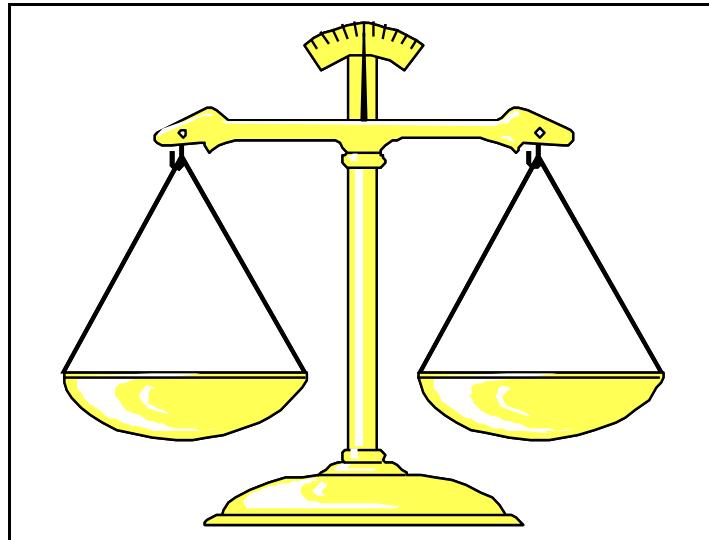


NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION



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

***SUBMITTED TO THE 2013 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
MARCH 2013***

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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 March 7, 2013. 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, 2013.

These summaries may not reflect the most recent bill amendments or committee substitutes. The date on which each individual 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 8, 2013.

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 Commission did not apply the classification criteria to homicide and controlled substances offenses.

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 2012 the Commission adopted a separate set of classification criteria to be used for reviewing the proposed classification of homicide offenses. These criteria resemble the Commission's harm-based offense classification criteria but rely upon factors other than harm to evaluate the severity of a homicide offense.

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.

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

CLASS CRITERIA

(FELONY)

- A** • Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation.
- B** • Intentional killing with malice.
- D** • Intentional killing with a partial legal excuse.
- E** • Unintentional killing by criminal or culpable negligence with aggravating circumstances.
- F** • Unintentional killing by criminal or culpable negligence.
- H** • Unintentional killing by motor vehicle involving a serious traffic violation.

(MISDEMEANOR)

- A1** • Unintentional killing by motor vehicle involving a traffic violation.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 25 – Amend Felony Breaking or Entering [Ed.1]

STATUTE

§ 14-54. Breaking or entering buildings generally.

DESCRIPTION

Subsection (a1):

Any person who

1. breaks or enters
2. any building
3. with intent to
 - a. terrorize an occupant of the building or
 - b. injure an occupant of the building.

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.

G.S. 14-54(a) provides that it shall be a Class H felony for any person to break or enter a building with intent to commit a felony or larceny therein.

G.S. 14-221, Breaking or entering jails with intent to injure prisoners, provides that it shall be a Class F felony to break or enter any jail with intent to kill or injure any prisoner confined therein.

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: 03/08/13

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 25: AMEND FELONY BREAKING OR ENTERING

PREPARED: February 4, 2013

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1. This bill creates a new Class H felony by adding subsection (a1) to G.S. 14-54, Breaking or entering buildings generally. G.S. 14-54(a1) provides that it shall be a Class H felony for any person to break or enter any building with intent to terrorize or injure an occupant of the building.

Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 35% 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.

Some of the conduct prohibited by G.S. 14-54(a1) may also be covered under G.S. 14-221, Breaking or entering jails with intent to injure prisoners. This offense is a Class F felony. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-221. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data.

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 26 – Strengthen Laws/Vehicle Theft [Ed.1]

STATUTE

§ 14-72.7. Chop shop activity.

DESCRIPTION

A person who

1. without regard to value of the property in question
2. engages himself in chop shop activities.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: 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 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.

G.S.14-72.7(a)(1)-(4) outlines which activities are chop shop activities: (1) altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or part thereof the person knows or has reasonable grounds to believe has been illegally obtained by theft, fraud, or other illegal means; (2) permitting a place to be used for any activity prohibited by this section, where the person has legal possession of the place and knows or has reasonable grounds to believe that the place is being used for activity prohibited by this section; (3) purchasing, disposing of, selling, transferring, receiving, or possessing a motor vehicle or part thereof knowing or having reasonable grounds to believe that the VIN, or VPIN has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed; or (4) purchasing, disposing of, selling, transferring, receiving, or possessing a motor vehicle or part thereof to or from a person engaged in any activity prohibited by this section, knowing or having reasonable grounds to believe that the person is engaging in that activity.

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: 03/08/13

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 26 – Strengthen Laws/Vehicle Theft [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (c):

A person who

1. knowingly and willfully violates any provision of G.S. 20-62.1, or
2. falsifies a statement required under G.S. 20-62.1(a)(1)g.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor for first offense; Class I felony for second or subsequent.

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.

G.S. 20-62.1 applies to secondary metals recyclers and salvage yards, and generally provides for keeping records of cars purchased for scrap or parts. G.S. 20-62.1(a)(1)g specifically provides that a secondary metals recycler or salvage yard, purchasing motor vehicles for scrap metal or the sale of parts only shall maintain a record of all purchase transactions and that record shall include a written statement signed by the seller certifying that he has the lawful right to sell and dispose of the motor 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: 03/08/13

IMPACT ANALYSIS 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 or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 26: STRENGTHEN LAWS/VEHICLE THEFT

PREPARED: February 14, 2013

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1.

Raises the offense class and relaxes the *mens rea* requirement for the four felony offenses in subsection (a) of G.S. 14-72.7, Chop Shop Activity. Each offense is raised from felony Class H to Class G. The *mens rea* required for each offense is changed from “knowingly” to “knowingly or with reasonable grounds to believe[.]” This amendment expands the eligible offender pool for each offense by an indeterminate amount.

- ***Subpart (a)(1).*** The bill amends G.S. 14-72.7(a)(1) to make it a Class G felony to alter, destroy, disassemble, dismantle, reassemble, or store a motor vehicle or motor vehicle part which the offender knows or has reasonable grounds to believe has been obtained by illegal means.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of subsection (a) of G.S. 14-72.7. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Reclassification: Impact on the prison population will occur if Class H offenses became Class G offenses under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 42% for Class G) and longer average estimated time served (10 months compared to 14 months for Class G). If, for example, there were three Class H felony convictions that were reclassified as Class G felony convictions, 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). It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocation, because convictions under both Class H and Class G receive 9 months of PRS.

Expansion: It is not known how many additional convictions may result from the proposed relaxed *mens rea* requirement of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 42% of Class G convictions will result in active sentences, with an average estimated time served of 14 months. If, for example, there were two additional Class G convictions per year as a result of the proposed broadening of the current 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.

Potential Pool: Since the proposed bill relaxes the *mens rea* requirement for Subpart (a)(1), persons eligible for conviction of this offense include an unknown portion of those currently convicted under:

G.S. §	Offense	Offense Class	FY 2011/12 Convictions
14-71(a), 72(a)	Receive stolen goods (F)	H	16
14-71.1	Possess stolen goods (F)	H	530
14-71.1	Possess stolen goods (M)	1	2,097
14-72(a)	Receive stolen goods (M)	1	43
14-86.6(a)(2)	Receive/Possess stolen retail property	H	0
14-160	Injury to personal property	2,1	1,708
20-106	Possess stolen motor vehicle	H	195
20-107	Tamper with vehicle	2	1
20-107(a)	Tamper with vehicle parts	2	0
20-108	Vehicles/Parts without manufacturer numbers	2	0
20-109	Alter serial numbers	I	0

Source: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

It is not known how many of the above Class H felony convictions would be eligible for conviction as a Class G felony under the proposed Subpart (a)(1) due to the relaxed *mens rea* requirement. Impact on the prison population will occur if Class H offenses became Class G offenses under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 42% for Class G) and longer average estimated time served (10 months compared to 14 months for Class G). If, for example, there were three Class H felony convictions that were reclassified as Class G felony convictions, 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). It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocation, because convictions under both Class H and Class G receive 9 months of PRS.

It is not known how many of the above misdemeanor convictions would be eligible for conviction as a Class G felony under the proposed Subpart (a)(1) due to the relaxed *mens rea* requirement. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 42% of Class G convictions will result in active sentences, with an average estimated time served of 14 months. Using threshold data, if, for example, two convictions were reclassified from a misdemeanor offense to a Class G felony, this 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.

- ***Subpart (a)(2).*** The bill amends G.S. 14-72.7(a)(2) to make it a Class G felony to permit a legally owned or legally possessed place to be used for any act prohibited by G.S. 14-72.7, knowing or having reasonable grounds to believe that the place is being used for this prohibited purpose.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of subsection (a) of G.S. 14-72.7. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Reclassification: Impact on the prison population will occur if Class H offenses became Class G offenses under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 42% for Class G) and longer average estimated time served (10 months compared to 14 months for Class G). If, for example, there were three Class H felony convictions that were reclassified as Class G felony convictions, 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). It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocation, because convictions under both Class H and Class G receive 9 months of PRS.

Expansion: It is not known how many additional convictions may result from the proposed relaxed *mens rea* requirement of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 42% of Class G convictions will result in active sentences, with an average estimated time served of 14 months. If, for example, there were two additional Class G convictions per year as a result of the proposed broadening of the current 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.

- ***Subpart (a)(3).*** The bill amends G.S. 14-72.7(a)(3) to make it a Class G felony to purchase, dispose of, sell, transfer, receive, or possess a motor vehicle or motor vehicle part knowing or having reasonable grounds to believe that the vehicle identification number or vehicle part identification number has been altered, etc., or removed.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of subsection (a) of G.S. 14-72.7. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Reclassification: Impact on the prison population will occur if Class H offenses became Class G offenses under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 42% for Class G) and longer average estimated time served (10 months compared to 14 months for Class G). If, for example, there were three Class H felony convictions that were

reclassified as Class G felony convictions, 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). It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocation, because convictions under both Class H and Class G receive 9 months of PRS.

Expansion: It is not known how many additional convictions may result from the proposed relaxed *mens rea* requirement of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 42% of Class G convictions will result in active sentences, with an average estimated time served of 14 months. If, for example, there were two additional Class G convictions per year as a result of the proposed broadening of the current 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.

Potential Pool: Since the proposed bill relaxes the *mens rea* requirement for Subpart (a)(3), persons eligible for conviction of this offense include an unknown portion of those currently convicted under:

G.S. §	Offense	Offense Class	FY 2011/12 Convictions
14-71(a), 72(a)	Receive stolen goods (F)	H	16
14-71.1	Possess stolen goods (F)	H	533
14-71.1	Possess stolen goods (M)	1	2,097
14-72(a)	Receive stolen goods (M)	1	43
14-86.6(a)(2)	Receive/Possess stolen retail property	H	0
20-106	Possess stolen motor vehicle	H	195
20-108	Vehicles/Parts without manufacturer numbers	2	0

Source: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

- **Subpart (a)(4).** The bill amends G.S. 14-72.7(a)(4) to make it a Class G felony to purchase, dispose of, sell, transfer, receive, or possess a motor vehicle or motor vehicle part to or from a person engaged in an activity prohibited by G.S. 14-72.7, knowing or having reasonable grounds to believe that the person is engaging in this activity.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of subsection (a) of G.S. 14-72.7. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Reclassification: Impact on the prison population will occur if Class H offenses became Class G offenses under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 42% for Class G) and longer average estimated time served (10 months compared to 14

months for Class G). If, for example, there were three Class H felony convictions that were reclassified as Class G felony convictions, 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). It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocation, because convictions under both Class H and Class G receive 9 months of PRS.

Expansion: It is not known how many additional convictions may result from the proposed relaxed *mens rea* requirement of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 42% of Class G convictions will result in active sentences, with an average estimated time served of 14 months. If, for example, there were two additional Class G convictions per year as a result of the proposed broadening of the current 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.

Potential Pool: Since the proposed bill relaxes the *mens rea* requirement for Subpart (a)(4), persons eligible for conviction of this offense include an unknown portion of those currently convicted under:

G.S. §	Offense	Offense Class	FY 2011/12 Convictions
14-71(a), 72(a)	Receive stolen goods (F)	H	16
14-71.1	Possess stolen goods (F)	H	533
14-71.1	Possess stolen goods (M)	1	2,097
14-72(a)	Receive stolen goods (M)	1	43
14-86.6(a)(2)	Receive/Possess stolen retail property	H	0
20-106	Possess stolen motor vehicle	H	195
20-108	Vehicles/Parts without manufacturer numbers	2	0

Source: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

SECTIONS 2-3. SECTION 2 of the bill amends subsection (a) of G.S. 20-62.1, Purchase of vehicles for purposes of scrap or parts only, to narrow the group of vehicles lacking certificates of title which may be purchased for scrap or parts by a secondary metals recycler or salvage yard. Currently, the vehicle must be at least 10 years old to be purchased without a certificate of title. The amendment would require the vehicle to be at least 20 years old. Absent the exemption in G.S. 20-62.1, the secondary metals recycler or salvage yard must return the wrecked vehicle's certificate of title to DMV pursuant to G.S. 20-61, Owner dismantling or wrecking vehicle to return evidence of registration. However, changing the age of

vehicles subject to the competing regulatory requirements of G.S. 20-61 and 20-62.1 does not necessarily result in increased violations of either statute.

SECTION 3 of the bill amends subsection (c) of G.S. 20-62.1, Purchase of vehicles for purposes of scrap or parts only, to reclassify a first violation of this statute from a Class 1 misdemeanor to a Class I felony.

The AOC currently does not have a specific offense code for violations of subsection (c) of G.S. 20-62.1. 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 2011/12 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 6 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.

Effective December 1, 2013, and applies to offenses committed on or after that date.

DATA SOURCE: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary 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 29 – Methamphetamine/Offense/Penalties [Ed.1]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subpart (d1)(1)c.:

A person who

1. has a prior conviction for
 - a. possession of methamphetamine, or
 - b. manufacture of methamphetamine, and
2. possesses a pseudoephedrine product.

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.

G.S. 90-95(d1)(1)a.-b. provide that, unless the immediate precursor is one that can be used to manufacture methamphetamine, it shall be a Class H felony for any person 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 the immediate precursor chemical will be used to manufacture a controlled substance.

G.S. 90-95(d1)(2) provides that it shall be a Class F felony for any person to possess an immediate precursor chemical with intent to manufacture methamphetamine; or possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture methamphetamine.

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: 03/08/13

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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 29 – Methamphetamine/Offense/Penalties [Ed.1] (cont'd)

STATUTE

§ 15A-1340.16D. Manufacturing methamphetamine; enhanced sentence.

DESCRIPTION

Subdivision (a1)(1):

A person who

1. is convicted of the offense of manufacture of methamphetamine pursuant to G.S. 90-95(b)(1a), and
2. it is found that a minor under 18 years of age
 - a. resided on the property used for the manufacture of methamphetamine, or
 - b. was present at a location where methamphetamine was being manufactured.

PUNISHMENT RANGE

CURRENT (if applicable): Class C felony or Class H felony, punished according to the felony punishment chart based on the class of the felony committed and the offender's prior record level.

PROPOSED: The minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months.

ANALYSIS

G.S. 90-95(b)(1a) provides that the manufacture of methamphetamine shall be punished as a Class C felony unless the offense was one of the following: packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. The offense of packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container shall be punished as a Class H felony.

FINDINGS

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

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

DATE OF REVIEW: 03/08/13

BILL CONTINUED ON NEXT PAGE

12 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 29 – Methamphetamine/Offense/Penalties [Ed.1] (cont'd)

STATUTE

§ 15A-1340.16D. Manufacturing methamphetamine; enhanced sentence.

DESCRIPTION

Subdivision (a1)(2):

A person who

1. is convicted of the offense of manufacture of methamphetamine pursuant to G.S. 90-95(b)(1a), and
2. it is found that a disabled or elder adult
 - a. resided on the property used for the manufacture of methamphetamine, or
 - b. was present at a location where methamphetamine was being manufactured.

PUNISHMENT RANGE

CURRENT (if applicable): Class C felony or Class H felony, punished according to the felony punishment chart based on the class of the felony committed and the offender's prior record level.

PROPOSED: The minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months.

ANALYSIS

G.S. 90-95(b)(1a) provides that the manufacture of methamphetamine shall be punished as a Class C felony unless the offense was one of the following: packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. The offense of packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container shall be punished as a Class H felony.

FINDINGS

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

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

DATE OF REVIEW: 03/08/13

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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 29 – Methamphetamine/Offense/Penalties [Ed.1] (cont'd)

STATUTE

§ 15A-1340.16D. Manufacturing methamphetamine; enhanced sentence.

DESCRIPTION

Subdivision (a1)(3):

A person who

1. is convicted of the offense of manufacture of methamphetamine pursuant to G.S. 90-95(b)(1a), and
2. it is found that a minor and a disabled or elder adult
 - a. resided on the property used for the manufacture of methamphetamine, or
 - b. were present at a location where methamphetamine was being manufactured.

PUNISHMENT RANGE

CURRENT (if applicable): Class C felony or Class H felony, punished according to the felony punishment chart based on the class of the felony committed and the offender's prior record level.

PROPOSED: The minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 48 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 48 months.

ANALYSIS

G.S. 90-95(b)(1a) provides that the manufacture of methamphetamine shall be punished as a Class C felony unless the offense was one of the following: packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. The offense of packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container shall be punished as a Class H felony.

FINDINGS

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

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

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS ON NEXT PAGE

14 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 29: METHAMPHETAMINE/OFFENSE/PENALTIES

PREPARED: February 14, 2013

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1. This section amends G.S. 90-95(d1)(1) to add a new offense. Subsubdivision c. makes it unlawful for any person to possess a pseudoephedrine product if the person has a prior conviction for the possession or manufacture of methamphetamine. Violation is a Class H felony.

Subsubdivision c. requires that a person have a prior conviction for “the possession or manufacture of methamphetamine,” but it does not cite a statutory reference for the offenses; therefore, it is possible for a person to qualify for the new offense with a prior conviction for any of the offenses listed in Table 1. In FY 2011/12, there were a total of 946 felony convictions for the offenses listed in Table 1. While the 946 convictions occurred during a fiscal year, Subsubdivision c. does not limit the timeframe to only a year –meaning the prior conviction can occur at any point in the offender’s entire criminal history.

It is not known how many of the offenders would possess a pseudoephedrine product. 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 1.

Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 35% 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.

Table 1

Offense Text and G.S. Citation	Offense Class	# of Convictions
Manufacture methamphetamine. 90-95(b)(1a)	C	42
Trafficking in methamphetamine.* 90-95(h)(3b)	C, E, F	12
Possess with intent to manufacture, sell, or deliver methamphetamine. 90-95(a)(1)	H	41
Possess with intent to manufacture, sell, or deliver a Schedule II controlled substance. 90-95(a)(1)	H	277
Manufacture a Schedule II controlled substance. 90-95(a)(1)	H	4
Possess methamphetamine. 90-95(a)(3)	I	171
Simple possession of a Schedule II, III, or IV controlled substance. 90-95(d)(2)	I	0
Felony possession Schedule II controlled substance. 90-95(a)(3)	I	399
Total		946

* “Trafficking in methamphetamine” may include selling, manufacturing, delivering, transporting, or possessing.

Source: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

SECTION 2. This section amends G.S. 15A-1340.16D, Manufacturing methamphetamine; enhanced sentence, to add three new enhancements that would require the court to increase the minimum sentence by 24, 48, or 72 months depending on the following criteria:

- **Minor Child under 18 Years:** Subdivision (a1)(1) requires the court to increase the minimum sentence by 24 months if the person is convicted of manufacturing methamphetamine under G.S. 90-95(b)(1a) and it is found that a minor under 18 years of age resided on the property or was present at the location where methamphetamine was being manufactured. The court imposes the maximum sentence that corresponds to the new minimum sentence.
- **Disabled or Elderly Adult:** Subdivision (a1)(2) requires the court to increase the minimum sentence by 24 months if the person is convicted of manufacturing methamphetamine under G.S. 90-95(b)(1a) and it is found that a disabled or elder adult resided on the property or was present at the location where methamphetamine was being manufactured. The court imposes the maximum sentence that corresponds to the new minimum sentence.
- **Both Minor Child and Disabled or Elderly Adult:** Subdivision (a1)(3) requires the court to increase the minimum sentence by 48 months if the person is convicted of manufacturing methamphetamine under G.S. 90-95(b)(1a) and it is found that a minor and a disabled or elder adult resided on the property or was present at the location where methamphetamine was being manufactured. The court imposes the maximum sentence that corresponds to the new minimum sentence.
- **‘Service’ Personnel, Minor Child, and/or Disabled/Elderly Adult:** If a person is convicted of manufacturing methamphetamine under G.S. 90-95(b)(1a) and receives a sentence enhancement

under subsection (a) (24 months if the offense caused serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter) as well as under subsection (a1), the penalties are cumulative. The court imposes the maximum sentence that corresponds to the new minimum sentence.

In FY 2011/12, there were 42 Class C convictions for manufacturing methamphetamine. The average minimum sentence imposed was 65 months (median=60 months). Of the 42 convictions, the minimum sentence imposed ranged from 44 months to 116 months. Based on the criteria listed above, Table 2 provides information about the new minimum sentence if the sentence enhancements in Section 2 are enacted.

Table 2

Options	Average Minimum Sentence* (Months)	Proposed Enhancement Length (Months)	New Minimum Sentence (Months)
• Minor Present OR Disabled/Elderly Present OR ‘Service’ Personnel Injured	65	24	89
• Minor Present AND Disabled/Elderly Present			
• Minor Present AND ‘Service’ Personnel Injured	65	48	113
• Disabled/Elderly Present AND ‘Service’ Personnel Injured			
• Minor Present AND Disabled/Elderly Present AND ‘Service’ Personnel Injured	65	72	137

* In FY 2011/12, all Class C felonies (n=1,001) had an average minimum sentence imposed of 80 months. See Preliminary FY 2011/12 Statistical Report Data.

Source: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

It is not known how many of these 42 convictions had minor children under 18 years of age and/or disabled or elderly adults residing on the property or present at the location where methamphetamine was being manufactured. It is also not known if the offense caused serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. Since the punishment type (e.g., active versus non-active) is not expected to change, the impact would result from the additional months added to the minimum sentence length. The impact on prison resources would not occur until after 5 years (based on the average minimum sentence imposed for Class C felonies for manufacturing methamphetamine) and would occur due to these offenders ‘stacking up’ in prison with the longer prison sentence lengths.

Effective December 1, 2013, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary 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 31 – Amend Habitual DWI [Ed.1]

STATUTE

§ 20-138.5. Habitual impaired driving.

DESCRIPTION

A person who

1. drives while impaired (as defined in G.S. 138.1) and
2. has been convicted of three or more offenses involving impaired driving within 10 years of the date of this offense, or
3. has been previously convicted of the offense of habitual impaired driving.

PROPOSED OFFENSE CLASS

Class F felony.

Sentence must include a minimum active term of not less than 12 months, and must run consecutively with and at the expiration of any sentence being served.

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 Sentencing Commission reviewed a similar provision in SB 743 in May of 2007 and found that the offense classification criteria were not applicable because driving while impaired offenses are not classified under Structured Sentencing.

FINDINGS

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

Driving while impaired offenses are not classified under Structured Sentencing.

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 31: AMEND HABITUAL DWI

PREPARED: February 18, 2013

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill expands an existing offense.

SECTION 1. This bill expands the scope of the offense of Habitual impaired driving by amending subsection (a) of G.S. 20-138.5, Habitual impaired driving.

Currently, G.S. 20-138.5(a) provides that a person commits the offense of habitual impaired driving if he drives while impaired and has been convicted of three or more offenses involving impaired driving within 10 years of the date of this offense. This bill expands the scope of the existing offense by amending G.S. 20-138.5(a) to provide that a person may also be convicted of habitual impaired driving if he drives while impaired and has been previously convicted of the offense of habitual impaired driving, regardless of the timing. Per G.S. 20-138.5(b) habitual impaired driving is a Class F felony, and a person convicted of the offense shall be sentenced to a minimum active term of not less than 12 months imprisonment, which shall not be suspended.

In FY 2011/12, there were 316 convictions for habitual impaired driving under G.S. 20-138.5(a). Almost 99% (312) received an active sentence with an average estimated time served of 16 months. This amendment would increase the eligible pool of offenders for habitual impaired driving. The Sentencing Commission does not maintain statistical information on misdemeanor impaired driving offenses. In addition, while the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses that were used to calculate the number of prior record/conviction points. As a result, the Sentencing Commission does not have any data from which to estimate how many additional convictions would occur as a result of the proposed amendment.

Convictions under G.S. 20-138.5(a) carry a mandatory active sentence. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), if, for example, there were two additional Class F convictions for this offense per year, active sentences would result in the need for two additional prison beds the first year and three additional prison beds the second year. 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.

This act becomes effective July 1, 2013, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary 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 40 – Amend Habitual DWI [Ed.1]

STATUTE

§ 20-138.5. Habitual impaired driving.

DESCRIPTION

A person who

1. drives while impaired (as defined in G.S. 138.1) and
2. has been convicted of two or more offenses involving impaired driving within 10 years of the date of this offense.

PROPOSED OFFENSE CLASS

Class F felony.

Sentence must include a minimum active term of not less than 12 months, and must run consecutively with and at the expiration of any sentence being served.

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.

Currently, G.S. 20-138.5 requires three or more convictions involving impaired driving within 10 years.

The Sentencing Commission reviewed a similar provision in SB 743 in May of 2007 and found that the offense classification criteria were not applicable because driving while impaired offenses are not classified under Structured Sentencing.

FINDINGS

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

Driving while impaired offenses are not classified under Structured Sentencing.

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS ON NEXT PAGE

20 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 40: AMEND HABITUAL DWI

PREPARED: February 11, 2013

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1. Redefines the Class F felony of habitual impaired driving in G.S. 20-138.5(a) to require only two – rather than three – prior convictions for an offense involving impaired driving within 10 years of a current offense of driving while impaired (DWI) under G.S. 20-138.1, Impaired driving. The bill thus expands the pool of DWI offenders under G.S. 20-138.1 who would also be subject to prosecution for habitual impaired driving under G.S. 20-138.5(a).

In FY 2011/12, there were 316 convictions for habitual impaired driving under G.S. 20-138.5(a). Almost 99% (312) received an active sentence with an average estimated time served of 16 months. This amendment would increase the eligible pool of offenders for habitual impaired driving. The Sentencing Commission does not maintain statistical information on misdemeanor impaired driving offenses. In addition, while the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses that were used to calculate the number of prior record/conviction points. As a result, the Sentencing Commission does not have any data from which to estimate how many additional convictions would occur as a result of the proposed amendment.

Convictions under G.S. 20-138.5(a) carry a mandatory active sentence. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), if, for example, there were two additional Class F convictions for this proposed offense per year, active sentences would result in the need for two additional prison bed the first year and three additional prison beds the second year. 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.

Effective December 1, 2013, and applies to offenses committed on or after that date. (It appears that qualifying prior convictions before December 1, 2013, may be used to establish the two requisite prior convictions, provided they occurred within 10 years of the current violation of G.S. 20-138.1.)

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

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 75/SB 70 – Kilah’s Law/Increase Child Abuse Penalties
[Ed.1]

STATUTE

§ 14-318.4. Child abuse a felony.

DESCRIPTION

Subsection (a):

A person who

1. is a parent or other person providing care to or supervision of a child less than 16 years of age
2. who intentionally
 - a. inflicts any serious physical injury upon or to the child, or
 - b. commits an assault upon the child which results in serious physical injury to the child.

OFFENSE CLASS

CURRENT: Class E 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 personal injury as Class E felonies.

The Commission studied this issue in 2012 and recommended that increasing the penalty for G.S. 14-318.4(a) from a Class E felony to a Class D felony would be inconsistent with the Offense Classification Criteria for Class 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: 03/08/13

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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 75/SB 70 – Kilah’s Law/Increase Child Abuse Penalties
[Ed.1] (cont’d)

STATUTE

§ 14-318.4. Child abuse a felony.

DESCRIPTION

Subsection (a1):

A person who

1. is a parent or other person providing care to or supervision of a child less than 16 years of age
2. and commits, permits, or encourages
3. an act of prostitution
4. with or by the child.

OFFENSE CLASS

CURRENT: Class E 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 personal injury as Class E felonies.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/08/13

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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 75/SB 70 – Kilah’s Law/Increase Child Abuse Penalties
[Ed.1] (cont’d)

STATUTE

§ 14-318.4. Child abuse a felony.

DESCRIPTION

Subsection (a2):

A person who

1. is a parent or legal guardian of a child less than 16 years of age
2. and commits or allows the commission of
3. any sexual act upon the child.

OFFENSE CLASS

CURRENT: Class E 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 personal injury as Class E felonies.

FINDINGS

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

DATE OF REVIEW: 03/08/13

BILL CONTINUED ON NEXT PAGE

24 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 75/SB 70 – Kilah’s Law/Increase Child Abuse Penalties
[Ed.1] (cont’d)

STATUTE

§ 14-318.4. Child abuse a felony.

DESCRIPTION

Subsection (a3):

A person who

1. is a parent or other person providing care to or supervision of a child less than 16 years of age
2. and intentionally
 - a. inflicts any serious bodily injury to the child, or
 - b. commits an assault upon the child which results in
 - i. any serious bodily injury to the child, or
 - ii. permanent or protracted loss or impairment of any mental or emotional function of the child.

OFFENSE CLASS

CURRENT: Class C felony.

PROPOSED: Class B2 felony.

ANALYSIS

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

The 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 Commission studied this issue in 2012 and found that this change would be consistent with the Offense Classification Criteria for Class B felony offenses.

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: 03/08/13

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: HB 75/SB 70 – Kilah’s Law/Increase Child Abuse Penalties
[Ed.1] (cont’d)

STATUTE

§ 14-318.4. Child abuse a felony.

DESCRIPTION

Subsection (a5):

A person who

1. is a parent or other person providing care to or supervision of a child less than 16 years of age and
2. whose willful act or grossly negligent omission in the care of the child
3. shows a reckless disregard for human life and
4. the act or omission results in serious physical injury to the child.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: 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 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: 03/08/13

IMPACT ANALYSIS ON NEXT PAGE

26 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 75: KILAH'S LAW/INCREASE CHILD ABUSE PENALTIES

PREPARED: February 8, 2013

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill reclassifies five existing child abuse offenses contained in G.S. 14-318.4, Child abuse a felony.

Subsection (a)

Subsection (a) makes it unlawful for a parent or any other person providing care to or supervision of a child less than 16 years of age to intentionally inflict any serious physical injury upon or to the child or to intentionally commit an assault upon the child which results in any serious physical injury to the child. This bill raises the offense from a Class E felony to a Class D felony.

There were 30 convictions under Subsection (a) of G.S. 14-318.4 in FY 2011/12. Impact on the prison population will occur if Class E convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 57% for Class E) and longer average estimated time served (68 months compared to 28 months for Class E).

Due to the small number of convictions, a more detailed impact projection using the SAS[®] Simulation Studio prison projection model would not be reliable. Using threshold data, if these 30 convictions were reclassified from Class E to Class D, active sentences would result in the need for 13 additional prison beds in the first year and 26 additional prison beds in the second year. It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocation, because convictions under both Class D and Class E receive 12 months of PRS.

Subsection (a1)

Subsection (a1) makes it unlawful for a parent or any other person providing care to or supervision of a child less than 16 years of age to commit, permit, or encourage any act of prostitution with or by the child. This bill raises the offense from a Class E felony to a Class D felony.

There were no convictions under Subsection (a1) of G.S. 14-318.4 in FY 2011/12. Impact on the prison population will occur if Class E convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 57% for Class E) and longer average estimated time served (68 months compared to 28 months for Class E).

Using threshold data, if two convictions were reclassified from Class E to Class D, active sentences would result in the need for one additional prison bed in the first year and one additional prison bed in the second year. It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocations because convictions under both Class D and Class E receive 12 months of PRS.

Subsection (a2)

Subsection (a2) makes it unlawful for a parent or legal guardian of a child less than 16 years of age to commit or allow the commission of any sexual act upon the child. This bill raises the offense from a Class E felony to a Class D felony.

There were five convictions under Subsection (a) of G.S. 14-318.4 in FY 2011/12. Impact on the prison population will occur if Class E convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 57% for Class E) and longer average estimated time served (68 months compared to 28 months for Class E).

Due to the small number of convictions, a more detailed impact projection using the SAS® Simulation Studio prison projection model would not be reliable. Using threshold data, if these five convictions were reclassified from Class E to Class D, active sentences would result in the need for two additional prison beds in the first year and four additional prison beds in the second year. It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocations because convictions under both Class D and Class E receive 12 months of PRS.

Subsection (a3)

Subsection (a3) makes it unlawful for a parent or any other person providing care to or supervision of a child less than 16 years of age to intentionally inflict any serious bodily injury to the child or to intentionally commit an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child. This bill raises the offense from a Class C felony to a Class B2 felony.

There were 12 convictions under Subsection (a3) of G.S. 14-318.4 in FY 2011/12. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 and Class C offenders are required to receive an active sentence. Impact on the prison population will occur if Class C convictions become Class B2 convictions under the proposed statute because of the longer average estimated time served (183 months compared to 81 months for Class C). No additional prison beds would be needed in the short term due to the long sentence lengths. Long-term impact on the prison population would begin in year six due to the longer sentence lengths for Class B2 felony convictions, and would continue as individuals convicted of this offense accumulate in the prison population over the years. It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocations because convictions under both Class B2 and Class C receive 12 months of PRS.

Subsection (a5)

Subsection (a5) makes it unlawful when a parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life and the act or omission results in serious physical injury to the child. This bill raises the offense from a Class H felony to a Class G felony.

Impact on the prison population will occur if Class H convictions become Class G convictions under the proposed statute because of the higher rate of active sentences (42% for Class G compared to 35% for Class H) and longer average estimated time served (14 months for Class G compared to 10 months for Class H).

There were six convictions under Subsection (a5) of G.S. 14-318.4 in FY 2011/12. Due to the small number of convictions, a more detailed impact projection using the SAS® Simulation Studio prison projection model would not be reliable. Using threshold data, if these six convictions were reclassified from Class H to Class G, 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). It is not anticipated that there will be any additional impact on Post Release Supervision (PRS) caseloads or on PRS revocations because convictions under both Class G and Class H receive 9 months of PRS.

Effective December 1, 2013, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary 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 149 – Caylee’s Law/Report Missing Children [Ed.2]

STATUTE

§ 14-318.5. Failure to report the disappearance of a child to law enforcement; immunity of person reporting in good faith.

DESCRIPTION

A person who

1. is a parent or any other person providing care to or supervision of a child
2. and who knowingly or wantonly
3. fails to report the disappearance of a child
4. to law enforcement.

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. 14-318.5(a) defines “child” as any person less than 16 years of age and “disappearance of a child” as the time when the parent or supervisor of a child does not know the location of the child and has not had contact with the child for a 24-hour period.

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: 03/08/13

BILL CONTINUED ON NEXT PAGE

30 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 149 – Caylee’s Law/Report Missing Children [Ed.2] (cont’d)

STATUTE

§ 14-401.22. Concealment of death; disturbing human remains; dismembering human remains.

DESCRIPTION

Subsection (a1):

A person who

1. with intent to conceal the death of a child
2. a. fails to notify law enforcement authority of the death, or
- b. secretly buries or otherwise secretly disposes of a dead child’s body.

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.

Current G.S. 14-401.22(a) provides that it shall be a Class I felony for any person who, with intent to conceal the death of a person, fails to notify law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body.

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: 03/08/13

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NORTH CAROLINA SENTENCING 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 – Caylee’s Law/Report Missing Children [Ed.2] (cont’d)

STATUTE

§ 14-401.22. Concealment of death; disturbing human remains; dismembering human remains.

DESCRIPTION

Subsection (e):

A person who

1. violates G.S. 14-401.22(a)
2. and knows or has reason to know
3. that the body or human remains are of a person that did not die of natural causes.

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.

G.S. 14-401.22(a) provides that it shall be a Class I felony for any person who, with intent to conceal the death of a person, fails to notify law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body.

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: 03/08/13

BILL CONTINUED ON NEXT PAGE

32 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 149 – Caylee’s Law/Report Missing Children [Ed.2] (cont’d)

STATUTE

§ 14-401.22. Concealment of death; disturbing human remains; dismembering human remains.

DESCRIPTION

Subsection (e):

A person who

1. violates G.S. 14-401.22(a1)
2. and knows or has reason to know
3. that the body or human remains are of a person that did not die of natural causes.

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.

New G.S. 14-401.22(a1) provides that it shall be a Class H felony for any person who, with intent to conceal the death of a child, fails to notify law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead child’s body.

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: 03/08/13

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NORTH CAROLINA SENTENCING 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 – Caylee’s Law/Report Missing Children [Ed.2] (cont’d)

STATUTE

§ 14-225. False reports to law enforcement agencies or officers.

DESCRIPTION

Subsection (b):

A person who

1. willfully
2. makes or causes to be made
3. to a law enforcement agency or officer
4. any false, deliberately misleading or unfounded report relating to
 - a. a law enforcement investigation involving the disappearance of a child, or
 - b. a child victim of a Class A, B1, B2 or C felony offense
5. for the purpose of
 - a. interfering with the operation of a law enforcement agency, or
 - b. to hinder or obstruct any law enforcement officer in the performance of his duty.

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.

Current G.S. 14-225(a) provides that it shall be a Class 2 misdemeanor for any person to willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty.

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: 03/08/13

IMPACT ANALYSIS NOT REQUESTED YET

34 A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 160 – Public Contracts/Illegal Immigrants [Ed.1]

STATUTE

§ 143-133.1. Contracts with illegal immigrants prohibited; verification and certification required.

DESCRIPTION

A person who

1. is a contractor
2. submitting a bid or entering into a contract with any State department, institution, or agency, or any political subdivision of the State
3. and knowingly
4. submits a false certification form verifying the authorization to work in the United States of each individual employed.

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.

Per G.S. 143-133.1(b), the certification form shall be approved by the Secretary of Administration and shall verify the authorization to work in the United States of each individual employed by the contractor, whether permanent, temporary, or seasonal to perform work under the contract in accordance with the terms and conditions of the E-Verify Program administered by the US Dept. of Homeland Security.

The Commission reviewed a similar provision in HB 36 [Ed.2] in June 2011, and found it to be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/08/13

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: HB 221 – Increase Penalties for Human Trafficking [Ed.1]

STATUTE

§ 14-43.11. Human Trafficking.

DESCRIPTION

A person who

1. knowingly
2. recruits, entices, harbors, transports, provides or obtains by any means
3. another person
4. with the intent that the other person be held in
 - a. involuntary servitude, or
 - b. sexual servitude.

OFFENSE CLASS

CURRENT: Class F felony if the victim is an adult.

PROPOSED: Class E felony if the victim is an adult.

ANALYSIS

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

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

A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

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) if the offense is committed against a minor less than 18 or the offense is committed against an adult with the intent that the person be held in sexual servitude; a convicted offender would be required to register.

Each violation of this section constitutes a separate offense and shall not merge with any other offense.

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: 03/08/13

BILL CONTINUED ON NEXT PAGE

36 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 221 – Increase Penalties for Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-43.12. Involuntary servitude.

DESCRIPTION

A person who

1. knowingly and willfully
2. holds another person in
3. involuntary servitude.

OFFENSE CLASS

CURRENT: Class F felony if the victim is an adult.

PROPOSED: Class E felony if the victim is an adult.

ANALYSIS

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

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

A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

Each violation of this section constitutes a separate offense and shall not merge with any other offense.

Nothing in this section shall be construed to affect the laws governing the relationship between an unemancipated minor and his or her parents or legal guardian.

G.S. 14-43.10(3) states that involuntary servitude includes (a) the performance of labor, whether or not for compensation, or whether or not for the satisfaction of a debt; and (b) by deception, coercion, or intimidation using violence or the threat of violence or by any other means of coercion or intimidation.

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: 03/08/13

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: HB 221 – Increase Penalties for Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-43.13. Sexual servitude.

DESCRIPTION

A person who

1. knowingly and willfully
2. holds another person in
3. sexual servitude.

OFFENSE CLASS

CURRENT: Class F felony if the victim is an adult.

PROPOSED: Class E felony if the victim is an adult.

ANALYSIS

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

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

A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

Each violation of this section constitutes a separate offense and shall not merge with any other offense.

G.S. 14-43.10(5) states that sexual servitude includes: (a) any sexual activity for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or (b) any sexual activity that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

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: 03/08/13

BILL CONTINUED ON NEXT PAGE

38 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 221 – Increase Penalties for Human Trafficking [Ed.1]
(cont'd)

STATUTE

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

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: 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.

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 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 “offense against a minor” in G.S. 14-208.6(1m).

The Commission reviewed an earlier version of this provision in SB 910 [Ed. 2] in June 2012, and found it to be inconsistent with the Offense Classification Criteria for a Class D felony, but noted that it would be consistent with the Offense Classification Criteria for a Class F felony.

FINDINGS

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

DATE OF REVIEW: 03/08/13

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 253/SB 235 – Voter Protection and Integrity Act [Ed.1]

STATUTE

§ 163-166.13. Guarantee of right to vote through positive affirmation to local election officials at voting place.

DESCRIPTION

Subsection (b):

A person who

1. with intent to commit fraud or vote illegally at any primary or election
2. has his photograph taken by a designated election official, and
3. signs a voter photo affidavit affirming that he is in fact the registered voter in whose name they are requesting a ballot.

PROPOSED OFFENSE CLASS

Class I felony (pursuant to G.S. 163-275(7)).

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. 163-275(7) provides that it is a Class I felony for any person, with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election.

The Commission reviewed a similar provision in HB 862 [Ed.1] in June 2011, and found it to be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS NOT REQUESTED YET

40 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 18 – Amend Locksmith License Act/Raise Fee Ceiling [Ed.1]

STATUTE

§ 74F-3. Licenses required.

DESCRIPTION

A person who

1. performs or offers to perform
2. locksmith services and
3. is not licensed as a locksmith under Chapter 74F of the General Statutes.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor.

PROPOSED: Class 1 misdemeanor for the first offense.

Class I felony for the second and subsequent offenses.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

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 the 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: 03/08/13

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NORTH CAROLINA 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 18 – Amend Locksmith License Act/Raise Fee Ceiling [Ed.1]
(cont'd)

STATUTE

§ 74F-3. Licenses required.

DESCRIPTION

A person who

1. possesses
2. any locksmith tools and
3. is not licensed as a locksmith under Chapter 74F of the General Statutes or exempt from the provisions of that Chapter.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for the first offense.

Class I felony for the second and subsequent offenses.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

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 the 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: 03/08/13

IMPACT ANALYSIS NOT REQUESTED YET

42 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support 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 117 – Lily’s Law [Ed.2]

STATUTE

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

DESCRIPTION

Subsection (c):

A person who

1. Inflicts injuries on a child prior to the child being born and the child is born alive but dies as a result of the injuries.

PROPOSED OFFENSE CLASS

Class A felony if it meets the definition of first degree murder in G.S. 14-17(a).

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with premeditation and deliberation, or a legally recognized substitute for premeditation and deliberation, as Class A felonies.

FINDINGS

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

DATE OF REVIEW: 03/08/13

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NORTH CAROLINA 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 117 – Lily’s Law [Ed.2] (cont’d)

STATUTE

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

DESCRIPTION

Subsection (c):

A person who

1. Inflicts injuries on a child prior to the child being born and the child is born alive but dies as a result of the injuries.

PROPOSED OFFENSE CLASS

Class B1 or B2 felony if it meets the definition of second degree murder in G.S. 14-17(b).

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies.

FINDINGS

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

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS NOT REQUESTED YET

44 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 124 – Shoot Gun From Inside/To Harm or Incite Fear [Ed.1]

STATUTE

§ 14-34.10. Discharge firearm within enclosure to do harm or incite fear.

DESCRIPTION

A person who

1. willfully or wantonly
2. discharges or attempts to discharge
3. a firearm
4. within any building, structure, motor vehicle, or other conveyance, erection, or enclosure
5. with the intent to
 - a. do harm or
 - b. incite fear.

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 from within an enclosure is a Class E felony. G.S. 14-34.9.

FINDINGS

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

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 135 – Modify Habitual Impaired Driving Statute [Ed.1]

STATUTE

§ 20-138.5. Habitual impaired driving.

DESCRIPTION

A person who

1. drives while impaired (as defined in G.S. 138.1) and
2. has been convicted of three or more offenses involving impaired driving.

PROPOSED OFFENSE CLASS

Class F felony.

Sentence must include a minimum active term of not less than 12 months, and must run consecutively with and at the expiration of any sentence being served.

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.

This bill deletes the requirement that the three prior convictions must have occurred within ten years of the date of the current offense.

The Sentencing Commission reviewed an identical provision in SB 743 in May of 2007 and found that the offense classification criteria were not applicable because driving while impaired offenses are not classified under Structured Sentencing.

FINDINGS

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

Driving while impaired offenses are not classified under Structured Sentencing.

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS NOT REQUESTED YET

46 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 137 – Prohibit Co-pay Waiver/Medicaid Providers. [Ed.1]

STATUTE

§ 108A-63. Medical Assistance Provider Fraud.

DESCRIPTION

Subdivision (e)(3):

A provider of medical assistance under the Medical Assistance Program (Part 6, Article 2, Chapter 108A) who

1. knowingly and willfully
2. executes or attempts to execute
3. a scheme or artifice
4. to waive the collection of co-payments owed by recipients of medical assistance as required under the Medical Assistance Program
5. with the intent to induce recipients to purchase, lease, or order items or services from the provider.

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

FINDINGS

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

DATE OF REVIEW: 03/08/13

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NORTH CAROLINA 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 137 – Prohibit Co-pay Waiver/Medicaid Providers. [Ed.1]
(cont'd)

STATUTE

§ 108A-63. Medical Assistance Provider Fraud.

DESCRIPTION

Subsection (g):

A person who

1. knowingly and willfully
2. solicits or receives
3. any remuneration (including any waiver of a co-payment owed by a recipient of medical assistance)
4. directly or indirectly, overtly or covertly, in cash or in-kind
5. in return for
 - a. referring an individual to a person for the furnishing or arranging or the furnishing of any item or service for which payment may be made in whole in part under Part 6, Article 2, Chapter 108A, or
 - b. purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Part 6, Article 2, Chapter 108A.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

This subsection currently applies to remuneration including any kickback, bribe, or rebate.

FINDINGS

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

DATE OF REVIEW: 03/08/13

BILL CONTINUED ON NEXT PAGE

48 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 137 – Prohibit Co-pay Waiver/Medicaid Providers. [Ed.1]
(cont'd)

STATUTE

§ 108A-63. Medical Assistance Provider Fraud.

DESCRIPTION

Subsection (h):

A person who

1. knowingly and willfully
2. offers or pays
3. any remuneration (including any waiver of a co-payment owed by a recipient of medical assistance)
4. directly or indirectly, overtly or covertly, in cash or in-kind
5. to any person to induce such person
 - a. to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Part 6, Article 2, Chapter 108A, or
 - b. to purchase, lease, order, or arrange for or recommend purchasing, leasing or ordering any good, facility, service, or item for which payment may be made in whole or in part under Part 6, Article 2, Chapter 108A.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

This subsection currently applies to remuneration including any kickback, bribe, or rebate.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 03/08/13

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 140 – Financial Exploitation of Older Adults [Ed.1]

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (c):

A person who

1. knowingly,
2. by deception or intimidation,
3. a. obtains or uses,
b. endeavors to obtain or use, or
c. conspires with another to obtain or use
4. an elder adult's or disabled adult's funds, assets, or property
5. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult.

PROPOSED OFFENSE CLASS

If the funds, assets, or property involved are valued at \$100,000 or more, 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 bill deletes the element that the person knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent and adds the elements that the person commit the offense knowingly and by deception or intimidation.

This bill expands the definition of "Elder adult" to include any person who is 60 years of age or older.

FINDINGS

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

DATE OF REVIEW: 03/08/13

BILL CONTINUED ON NEXT PAGE

50 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 140 – Financial Exploitation of Older Adults [Ed.1] (cont'd)

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (c):

A person who

1. knowingly,
2. by deception or intimidation,
3. a. obtains or uses,
 - b. endeavors to obtain or use, or
 - c. conspires with another to obtain or use
4. an elder adult's or disabled adult's funds, assets, or property
5. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult.

PROPOSED OFFENSE CLASS

If the funds, assets, or property involved are valued at \$20,000 or more but less than \$100,000, 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.

This bill deletes the element that the person knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent and adds the elements that the person commit the offense knowingly and by deception or intimidation.

This bill expands the definition of "Elder adult" to include any person who is 60 years of age or older.

FINDINGS

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

DATE OF REVIEW: 03/08/13

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 140 – Financial Exploitation of Older Adults [Ed.1] (cont'd)

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (c):

A person who

1. knowingly,
2. by deception or intimidation,
3. a. obtains or uses,
 - b. endeavors to obtain or use, or
 - c. conspires with another to obtain or use
4. an elder adult's or disabled adult's funds, assets, or property
5. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult.

PROPOSED OFFENSE CLASS

If the funds, assets, or property involved are valued at less than \$20,000, Class I felony.

ANALYSIS

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

This bill deletes the element that the person knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent and adds the elements that the person commit the offense knowingly and by deception or intimidation.

This bill expands the definition of “Elder adult” to include any person who is 60 years of age or older.

FINDINGS

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

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS NOT REQUESTED YET

52 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 187 – PM2.5 Studies on Humans Unlawful [Ed.1]

STATUTE

§ 14-34.4A. Human research studies involving intentional exposure to fine particulate matter.

DESCRIPTION

A person who

1. Conducts research studies that intentionally expose human subjects to fine particulate matter at
 - a. a concentration higher than 12 micrograms per cubic meter or
 - b. the primary annual health national ambient air quality standard, as defined by the U.S. Environmental Protection Agency, whichever is lower.

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.

“Fine particulate matter” is defined as airborne particles with a diameter of 2.5 micrometers or less, commonly known as PM2.5.

FINDINGS

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

DATE OF REVIEW: 03/08/13

IMPACT ANALYSIS NOT REQUESTED YET