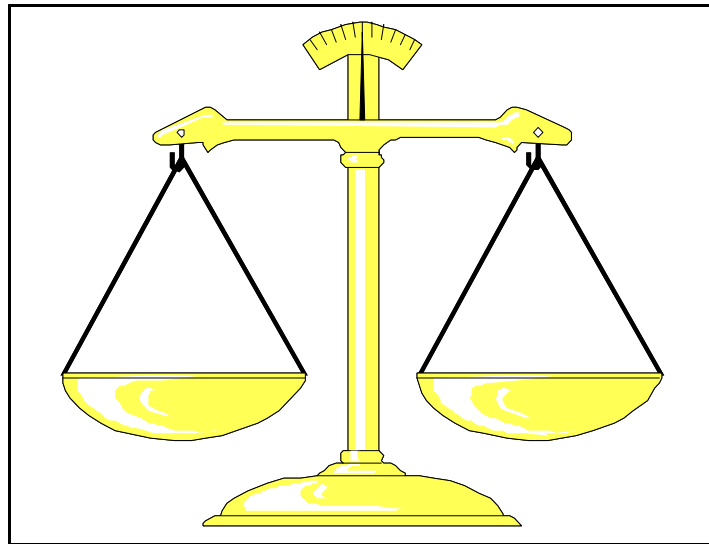


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2012 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 2012***

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION**

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

This report by the Sentencing Commission includes all bills introduced or amended through June 15, 2012. The report is submitted in conformance with the following requirements of G.S. 164-43:

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f) and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model to the provisions of the bill.

A one page summary is included for each bill (or each relevant section of a bill) which either creates a new crime, changes the classification of an existing crime, or prescribes a new range of punishments. The summary provides the bill number, the short title, and a brief description. At the bottom of the summary is an analysis and a finding of whether the bill appears consistent with the Commission's classification criteria as specified in G.S. 164-41 (*see* following page for a description of the criteria). Following the summary is an analysis of the projected impact of the bill (a more detailed impact analysis is provided to the Fiscal Research Division). The impact estimates assume an effective date of December 1, 2012.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on June 15, 2012.

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 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.

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.

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NORTH CAROLINA SENTENCING 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.5]

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, or
 - b. in separate counties during a single week or session of court
3. in any jurisdiction,
4. 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). However, Class I felonies such as larceny of goods from a permitted construction site, G.S. 14-72.6, and larceny of motor vehicle parts, G.S. 14-72.8, would also be subject to this provision.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 06/15/12

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 111 – Amend Firearms Laws [Ed.5]

STATUTE

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

DESCRIPTION

Subparts (a), (a1)(1):

A person who:

1. is a convicted felon and
2. purchases, owns, possesses, or has in his custody, care, or control
3. any
 - a. ammunition or
 - b. electric weapon or device intended to be used as a 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.

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.

The Commission reviewed a similar provision in HB 582 [Ed.1] in April 2011, and an identical provision in HB 582 [Ed.2] in June 2011, and found these provisions to be inconsistent with the Offense Classification Criteria for a Class G felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

BILL CONTINUED ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 111 – Amend Firearms Laws [Ed.5] (cont'd)

STATUTE

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

DESCRIPTION

Subparts (a), (a1)(1):

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 similar device intended to be used as a weapon.

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).

The Commission reviewed a similar provision in HB 582 [Ed.1] in April 2011, and an identical provision in HB 582 [Ed.2] in June 2011, and found these provisions to be inconsistent with the Offense Classification Criteria for a Class G felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 111 – Amend Firearms Laws [Ed.5] (cont'd)

STATUTE

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

DESCRIPTION

Subpart (a1)(2):

A person who:

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

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

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).

The Commission reviewed a similar provision in HB 582 [Ed.1] in April 2011, and an identical provision in HB 582 [Ed.2] in June 2011, and found these provisions to be inconsistent with the Offense Classification Criteria for a Class E felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

BILL CONTINUED ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 111 – Amend Firearms Laws [Ed.5] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (a1)(3):

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 intended to be used as a weapon, or
 - b. carries a concealed weapon
2. resulting in serious injury to a person.

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.

“Serious injury” under G.S. 14-415.1 refers to “a lesser degree of physical harm than serious bodily injury, which includes but is not limited to bruises, lacerations, sprains, broken bones, or any other indications of physical injury of a type which do[es] not constitute serious bodily injury.”

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

The Commission reviewed a similar provision in HB 582 [Ed.1] in April 2011, and an identical provision in HB 582 [Ed.2] in June 2011, and found these provisions to be 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: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 111 – Amend Firearms Laws [Ed.5] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (a1)(4):

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 intended to be used as a weapon,
 - b. or carries a concealed weapon
2. resulting in serious bodily injury to a person.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

For purposes of this offense, “serious bodily injury” means “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization,” as defined in G.S. 14-32.4(a).

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

The Commission reviewed a similar provision in HB 582 [Ed.1] in April 2011, and an identical provision in HB 582 [Ed.2] in June 2011, and found these provisions to be consistent with the Offense Classification 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.

DATE OF REVIEW: 06/15/12

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 142 – Economic Development & Finance Changes [Ed.3]

STATUTE

§ 57C-1-22. Filing, service, and copying fees.

DESCRIPTION

A person who:

1. is the organizer of a limited liability company,
2. delivers articles of organization to the Office of the Secretary of State for filing, and
3. falsely swears or affirms on a form promulgated by the Secretary of State
4. that the organizer
 - a. is an unemployed individual legally residing in the United States and
 - b. is not in the custody of a state or federal correctional facility at the time of filing.

PROPOSED OFFENSE CLASS

Class F felony (G.S. 14-209, Punishment for perjury).

ANALYSIS

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

The Secretary of State shall waive the \$125.00 filing fee for the articles of organization if the organizer swears or affirms as described above. G.S. 57-1-22(a1). The penalty for perjury committed under this subsection is the same as provided in G.S. 14-209.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony.

DATE OF REVIEW: 06/15/12

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 199 – Metal Theft Prevention Act of 2012 [Ed.4]

STATUTE

§ 14-159.4. Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals.

DESCRIPTION

Subpart (c)(1):

A person who

1. willfully and wantonly
2. injures another person’s property (including any fixtures or improvements)
3. for the purpose of obtaining any amount of nonferrous metals
4. causing property damage of at least \$1,000 but less than in \$10,000.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

In the case of direct injury to property, the court shall determine the dollar amount of property damage caused by the defendant’s violation. The court may consider the loss in value to the property, the amount of repairs necessary to return the property to its prior condition, and the replacement cost (including fixtures and improvements). G.S. 14-159.4(c)(1).

“Nonferrous metals” are metals that do not contain significant quantities of iron or steel, including but not limited to copper wire, copper-clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs and containers. G.S. 14-159.4(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: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 199 – Metal Theft Prevention Act of 2012 [Ed.4] (cont'd)

STATUTE

§ 14-159.4. Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals.

DESCRIPTION

Subpart (c)(1):

A person who

1. willfully and wantonly
2. injures another person's property (including any fixtures or improvements)
3. for the purpose of obtaining any amount of nonferrous metals
4. causing property damage of \$10,000 or more.

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.

In the case of direct injury to property, the court shall determine the dollar amount of property damage caused by the defendant's violation. The court may consider the loss in value to the property, the amount of repairs necessary to return the property to its prior condition, and the replacement cost (including fixtures and improvements). G.S. 14-159.4(c)(1).

"Nonferrous metals" are metals that do not contain significant quantities of iron or steel, including but not limited to copper wire, copper-clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs and containers. G.S. 14-159.4(a).

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 G felony.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 199 – Metal Theft Prevention Act of 2012 [Ed.4] (cont'd)

STATUTE

§ 14-159.4. Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals.

DESCRIPTION

Subpart (c)(3):

A person who

1. willfully and wantonly
2. injures another person's property (including any fixtures or improvements)
3. for the purpose of obtaining any amount of nonferrous metals
4. resulting in serious bodily injury to another person.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

“Serious bodily injury” means “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization,” per G.S. 14-32.4(a).

“Nonferrous metals” are metals that do not contain significant quantities of iron or steel, including but not limited to copper wire, copper-clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs and containers.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 199 – Metal Theft Prevention Act of 2012 [Ed.4] (cont'd)

STATUTE

§ 14-159.4. Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals.

DESCRIPTION

Subpart (c)(4):

A person who

1. willfully and wantonly
2. injures another person's property (including any fixtures or improvements)
3. for the purpose of obtaining any amount of nonferrous metals
4. resulting in another person's death.

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

“Nonferrous metals” are metals that do not contain significant quantities of iron or steel, including but not limited to copper wire, copper-clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs and containers.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 199 – Metal Theft Prevention Act of 2012 [Ed.4] (cont'd)

STATUTE

§ 66-424. Violations.

DESCRIPTION

Subsection (a):

A person who

1. knowingly and willfully violates
2. a provision within G.S. Chapter 66, Article 45, Part 3 (Regulation of Sales and Purchases of Metals) for which no greater punishment is provided.

PROPOSED OFFENSE CLASS

First violation: Class 1 misdemeanor.

Second or subsequent violation: Class I felony.

ANALYSIS

House Bill 199 enacts new Article 45 (Pawnbrokers, Metal Dealers, and Scrap Dealers) within Chapter 66 (Commerce and Business) of the General Statutes. Part 3 (Regulation of Sales and Purchases of Metals) of the article governs the purchase and sale of non-precious ferrous and nonferrous metals. It includes both extant offenses re-codified from G.S. 66-11 and 66.11.1 and new offenses related to the covered transactions.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 06/15/12

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 203 – Mortgage Satisfaction Forms/No False Liens [Ed.2]

STATUTE

§ 14-118.1. Simulation of court process in connection with collection of claim, demand or account.

DESCRIPTION

A person, firm, corporation, association, agent or employee who:

1. does or attempts to coerce or intimidate
2. any person
3. in connection with any claim, demand, or account
4. by issuing, uttering, or delivering printed, typed, or written matter that
 - a. simulates or resembles a court process or pleading, or
 - b. has a tendency to create in the mind of an ordinary person the false impression that it has judicial or other official authorization, sanction, or approval.

PUNISHMENT RANGE

CURRENT: Class 2 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

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

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE OF REVIEW: 06/15/12

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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 203 – Mortgage Satisfaction Forms/No False Liens [Ed.2]
(cont'd)

STATUTE

§ 14-401.19. Filing false security agreements.

DESCRIPTION

A person or association of persons in North Carolina who:

1. presents a record for filing under G.S. Chapter 25, Article 9 (Secured Transactions)
 - a. knowing it is not related to a valid security agreement, or
 - b. intending that it be filed for an improper purpose such as hindering, harassing, or wrongfully interfering with any person.

PUNISHMENT RANGE

CURRENT: Class 2 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

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

FINDINGS

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

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

G.S. 164-41 is not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class H felony or a Class F felony.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 203 – Mortgage Satisfaction Forms/No False Liens [Ed.2]
(cont'd)

STATUTE

§ 14-118.6. Filing false lien or encumbrance.

DESCRIPTION

A person who

1. files in a
 - a. public record or
 - b. private record generally available to the public
2. a false lien or encumbrance
 - a. against the property of a public officer or public employee
 - b. on account of the performance of the officer or employee's official duties
3. knowing or having reason to know that the lien or encumbrance
 - a. is false or
 - b. contains a materially false, fictitious, or fraudulent statement or representation.

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.

This offense would also be consistent with the Offense Classification Criteria for a Class H felony or a Class F felony.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 203 – Mortgage Satisfaction Forms/No False Liens [Ed.2]
(cont'd)

STATUTE

§ 14-118.12. Residential mortgage fraud.

DESCRIPTION

A person who

1. for financial gain and with intent to defraud
2. knowingly files in a
 - a. public record or
 - b. private record generally available to the public
3. a document falsely claiming that a mortgage loan
 - a. has been satisfied, discharged, released, revoked or terminated or
 - b. is invalid.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 14-118.15(a)).

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 breach of trust, formal or informal, or in significant societal injury as Class H felonies.

Existing forms of residential mortgage fraud that involve a single mortgage are currently classified as Class H felonies under G.S. 14-118.12(a) and 14-118.15(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: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 203 – Mortgage Satisfaction Forms/No False Liens [Ed.2]
(cont'd)

STATUTE

§ 14-118.12. Residential mortgage fraud.

DESCRIPTION

A person who

1. for financial gain and with intent to defraud
2. knowingly files in a
 - a. public record or
 - b. private record generally available to the public
3. a document falsely claiming that a mortgage loan
 - a. has been satisfied, discharged, released, revoked or terminated, or
 - b. is invalid
4. as part of a pattern of residential mortgage fraud.

PROPOSED OFFENSE CLASS

Class E felony (G.S. 14-118.15(b)).

ANALYSIS

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

Existing forms of residential mortgage fraud that involve a pattern of such fraud are currently classified as Class E felonies under G.S. 14-118.12(a) and 14-118.15(b).

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 F felony.

DATE OF REVIEW: 06/15/12

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 203: MORTGAGE SATISFACTION FORMS/NO FALSE LIENS

PREPARED: June 8, 2012

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates several new felony offenses and reclassifies two existing offenses. A Class I Felony is created by adding a new section to Article 20 of Chapter 14 of the General Statutes, G.S. 14-118.6, Filing false lien or encumbrance, and Class E and H Felonies are created by the addition of a new subsection to G.S. 14-118.12(a), Residential Mortgage Fraud. Two Class 2 misdemeanors are reclassified as a Class I felonies by the amendments of G.S. 14-118.1, Simulation of court process in connection with collection of claim, demand or account, and G.S. 14-401.19, Filing false security agreements.

Section 3. Currently, G.S. 14-118.1, Simulation of court process in connection with collection of claim, demand, or account, provides that it shall be a Class 2 misdemeanor for any person in any manner to coerce, intimidate, or attempt to coerce or intimidate any person in connection with any claim, demand or account, by the issuance, utterance or delivery of any matter, printed, typed or written, which (i) simulates or resembles a summons, warrant, writ or other court process or pleading; or (ii) by its form, wording, use of the name of North Carolina or any officer, agency or subdivision thereof, use of seals or insignia, or general appearance has a tendency to create the false impression that it has official authorization. This section amends G.S. 14-118.1 to reclassify the offense as a Class I felony.

In FY 2010/11, there was one Class 2 misdemeanor conviction under G.S. G.S. 14-118.1. The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 7 months. If, for example, eleven Class 2 misdemeanor convictions per year were reclassified as Class I felonies, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Section 4. This section creates a new Class I felony by adding G.S. 14-118.6, Filing false Lien or encumbrance to Article 20 of Chapter 14 of the General Statutes. New G.S. 14-118.6 provides that it shall be a Class I felony for any person to file in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public officer or public employee on account of the performance of the public officer or employee's official duties, knowing or having reason to know that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation.

Since the proposed G.S. 14-118.6 creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 7 months. If, for example, there were eleven Class I convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Section 5. This bill also creates two new offenses, a Class H felony and a Class E felony, by adding subsection (5) to G.S. 14-118.12(a), Residential mortgage fraud. New G.S. 14-118.12(a)(5) provides that a person shall be guilty of residential mortgage fraud when, for financial gain and with intent to defraud, that person knowingly files in a public record or private record generally available to the public, a document falsely claiming that a mortgage loan has been satisfied, discharged, released, revoked, or terminated or is invalid. G.S. 14-118.15, Penalty for violation of Article, provides in subsection (a) that a violation of the Residential Mortgage Fraud Act involving a single mortgage loan is a Class H felony, and in subsection (b) that a violation of the Act involving a pattern of residential mortgage fraud is a Class E felony.

Since the proposed G.S. 14-118.12(a)(5) creates two new offenses (one Class H and one Class E), the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

Penalty under G.S. 14-118.15(a): Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 36% of Class H convictions will result in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class H felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Penalty under G.S. 14-118.15(b): Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 57% of Class E convictions will result in active sentences, with an average estimated time served of 29 months. If, for example, there were two Class E convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and three additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of

probation revocations or the imposition of confinement in response to violation (CRV). In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class E felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Section 6. Finally, this bill reclassifies the existing offense in G.S. 14-401.19, Filing false security agreements; currently violation of this section is a Class 2 misdemeanor. This section amends G.S. 14-401.19 to provide that the penalty for a violation of the section shall be a Class I felony.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. G.S. 14-401.19. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 7 months. If, for example eleven Class 2 misdemeanor convictions per year were reclassified to Class I felonies, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Effective December 1, 2012 and applies to offenses committed on or after that date.

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 1021 – Justice Reinvestment Clarifications [Ed.2]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (h):

Adds three months to the maximum sentence for a Class C, D, or E felony drug trafficking offense:

PUNISHMENT RANGE

CURRENT: Class C felony drug trafficking: 225 months to 279 months.

Class D felony drug trafficking: 175 months to 219 months.

Class E felony drug trafficking: 90 months to 117 months.

PROPOSED: Class C felony drug trafficking: 225 months to 282 months.

Class D felony drug trafficking: 175 months to 222 months.

Class E felony drug trafficking: 90 months to 120 months.

ANALYSIS

The maximum sentence for Class C, D, and E felony drug trafficking offenses includes nine months for post-release supervision. G.S. 90-95(h). The bill increases the maximum sentence for these offenses by three months to allow for the twelve months of post-release supervision prescribed by the Justice Reinvestment Act of 2011.

The bill also clarifies that drug traffickers sentenced to an active punishment are subject to post-release supervision under G.S. Chapter 15A, Article 84A. G.S. 15A-1368.1.

FINDINGS



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



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



G.S. 164-41 is not applicable.

DATE PREPARED: 06/15/12

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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 1021 – Justice Reinvestment Clarifications [Ed.2] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (h):

Adds nine months to the maximum sentence for a Class F, G, or H felony drug trafficking offense:

PUNISHMENT RANGE

CURRENT: Class F felony drug trafficking: 70 months to 84 months.

Class G felony drug trafficking: 35 months to 42 months.

Class H felony drug trafficking: 25 months to 30 months.

PROPOSED: Class F felony drug trafficking: 70 months to 93 months.

Class G felony drug trafficking: 35 months to 51 months.

Class H felony drug trafficking: 25 months to 39 months.

ANALYSIS

The bill increases the maximum sentence for these offenses by nine months to allow for the period of post-release supervision prescribed by the Justice Reinvestment Act of 2011.

The bill also clarifies that drug traffickers sentenced to an active punishment are subject to post-release supervision under G.S. Chapter 15A, Article 84A. G.S. 15A-1368.1.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE OF REVIEW: 06/15/12

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 1180 – Video Sweepstakes Entertainment Tax [Ed.1]

STATUTE

G.S. Chapter 105, Article 2E (Video Sweepstakes Entertainment Tax).

DESCRIPTION

A person who:

1. willfully attempts in any manner, or aids and abets an attempt
2. to evade or defeat
3. any tax imposed on a video sweepstakes establishment, machine, or device under Article 2E.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 105-113.128(e), 105-236(7)).

ANALYSIS

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

Article 2E imposes or authorizes the following taxes:

- annual state license tax to operate a video sweepstakes establishment: \$2,000;
- annual state excise tax on each video sweepstakes machine or device placed in operation: \$1,000;
- quarterly state tax on gross receipts from operating each video sweepstakes machine or device: 04%;
- annual local license tax to operate a video sweepstakes establishment: \$1,000; and
- annual local excise tax on each video sweepstakes machine or device placed in operation: \$500.

G.S. 105-113.122(a), 105-113-123(a), 105-113.124(a), 105-113.128(b)-(c), (e).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1180 – Video Sweepstakes Entertainment Tax [Ed.1] (cont'd)

STATUTE

G.S. Chapter 105, Article 2E (Video Sweepstakes Entertainment Tax).

DESCRIPTION

An income tax return preparer who:

1. willfully aids, assists in, procures, counsels, or advises
2. the preparation, presentation, or filing of a return, affidavit, claim, or any other document
3. knowing it is fraudulent or false as to any material matter
4. and fraudulently evades taxes of \$100,000 or more imposed on video sweepstakes in a taxable year under Article 2E.

PROPOSED OFFENSE CLASS

Class C felony (G.S. 105-236(9a)a.).

ANALYSIS

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

Article 2E imposes or authorizes the following taxes:

- annual state license tax to operate a video sweepstakes establishment: \$2,000;
- annual state excise tax on each video sweepstakes machine or device placed in operation: \$1,000;
- quarterly state tax on gross receipts from operating each video sweepstakes machine or device: 04%;
- annual local license tax to operate a video sweepstakes establishment: \$1,000; and
- annual local excise tax on each video sweepstakes machine or device placed in operation: \$500.

G.S. 105-113.122(a), 105-113-123(a), 105-113.124(a), 105-113.128(b)-(c), (e).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1180 – Video Sweepstakes Entertainment Tax [Ed.1] (cont'd)

STATUTE

G.S. Chapter 105, Article 2E (Video Sweepstakes Entertainment Tax).

DESCRIPTION

An income tax return preparer who:

1. willfully aids, assists in, procures, counsels, or advises
2. the preparation, presentation, or filing of a return, affidavit, claim, or any other document
3. knowing it is fraudulent or false as to any material matter
4. and fraudulently evades taxes of less than \$100,000 imposed on video sweepstakes in a taxable year under Article 2E.

PROPOSED OFFENSE CLASS

Class F felony (G.S. 105-236(9a)b.).

ANALYSIS

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

Article 2E imposes or authorizes the following taxes:

- annual state license tax to operate a video sweepstakes establishment: \$2,000;
- annual state excise tax on each video sweepstakes machine or device placed in operation: \$1,000;
- quarterly state tax on gross receipts from operating each video sweepstakes machine or device: 04%;
- annual local license tax to operate a video sweepstakes establishment: \$1,000; and
- annual local excise tax on each video sweepstakes machine or device placed in operation: \$500.

G.S. 105-113.122(a), 105-113-123(a), 105-113.124(a), 105-113.128(b)-(c), (e).

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1180 – Video Sweepstakes Entertainment Tax [Ed.1] (cont'd)

STATUTE

G.S. Chapter 105, Article 2E (Video Sweepstakes Entertainment Tax).

DESCRIPTION

A person who:

1. willfully aids, assists in, procures, counsels, or advises
2. the preparation, presentation, or filing of a return, affidavit, claim, or any other document
3. knowing it is fraudulent or false as to any material matter
4. related to taxes imposed on video sweepstakes establishments, games, or devices under Article 2E,
5. and is not covered by the offenses in subdivision G.S. 105-236(9a)a. and b.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 105-236(9a)c.).

ANALYSIS

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

Article 2E imposes or authorizes the following taxes:

- annual state license tax to operate a video sweepstakes establishment: \$2,000;
- annual state excise tax on each video sweepstakes machine or device placed in operation: \$1,000;
- quarterly state tax on gross receipts from operating each video sweepstakes machine or device: 04%;
- annual local license tax to operate a video sweepstakes establishment: \$1,000; and
- annual local excise tax on each video sweepstakes machine or device placed in operation: \$500.

G.S. 105-113.122(a), 105-113-123(a), 105-113.124(a), 105-113.128(b)-(c), (e).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 1180 – Video Sweepstakes Entertainment Tax [Ed.1] (cont'd)

STATUTE

G.S. Chapter 105, Article 2E (Video Sweepstakes Entertainment Tax).

DESCRIPTION

A person who:

1. willfully fails to remit to the Secretary of Revenue
2. money received from a taxpayer
3. with the understanding that the money is to be remitted to the Secretary
4. for application to the taxpayer's tax liability for video sweepstakes establishments, machines or devices under Article 2E.

PROPOSED OFFENSE CLASS

Class F felony (G.S. 105-236(10b)).

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.

Article 2E imposes or authorizes the following taxes:

- annual state license tax to operate a video sweepstakes establishment: \$2,000;
- annual state excise tax on each video sweepstakes machine or device placed in operation: \$1,000;
- quarterly state tax on gross receipts from operating each video sweepstakes machine or device: 04%;
- annual local license tax to operate a video sweepstakes establishment: \$1,000; and
- annual local excise tax on each video sweepstakes machine or device placed in operation: \$500.

G.S. 105-113.122(a), 105-113-123(a), 105-113.124(a), 105-113.128(b)-(c), (e).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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 1188 – Casino Night for Nonprofits [Ed.1]

STATUTE

§ 14-309.16A. Casino Nights.

DESCRIPTION

A person who:

1. operates a casino night without a license, or while license is suspended or revoked;
2. willfully misuses or misapplies any moneys received in connection with any casino night;
3. allows bingo to be played during the casino night;
4. allows the operation of or the possession of a slot machine as defined in G.S. 14-306; or
5. contracts with or provides consulting services to any licensee.

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.

"Casino Night" means a specific night at which games of chance are played and at which prizes are awarded on the basis of the amount of play money, scrip, tokens, or chips won at any particular game by an authorized player or participant. G.S. 14-309.16(2).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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 1188 – Casino Night for Nonprofits [Ed.1] (cont'd)

STATUTE

§ 14-309.16H. Regulation and licensing of gaming table dealers.

DESCRIPTION

A person who:

1. is not a licensed Gaming Table Dealer, and
2. possesses, keeps, stores, operates, offers for sale, sells, rents, or leases
3. any gaming tables or casino games
4. for any purpose other than selling such games to a nonprofit organization for use at a casino night authorized by G.S. 14-309.16A.

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.

"Casino Night" means a specific night at which games of chance are played and at which prizes are awarded on the basis of the amount of play money, scrip, tokens, or chips won at any particular game by an authorized player or participant. G.S. 14-309.16(2).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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 1188 – Casino Night for Nonprofits [Ed.1] (cont'd)

STATUTE

§ 14-309.16H. Regulation and licensing of gaming table dealers.

DESCRIPTION

A person who

1. sells a gaming table or casino game:
2. without holding a valid license from the Department of Crime Control and Public Safety, or
3. to any party other than a nonprofit organization licensed by the Department to hold casino nights.

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.

"Casino Night" means a specific night at which games of chance are played and at which prizes are awarded on the basis of the amount of play money, scrip, tokens, or chips won at any particular game by an authorized player or participant. G.S. 14-309.16(2).

FINDINGS

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

DATE OF REVIEW: 06/15/12

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 828 – Unemployment Insurance Changes [Ed.4]

STATUTE

§ 96-18. Penalties.

DESCRIPTION

Subsection (a)(1):

A person who

1. knowingly
 - a. makes a false statement or representation, or
 - b. fails to disclose a material fact
2. to obtain or increase
 - a. any benefit under Article 2 of Chapter 96 of the General Statutes or
 - b. any benefit under an employment security law of any other state, the federal government, or a foreign government
3. either for himself or any other person
4. wrongly obtaining benefits valued at more than \$400.

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.

Proposed G.S. 96-18(a)(2) provides that it shall be a Class 1 misdemeanor for any person to wrongly obtain an unemployment insurance benefit in the amount of \$400 or less.

Currently, G.S. 96-18(a) provides that it shall be a Class 1 misdemeanor for any person to wrongly obtain an unemployment insurance benefit in any amount.

Article 2 of Chapter 96 of the General Statutes provides for the rules and regulations regarding the Unemployment Insurance Division.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/15/12

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 854 – Prohibit Use of Tax-Zapper Software [Ed.1]

STATUTE

§14-118.6. Possession, transfer, or use of automated sales suppression device.

DESCRIPTION

A person who

1. knowingly sells, purchases, installs, transfers, possesses, uses, or accesses
2. any automated sales suppression device, zapper or phantom-ware.

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.

Automated sales suppression device or zapper is defined in G.S. 14-118.6(a)(1) as a software program that falsifies the electronic records of electronic cash registers and other point-of-sale systems. The term includes the software program, any device that carries the software program, or an internet link to the software program.

G.S. 14-118.6(a)(3) defines *phantom-ware* as a hidden programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a second set of records or may eliminate or manipulate transaction records, which may or may not be preserved in digital formats, to represent the true or manipulated record of transactions in the electronic cash register.

FINDINGS

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

DATE OF REVIEW: 06/15/12

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 910 – Sale of a Child/Felony Offense [Ed.2]

STATUTE

§14-43.14. Unlawful sale, surrender, or purchase of a child.

DESCRIPTION

A person who

1. participates in
 - a. acceptance, solicitation, offer, payment, or transfer of any compensation in money, property, or other thing of value
 - b. in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child
 - c. except as ordered by the court or authorized pursuant to G.S. 48-10-103.

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 offense is a lesser included offense of human trafficking of a minor, a Class C felony. G.S. 14-43.11(b).

The offense is added to the definition of a “sexually violent offense” under G.S. Chapter 14, Article 27A (Sex Offender and Public Protection and Registration Programs) and a convicted offender would be required to register.

G.S. 48-10-103 provides for lawful payments related to adoption.

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 F felony.

DATE OF REVIEW: 06/15/12

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 910: SALE OF A CHILD/FELONY OFFENSE

PREPARED: June 6, 2012

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates a new felony offense and adds it to the list of offenses for which an offender must register with the Sex Offender Registration Program.

SECTION 1. This section creates a new offense under G.S. 14-43.14, Unlawful sale, surrender, or purchase of a child, which would make it unlawful for a person to participate in the acceptance, solicitation, offer, payment, or transfer of any compensation, in money, property, or other thing of value, at any time by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child. The statute excludes transfers ordered by the court or authorized pursuant to G.S. 48-10-103, Lawful payments related to adoption. Violation is a Class D felony.

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

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2010/11 the average estimated time served for an offender convicted of a Class D offense was 70 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since sixty months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E sex offenses, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary, the Post-Release Supervision and Parole Commission will have up to 60 months of imprisonment available if the offender violates post-release supervision). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Some of the prohibited conduct may currently be covered by G.S. 48-10-102, Unlawful payments related to adoption. Violation is a Class 1 misdemeanor for the first offense and a Class H felony for the second or subsequent offense. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 48-10-102. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Some of the prohibited conduct may also be covered by G.S. 14-43.11, Human trafficking (of a minor). Violation is a Class C felony. There was one Class C conviction under G.S. 14-43.11 during FY 2010/11. It is not known whether the one Class C conviction under G.S. 14-43.11 involved conduct covered by the proposed Class D offense. However, since the proposed conduct may also be covered by a more serious offense, it may be prosecuted as the more serious offense.

SECTION 3. This section amends the definition of “Sexually violent offense” in G.S. 14-208.6(5) to add G.S. 14-43.14, Unlawful sale, surrender, or purchase of a child (created in Section 1 of this bill). An offender who is convicted of a sexually violent offense is required to register with the Sex Offender and

Public Protection Registration Program. Failing to meet the requirements of the Program can result in a number of criminal offenses:

- The sex offender must register and keep that registration current. Willful failure to do so is a Class F felony under G.S. 14-208.11. In FY 2010/11, there were 216 convictions for failure to register under G.S. 14-208.11. It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F convictions per year as a result of broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.
- The sex offender must maintain a current photograph with the sheriff. If it appears to the sheriff that the photograph is no longer accurate, the sex offender must allow the sheriff to take another photograph. Willful failure to comply is a Class 1 misdemeanor under G.S. 14-208.9A(c). The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-208.9A(c). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. In FY 2010/11, 25% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, additional convictions due to broadening the existing statute would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.
- Any person who has reason to believe that an offender is in violation of the requirements and, with the intent to assist the offender in eluding arrest, withholds information, provides false information, harbors or conceals the offender is guilty of a Class H felony under G.S. 14-208.11A. In FY 2010/11, there were nine convictions for failure to report a sex offender under G.S. 14-208.11A. It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 36% of Class H convictions will result in active sentences, with an average estimated time served of 10 months. If, for example, there were three additional Class H convictions per year as a result of broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class H

felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

- The sex offender must not reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located. Violation is a Class G felony under G.S. 14-208.16. In FY 2010/11, there were nine convictions for a sex offender residence violation under G.S. 14-208.16. It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 41% of Class G convictions will result 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 broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class G felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.
- The sex offender must not work or volunteer at any place where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors. Violation is a Class F felony under G.S. 14-208.17(a). In FY 2010/11, there was one conviction for this offense under G.S. 14-208.17(a). It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F per year as a result of broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.
- Any person who conducts any activity at his or her residence where the person accepts a minor or minors into his or her care or custody from another and knows that a person who resides at that same location is require to register is guilty of a Class F felony under G.S. 14-208-17(b). In FY 2010/11, there were no convictions for this offense under G.S. 14-208-17(b). It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F convictions per year as a result of broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of

prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

- The sex offender must not knowingly be at any of the locations listed in the statute. Violation is a Class H felony under G.S. 14-208.18. In FY 2010/11, there were 36 convictions for this offense under G.S. 14-208.18. It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 36% of Class H convictions will result in active sentences, with an average estimated time served of 10 months. If, for example, there were three additional Class H convictions per year as a result of broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class H felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

If the sex offender is classified as a sexually violent predator, he or she will be required to enroll in a satellite-based monitoring program.

- Failure to enroll is a Class F felony under G.S. 14-208.44(a). In FY 2010/11, there were no convictions for this offense under G.S. 14-208.44(a). It is not known how many additional convictions might occur as a result of broadening the existing statute. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the existing statute, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.
- Any person who intentionally tampers with, removes, vandalizes, or otherwise interferes with the proper functioning of a device issued pursuant to this program is guilty of a Class E felony under G.S. 14-208.44(b). In FY 2010/11, there were three convictions for this offense under G.S. 14-208.44(b). It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. Based on FY 2010/11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 57% of Class E convictions will result in

active sentences, with an average estimated time served of 29 months. If, for example, there were two additional Class E convictions per year as a result of broadening the existing statute, active sentences would result in the need for one additional prison bed the first year and three additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class E felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

- Any person who is required to enroll in the program and who fails to provide necessary information to the Division of Adult Correction, or fails to cooperate with the Division of Adult Correction's guidelines and regulations for the program is guilty of a Class 1 misdemeanor under G.S. 14-208.44(c). In FY 2010/11, there were three convictions for this offense under G.S. 14-208.44(c). It is not known how many additional convictions might occur as a result of the proposed broadening of the existing statute. In FY 2010/11, 25% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, additional convictions due to broadening the existing statute would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.