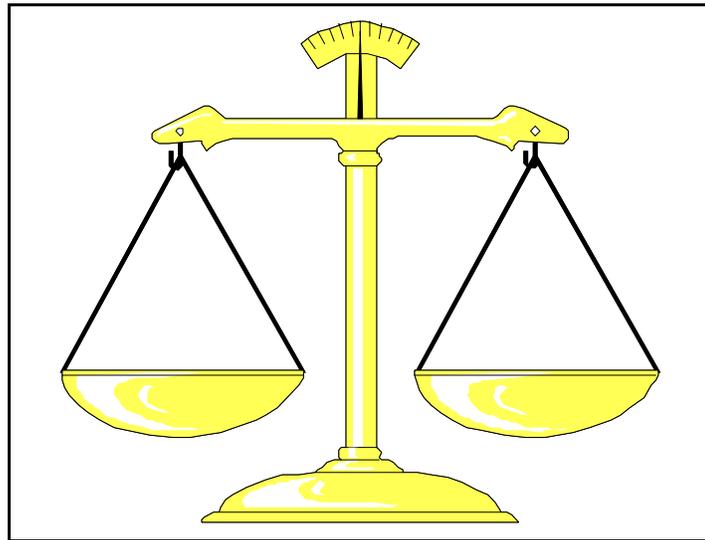


**NORTH CAROLINA  
SENTENCING  
AND  
POLICY ADVISORY  
COMMISSION**



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

***SUBMITTED TO THE 2013 SESSION OF THE  
NORTH CAROLINA GENERAL ASSEMBLY  
JUNE 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 June 14, 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 June 14, 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

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\* 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 589 – VIVA [Ed.5]

**STATUTE**

§ 163-82.7A. Declaration religious objection to photograph.

**DESCRIPTION**

A person who

1. at the time of approval of his application to register to vote
2. falsely attests
  - a. before an elections official
  - b. that he holds a sincere religious objection to being photographed.

**PROPOSED OFFENSE CLASS**

Class I felony, pursuant to G.S. 163-275(13).

**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. 163-82.7A(a) provides that, at the time of approval of the application to register to vote, a voter with a sincerely held religious objection to being photographed may execute a declaration before an elections official to that effect to be incorporated as part of the official record of voter registration.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

**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:** 06/14/13

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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 589 – VIVA [Ed.5] (cont'd)

**STATUTE**

§ 163-82.7A. Declaration religious objection to photograph.

**DESCRIPTION**

A person who

1. at any time after he has registered to vote
2. falsely attests
  - a. before an elections official
  - b. that he holds a sincerely held religious objection to being photographed.

**PROPOSED OFFENSE CLASS**

Class I felony pursuant to G.S. 163-275(13).

**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. 163-82.7A(b) provides that, at any time after the voter has registered to vote that voter has determined that he holds a sincerely held religious objection to being photographed, he may execute a declaration before an elections official to be incorporated as part of the official record of his voter registration.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

**FINDINGS**

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

**DATE OF REVIEW:** 06/14/13

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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 589 – VIVA [Ed.5] (cont'd)

### STATUTE

§ 20-37.7. Special identification card.

### DESCRIPTION

Subdivision (d)(5):

A person who

1. falsely attests
  - a. that he is a registered voter, and
  - b. does not have other photo identification acceptable under G.S. 163-166.13
2. in order to have the fee for a special identification card waived.

### PROPOSED OFFENSE CLASS

Class I felony pursuant to G.S. 163-275(13).

### 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. 20-37.7(d) provides that the fee for a special identification card does not apply in certain instances. G.S. 2037.7(d)(5) also states that any declarations shall prominently include the penalty under G.S. 163-275(13) for falsely making the declaration.

Proposed G.S. 163-166.13 provides that every individual voting in person shall present photo identification bearing any reasonable resemblance to that voter to a local election official at the voting place before voting.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

### FINDINGS

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/14/13

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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 589 – VIVA [Ed.5] (cont'd)

### STATUTE

§ 20-37.7. Special Identification Card.

### DESCRIPTION

Subdivision (d)(6)

A person who

1. while appearing before the Division of Motor vehicles for the purpose of registering to vote in accordance with G.S. 163-82.19
2. falsely attests
  - a. that he is registering to vote
  - b. and does not have other photo identification acceptable under G.S. 163-166.13
3. in order to have the fee for a special identification card waived.

### PROPOSED OFFENSE CLASS

Class I felony pursuant to G.S. 163-275(13).

### 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. 20-37.7(d) provides that the fee for a special identification card does not apply in certain instances. G.S. 2037.7(d)(5) also states that any declarations shall prominently include the penalty under G.S. 163-275(13) for falsely making the declaration.

Proposed G.S. 163-166.13 provides that every individual voting in person shall present photo identification bearing any reasonable resemblance to that voter to a local election official at the voting place before voting.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

G.S. 163-82.19, Voter registration at drivers license offices; coordination on data interface, provides that the DMV shall modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote, or to update the voter's registration if the voter has changed his or her address or moved from one precinct to another or from one county to another, or to preregister to vote. 163-82.19 further provides that it shall be a Class I felony for any person to willfully and knowingly and with fraudulent intent give false information on the application.

### 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:** 06/14/13

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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 589 – VIVA [Ed.5] (cont'd)

**STATUTE**

§ 130A-93.1. Fees for vital records copies or search; automation fund.

**DESCRIPTION**

Subsection (c):

A person who

1. falsely or fraudulently attests
  - a. that he is a registered voter, and
  - b. does not have a certified copy of his birth certificate or marriage license necessary to obtain photo identification acceptable under G.S. 163-166.13
2. in order to have the fee for issuing a copy of or doing a search for a vital record waived.

**PROPOSED OFFENSE CLASS**

Class I felony pursuant to G.S. 163-275(13).

**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. 130A-93.1(c) also states that any declaration shall prominently include the penalty under G.S. 163-275(13) for falsely or fraudulently making the declaration.

Proposed G.S. 163-166.13 provides that every individual voting in person shall present photo identification bearing any reasonable resemblance to that voter to a local election official at the voting place before voting.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/14/13

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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 589 – VIVA [Ed.5] (cont'd)

**STATUTE**

§ 161-10. Uniform fees of register of deeds.

**DESCRIPTION**

Subdivision (a)(8):

A person who

1. falsely or fraudulently attests
  - a. that he is a registered voter, and
  - b. does not have a certified copy of his birth certificate or marriage license necessary to obtain photo identification acceptable under G.S. 163-166.13
2. in order to have the fee for issuing a copy of or doing a search for a vital record waived.

**PROPOSED OFFENSE CLASS**

Class I felony pursuant to G.S. 163-275(13).

**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. 161-10(a)(8) also states that any declaration shall prominently include the penalty under G.S. 163-275(13) for falsely or fraudulently making the declaration.

Proposed G.S. 163-166.13 provides that every individual voting in person shall present photo identification bearing any reasonable resemblance to that voter to a local election official at the voting place before voting.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/14/13

**IMPACT ANALYSIS NOT REQUESTED YET**

***NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION***

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]

**STATUTE**

§ 14-43.11. Human trafficking.

**DESCRIPTION**

Subdivision (i):

A person who

1. a. knowingly or  
b. in reckless disregard of the fact
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 involuntary servitude or sexual servitude.

**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 significant personal injury or serious societal injury as Class F felonies.

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

Violation of this section is a Class C felony if the victim is a minor. This bill does not change that classification.

**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:** 06/14/13

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

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§ 14-43.11. Human trafficking.

**DESCRIPTION**

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Subdivision (ii):

A person who

1. a. knowingly or  
b. in reckless disregard of the fact
2. causes a minor to be held in involuntary servitude or sexual servitude.

**PROPOSED OFFENSE CLASS**

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Class C felony.

**ANALYSIS**

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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.

A violation of G.S. 14-43.11 is a Class F felony (proposed Class E felony) if the victim of the offense is an adult. Subdivision (ii) requires that the victim be a minor; therefore, the Class F felony is not applicable.

**FINDINGS**

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- 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:** 06/14/13

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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:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-43.12. Involuntary servitude.

**DESCRIPTION**

A person who

1. a. knowingly and willfully or  
    **b. in reckless disregard**
2. holds
3. another
4. in involuntary servitude.

**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 significant personal injury or serious societal injury as Class F felonies.

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

Violation of this section is a Class C felony if the victim is a minor. This bill does not change that classification.

**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:** 06/14/13

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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:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-43.13. Sexual servitude.

**DESCRIPTION**

A person who

1. a. knowingly or  
b. in reckless disregard
2. a. subjects  
b. or maintains
3. another
4. in sexual servitude.

**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 significant personal injury or serious societal injury as Class F felonies.

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

Violation of this section is a Class C felony if the victim is a minor. This bill does not change that classification.

**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:** 06/14/13

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.3. Solicitation of prostitution.

**DESCRIPTION**

A person who

1. solicits
2. another
3. for the purpose of prostitution (defined in G.S. 14-203.1).

**PROPOSED OFFENSE CLASS**

Class 1 misdemeanor for a first offense, Class I felony for a second or subsequent offense.

**ANALYSIS**

The Sentencing Commission does not classify misdemeanor offenses.

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

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

G.S. 14-203.1(5) defines prostitution as the performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification for any money or other consideration.

The Sentencing Commission reviewed a similar provision on April 19, 2013, that was proposed as a Class F felony. The Commission found it to be inconsistent with the Offense Classification Criteria for a Class F felony but recommended that it would 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 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. This offense would be consistent as a Class 1 misdemeanor.

**DATE OF REVIEW:** 06/14/13

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

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§ 14-203.3. Solicitation of prostitution.

**DESCRIPTION**

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A person who

1. is 18 years of age or older
2. solicits
3. a minor
4. for the purpose of prostitution (defined in G.S. 14-203.1).

**PROPOSED OFFENSE CLASS**

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Class C felony.

**ANALYSIS**

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

The Sentencing Commission reviewed a similar provision on April 19, 2013, and found it to be inconsistent with the Offense Classification Criteria for a Class C felony but recommended that it would be consistent with the Offense Classification Criteria for a Class F felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.3. Solicitation of prostitution.

**DESCRIPTION**

A person who

1. solicits
2. a person who is severely or profoundly mentally disabled
3. for the purpose of prostitution (defined in G.S. 14-203.1).

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

The Sentencing Commission reviewed a similar provision on April 19, 2013, and found it to be inconsistent with the Offense Classification Criteria for a Class C felony but recommended that it would be consistent with the Offense Classification Criteria for a Class F felony.

“Severely or profoundly mentally disabled” is not defined in statute.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: “Severely or profoundly mentally disabled” is not defined in statute.

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

### **STATUTE**

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§ 14-203.4. Promoting prostitution.

### **DESCRIPTION**

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Subsection (a):

A person who

1. knowingly
2. performs any of the following acts:
  - a. Advances prostitution as defined in G.S. 14-203.1.
  - b. Profits from prostitution by doing any of the following:
    1. Compelling a person to become a prostitute.
    2. Arranging or offering to arrange a situation in which a person may practice prostitution.
    3. Any means other than those described in sub-subdivisions a. and b. of this subdivision, including from a person who patronizes a prostitute. This sub-subdivision does not apply to a person engaged in prostitution who is a minor. A person cannot be convicted of promoting prostitution under this sub-subdivision if the practice of prostitution underlying the offense consists exclusively of the accused's own acts of prostitution under G.S. 14-203.2.

### **PROPOSED OFFENSE CLASS**

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Class F felony.

### **ANALYSIS**

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

G.S. 14-203.1. Definitions.

Advance prostitution. - The term includes all of the following:

- a. Soliciting for a prostitute by performing any of the following acts when acting other than a prostitute or a patron of a prostitute:
  1. Soliciting another for the purpose of prostitution.
  2. Arranging or offering to arrange a meeting of persons for the purpose of prostitution.
  3. Directing another to a place knowing the direction is for the purpose of prostitution.
  4. Using the Internet, including any social media website, to solicit another for the purpose of prostitution.

- 
- b. Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting other than a prostitute or a patron of a prostitute:
1. Knowingly granting or permitting the use of the place for the purpose of prostitution.
  2. Granting or permitting the use of the place under circumstances from which the person could reasonably know that the place is used or is to be used for purposes of prostitution.
  3. Permitting the continued use of the place after becoming aware of facts or circumstances from which the person should know that the place is being used for the purpose of prostitution.

Various acts related to promoting prostitution are Class 1 misdemeanors. (G.S. 14-204, -208)

## **FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.4. Promoting prostitution.

**DESCRIPTION**

Subsection (b):

A person who

1. violates G.S. 14-203.4
2. within 1,000 feet of real property comprising a school.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

“School” is not defined in the statute.

Various acts related to promoting prostitution are Class 1 misdemeanors. (G.S. 14-204, -208)

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: “School” is not defined in the statute.

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

### STATUTE

§ 14-203.4. Promoting prostitution.

### DESCRIPTION

Subsection (b):

A person who

1. violates G.S. 14-203.4 and
2. has a prior conviction for a violation of
  - a. G.S. 14-203.4 (promoting prostitution – Class F) or
  - b. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
  - c. G.S. 14-203.3 (solicitation of prostitution – Class 1/I, C),
  - d. G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person – Class B2, B1),
  - e. G.S. 14-203.6 (patronizing a prostitute – Class F), or
  - f. G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution – Class C).

### PROPOSED OFFENSE CLASS

Class C felony.

### ANALYSIS

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

### 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.

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.

**DESCRIPTION**

Subdivision (a)(1):

A person who

1. knowingly
2. advances prostitution as defined in G.S. 14-203.1
3. a. where a minor or severely or profoundly mentally disabled person engaged in prostitution, or  
b. any person engaged in prostitution in the place is a minor or is severely or profoundly mentally disabled at the time of the offense.

**PROPOSED OFFENSE CLASS**

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.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

See summary above for a definition of “advancing prostitution” under G.S. 14-203.1

**FINDINGS**

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

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

Note: “Severely or profoundly mentally disabled” is not defined in statute.

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.

**DESCRIPTION**

Subdivision (a)(2):

A person who

1. knowingly
2. profits
3. from prostitution
4. by any means where the prostituted person is a minor or is severely or profoundly mentally disabled at the time of the offense.

**PROPOSED OFFENSE CLASS**

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.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: “Severely or profoundly mentally disabled” is not defined in statute.

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

### STATUTE

§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.

### DESCRIPTION

Subdivision (a)(3):

A person who

1. knowingly
2. confines
3. a minor or severely or profoundly mentally disabled person
4. against the person's will
5. a. by the infliction or threat of imminent infliction of great bodily harm, permanent disability or disfigurement  
b. by administering to the minor or severely or profoundly mentally disabled person, without the person's consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and
6. does any of the following:
  - a. Compels the child or severely or profoundly mentally disabled person to engage in prostitution.
  - b. Arranges a situation in which the child or severely or profoundly mentally disabled person may practice prostitution.
  - c. Profits from prostitution by the child or severely or profoundly mentally disabled person.

### PROPOSED OFFENSE CLASS

Class B1 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.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

### FINDINGS

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

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

Note: "Severely or profoundly mentally disabled" is not defined in statute.

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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 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.

**DESCRIPTION**

Subsection (c):

A person who

1. violates G.S. 14-203.5
2. within 1,000 feet of real property comprising a school.

**PROPOSED OFFENSE CLASS**

Class B1 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.

“School” is not defined in the statute.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: “School” is not defined in the statute.

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.

**DESCRIPTION**

Subsection (c):

A person who

1. violates G.S. 14-203.5 and
2. has prior conviction for a violation of
  - a. G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person – Class B2, B1), or
  - b. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
  - c. G.S. 14-203.3 (solicitation of prostitution – Class 1/I, C),
  - d. G.S. 14-203.4 (promoting prostitution – Class F, C),
  - e. G.S. 14-203.6 (patronizing a prostitute – Class B2, B1) , or
  - f. G.S. 14-203.7 (patronizing a minor engaged in prostitution – Class C, B2).

**PROPOSED OFFENSE CLASS**

Class B1 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.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

**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.

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.6. Patronizing a prostitute.

**DESCRIPTION**

Subsection (a):

A person who

1. Knowingly
2. a. engages in vaginal intercourse, any sexual act as define in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification with a prostitute, or  
b. enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-271.(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, and
3. the person is not his or her spouse.

**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.

Prostitution is a Class 1 misdemeanor. (G.S. 14-204(5), -208)

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.6. Patronizing a prostitute.

**DESCRIPTION**

Subsection (b):

A person who

1. a. engages in vaginal intercourse, any sexual act as define in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification with a prostitute, or  
b. enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-271.(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, and
2. the person is not his or her spouse, and
3. commits the offense within 1,000 feet of real property comprising a school.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

“School” is not defined in the statute.

Prostitution is a Class 1 misdemeanor. (G.S. 14-204(5), -208)

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: “School” is not defined in the statute.

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.6. Patronizing a prostitute.

**DESCRIPTION**

Subsection (b):

A person who

1. violates G.S. 14-203.6 and
2. has a prior conviction for a violation of
  - a. G.S. 14-203.6 (patronizing a prostitute – Class F, C) or
  - b. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
  - c. G.S. 14-203.3 (solicitation of prostitution – Class 1/I, C),
  - d. G.S. 14-203.4 (promoting prostitution – Class F, C),
  - e. G.S. 14-203.5 (promoting prostitution of a minor – Class B2, B1) , or
  - f. G.S. 14-203.7 (patronizing a minor engaged in prostitution – Class C, B2).

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

Prostitution is a Class 1 misdemeanor. (G.S. 14-204(5), -208)

**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.

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.7. Patronizing a minor or mentally disabled person engaged in prostitution.

**DESCRIPTION**

Subsection (a):

A person who

1. is 18 years of age or older
2. engages in vaginal intercourse, any sexual act defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5)
3. for the purpose of sexual arousal or gratification
4. with a prostitute that is a minor.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

Participating in prostitution of a minor is a Class F felony. (G.S. 14-190.19)

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

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**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.7. Patronizing a minor or mentally disabled person engaged in prostitution.

**DESCRIPTION**

Subsection (b):

A person who

1. engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5)
2. for the purpose of sexual arousal or gratification
3. with a prostitute that is a severely or profoundly mentally disabled person.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

Participating in prostitution of a minor is a Class F felony. (G.S. 14-190.19)

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

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

Note: “Severely or profoundly mentally disabled” is not defined in statute.

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(PREPARED PURSUANT TO G.S. 164-43)**

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.7. Patronizing a minor or mentally disabled person engaged in prostitution.

**DESCRIPTION**

A person who

1. violates G.S. 14-203.7
2. within 1,000 feet of real property comprising a school.

**PROPOSED OFFENSE CLASS**

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.

“School” is not defined in the statute.

Participating in prostitution of a minor is a Class F felony. (G.S. 14-190.19)

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: “School” is not defined in the statute.

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 14-203.7. Patronizing a minor or mentally disabled person engaged in prostitution.

**DESCRIPTION**

Subsection (c):

A person who

1. violates G.S. 14-203.7 and
2. has a prior conviction for a violation of
  - a. G.S. 14-203.7 (patronizing a minor engaged in prostitution – Class C, B2) or
  - b. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
  - c. G.S. 14-203.3 (solicitation of prostitution – Class 1/I, C),
  - d. G.S. 14-203.4 (promoting prostitution – Class F, C),
  - e. G.S. 14-203.5 (promoting prostitution of a minor – Class B2, B1) , or
  - f. G.S. 14-203.6 (patronizing a prostitute – Class F, C).

**PROPOSED OFFENSE CLASS**

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.

Participating in prostitution of a minor is a Class F felony. (G.S. 14-190.19)

**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:** 06/14/13

**BILL CONTINUED ON NEXT PAGE**

***NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION***

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

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§ 15A-1340.16. Aggravated and mitigated sentences.

**DESCRIPTION**

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Subdivision (d)(19a):

A person who

1. violates G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and
2. the offense involved multiple victims.

**PUNISHMENT RANGE**

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**CURRENT:** Sentenced from the presumptive range as specified in G.S. 15A-1340.17.

**PROPOSED:** Sentenced from the aggravated range as specified in G.S. 15A-1340.17.

**ANALYSIS**

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Structured sentencing allows for aggravated sentences.

**FINDINGS**

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

**DATE OF REVIEW:** 06/14/13

**BILL CONTINUED ON NEXT PAGE**

***NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION***

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

**BILL NUMBER/SHORT TITLE:** SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.3]  
(cont'd)

**STATUTE**

§ 15A-1340.16. Aggravated and mitigated sentences.

**DESCRIPTION**

Subdivision (d)(19b):

A person who

1. violates G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and
2. the victim suffered serious injury as a result of the offense.

**PUNISHMENT RANGE**

**CURRENT:** Sentenced from the presumptive range as specified in G.S. 15A-1340.17.

**PROPOSED:** Sentenced from the aggravated range as specified in G.S. 15A-1340.17.

**ANALYSIS**

Structured sentencing allows for aggravated sentences.

**FINDINGS**

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

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

G.S. 164-41 is not applicable.

**DATE OF REVIEW:** 06/14/13

**IMPACT ANALYSIS ON NEXT PAGE**

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## SB 683: SAFE HARBOR/VICTIMS OF HUMAN TRAFFICKING

*PREPARED: May 9, 2013*

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

**SECTION 1.** This Section amends G.S. 14-43.11, Human trafficking.

1. It reclassifies the existing offense involving an adult victim from Class F to Class E.
2. It expands the existing offense to add a person who, in reckless disregard of the fact, recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude. Violation would be a Class E felony if the victim is an adult. It remains a Class C felony if the victim is a minor.
3. It adds a new offense if a person knowingly or in reckless disregard of the fact causes a minor to be held in involuntary servitude or sexual servitude. Presumably, this would be a Class C felony since the victim is a minor.

In FY 2011/12, there were no convictions for human trafficking involving an adult victim (a Class F felony) or for human trafficking involving a minor victim (a Class C felony).

Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (53% for Class F compared to 57% for Class E) and longer average estimated time served (17 months for Class F compared to 28 months for Class E). If, for example, there were two Class F felony convictions that were reclassified as Class E felony convictions, active sentences would result in the need for no additional prison beds the first year and one additional prison bed the second year. No additional prison beds would be needed in year one because average estimated time served for both Class F and Class E felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. In addition, there would be an impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary) as a result of the longer period of Post-Release Supervision for Class E felons (12 months) compared to Class F felons (9 months). Due to the lack of historical data under JRA, it is not possible to determine this impact.

It is not known how many additional Class E convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 57% of Class E convictions will result in active sentences, with an average estimated time served of 28 months. If, for example, there were two additional Class E 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 three additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class E felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

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

It is not known how many additional Class C convictions may result from the proposed broadening of the current statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class C 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.

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 proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

**SECTION 2.** This Section amends G.S. 14-43.12, Involuntary servitude.

1. It reclassifies the existing offense involving an adult victim from Class F to Class E.
2. It expands the existing offense to add a person who, in reckless disregard, holds another in involuntary servitude.

In FY 2011/12, there were no convictions for involuntary servitude involving an adult victim (a Class F felony) or for involuntary servitude involving a minor victim (a Class C felony).

Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (53% for Class F compared to 57% for Class E) and longer average estimated time served (17 months for Class F compared to 28 months for Class E). If, for example, there were two Class F felony convictions that were reclassified as Class E felony convictions, active sentences would result in the need for no additional prison beds the first year and one additional prison bed the second year. No additional prison beds would be needed in year one because average estimated time served for both Class F and Class E felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. In addition, there would be an impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary) as a result of the longer period of Post-Release Supervision for Class E felons (12 months) compared to Class F felons (9 months). Due to the lack of historical data under JRA, it is not possible to determine this impact.

It is not known how many additional Class E convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 57% of Class E convictions will result in active sentences, with an average estimated

time served of 28 months. If, for example, there were two additional Class E 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 three additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class E felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

It is not known how many additional Class C convictions may result from the proposed broadening of the current statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class C felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

**SECTION 3.** This Section amends G.S. 14-43.13, Sexual servitude.

1. It reclassifies the existing offense involving an adult victim from Class F to Class E.
2. It expands the existing offense to add a person who, in reckless disregard, subjects or maintains another in sexual servitude.

In FY 2011/12, there were no convictions for sexual servitude involving an adult victim (a Class F felony) or one conviction for sexual servitude involving a minor victim (a Class C felony).

Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (53% for Class F compared to 57% for Class E) and longer average estimated time served (17 months for Class F compared to 28 months for Class E). If, for example, there were two Class F felony convictions that were reclassified as Class E felony convictions, active sentences would result in the need for no additional prison beds the first year and one additional prison bed the second year. No additional prison beds would be needed in year one because average estimated time served for both Class F and Class E felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. In addition, there would be an impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary) as a result of the longer period of Post-Release Supervision for Class E felons (12 months) compared to Class F felons (9 months). Due to the lack of historical data under JRA, it is not possible to determine this impact.

It is not known how many additional Class E convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 57% of Class E convictions will result in active sentences, with an average estimated time served of 28 months. If, for example, there were two additional Class E convictions per year as a

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

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

It is not known how many additional Class C convictions may result from the proposed broadening of the current statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class C felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

**SECTION 4.** This Section repeals eight statutes from Chapter 14 of the General Statutes.

G.S. 14-190.18. Promoting prostitution of a minor.

G.S. 14-190.19. Participating in prostitution of a minor.

G.S. 14-203. Definition of terms.

G.S. 14-204. Prostitution and various acts abetting prostitution unlawful.

G.S. 14-204.1. Loitering for the purpose of engaging in prostitution offense.

G.S. 14-205. Prosecution; in what courts.

G.S. 14-207. Degree of guilt.

G.S. 14-208. Punishment; probation; parole.

The Administrative Office of the Courts (AOC) currently does not have specific offense codes for violations of G.S. 14-190.18 and G.S. 14-190.19. The lack of AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions.

In FY 2011/12, there were a total of 232 convictions under G.S. 14-204 – 4 convictions for maintaining a place for prostitution under subsection (1), 2 convictions for transporting for prostitution under subsection (4), 178 convictions for soliciting prostitution under subsection (5), 46 convictions for engaging in prostitution under subsection (7), and 2 convictions for aiding and abetting prostitution under subsection (7). The AOC currently does not have specific offense codes for the remaining subsections. There were 51 convictions for loitering for prostitution under G.S. 14-204.1. Violation of these statutes is a Class 1 misdemeanor offense.

Most of the conduct covered in the statutes that are being repealed is covered in the new statutes that are enacted in Section 5 of the proposed bill. However, loitering for prostitution (G.S. 14-204.1) does not appear to be covered by the new offenses created in Section 5. As noted above, there were 51 convictions for loitering for prostitution. Since most misdemeanor sentences are served in local jails, the repeal of these statutes is not expected to result in prison bed savings. The repeal could result in jail bed savings; however, the savings would be minimal due to the small number of convictions involved.

**SECTION 5.** This Section enacts six new statutes related to prostitution.

**§ 14-203.2. Prostitution**

This statute makes it illegal for any person to knowingly perform, offer, or agree to perform any sexual act for any money, property, token, object, or article or anything of value or any touching or fondling of the sex organs of one person by another person, for anything of value, for the purpose of sexual arousal or gratification. This statute broadens the conduct covered by the existing offense to include any sexual act and any touching or fondling of the sex organs of one person by another person. Violation is a Class 1 misdemeanor. Some of this conduct is currently covered by subsection (7) of G.S. 14-204. Prostitution. If the offender has not previously been convicted of or placed on probation for misdemeanor prostitution, the court must place him or her on probation without conviction (conditional discharge). (There is no conditional discharge requirement in the current statute, some districts may offer some form of it in their discretion.) If the offender is a minor, he or she is immune from prosecution. (There is no immunity for minors in the current statute.)

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 proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. As noted above, while some of the conduct covered under the new offense is currently covered by the existing offense for engaging in prostitution (for which there were 46 convictions in FY 2011/12), the new statute expands the conduct covered for this offense. It is not known how many additional convictions may result from the proposed broadening of the conduct covered. At the same time, the new statute limits potential convictions by requiring conditional discharge for offenders who have not previously been convicted of or placed on probation for misdemeanor prostitution and by requiring immunity from prosecution for minor offenders. It is not known how many fewer convictions may result from these requirements. As a result, the impact cannot be determined.

In FY 2011/12, 26% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 39 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

**§ 14-203.3. Solicitation of a sexual act.**

This statute makes it illegal for a person to solicit another person for the purpose of prostitution. Violation is a Class 1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. Some of this conduct is currently covered by subsection (5) of G.S. 14-204. Prostitution. In FY 2011/12, there were 178 convictions for soliciting for prostitution, a Class 1 misdemeanor.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. In FY 2011/12, 26% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 39 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

It is also not known how many offenders may be repeat offenders under the proposed statute and would be convicted as Class I felons. 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.

Of the 178 convictions for soliciting for prostitution, 126 were for offenders with one or more prior conviction points.<sup>1</sup> While the AOC database contains information on the number of prior conviction points, it does not contain information about the specific offenses that are used to calculate the number of prior conviction points. Therefore, it is not known how many of these offenders could be convicted as Class I felons (second or subsequent offense) under the proposed statute. The SAS<sup>®</sup> Simulation Studio prison projection model typically cannot be used to project the impact of misdemeanor to felony reclassifications. Using threshold data, if all of the 126 of the Class 1 misdemeanor convictions for offenders with one or more prior conviction point would be convicted as Class I felonies under the proposed bill, active sentences would result in the need for 12 additional prison beds the first year and 12 additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation is a Class C felony if the person is 18 years of age or older and they solicit a minor. G.S. 14-190.19, Participating in prostitution of a minor, currently covers this conduct. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.19. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Impact on the prison population will occur if Class F convictions become Class C convictions under the proposed statute because of the higher rate of active sentences (100% for Class C compared to 53% for Class F) and longer average estimated time served (81 months for Class C compared to 17 months for Class F). If, for example, there were two Class F felony convictions that were reclassified as Class C felony convictions, active sentences would result in the need for no additional prison beds the first year and two additional prison beds the second year. No additional prison beds would be needed in year one because average estimated time served for both Class C and Class F felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. In addition, there would be an impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary) as a result of the longer period of Post-Release Supervision for Class E felons (12 months) compared to Class F felons (9 months). Due to the lack of historical data under JRA, it is not possible to determine this impact.

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<sup>1</sup> For misdemeanants, prior conviction points are determined by calculating the offender's total number of prior felony and misdemeanor convictions. For felons, prior record points are assigned to each prior conviction based on its offense class. SOURCE: NC Sentencing and Policy Advisory Commission, FY 2011/12 Structured Sentencing Simulation Data.

Violation is a Class C felony if any person solicits a person who is severely or profoundly mentally disabled. Some of this conduct is currently covered by G.S. 14-190.19. Participating in prostitution of a minor. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.19. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

#### **§ 14-203.4. Promoting prostitution.**

This statute makes it illegal for a person to knowingly promote prostitution by any of the means listed in the statute or otherwise.

Violation is a Class F felony. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Some of this conduct is currently covered by subsections (1), (2), (3), and (7) of G.S. 14-204. Prostitution. In FY 2011/12, there were 2 convictions for aiding and abetting prostitution and 4 convictions for maintaining a place for prostitution. These are currently Class 1 misdemeanor offenses. The SAS<sup>®</sup> Simulation Studio prison projection model typically cannot be used to project the impact of misdemeanor to felony reclassifications. Using threshold data, if these 6 Class 1 misdemeanor convictions would be reclassified as Class F felonies under the proposed bill, this would result in the need for 4 additional prison beds the first year and 5 additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA,

it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation within 1,000 feet of real property comprising a school is a Class C felony. It is not known how many offenders would qualify for conviction as Class C felons based on the criteria for this offense. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

A violation of this section with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.5 (promoting prostitution of a minor), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony. It is not known how many offenders would qualify for conviction as Class C felons based on their prior convictions (as defined in statute). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

**§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.**

This statute makes it illegal for a person to knowingly promote prostitution of a minor or a person who is severely or profoundly mentally disabled at the time of the offense by any of the means listed in the statute.

Violation of subdivision (a)(1) is a Class B2 felony. Some of this conduct is currently covered by G.S. 14-190.18. Promoting prostitution of a minor. G.S. 14-190.18 does not address a person who is severely or profoundly mentally disabled. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2011/12 Structured Sentencing Simulation Data. 39

the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

Violation of subdivision (a)(2) is a Class B2 felony. Some of this conduct is currently covered by G.S. 14-190.18. Promoting prostitution of a minor. G.S. 14-190.18 does not address a person who is severely or profoundly mentally disabled. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

Violation of subdivision (a)(3) is a Class B1 felony. Some of this conduct is currently covered by G.S. 14-190.18. Promoting prostitution of a minor. G.S. 14-190.18 does not address a person who is severely or profoundly mentally disabled. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B1 offense was 235 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

Violation within 1,000 feet of real property comprising a school is a Class B1 felony. It is not known how many offenders would qualify for conviction as Class B1 felons based on the criteria for this offense. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under

Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B1 offense was 235 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

A violation of this section with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class B1 felony. It is not known how many offenders would qualify for conviction as Class B1 felons based on their prior convictions (as defined in statute). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B1 offense was 235 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

#### **§ 14-203.6. Patronizing a prostitute.**

This statute makes it illegal for a person to knowingly perform any of the following acts with a person not his or her spouse:

- (1) Engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute.
- (2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification.

Violation is a Class F felony. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Some of this conduct is currently covered by subsection (2), (6), and (7) of G.S. 14-204. Prostitution. In FY 2011/12, there were 46 convictions for engaging in prostitution. The SAS<sup>®</sup> Simulation Studio prison projection model typically cannot be used to project the impact of misdemeanor to felony reclassifications. Using threshold data, if all of these 46 Class 1 misdemeanor convictions would be reclassified as Class F felonies under the proposed bill, this would result in the need for 25 additional prison beds the first year and 35 additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation within 1,000 feet of real property comprising a school is a Class C felony. It is not known how many offenders would qualify for conviction as Class C felons based on the criteria for this offense. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

A violation of this section with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony. It is not known how many offenders would qualify for conviction as Class C felons based on their prior convictions (as defined in statute). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

**§ 14-203.7. Patronizing a minor or mentally disabled person engaged in prostitution.**

This statute makes it illegal for a person to do any of the following:

- (1) if the person is 18 years of age or older, engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute that is a minor.

- (2) engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute that is a severely or profoundly mentally disabled person.

Violation is a Class C felony. Some of this conduct is currently covered by G.S. 14-190.19. Participating in prostitution of a minor. G.S. 14-190.19 does not address a person who is severely or profoundly mentally disabled. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.19. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

Violation within 1,000 feet of real property comprising a school is a Class B2 felony. It is not known how many offenders would qualify for conviction as Class B2 felons based on the criteria for this offense. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (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.

A violation of this section with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.6 (patronizing a prostitute) is a Class B2 felony. It is not known how many offenders would qualify for conviction as Class B2 felons based on their prior convictions (as defined in statute). Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to

the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

**SECTION 14.** This Section enacts two new aggravating factors.

G.S. 15A-1340.16(d)(19a) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and involved multiple victims.

G.S. 15A-1340.16(d) (19b) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and the victim suffered serious injury as a result of the offense.

It is not known how many sentences might be aggravated if this conduct is added as aggravating factors. Therefore, it is not possible to determine the impact this proposal would have on the state prison population. The aggravated sentence range allows the judge to impose a sentence that is up to 25% longer than the longest sentence in the presumptive sentence range. During FY 2011/12, 5% (n=517) of all felony convictions receiving an active sentence fell in the aggravated sentence range. The Administrative Office of the Courts' Automated Criminal Infractions System does not contain data on the application of aggravating or mitigating factors. The aggravating factors in the proposed bill could be applied to convictions for Class C and Class E offenses under the applicable statutes. The impact of aggravated sentences varies considerably by offense class (e.g., little impact for low-level felonies with increasing impact as one moves up the grid to having a substantial impact for Class B1 felonies). For illustrative purposes, the table below shows minimum sentence lengths for each sentencing range for Class C and Class E felons.

*Class C and Class E Minimum Sentence Lengths*

Offense Class	Prior Record Level						Disposition
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
C	A 73 – 92	A 83 – 104	A 96 – 120	A 110 – 138	A 127 – 159	A 146 – 182	Aggravated Range
	<b>58 – 73</b>	<b>67 – 83</b>	<b>77 – 96</b>	<b>88 – 110</b>	<b>101 – 127</b>	<b>117 – 146</b>	<b>Presumptive Range</b>
	44 – 58	50 – 67	58 – 77	66 – 88	76 – 101	87 – 117	Mitigated Range
E	I/A 25 – 31	I/A 29 – 36	A 33 – 41	A 38 – 48	A 44 – 55	A 50 – 63	Disposition Aggravated Range
	<b>20 – 25</b>	<b>23 – 29</b>	<b>26 – 33</b>	<b>30 – 38</b>	<b>35 – 44</b>	<b>40 – 50</b>	<b>Presumptive Range</b>
	15 – 20	17 – 23	20 – 26	23 – 30	26 – 35	30 – 40	Mitigated Range

Source: Felony Punishment Chart, Effective for Offenses Committed on or after 12/1/2011

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 Structured Sentencing Simulation Data

**TECHNICAL CONSIDERATIONS:** In Section 5, “Severely or profoundly mentally disabled” is not defined in statute and “school” is not defined in statute.

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