (2) to possess five or more game terminals with a display simulating a game ordinarily played on a slot machine or video gaming machine, for the purpose of promoting, operating, or conducting a server-based electronic game promotion, as barred by G.S. 14-306.3.

See also HB 226.

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: 04/08/11

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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 3 – Broaden Sweepstakes Law [Ed.1] (cont'd)

STATUTE

§ 14-306.4. Electronic machines and devices for sweepstakes prohibited.

DESCRIPTION

A person who

1. operates or places into operation
2. five or more electronic machines or devices to
 - a. conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize.
 - b. promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

PROPOSED OFFENSE CLASS

Class G felony (G.S. 14-309(c)).

ANALYSIS

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

It is currently a Class G felony under G.S. 14-309(b)-(c): (1) to operate, allow to be operated, place into operation, or keep in one's possession for the purpose of operation five or more video gaming machines barred by G.S. 14-306.1A, or (2) to possess five or more game terminals with a display simulating a game ordinarily played on a slot machine or video gaming machine for the purpose of promoting, operating, or conducting a server-based electronic game promotion, as barred by G.S. 14-306.3.

See also HB 226.

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: 04/08/11

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: SB 4 – Make Synthetic Cannabinoids Illegal [Ed.1]

STATUTE

§ 90-89. Schedule I controlled substances.

DESCRIPTION

Classifies synthetic cannabinoids as Schedule I controlled substances.

PROPOSED OFFENSE CLASS

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

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

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

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

ANALYSIS

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

See also HB 12.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

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: SB 9 – Make Synthetic Cannabinoids Illegal [Ed.2]

STATUTE

§ 90-94. Schedule VI controlled substances.

DESCRIPTION

Subsection (3):

Classifies synthetic cannabinoids as a Schedule VI controlled substance.

PROPOSED OFFENSE CLASS

Sale of a Schedule VI controlled substance is a Class H felony under G.S. 90-95(a)(1), (b)(2), except that the transfer of less than 5 grams of a synthetic cannabinoid for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

Manufacture, delivery, or possession with intent to manufacture, sell or deliver a Schedule VI controlled substance is a Class I felony under G.S. 90-95(a)(1), (b)(2).

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

Possession of a Schedule VI controlled substance is a Class 3 misdemeanor under G.S. 90-95 (a)(3), (d)(4), but any active sentence imposed must be suspended; if the quantity exceeds one-half an ounce of a synthetic cannabinoid, the violation shall be punishable as a Class 1 misdemeanor; if the quantity exceeds one and one-half ounces of a synthetic cannabinoid, the violation shall be punishable as a Class I felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 9 – Make Synthetic Cannabinoids Illegal [Ed.2] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (h)(1a):

A person who

1. sells, manufactures, delivers, transports, or possesses
2. in excess of 35 grams of synthetic cannabinoid or any mixture containing such substance.

PROPOSED OFFENSE CLASS

Class F felony.

The sentence shall be an active prison term of 70 months minimum and 84 months maximum and a fine of not less than \$50,000.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 9: MAKE SYNTHETIC CANNABINOIDS ILLEGAL [Ed. 2]

PREPARED: FEBRUARY 4, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill adds “synthetic cannabinoids” to the list of Schedule VI controlled substances in G.S. 90-94, thereby expanding all extant offenses that involve Schedule VI drugs. The bill also creates two new possession offenses specific to synthetic cannabinoids in G.S. 90-95(d)(4), as well as a new Class F felony of trafficking in synthetic cannabinoids in G.S. 90-95(h). (Currently, synthetic cannabinoids are not regulated by North Carolina law.)

SECTION 1. This bill amends G.S. 90-94, Schedule VI controlled substances, by adding subsection (6), Synthetic cannabinoids. Subsection (3) includes nine subparts, (a)-(i), providing detailed chemical descriptions of the substances that would qualify as synthetic cannabinoids. The addition of synthetic cannabinoids to Schedule VI expands the reach of all existing offenses involving Schedule VI controlled substances in G.S. 90-95, Violations; penalties, and elsewhere. These offenses are set forth by offense classification below:

Class 3 Misdemeanors

Under G.S. 90-95(d)(4), it is a Class 3 misdemeanor to possess a Schedule VI controlled substance as proscribed by G.S. 90-95(a)(3). (*See also SECTION 3* for additional offenses governing possession of specific quantities of synthetic cannabinoids in G.S. 90-95(d)(4)).

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to possess a Schedule VI controlled substance is guilty of a Class 3 misdemeanor.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 28% of Class 3 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 3 convictions was 3 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 3 misdemeanor convictions that occur as a result of the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Class 1 Misdemeanors

It is a Class 1 misdemeanor under subsection (b) of G.S. 90-108, Prohibited acts; penalties, to engage in the following conduct with regard to a Schedule VI controlled substance:

- (1) for a person other than a licensed practitioner to misrepresent himself as a licensed practitioner to a lawful manufacturer, distributor, or dispenser of controlled substances in order to secure or attempt to secure a controlled substance;
- (2) for a person subject to registration requirements or a practitioner to distribute or dispense Schedule controlled substance in violation of G.S. 90-105, Order forms;

- (3) for a registrant to manufacture, distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (4) for a person to omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act;
- (5) for a person to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Controlled Substances Act;
- (6) for a person to refuse any entry onto any premises or inspection authorized by the Controlled Substances Act;
- (7) to knowingly keep or maintain a building, vehicle, or any place whatsoever which is resorted to by users of unlawful controlled substances for the purpose of using such substances, or which is used for the keeping or selling thereof;
- ...
- (8) to use in the course of manufacturing or distributing a controlled substance a fictitious, suspended, or revoked registration number;
- (9) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
- (10) to furnish false or fraudulent material information, or to omit same, from any application, report, or document required under the Controlled Substances Act;
- (11) to make, distribute, or possess any thing designed to print or reproduce an identifying mark upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
- (12) to obtain controlled substances through the use of legal prescriptions obtained by knowing and willful misrepresentation to, or intentional withholding of information from, one or more practitioners;
- (13) for an employee of a registrant or practitioner who is authorized to possess or has access to controlled substances by virtue of his employment, to embezzle or fraudulently and willfully misapply or divert to his or any other unauthorized or illegal use any controlled substance coming into his possession or care.

Because G.S. 90-108 primarily concerns prescription drugs, many of these offenses will not apply to synthetic cannabinoids. However, where an offense does apply to Schedule VI drugs, the proposed bill would expand its reach.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class 1 misdemeanor.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions that occur as a result of the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Class I Felonies

It is a Class I felony under subsection (b) of G.S. 90-108, Prohibited acts; penalties, to engage in any of the following conduct prohibited in subsection (a) with regard to a Schedule VI controlled substance, if the violation is alleged and proved to have been committed *intentionally*:

- (1) for a person other than a licensed practitioner to misrepresent himself as a licensed practitioner to a lawful manufacturer, distributor, or dispenser of controlled substances in order to secure or attempt to secure a controlled substance;
- (2) for a person subject to registration requirements or a practitioner to distribute or dispense Schedule controlled substance in violation of G.S. 90-105, Order forms;
- (3) for a registrant to manufacture, distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (4) for a person to omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act;
- (5) for a person to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Controlled Substances Act;
- (6) for a person to refuse any entry onto any premises or inspection authorized by the Controlled Substances Act;
- (7) to knowingly keep or maintain a building, vehicle, or any place whatsoever which is resorted to by users of unlawful controlled substances for the purpose of using such substances, or which is used for the keeping or selling thereof;
- ...
- (9) to use in the course of manufacturing or distributing a controlled substance a fictitious, suspended, or revoked registration number;
- (10) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
- (11) to furnish false or fraudulent material information, or to omit same, from any application, report, or document required under the Controlled Substances Act;
- (12) to make, distribute, or possess any thing designed to print or reproduce an identifying mark upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
- (13) to obtain controlled substances through the use of legal prescriptions obtained by knowing and willful misrepresentation to, or intentional withholding of information from, one or more practitioners;
- (14) for an employee of a registrant or practitioner who is authorized to possess or has access to controlled substances by virtue of his employment, to embezzle or fraudulently and willfully misapply or divert to his or any other unauthorized or illegal use any controlled substance coming into his possession or care.

Because G.S. 90-108 primarily concerns prescription drugs, many of these offenses will not apply to synthetic cannabinoids. However, where an offense does apply to Schedule VI drugs, the proposed bill would expand its reach.

As listed above under “Class 1 Misdemeanors,” violations of G.S. 90-108(a)(1)-(14) are classified as Class 1 misdemeanors unless the criminal pleading alleges that they were committed intentionally. However, subpart (e)(1) of G.S. 90-95, Violations; penalties, makes it a Class I felony to engage in any of these Class 1 misdemeanors after having a prior conviction under the Controlled Substances Act (G.S. 90-86 through 90-113.8) or a similar federal or state law. Subsection (b) of 90-108 also makes it Class I felony to violate subpart 90-108(a)(7) if the person fortifies the structure with the intent to impede law enforcement entry (by barricading windows and doors).

Under G.S. 90-95(b)(2), it is a Class I felony to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule VI controlled substance as proscribed by G.S. 90-95(a)(1).

Under G.S. 90-95(c), it is a Class I felony to create, sell or deliver, or possess with intent to sell or deliver a counterfeit Schedule VI controlled substance as proscribed by G.S. 90-95(a)(2).

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit either of the offenses set forth above is guilty of a Class I felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten additional Class I convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Class H Felonies

Under G.S. 90-95(b)(2), it is a Class H felony to sell a Schedule VI controlled substance as proscribed by G.S. 90-95(a)(1).

Under subpart (a)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class H felony for a person 18 to 20 years of age to hire or intentionally employ a minor more than 13 years of age to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule VI controlled substance.

Under G.S. 90-95(e)(9), it is a Class H felony to possess a controlled substance (as proscribed by subpart (a)(3)) on the premises of a penal institution or local confinement facility.

Under G.S. 90-95(d1)(1), it is a class H felony to (a) possess an immediate precursor chemical with intent to manufacture a controlled substance, or (b) possess or distribute an immediate precursor chemical knowing or having reasonable cause to believe that it will be used to manufacture a controlled substance.

Under subsection (a) of 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, it is a class H felony to give or sell a Schedule I-VI controlled substance to an inmate, or to combine, confederate, conspire, aid, abet, solicit, urge, investigate, counsel, advise, encourage or attempt to procure, or procure another or others to do so.

Under G.S. 14-410.16, Contaminate food or drink to render one mentally incapacitated or physically helpless, it is a Class H felony (a) to knowingly contaminate an edible or potable substance with any controlled substance that would render a person incapacitated or helpless with the intent of causing this result, or (b) to knowingly manufacture, sell, deliver, or possess any controlled substance for this

purpose of committing this act. Note: It is unclear whether synthetic cannabinoids would induce the effect required for this offense.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class H felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H convictions per year as a result of the proposed broadening of the current statute, 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.

Class G Felonies

Under subpart (a)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class G felony for a person 18 to 20 years of age to hire or intentionally employ a minor more than 13 years of age to sell a Schedule VI controlled substance.

Under subpart (a)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class G felony for a person 18 to 20 years of age to hire or intentionally employ a minor 13 years of age or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule VI controlled substance.

Under G.S. 90-95.7, Participation in a drug violation by a minor, it is a Class G felony for a person 21 years of age or older to purchase or receive a controlled substance from a minor 13 years of age or younger who possesses, sells, or delivers the substance in violation of G.S. 90-95(a)(1).

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class G felony.

Under subsection (c) of G.S. 14-410.16, Contaminate food or drink to render one mentally incapacitated or physically helpless, it is a Class G felony to knowingly, with the intent to commit a rape or sexual offense, (a) contaminate an edible or potable substance with any controlled substance that would render a person incapacitated or helpless with the intent of causing this result, or (b) manufacture, sell, deliver, or possess any controlled substance for this purpose of committing this act. Note: It is unclear whether synthetic cannabinoids would induce the effect required for this offense.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. If, for example, there were two additional Class G convictions per year as a result of the proposed broadening of the current statute, 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.

Class F Felonies

Under subpart (b)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class F felony for a person 21 years of age or older to hire or intentionally employ a minor more than 13 years of age to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule VI controlled substance.

Under subpart (a)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class F felony for a person 18 to 20 years of age to hire or intentionally employ a minor 13 years of age or younger to sell a Schedule VI controlled substance.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit either of the offenses set forth above is guilty of a Class F felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 54% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the current statute, 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.

Class E Felonies

Under subpart (b)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class E felony for a person 21 years of age or older to hire or intentionally employ a minor more than 13 years of age to sell a Schedule VI controlled substance.

Under subpart (b)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class E felony for a person 21 years of age or older to hire or intentionally employ a minor 13 years of age or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule VI controlled substance.

Under G.S. 90-95(e)(8), it is a Class E felony for a person 21 years of age or older to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance (as proscribed by subpart (a)(1)) on property used for a child care center or an elementary or secondary school, or within 1,000 feet of the boundary of realty used for these purposes.¹

Under G.S. 90-95(e)(10), it is a Class E felony for a person 21 years of age or older to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance (as proscribed by subpart (a)(1)) on property that is a public park or within 1,000 feet of the boundary of realty that is a public park.²

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class E felony.

¹ It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

² It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2009/10, 51% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two additional Class E convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Class D Felonies

Under subpart (b)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class D felony for a person 21 years of age or older to hire or intentionally employ a minor 13 years of age or younger to sell a Schedule VI controlled substance.

Under G.S. 90-95(e)(5), it is a Class D felony for a person 18 years of age or older to sell or deliver a controlled substance (as proscribed by subpart (a)(1)) to a person under 16 but more than 13 years old, or to a pregnant female.³

Under G.S. 90-95.6, Promoting drug sales by a minor, it is a Class D felony for a person 21 years of age or older to entice, force, encourage, or otherwise facilitate a minor, or to supervise, support, advise, or protect a minor in violating G.S. 90-95(a)(1) by the manufacture, sale, delivery, or possession with intent to manufacture, sell, or deliver a controlled substance.⁴

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class D felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class D offense was 63 months. If, for example, there was one additional Class D conviction per year as a result of the proposed broadening of the current statute, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Class C Felonies

Under G.S. 90-95(e)(5), it is a Class C felony for a person 18 years of age or older to sell or deliver a controlled substance (as proscribed by subpart (a)(1)) to a person 13 years of age or younger.⁵

³ It is assumed that the additional age-based offenses in G.S. 90-95.4(a) and (b) do not apply to this offense.

⁴ It is assumed that the additional age-based offenses in G.S. 90-95.4(b)(1) and (2) do not apply to this offense.

⁵ It is assumed that the additional age-based offenses in G.S. 90-95.4(a) and (b) do not apply to this offense.

Under G.S. 90-95.1, Continuing criminal enterprise, it is a Class C felony commit any felony under the Controlled Substances Act (G.S. Chapter 90, Article 5), if the violation is part of a continuing series of violations (a) which are undertaken in concert with five or more other people over whom the person serves as organizer, supervisor, or manager, and (b) from which the person obtains substantial income or resources.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit either of the offenses set forth above is guilty of a Class C felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class C offense was 82 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

SECTION 2. This section amends G.S. 90-95(b)(2) to provide that a transfer for no remuneration of less than 5 grams of synthetic cannabinoid shall not constitute a delivery for purposes of G.S. 90-95(a)(1), thereby excluding the act from the Class I felony offense of delivery of a Schedule VI controlled substance in G.S. 90-95(b)(2).

This provision mirrors the current exclusion of unremunerated transfers of less than 5 grams of marijuana.

SECTION 3. This section amends G.S. 90-95(d)(4) to make it a Class 1 misdemeanor to possess more than one-half ounce of a synthetic cannabinoid or any mixture containing such substance, and to make it a Class I felony to possess in excess of one and one-half ounces of a synthetic cannabinoid or any mixture containing such substance.

Both offenses mirror the current offenses for possessing a like quantity of marijuana.

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

In FY 2009/10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for the proposed Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten Class I convictions for this proposed offense per

year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

SECTION 4. This section adds subpart (h)(2a) to G.S. 90-95, Violations; penalties, to create the offense of “trafficking in synthetic cannabinoids,” a Class F felony punished by an active prison term of 70 months to 84 months and a fine of at least \$50,000.⁶ The offense is defined as the sale, manufacture, delivery, transport, or possession of more than 35 grams of synthetic cannabinoids.

Under G.S. 90-95(i), conspiring to traffic in synthetic cannabinoids would also be a Class F felony punished by 70 months to 84 months of active prison time and a fine of no less than \$50,000.

Impact: Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. If, for example, there was one Class F conviction per year for the proposed offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.

⁶Subpart G.S. 90-95(h)(5) allows the judge in a drug trafficking case to suspend the sentence and impose probation or impose a prison term less than the prescribed minimum upon a finding that the defendant rendered “substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals.”

NORTH CAROLINA 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 25 – Only Barbers To Use Barber Pole/Advertisement [Ed.1]

STATUTE

§ 86A-1. Necessity of certificate for registration and shop or school permit.

DESCRIPTION

A person, combination of persons, or corporation who

1. advertises or otherwise represents oneself or itself
2. as qualified or authorized to
3. engage in the practice of barbering, including use or display of the barber pole,
4. without first obtaining
 - a. a certificate of registration as a registered barber, or
 - b. a shop permit, or
 - c. a school permit
5. issued by the State Board of Barber Examiners.

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, property, or society as Class 3 misdemeanors.

G.S. 86A-20, Misdemeanors, provides that barbering without a license is 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: 04/08/11

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 31 – Conform Penalty Unauth. Practice Of Medicine [Ed.2]

STATUTE

§ 90-18. Practicing without a license; penalties.

DESCRIPTION

Subsection (a):

A person who

1. performs any act constituting the practice of medicine or surgery
2. without first being duly licensed and registered to do so pursuant to Article 1 of Chapter 90 of the General Statutes.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

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

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

Article 1 of Chapter 90 provides for and regulates the practice of medicine in North Carolina.

Currently, G.S. 90-18 provides that a person practicing medicine without a license is guilty of a Class 1 misdemeanor, except that if the person practicing without a license is an out of state practitioner who has not been licensed and registered to practice medicine or surgery in this State, he shall be 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.

DATE OF REVIEW: 04/08/11

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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 31 – Conform Penalty Unauth. Practice of Medicine [Ed.2]
(cont'd)

STATUTE

§ 90-18. Practicing without a license; penalties.

DESCRIPTION

Subsection (a):

A person who

1. practices medicine or surgery
2. and who has a license or approval
3. under Article 1 of Chapter 90
4. that is inactive
5. due solely to
6. failure to complete annual registration in a timely fashion as required by
 - a. Article 1 of Chapter 90
 - b. or any other Article in Chapter 90 under which the person is licensed, registered and practicing.

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.

Article 1 of Chapter 90 provides for and regulates the practice of medicine in North Carolina; other Articles within Chapter 90 regulate other Allied Health Occupations such as Dentistry, Pharmacy, Optometry, etc.

Currently, G.S. 90-18 provides that a person practicing medicine without a license is guilty of a Class 1 misdemeanor, except that if the person practicing without a license is an out of state practitioner who has not been licensed and registered to practice medicine or surgery in this State, he shall be 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.

DATE OF REVIEW: 04/08/11

IMPACT ANALYSIS 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 or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 31: CONFORM PENALTY UNAUTH. PRACTICE OF MEDICINE [Ed.2]

PREPARED: MARCH 3, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill changes the respective populations of offenders who are covered by the Class 1 misdemeanor offense and the Class I felony offense of unauthorized practice of medicine in G.S. 90-18(a).

Subsection (a) of G.S. 90-18, Unauthorized practice of medicine, punishment; currently classifies the unauthorized practice of medicine as a Class 1 misdemeanor, except that if the person practicing without a license is an out of state practitioner who has not been licensed and registered to practice medicine in North Carolina, that person is guilty of a Class I felony. The bill would eliminate the distinction between in-state and out-of-state practitioners and make any person who practices medicine in North Carolina without being licensed and registered under Article 1 (Practice of Medicine) of G.S. Chapter 90 (Medicine and Allied Occupations) guilty of a Class I felony. However, if the person is licensed and registered under any other article in Chapter 90, the offense would be a Class 1 misdemeanor.

As explained below, Senate Bill 31 preserves the existing offense structure in G.S. 90-18(a), but redistributes the offenders who are covered by the Class I felony and the Class 1 misdemeanor.

The bill retains the current offense classifications for two subsets of offenders: offenders with an out-of-state medical license and no North Carolina license under G.S. Chapter 90 in a discipline other than medicine (e.g., dentistry, midwifery) remain Class I felons; and offenders who have no out-of-state medical license but have a license under G.S. Chapter 90 in a discipline other than medicine remain Class 1 misdemeanants.

Likewise, the bill reclassifies two subsets of offenders as follows: (I) an offender without an out-of-state medical license or any license in North Carolina under G.S. Chapter 90 is reclassified from a Class 1 misdemeanant to a Class I felon; and (II) an offender with an out-of-state medical license and a license in North Carolina under G.S. Chapter 90 in a discipline other than medicine (e.g., dentistry, midwifery) is reclassified from a Class I felon to a Class 1 misdemeanant.

I. Reclassification of Class 1 misdemeanors to Class I felonies.

In reviewing the past five fiscal years of AOC data, there was one Class 1 misdemeanor conviction in FY 2006/07. It is unknown whether this conviction would be subject to reclassification under the bill. Given the lack of convictions for this offense, it is unlikely that the proposed reclassification of certain Class 1 misdemeanor offenders to Class I felony offenders would result in substantial impact to the prison population.

The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009/10, 17% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. Using threshold data, if 10 Class 1 misdemeanor convictions were reclassified from Class 1 misdemeanor to Class I felony, this would result in the need for one additional prison bed the first year and three additional prison beds the second year.

II. Reclassification of Class I felonies to Class 1 misdemeanors.

There have been no Class I felony convictions under G.S. 90-18(a) in the past five fiscal years of AOC data. Therefore, it is unlikely that the proposed reclassification of certain Class I felony offenders to Class 1 misdemeanor offenders would result in any prison bed savings.

NORTH CAROLINA 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 77 – MDPV/Schedule I Controlled Substance [Ed.2]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

A person who

1. possesses 1 gram or less
2. of the controlled substance, MDPV.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

This bill excepts the possession of 1 gram or less of MDPV from classification as a Class I felony.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

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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 77 – MDPV/Schedule I Controlled Substance [Ed.2] (cont'd)

STATUTE

§ 90-89. Schedule I controlled substances.

DESCRIPTION

Classifies MDPV (3,4-methylenedioxypropylvalerone) as a Schedule I controlled substance.

PROPOSED OFFENSE CLASS

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

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

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

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

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

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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 77 – MDPV/Schedule I Controlled Substance [Ed.2] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subpart (h)(3d)(a):

A person who

1. sells, manufactures, delivers, transports, or possesses
2. 28 grams or more, but less than 200 grams of MDPV or any mixture containing MDPV.

PROPOSED OFFENSE CLASS

Class F felony.

The sentence shall be an active prison term of 70 months minimum and 84 months maximum and a fine of not less than \$50,000.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

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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 77 – MDPV/Schedule I Controlled Substance [Ed.2] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subpart (h)(3d)(b):

A person who

1. sells, manufactures, delivers, transports, or possesses
2. 200 grams or more, but less than 400 grams of MDPV or any mixture containing MDPV.

PROPOSED OFFENSE CLASS

Class E felony.

The sentence shall be an active prison term of 90 months minimum and 117 months maximum and a fine of not less than \$100,000.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

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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 77 – MDPV/Schedule I Controlled Substance [Ed.2] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subpart (h)(3d)(c):

A person who

1. sells, manufactures, delivers, transports, or possesses
2. 400 grams or more of MDPV or any mixture containing MDPV.

PROPOSED OFFENSE CLASS

Class C felony.

The sentence shall be an active prison term of 225 months minimum and 279 months maximum and a fine of not less than \$250,000.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

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: SB 96 – Prohibit Request To Disclose Expunction [Ed.1]

STATUTE

§ 15A-153. Prohibited practices by employers, educational institutions, agencies of State and local governments.

DESCRIPTION

A person who

1. is an employer or educational institution,
2. and who requires an applicant for employment or admission
3. on any application, interview, or otherwise
4. to disclose information
5. concerning any arrest or criminal charge against the applicant
6. that has been expunged.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

Each violation is a separate offense.

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. 15A-153(b) further provides that an applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged.

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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 105 – Increase Penalty/2nd Degree Murder [Ed.1]

STATUTE

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

DESCRIPTION

A person who

1. kills any human being with malice
2. but is not first degree murder.

OFFENSE CLASS

CURRENT: Class B2 felony.

PROPOSED: Class B1 felony.

ANALYSIS

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

An identical provision was reviewed by the Sentencing Commission in SB 74 in March 2009, and it determined that the offense classification criteria were not applicable.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 03/18/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 105: INCREASE PENALTY/2nd DEGREE MURDER [Ed.1]

PREPARED: FEBRUARY 28, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill reclassifies the offense of second degree murder in G.S. 14-17.

SECTION 1. G.S. 14-17, Murder in the first and second degree defined; punishment, currently defines first degree murder and classifies all other kinds of murder as second degree murder. Second degree murder is classified as a Class B2 felony. This Section would amend the statute by increase the classification of second degree murder from a Class B2 felony to a Class B1 felony.

In FY 2009/10, there were 230 convictions for Second Degree Murder (Class B2). Under Structured Sentencing, sentence lengths for Class B2 felons range from 94 months to 393 months, depending on Prior Record Level. In FY 2009/10, the average estimated time served for Second Degree Murder convictions was 188 months.

Sentence lengths for Class B1 felons range from 144 months to life without parole, depending on Prior Record Level, with an average estimated time served of 234 months in FY 2009/10. Given the sentencing range for Class B2 felons and the average sentence imposed for second degree murder convictions in FY 2009/10, all of the impact that would result from reclassifying second degree murder from Class B2 to Class B1 would occur outside the ten-year projection period. As a result, the Structured Sentencing Simulation Model could not be used to project the impact from the proposed reclassification. However, if the proposed reclassification of second degree murder from Class B2 to Class B1 were enacted, substantial long-term impact to the prison population would occur due to the longer sentence lengths available for Class B1 felony convictions and would continue as these convictions “stack up” in prison.

Finally, the proposed section would increase accessory after the fact to second degree murder from Class D to Class C. There is also a potential for impact from the resulting reclassification of solicitation to commit second degree murder and accessory after the fact to second degree murder from Class D to Class C. In FY 2009/10, there were three (3) convictions for accessory after the fact to second degree murder. 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 would occur beginning in the fifth year of the projection period as a result of the longer average estimated time served (83 months for Class C compared to 63 months for Class D) and would continue as these convictions “stack up” in prison.

NORTH CAROLINA 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 149 – No Plastic Knuckles [Ed.1]

STATUTE

§ 14-269. Carrying concealed weapons.

DESCRIPTION

Subsection (a):

A person who

1. willfully and intentionally
2. carries concealed
3. about his person
4. plastic knuckles.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (pursuant to G.S. 14-269(c)).

ANALYSIS

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

Subsection (a) does not apply when the person carrying the plastic knuckles is on his own premises.

Currently, the list of weapons in G.S. 14-269(a) includes bowie knives, dirks, daggers, slung shots, loaded canes, metallic knuckles, razors, shurikins, stun guns, and any other deadly weapons of like kind.

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: 04/08/11

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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 149 – No Plastic Knuckles [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (d):

A person who

1. possesses or carries,
2. whether openly or concealed,
3. plastic knuckles
4. on educational property.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 14-269.2(d) includes in its list of prohibited weapons: BB guns, stun guns, air rifle, air pistols, bowie knives, dirks, daggers, slung shots, switchblade knives, metallic knuckles, razor blades, fireworks, etc.

G.S. 14-269.2(g) provides that this section shall not apply to a weapon used solely for educational or school-sanctioned ceremonial purposes or in a school-approved program, firefighters, EMS, and Forest Service personnel, private police employed by a school, home schools, weapons used for hunting purposes on the Howell Woods Nature Center property owned by Johnston Community College when used with written permission of JCC, a person registered as an armed armored car service guard or armed courier service guard when acting in discharge of his duties with the permission of the school, or a person registered as an armed security guard while on the premises of a hospital or health care facility located on educational property when acting in the discharge of duties.

G.S. 14-269.2(h) provides that it shall be a complete defense to violation of this section if the person comes into possession of a weapon by the taking or receiving of the weapon from another person or by finding the weapon, and the person delivers the weapon directly or indirectly, as soon as practical to law enforcement authorities.

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: 04/08/11

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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 149 – No Plastic Knuckles [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (e):

A person who

1. causes, encourages, or aids
2. a minor who is less than 18 years old
3. to possess or carry,
4. whether openly or concealed,
5. plastic knuckles
6. on educational property.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 14-269.2(e) includes in its list of prohibited weapons: BB guns, stun guns, air rifle, air pistols, bowie knives, dirks, daggers, slung shots, switchblade knives, metallic knuckles, razor blades, fireworks, etc.

G.S. 14-269.2(g) provides that this section shall not apply to a weapon used solely for educational or school-sanctioned ceremonial purposes or in a school-approved program, firefighters, EMS, and Forest Service personnel, private police employed by a school, home schools, weapons used for hunting purposes on the Howell Woods Nature Center property owned by Johnston Community College when used with written permission of JCC, a person registered as an armed armored car service guard or armed courier service guard when acting in discharge of his duties with the permission of the school, or a person registered as an armed security guard while on the premises of a hospital or health care facility located on educational property when acting in the discharge of duties.

G.S. 14-269.2(h) provides that it shall be a complete defense to violation of this section if the person comes into possession of a weapon by the taking or receiving of the weapon from another person or by finding the weapon, and the person delivers the weapon directly or indirectly, as soon as practical to law enforcement authorities.

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: 04/08/11

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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 149 – No Plastic Knuckles [Ed.1] (cont'd)

STATUTE

§ 14-315. Selling or giving weapons to minors.

DESCRIPTION

Subsection (a):

A person who

1. sells,
2. offers for sale,
3. gives,
4. or in any way transfers
5. to a minor
6. plastic knuckles.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

G.S. 14-315(a) includes in its list of prohibited weapons: pistol cartridges, brass knucks, bowie knives, leaded cane, slung shots, etc.

A violation of this section shall result in forfeiture of the proceeds of any sale made in violation of this section.

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: 04/08/11

IMPACT ANALYSIS NOT YET REQUESTED

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 150 – Amend Drug Trafficking Sentence [Ed.1]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (h)(5):

A sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided, or suspend the prison term and place a person on probation when the sentencing judge finds certain criteria are met and enters the finding in the record.

PUNISHMENT RANGE

CURRENT (if applicable): Mandatory sentence for drug trafficking may be reduced and/or suspended only in cases of “substantial assistance.”

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

ANALYSIS

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

The criteria are found in G.S. 90-95(h)(5)a and 90-95(h)(5)b, and the judge needs only find that one set has been met.

Amended G.S. 90-95(h)(5)a provides that the person has to the best of his or her knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals.

New G.S. 90-95(h)(5)b provides that the person has no prior convictions for crimes that produced or threatened serious bodily harm; has no prior felony convictions for the manufacture, sale, delivery, or possession of controlled substances; and the sentencing judge finds by a preponderance of the evidence that the person: (i) did not possess a firearm during the commission of the offense; (ii) played a minimal role in the drug scheme that led to the offense; (iii) carried out the offense at the direction of another; and (iv) stood to receive substantially less pecuniary gain from the offense than the person who directed the commission of the offense.

The Sentencing Commission reviewed a substantially similar provision in SB 1045 in May 2009 and found that G.S. 164-41 was not applicable.

FINDINGS

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

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

G.S. 164-41 is not applicable.

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

DATE OF REVIEW: 03/18/11

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 179 – Failure To Carry Or Complete Alien Reg. Docs. [Ed.1]

STATUTE

§ 14-465. Willful failure to complete or carry an alien registration document.

DESCRIPTION

A person who

1. willfully fails
2. to complete or carry
3. an alien registration document
4. in violation of 8 U.S.C. §1304(e) or §1306(a).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

Maximum fine of \$100. Maximum prison sentence of 20 days for first offense and 30 days for subsequent offenses.

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.

8 U.S.C. § 1304(e) provides that every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to this section.

8 U.S.C. §1306(a) provides any alien required to apply for registration and be fingerprinted in the United States and who willfully fails or refuses to make such application or to be fingerprinted and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor.

G.S. 14-465(f) states that this section does not apply to a person who maintains authorization from the federal government to remain in the United States.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 183 – Selective Vegetation Removal/State Highways [Ed.1]

STATUTE

§ 136-93. Openings, structures, pipes, trees, and issuance of permits.

DESCRIPTION

Subsection (b):

A person who

1. plants, cuts, trims, prunes, or removes
2. any vegetation, including any tree, shrub, or underbrush
3. in or on any right-of-way of a State road or State highway
4. without a written selective vegetation removal permit issued pursuant to G.S. 136-133.2 and the rules of the Department.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 136-135).

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. 136-133.2, Issuance or denial of a selective vegetation removal permit, provides the guidelines for approval or denial of an application for a permit to remove vegetation.

G.S. 136-135, Enforcement provisions, states that any person, firm, corporation or association, placing, erecting or maintaining outdoor advertising along the interstate system or primary system in violation of this Article or rules adopted by the Department of Transportation shall be guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed similar provisions in HB 1583 in June 2009, in SB 983 in April 2009, and in SB 150 in March 2007, and each time 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: 04/08/11

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 187 – Outlaw Red Light Camera Systems [Ed.1]

STATUTE

§ 160A-300.1A. Traffic control photographic systems unlawful.

DESCRIPTION

A person who

1. operates a traffic control photographic system
2. in this State.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

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

A violation of this section shall result in the forfeiture of any photographic system used for traffic control.

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: 04/08/11

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 195 – Operation Of Mopeds. [Ed.1]

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (b):

A person who

1. operates a moped
2. with any passengers.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (pursuant to G.S. 20-35(a)).

ANALYSIS

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

The Sentencing Commission reviewed an identical provision in SB 135 in May 2009 and found it 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: 03/18/11

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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 195 – Operation of Mopeds. [Ed.1] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (c):

A person who

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

PROPOSED OFFENSE CLASS

Class 2 misdemeanor

ANALYSIS

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

The Sentencing Commission reviewed an identical provision in HB 310 in May 2009 and found it 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: 03/18/11

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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 195 – Operation of Mopeds. [Ed.1] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (c):

A person who

1. operates on a
 - a. highway or
 - b. public vehicular area
2. a moped that
 - a. does not have a vehicle identification number for the moped, or
 - b. is not designed and manufactured for use on public highways.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

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

The Sentencing Commission reviewed an identical provision in SB 135 in May 2009, and found it to be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 03/11/2011

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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 195 – Operation of Mopeds. [Ed.1] (cont'd)

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (d):

A person who

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

PROPOSED OFFENSE CLASS

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

ANALYSIS

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

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

The Sentencing Commission reviewed an identical provision in HB 310 and SB 135 in May 2009 and found it to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor, but determined it would 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.

This offense would be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

DATE OF REVIEW: 03/18/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 205 – No Benefits For Illegal Aliens [Ed.1]

STATUTE

§64-11. Verification of eligibility for federal public benefits.

DESCRIPTION

Subsection (d):

A person who

1. fails to report
2. violations of federal immigration law
3. discovered in the course of employment of
 - a. an agency of this State that administers a federal public benefit, or
 - b. a political subdivision of this State that administers a federal public benefit.

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. 64-11 applies to employees and supervisors employed in State or local agencies that provide federal public benefits.

G.S. 64-11(g) provides that this section shall not apply to applications for a federal public benefit for which lawful presence in the United States is not required.

See also HB 343.

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: 04/08/11

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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 205 – No Benefits for Illegal Aliens [Ed.1] (cont'd)

STATUTE

§ 64-11. Verification of eligibility for federal public benefits.

DESCRIPTION

Subsection (d):

A person who

1. is a supervisor, and
2. fails to report
3. or fails to direct the employee to report
4. a violation of federal immigration law
5. discovered by an employee.

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. 64-11 applies to employees and supervisors employed in State or local agencies that provide federal public benefits.

64-11(f) provides that this section shall not apply to applications for a federal public benefit for which lawful presence in the United States is not required.

See also HB 343.

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: 04/08/11

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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 205 – No Benefits for Illegal Aliens [Ed.1] (cont'd)

STATUTE

§ 64-12. Verification of eligibility for State or local public benefits.

DESCRIPTION

Subsection (d):

A person who

1. fails to report
2. violations of federal immigration law
3. discovered in the course of employment of
 - a. an agency of this State that administers a State or local public benefit, or
 - b. a political subdivision of this State that administers a State or local public benefit.

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. 64-12 applies to employees and supervisors who are employed in State or local agencies that provide State or local public benefits.

See also HB 343.

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: 04/08/11

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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 205 – No Benefits for Illegal Aliens [Ed.1] (cont'd)

STATUTE

§ 64-12. Verification of eligibility for State or local public benefits.

DESCRIPTION

Subsection (d):

A person who

1. is a supervisor, and who
2. fails to report
3. or fails to direct the employee to report
4. a violation of federal immigration law
5. discovered by an employee.

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. 64-12 applies to employees and supervisors who are employed in State or local agencies that provide State or local public benefits.

See also HB 343.

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: 04/08/11

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: SB 224 – Professional Sports Agents/College Athletes [Ed.1]

STATUTE

§ 14-379.1. Unlawful contact with a student athlete by a professional sports team or agent.

DESCRIPTION

A person who

1. acts as, for, or on behalf of
2. a professional sports team or agent, and who
3. contacts any
 - a. team member
 - b. athlete
 - c. coach, or
 - d. member of a coaching staff
4. for purposes of recruiting a student athlete
5. prior to the end of the last season of the sport of the student athlete's eligibility.

PROPOSED OFFENSE CLASS

Class I felony.

A violation of this section shall result in a fine of not less than \$10,000.

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: 04/08/11

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 230 – Pedorthist Licensure [Ed.1]

STATUTE

§ 90-202.23. License required.

DESCRIPTION

A person who

1. practices or offers to practice pedorthics, or
2. uses the title ‘Licensed Pedorthist,’ the letters ‘LP’ or otherwise indicates or implies that he or she is a licensed pedorthist
3. without a current license.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 90-202.31(a)).

ANALYSIS

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

This bill creates Article 12B of Chapter 90 of the General Statutes, which provides for the licensure and government of Pedorthists.

G.S. 90-202.31(a) provides that any person who violates any provision of Article 12B of Chapter 90 shall be guilty of Class 1 misdemeanor and may be subject to a fine of not more than \$1000.

G.S. 90-202.26, Qualifications for licensure, provides that an applicant shall be licensed to practice pedorthics if the applicant meets all of the following: (1) is at least 18 years old, (2) is of good moral character, (3) possesses a high school diploma or its equivalent, (4) completes the application provided by the Board, (5) is certified as a pedorthist by the Board of Certification in Pedorthics, and (6) pays the required fee.

“Pedorthics” is the design, manufacture, modification, or fit of custom shoes, orthoses, and pedorthic devices to prevent or alleviate foot problems, pursuant to a physician’s prescription.

The Sentencing Commission reviewed an identical provision in SB 619 in April 2009, and found it inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/18/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 241 – Increase Dwi Penalty/Child In Vehicle [Ed.2]

STATUTE

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

DESCRIPTION

Subsection (c):

A person who

1. has been convicted
 - a. under G.S. 20-138.1 or 20-138.2, or
 - b. a second or subsequent time under G.S. 20-138.2A or 20-138.2B,
2. and had a child under the age of 18 in the vehicle at the time of the offense.

PUNISHMENT RANGE

CURRENT (if applicable): Level II punishment (absent any other aggravating factors).

PROPOSED: Level I punishment.

ANALYSIS

Driving While Impaired offenses are not classified under Structured Sentencing.

A defendant subject to Level One punishment may be fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months.

A defendant subject to Level Two punishment may be fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months.

G.S. 20-138.1, Impaired driving. G.S. 20-138.2, Impaired driving in commercial vehicle. G.S. 20-138.2A, Operating a commercial vehicle after consuming alcohol. G.S. 20-138.2B, Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Driving While Impaired offenses are not punished under Structured Sentencing.

DATE OF REVIEW: 04/08/11

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 319/SB 249 – Restore 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 that the package of cigarettes is taxable 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. 105-113.33 provides that any person who violates a provision of Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed a substantially similar provision in HB 1979/SB 1197 in June 2010, 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: 04/08/11

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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 319/SB 249 – Restore 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 of cigarettes
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 Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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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 319/SB 249 – Restore 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 who 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 is exclusive of Saturdays, Sundays, and legal holidays. A licensed distributor may obtain a cigarette stamp from the Secretary of 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 Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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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 319/SB 249 – Restore 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 who 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 Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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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 319/SB 249 – Restore 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 or 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. 105-113.9 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.

G.S. 105-113.33 provides that any person who violates a provision of Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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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 319/SB 249 – Restore Cigarette Tax Stamps [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (a):

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 Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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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 319/SB 249 – Restore Cigarette Tax Stamps [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (b):

A person who

1. is a licensed distributor of cigarettes
2. and who ships an unstamped package of 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. 105-113.10(b) provides that a licensed distributor may ship a package of unstamped cigarettes only in certain circumstances: (1) to a facility the distributor owns, (2) to another license distributor, (3) to a person in a transaction that is not subject to the federal excise tax on cigarettes, or (4) to an agency or an instrumentality of the United States.

G.S. 105-113.33 provides that any person who violates a provision of Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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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 319/SB 249 – Restore Cigarette Tax Stamps [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (c):

A person who

1. is a manufacturer
2. delivering cigarettes to another licensed distributor,
3. without application to the Secretary,
4. or without compliance with the requirements prescribed by the Secretary,
5. fails to pay the taxes levied in 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 Article 2A of Chapter 105 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: 04/08/11

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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 319/SB 249 – Restore Cigarette Tax Stamps [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (c):

A person who

1. is a licensed distributor of cigarettes
2. and who ships or delivers an unstamped package of 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. 105-113.10(c) provides that in addition to the shipments authorized by G.S. 105-113.10(b), a manufacturer may (i) ship unstamped packages of cigarettes directly to a licensed distributor, or (ii) deliver unstamped cigarettes to a licensed distributor at the manufacturer's place of business if the manner of delivery or receipt is approved by and reported to the Secretary.

G.S. 105-113.33 provides that any person who violates a provision of Article 2A of Chapter 105 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: 04/08/11

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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 319/SB 249 – Restore 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 who 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. 105-113.18 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 unstamped cigarette packages received during the month, the number of unstamped cigarette packages sold during the month, the number of unstamped cigarettes returned to the manufacturer during the month, the number of stamps on hand on the first and last days of the month, the number of cigarette stamps obtained during the month, all authorized stamp adjustments to be made during the month, and the number of cigarette stamps placed on packages of cigarettes during the month.

G.S. 105-113.33 provides that any person who violates a provision of Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed a substantially similar provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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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 319/SB 249 – Restore 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 who 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. 105-113.18 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) further provides that the report must state the number of cigarettes acquired and the amount of tax due.

G.S. 105-113.33 provides that any person who violates a provision of Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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 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 319/SB 249 – Restore 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. 105-113.18 provides that all reports must be in the form required by the Secretary and contain the information required by the Secretary.

G.S. 105-113.33 provides that any person who violates a provision of Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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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 319/SB 249 – Restore 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 Article 2A of Chapter 105 for which no other punishment is specifically prescribed is guilty of a Class 1 misdemeanor.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 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: 04/08/11

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 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 319/SB 249 – Restore 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.

Article 2A of Chapter 105 of the General Statutes provides for the regulation of tobacco product taxation.

The Sentencing Commission reviewed an identical provision in HB 1979/SB 1197 in June 2010 and found it to be consistent 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.

DATE OF REVIEW: 04/08/11

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 268 – Enhance Protection Of Victims And 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 D felony.

ANALYSIS

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

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 substantially similar provision was reviewed by the Sentencing Commission in SB 1393 in June 2010, and was found to be consistent with the Offense Classification Criteria for a Class C felony. The Commission also noted that it would also 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.

This offense would be consistent with the Offense Classification Criteria for Class C or Class F.

DATE OF REVIEW: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 315 – Roadside Campaign Signs [Ed.1]

STATUTE

§136-32. Regulation of signs.

DESCRIPTION

Subsection (g):

A person who

1. unlawfully removes
2. a campaign sign
3. lawfully placed under this section.

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.

G.S. 136-32(b) – (e) provide for the rules and regulations regarding compliant political signs and their proper placement. G.S. 136-32(f) provides for monetary penalties against permit holders who improperly place signs.

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: 04/08/11

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 353 – Unborn Victims Of Violence Act [Ed.1]

STATUTE

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

DESCRIPTION

A person who

1. unlawfully
2. causes the death of an unborn child by
 - a. willfully and maliciously committing an act with the intent to cause death to the unborn child;
 - b. committing an act that is inherently dangerous to human life and is done so recklessly and wantonly that it reflects disregard of life; or
 - c. perpetrating or attempting to perpetrate any arson, rape or sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon, including a nuclear, biological, or chemical weapon of mass destruction.

PROPOSED OFFENSE CLASS

Class A felony.

Punishment shall be life without parole.

ANALYSIS

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

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

G.S. 14-23.7, Exceptions, provides that this act does not apply to acts which cause the death of an unborn child if those acts were lawful pursuant to G.S. 14-45.1, When abortion not unlawful; acts which are committed pursuant usual and customary standards of medical practice during diagnostic testing or therapeutic treatment; or acts committed by a pregnant woman which result in miscarriage or stillbirth by the woman.

See also HB 215.

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: 04/08/11

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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 353 – Unborn Victims of Violence Act [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

A person who

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

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

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

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

Voluntary manslaughter is a Class D felony pursuant to G.S. 14-18.

G.S. 14-23.7, Exceptions, provides that this act does not apply to acts which cause the death of an unborn child if those acts were lawful pursuant to G.S. 14-45.1, When abortion not unlawful; acts which are committed pursuant usual and customary standards of medical practice during diagnostic testing or therapeutic treatment; or acts committed by a pregnant woman which result in miscarriage or stillbirth by the woman.

See also HB 215.

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: 04/08/11

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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 353 – Unborn Victims of Violence Act [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

A person who

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

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

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

Involuntary manslaughter is a Class F felony under G.S. 14-18.

G.S. 14-23.7, Exceptions, provides that this act does not apply to acts which cause the death of an unborn child if those acts were lawful pursuant to G.S. 14-45.1, When abortion not unlawful; acts which are committed pursuant usual and customary standards of medical practice during diagnostic testing or therapeutic treatment; or acts committed by a pregnant woman which result in miscarriage or stillbirth by the woman.

See also HB 215.

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: 04/08/11

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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 353 – Unborn Victims of Violence Act [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

A person who

1. by battery of a pregnant woman
2. unlawfully inflicts serious bodily harm
3. upon an unborn child who is subsequently born alive.

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.

G.S. 14-23.5(b) defines “seriously bodily harm” as bodily injury (1) creating a substantial risk of death, (2) causing serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or (3) resulting in prolonged hospitalization, or (4) causes the birth of the unborn child prior to 37 weeks gestation.

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

G.S. 14-23.7, Exceptions, provides that this act does not apply to acts which cause the death of an unborn child if those acts were lawful pursuant to G.S. 14-45.1, When abortion not unlawful; acts which are committed pursuant usual and customary standards of medical practice during diagnostic testing or therapeutic treatment; or acts committed by a pregnant woman which result in miscarriage or stillbirth by the woman.

See also HB 215.

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: 04/08/11

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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 353 – Unborn Victims of Violence Act [Ed.1] (cont'd)

STATUTE

§ 14-23.6. Assault of an unborn child; penalty.

DESCRIPTION

A person who

1. assaults a pregnant woman
2. in the course of committing any unlawful assault, assault and battery, or affray.

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.

Simple assault, assault and battery, or affray is a Class 2 misdemeanor pursuant to G.S. 14-33.

G.S. 14-23.7, Exceptions, provides that this act does not apply to acts which cause the death of an unborn child if those acts were lawful pursuant to G.S. 14-45.1, When abortion not unlawful; acts which are committed pursuant usual and customary standards of medical practice during diagnostic testing or therapeutic treatment; or acts committed by a pregnant woman which result in miscarriage or stillbirth by the woman.

See also HB 215.

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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 373 – Community Association Managers Licensing Act [Ed.1]

STATUTE

§ 93A-101. Violation a misdemeanor.

DESCRIPTION

A person who violates any provision of the North Carolina Community Association Managers Licensure Act (G.S. Chapter 93A, Article 6).

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.

Proposed Article 6 of Chapter 93A of the General Statutes would provide for the licensure and regulation of community association managers; some of the offenses may include: acting as a community association manager without a license; lack of coverage by a fidelity bond or insurance policy; failure to display license.

The Commission reviewed a substantially similar provision in HB 762/SB 516 in May 2009 and in HB 1535/SB 1315 in June, 2007, and found it to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS

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

DATE OF REVIEW: 04/08/11

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 374 – Landowner Protection Act [Ed.1]

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (a):

A person who

1. takes or attempts to take wildlife
2. by discharging a firearm, bow and arrow, or crossbow
3. from, on, across, or over
4. the right-of-way of any State-maintained public road or highway,
5. except as allowed on State game lands.

PROPOSED OFFENSE CLASS

First offense: Class 3 misdemeanor.

ANALYSIS

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

The statute does not provide for a specific fine or other penalty for the first violation, but does provide so for second and subsequent violations.

The term “to take” is defined in G.S. 113-130(7), and means, all operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.

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: 04/08/11

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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 374 – Landowner Protection Act [Ed.1] (cont’d)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (a):

A person who

1. takes or attempts to take wildlife
2. by discharging a firearm, bow and arrow, or crossbow
3. from, on, across, or over
4. the right-of-way of any State-maintained public road or highway,
5. except as allowed on State game lands.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, within three years: Class 2 misdemeanor.

Punishable by a fine of at least \$250 and the loss of hunting privileges for a period of 12 months from the date of conviction.

ANALYSIS

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

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

The term “to take” is defined in G.S. 113-130(7), and means, all operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.

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: 04/08/11

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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 374 – Landowner Protection Act [Ed.1] (cont'd)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (b):

A person who

1. possess a loaded firearm
2. outside the passenger compartment of a vehicle
3. while on the roadway or highway right-of-way
4. while in the act of taking or attempting to take wildlife.

PROPOSED OFFENSE CLASS

First offense: Class 3 misdemeanor.

ANALYSIS

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

The statute does not provide for a specific fine or other penalty for the first violation, but does provide so for second and subsequent violations.

G.S. 113-291.12(b) further provides that it is not unlawful to commit such an act if the offender is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land, dated within the last 12 months.

The term “to take” is defined in G.S. 113-130(7), and means, all operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.

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: 04/08/11

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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 374 – Landowner Protection Act [Ed.1] (cont'd)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (b):

A person who

1. possess a loaded firearm
2. outside the passenger compartment of a vehicle
3. while on the roadway or highway right-of-way
4. while in the act of taking or attempting to take wildlife.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, within three years: Class 2 misdemeanor.

Punishable by a fine of at least \$250 and the loss of hunting privileges for a period of 12 months from the date of conviction.

ANALYSIS

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

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

G.S. 113-291.12(b) further provides that it is not unlawful to commit such an act if the offender is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land, dated within the last 12 months.

The term "to take" is defined in G.S. 113-130(7), and means, all operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.

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: 04/08/11

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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 374 – Landowner Protection Act [Ed.1] (cont'd)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (c):

A person who

1. takes or attempts to take wildlife
2. on the land of another
3. without having on one's person
4. the written permission,
5. dated within the last 12 months,
6. of the landowner or lessee or the landowner's or lessee's designee.

PROPOSED OFFENSE CLASS

First offense: Class 3 misdemeanor.

ANALYSIS

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

The statute does not provide for a specific fine or other penalty for the first violation, but does provide so for second and subsequent violations.

G.S. 113-291.12(c) further provides that a person shall have written permission to hunt if a landowner or lessee granted permission to hunt to a hunting club, and the offender is carrying both a current membership card for the hunting club and a copy of valid written permission granted to the hunting club.

The term "to take" is defined in G.S. 113-130(7), and means, all operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.

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: 04/08/11

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 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 374 – Landowner Protection Act [Ed.1] (cont'd)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (c):

A person who

1. takes or attempts to take wildlife
2. on the land of another
3. without having on one's person
4. the written permission,
5. dated within the last 12 months,
6. of the landowner or lessee or the landowner's or lessee's designee.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, within 3 years: Class 2 misdemeanor.

Punishable by a fine of at least \$250 and the loss of hunting privileges for a period of 12 months from the date of conviction.

ANALYSIS

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

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

G.S. 113-291.12(c) further provides that a person shall have written permission to hunt if a landowner or lessee granted permission to hunt to a hunting club, and the offender is carrying both a current membership card for the hunting club and a copy of valid written permission granted to the hunting club.

The term "to take" is defined in G.S. 113-130(7), and means, all operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.

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: 04/08/11

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 393 – Felony Death By Vehicle/Penalty Increase [Ed.1]

STATUTE

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

DESCRIPTION

Subsection (a1):

A person who

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

OFFENSE CLASS

CURRENT: Class E felony (pursuant to G.S. 20-141.4(b)(2)).

PROPOSED: Class D felony.

ANALYSIS

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

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

Voluntary manslaughter is a Class D felony, and involuntary manslaughter is a Class F felony pursuant to G.S. 14-18.

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

This provision is identical to a provision in SB 158 reviewed by the Sentencing Commission in February 2009, the Commission found that the Offense Classification Criteria were not applicable.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/08/11

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 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 393 – Felony Death by Vehicle/Penalty Increase (cont'd)

STATUTE

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

DESCRIPTION

Subsection (a5):

A person who

1. unintentionally causes the death of another person,
2. while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,
3. the commission of the impaired driving offense is the proximate cause of the death, and
4. within seven years, has a previous conviction involving impaired driving.

OFFENSE CLASS

CURRENT: Class D felony.

PROPOSED: Class C felony.

ANALYSIS

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/08/11

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 412 – Public Meetings/Records Law Violations [Ed.1]

STATUTE

§ 132-9. Access to records.

DESCRIPTION

A person who

1. denies access to public records for purposes of inspection and examination, or
2. denies copies of public records.

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: 04/08/11

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 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 412 – Public Meetings/Records Law Violations [Ed.1]
(cont'd)

STATUTE

§ 143-318.18A. Violation of Article.

DESCRIPTION

A person who

1. violates
2. Article 33C, Meetings of Public Bodies, of Chapter 143 of the General Statutes.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

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

Article 33C, Meetings of Public Bodies, of Chapter 143, State Departments, Institutions and Commissions, of the General Statutes governs the policies and procedures of meetings of public bodies, particularly regarding public notice of official meetings.

G.S. 143-318.10 provides that a “public body” means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function.

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: 04/08/11

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 429 – Hunting Protection Act [Ed.1]

STATUTE

§ 14-159.6A. Trespass upon land that has not been posted for purposes of hunting.

DESCRIPTION

A person who

1. willfully goes on the land of another to hunt, or
2. willfully releases hunting dogs on the land of another,
3. without having on his or her person
4. the written consent of the owner or lessee or the agent of the owner or lessee.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

Punishable for a first offense by imprisonment for up to 30 days and a fine of up to \$500; punishable for a second or subsequent offense, or an offense involving the use of a motorized vehicle, by imprisonment for up to 45 days and a fine of up to \$1000.

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.

An active sentence is not an available disposition for Class 2 misdemeanors in Prior Conviction Levels I and II.

G.S. 14-159.6A(b) provides that written consent sufficient to satisfy this section shall be signed by the owner or lessee, or agent thereof, and dated within the last 12 months, or if the owner, lessee or agent thereof has granted permission to a hunting club and the person is carrying a current membership card and a document confirming the hunting club's permission to hunt the land.

Pursuant to G.S. 14-159.6, Trespass for purposes of hunting, etc., without written consent a misdemeanor, it is a Class 2 misdemeanor to hunt on land upon which "posted" notices have been placed prohibiting hunting.

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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 438 – Clarify Motor Vehicle Licensing Law [Ed.1]

STATUTE

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

DESCRIPTION

Subsection (4):

A person who

1. is a manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them
2. prevents or refuses to approve
3. the sale or transfer of
4. the ownership of a dealership by
5. change in use of an existing facility to provide for the sales or service of one or more additional line-makes of new motor vehicles.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 20-308).

ANALYSIS

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

G.S. 20-305(4) currently provides that it is unlawful to prevent or refuse to approve the transfer or sale of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership.

G.S. 20-308, Penalties, provides that a violation of any provision of Article 12, Motor Vehicle Dealers and Manufacturers Licensing Law, of Chapter 20 of the General Statutes, is 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: 04/08/11

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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 438 – Clarify Motor Vehicle Licensing Law [Ed.1] (cont'd)

STATUTE

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

DESCRIPTION

Subsection (14):

A person who

1. is a manufacturer, factory branch, distributor, or distributor branch
2. does not allocate its products to franchised dealers in this State in a manner that
 - a. is based on each dealer's specific allocation needs and historical selling patterns, and which provides each of its franchised dealers an adequate supply of vehicles by series, product line, and model to remain economically viable, and
 - b. does not discriminate against a dealer because the dealer fails to relocate, update, or renovate the dealer's existing dealership facility.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 20-308).

ANALYSIS

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

Under existing G.S. 20-305(14), it is a Class 1 misdemeanor for a manufacturer, factory branch, distributor or distributor branch to fail to allocate its products in a manner that provides franchised dealers in this State with an adequate supply of vehicles to achieve the manufacturer's minimum sales requirements, planning volume, or sales objectives, is fair and equitable to all of its franchised dealers in the State, and makes available to each of its dealers a minimum of one of each vehicle that the manufacturer advertises nationally as being available for purchase. Further, a manufacturer shall not unfairly discriminate among its franchised dealers in its allocation process.

G.S. 20-305(14) further provides that this section is not violated if such failure is caused solely by the occurrence of temporary product shortages resulting from natural disasters, labor strikes, product recalls or other factors and events beyond the manufacturer's control.

G.S. 20-308, Penalties, provides that a violation of any provision of Article 12, Motor Vehicle Dealers and Manufacturers Licensing Law, of Chapter 20 of the General Statutes, is 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: 04/08/11

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 or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 438 – Clarify Motor Vehicle Licensing Law [Ed.1] (cont'd)

STATUTE

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

DESCRIPTION

Subsection (43):

A person who

1. is a manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them
2. requires, coerces, or attempts to coerce
3. any new motor vehicle dealer in this State
4. to change location of the dealership or to make any substantial alterations to the dealership premises or facilities,
5. if the dealer has done so within the preceding 10 years at a cost of more than \$100,000,
6. and the change in location or alteration was made at the request of or with the approval of the manufacturer, factory branch, distributor, or distributor branch.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 20-308).

ANALYSIS

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

Under G.S. 14-2.5, Punishment for attempt to commit a felony or misdemeanor, attempts are classified one class lower than the class of the attempted offense.

G.S. 20-308, Penalties, provides that a violation of any provision of Article 12, Motor Vehicle Dealers and Manufacturers Licensing Law, of Chapter 20 of the General Statutes, is 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: 04/08/11

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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 438 – Clarify Motor Vehicle Licensing Law [Ed.1] (cont'd)

STATUTE

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

DESCRIPTION

Subsection (44):

A person who

1. is a manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them
2. requires, coerces, or attempts to coerce
3. any of its franchised motor vehicle dealers in this State
4. to change the principal operator, general manager, or any other manager or supervisor
5. employed by the dealer.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 20-308).

ANALYSIS

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

G.S. 20-305(44) further provides that any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument that is inconsistent with this subdivision shall be deemed null and void and without force and effect.

Under G.S. 14-2.5, Punishment for attempt to commit a felony or misdemeanor, attempts are classified one class lower than the class of the attempted offense.

G.S. 20-308, Penalties, provides that a violation of any provision of Article 12, Motor Vehicle Dealers and Manufacturers Licensing Law, of Chapter 20 of the General Statutes, is 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: 04/08/11

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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 438 – Clarify Motor Vehicle Licensing Law [Ed.1] (cont'd)

STATUTE

§ 20-305.1. Automobile dealer warranty obligations.

DESCRIPTION

Subsection (h):

A person who

1. is a motor vehicle manufacturer, factory branch, distributor, or distributor branch
2. denies a franchised new motor vehicle dealer
3. the right to return any part or accessory
4. that the dealer has not sold within 12 months
5. where the part or accessory was not obtained through a specific order initiated by the dealer.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (pursuant to G.S. 20-308).

ANALYSIS

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

This subsection applies to parts and accessories that were specified for, sold to, and shipped to the dealer pursuant to an automated ordering system, and such parts or accessories are in the condition required for return, and the dealer returns the part within 90 days of it becoming eligible under this subsection.

G.S. 20-305.1(h) further provides that an “automated ordering system” is a computerized system that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer.

G.S. 20-308, Penalties, provides that a violation of any provision of Article 12, Motor Vehicle Dealers and Manufacturers Licensing Law, of Chapter 20 of the General Statutes, is 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: 04/08/11

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 467 – Naturopathic Licensing Act [Ed.1]

STATUTE

§ 90-734. License required; exemptions.

DESCRIPTION

A person who

1. without a license issued under Article 43, Naturopathic Doctors, of Chapter 90 of the General Statutes,
 - 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 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.

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. 90-732).

The Sentencing Commission reviewed an identical provision in HB 969/SB 1080 in June 2007, 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: 04/08/11

IMPACT ANALYSIS NOT REQUESTED YET

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

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